

INFRASTRUCTURE, DEVELOPMENT AND INDEMNITY AGREEMENT

Among

CITY OF OVERLAND PARK, KANSAS

And

KANSAS CAMPUS, LLC

And

Agreed to as Sections 2.03 and 3.01(d)

And

Otherwise Acknowledged by

TALLGRASS CREEK, INC.

And

Agreed as to Section 2.04 and Article VI

And

Otherwise Acknowledged by

ERICKSON RETIREMENT COMMUNITIES, LLC

Dated as of November __, 2006

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**INFRASTRUCTURE, DEVELOPMENT
AND INDEMNITY AGREEMENT**

THIS INFRASTRUCTURE, DEVELOPMENT AND INDEMNITY AGREEMENT (this **“Agreement”**), is made as of this ____ day of November, 2006, by and among the CITY OF OVERLAND PARK, KANSAS, a municipal corporation organized and existing under the Constitution and laws of the State of Kansas, having its principal offices at its City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212 (the **“City”**), and KANSAS CAMPUS, LLC, a Maryland limited liability company (the **“Owner”**), having its principal office at 701 Maiden Choice Lane, Baltimore, Maryland 21228, TALLGRASS CREEK, INC., a Maryland non-stock corporation (the **“Nonprofit”**) (as to Sections 2.03 and 3.01(d) hereof), having its principal office at 701 Maiden Choice Lane, Baltimore, Maryland 21228 and ERICKSON RETIREMENT COMMUNITIES, LLC, a Maryland limited liability company (the **“Developer”**) (as to Section 2.04 and Article VI hereof) and as otherwise acknowledged.

W I T N E S S E T H:

WHEREAS, the City Council of the City adopted Resolution No. 3542 establishing a Transportation Development District (the **“Transportation Development District”**) to provide project improvements to said Transportation Development District pursuant to the provisions of K.S.A. 2005 Supp. 12-17,140 through 12-17,149, et seq. (collectively, the **“Act”**); and

WHEREAS, all of the property within the Transportation Development District (the **“Development Site”**) is owned by the Owner and may be leased under a long-term ground lease for the purpose of developing a continuing care retirement community as set forth in the Special Use Permit Ordinance No. Z-3179, adopted by the Governing Body of the City of Overland Park, Kansas on December 19, 2005 (the **“Development”**); and

WHEREAS, the Owner has contracted with the Developer to provide development services and represent the Owner in the design, development, construction and marketing of the Development; and

WHEREAS, the Owner has leased to the Nonprofit the Development and the Development Site for the purposes of operating the completed portions of the Development as a continuing care retirement community; and

WHEREAS, pursuant to Ordinance No. _____, dated _____, 2006 (the “**Ordinance**”), the City approved the issuance of its Transportation Development District Special Assessment Bonds, Series 2006 (Tallgrass Creek Project) (the “**Bonds**”) in an aggregate principal amount of \$15,000,000 to provide for the financing of transportation development district projects as more particularly described in the Ordinance to be acquired, constructed and installed within the Development Site and the Transportation Development District (the “**TDD Project**”); and

WHEREAS, the Bonds are payable from moneys received from special assessments levied upon real property situated within the Transportation Development District; and

WHEREAS, the proceeds of the Bonds will be deposited in a construction fund (the “**Construction Fund**”) created under and pursuant to a Trust Indenture dated as November 1, 2006 (the “**Trust Indenture**”) between the City and Manufacturer's and Traders Trust Owner, Baltimore, Maryland, as Trustee (the “**Trustee**”), and will be applied to the Eligible Project Costs in accordance with the terms of the Trust Indenture; and

WHEREAS, in consideration for the issuance of the Bonds, the Owner has agreed to maintain in a good and workmanlike manner and in accordance with all pertinent

ordinances and regulations of the City the Project upon the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

The terms defined in this Article shall, for all purposes of this Agreement, have the meanings specified in this Article, unless the context clearly otherwise requires.

“**Act**” shall have the meaning assigned such term in the preambles hereof.

“**Administrative Expenses**” shall mean the reasonable expenses incurred by the City pursuant to this Agreement or resulting from the issuance of the Bonds, not to exceed five percent (5%) of the Eligible Project Costs.

“**Agreement**” or “**this Agreement**” shall mean this Infrastructure, Development and Indemnity Agreement, as originally executed and as it may hereafter be amended and supplemented in accordance with the provisions hereof.

“**Bank**” shall mean the Construction Lender, as defined in the Indenture.

“**Bond**” or “**Bonds**” shall mean the City’s Transportation Development District Special Assessment Bonds, Series 2006 (Tallgrass Creek Project) in the aggregate principal amount of \$15,000,000.

“**City**” shall mean the City of Overland Park, Kansas, a municipal corporation organized and existing under the Constitution and laws of the State.

“**Closing Date**” shall mean the date of initial delivery of the Bonds.

“Construction Fund” shall mean that certain construction fund created pursuant to the Trust Indenture.

“Cost” or **“Cost of the Project”** or **“Costs of the Project”** with respect to the Project shall, to the extent permitted by the Act, be deemed to include all items that may be charged to or which upon completion will be chargeable to capital accounts for federal income tax purposes (regardless of how such items are charged or will be charged in the financial accounts of the Owner), including but not limited to:

(i) costs and obligations of the Owner incurred for labor and materials in connection with the acquisition, construction, installation and equipping of the Project;

(ii) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction of the Project;

(iii) all costs of legal, architectural and engineering services, including the costs of the Owner, for test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising, purchasing, constructing and installing, as well as for the performance of all other duties required by or consequent upon the proper construction of the Project, taxes and general overhead expenses of the Owner properly assignable to acquiring, constructing, installing and equipping the Project;

(iv) all expenses incurred in connection with the issuance of the Bonds, including without limitation compensation and expenses of the Trustee, underwriting and legal expenses and fees, costs of printing and recording and filing fees;

(v) all costs which the Owner shall be required to pay, under the terms of any contract or contracts, for the acquisition, construction, installation or equipping of the Project;

(vi) any sums required to reimburse the Owner for advances made or obligations incurred by it for any of the above items or for any other costs incurred and for work done by it which are properly chargeable to the Project; and

(vii) all interest on the Bonds during the construction period, if any, and other costs related to the Project.

“Determination Letter” shall mean the favorable determination letter issued by the Department of Treasury of the Internal Revenue Service that the Nonprofit is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

“Developer” shall mean Erickson Retirement Communities, LLC, a Maryland limited liability company.

“Development” shall mean the continuing care retirement community to be located on the Development Site.

“Development Site” shall mean all of the land within the Transportation Development District.

“Eligible Project Costs” shall mean all Costs of the Project that are eligible for financing under the Act.

“Event(s) of Default” shall have the meaning given in Article VI hereof.

“Nonprofit” shall mean Tallgrass Creek, Inc., a Maryland non-stock corporation.

“Ordinance” shall mean that certain Ordinance No. _____ adopted by the City on October __, 2006 authorizing the issuance of the Bonds.

“Owner” shall mean Kansas Campus, LLC, a Maryland limited liability company, or any successor thereto.

“Project” shall mean the acquisition of land and the construction of public and private improvements thereon, as more particularly described in Resolution No. 3542, adopted by the Governing Body of the City of Overland Park, Kansas on September 11, 2006, as the same may at any time and from time to time exist, including any modifications, substitutions and additions and excluding deletions.

“State” shall mean the State of Kansas.

“Transfer Date” shall mean a date which is no later than November 29, 2009, and with respect to those portions of the Project to be conveyed to the Nonprofit pursuant to the terms of the Lease, dated November __, 2006 between the Owner and the Nonprofit, the dates those portions of the Project are paid from moneys in the Construction Fund, and as otherwise provided in Article III hereof.

“TDD Project” shall mean the Transportation Development District projects described in Resolution No. 3542.

“Transportation Development District” shall mean the Transportation Development District established by the City by that certain Resolution No. 3542, adopted September 11, 2006, pursuant to the Act.

“Trustee” shall mean Manufacturer's and Traders Trust Company, Baltimore, Maryland.

“Trust Indenture” shall mean that certain Trust Indenture dated as of November 1, 2006 by and between the City and the Trustee.

ARTICLE II

REPRESENTATIONS

SECTION 2.01. The City. The City makes the following representations and covenants as the basis for the undertakings on the part of the Owner contained in this Agreement:

(a) The City is a municipal corporation organized and existing under the Constitution and laws of the State and has the corporate power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) The City will issue its Bonds in the aggregate principal amount of \$15,000,000 to finance the TDD Project, upon the terms and conditions set forth in the Ordinance and will cause the proceeds of the sale of the Bonds to be applied to the Costs of the TDD Project.

(c) The execution and delivery of this Agreement by the City has been duly authorized by all necessary action on its part.

SECTION 2.02. The Owner. The Owner makes the following representations and covenants as the basis for the undertakings on the part of the City herein contained:

(a) The Owner is a limited liability company duly organized under the laws of the State of Maryland, is duly authorized to do business in the State, has power to enter into this Agreement and by proper action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or

provisions of any corporate restriction or any agreement or instrument to which the Owner is a party or by which it is bound, or will constitute a default under any of the foregoing.

(c) So long as any of the Bonds shall be outstanding, the Owner will not willfully take any action, or willfully fail to take any action, that (i) would cause the Project to be ineligible for financing under the Act, or (ii) adversely affect the tax exempt status of the interest payable on the Bonds.

SECTION 2.03. The Nonprofit. The Nonprofit makes the following representations and covenants as the basis for the undertakings on the part of the City herein contained:

(a) The Nonprofit is a non-stock corporation duly organized under the laws of the State of Maryland, is duly authorized to do business in the State, has power to enter into this Agreement and by proper action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Nonprofit is a party or by which it is bound, or will constitute a default under any of the foregoing.

(c) So long as any of the Bonds shall be outstanding, the Nonprofit will not willfully take any action, or willfully fail to take any action, that (i) would cause the Project to be ineligible for financing under the Act, or (ii) adversely affect the tax exempt status of the interest payable on the Bonds.

SECTION 2.04. The Developer. The Developer makes the following representations and covenants as the basis for the undertakings on the part of the City herein contained:

(a) The Developer is a limited liability company duly organized under the laws of the State of Maryland, is duly authorized to do business in the State, has power to enter into this Agreement and by proper action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Developer is a party or by which it is bound, or will constitute a default under any of the foregoing.

(c) So long as any of the Bonds shall be outstanding, the Developer will not willfully take any action, or willfully fail to take any action, that (i) would cause the Project to be ineligible for financing under the Act, or (ii) adversely affect the tax exempt status of the interest payable on the Bonds.

ARTICLE III

AGREEMENTS WITH RESPECT TO THE CONSTRUCTION, EQUIPPING AND INSTALLATION OF THE PROJECT; TRANSFER

**SECTION 3.01. Construction, Equipping and Installation of the Project;
Sale of the Project.**

(a) The Owner shall have the sole responsibility for the acquisition, construction, installation and equipping of the Project and may perform the same itself, through the Developer or through agents, contractors and others selected by the Developer, and may

make or issue such contracts, orders, receipts and instructions, and in general do or cause to be done all such other things, as it may in its sole discretion consider requisite or advisable for the acquisition, construction, installation and equipping of the Project. The Owner shall have full authority and the sole right under this Agreement to supervise and control directly or indirectly all aspects of the acquisition, construction, installation and equipping of the Project.

(b) In the event the moneys in the Construction Fund available for payment of the Eligible Project Costs should not be sufficient to pay the Cost of the Project in full, the Owner agrees to complete such part of the Project and to pay that portion of the Cost of the Project in excess of the moneys available therefore in the Construction Fund. The Owner agrees that if after exhaustion of the moneys in the Construction Fund, the Owner should pay any portion of the Cost of the Project pursuant to the provisions of this Section 3.01, and the Owner shall not be entitled to any reimbursement therefore from the City.

(c) The Owner will use all reasonable efforts to cause the Project to be completed on or before three (3) years from the date of issuance of the Bonds or as soon thereafter as may be practicable.

(d) The Owner agrees, on or before the “**Transfer Date**”, to convey and grant the Project to the Nonprofit (except for any portion conveyed to the City pursuant to its Special Use Permit Ordinance No. Z-3179 and the ERC Campus, Second Plat), and the Nonprofit agrees to accept the aforesaid conveyance and grant of the Project in accordance with the provisions of subsection (f) below. Such portion of the Project to be conveyed to the City shall occur prior to the Transfer Date and shall be consummated pursuant to a Kansas Warranty Deed or in any other manner acceptable to the City and the Owner.

(e) The Nonprofit agrees to provide the Trustee with a copy of the Determination Letter or any correspondence from the Internal Revenue Service stating that the Nonprofit is not exempt from Federal income tax under Section 501(c)(3) of the Code within thirty (30) days of receipt thereof.

(f) At least ten (10) days prior to the Transfer Date of that portion of the Project to be conveyed to the City, the Owner shall certify to the City that, except for the amounts retained by the Trustee at the Owner's direction for any Cost of the Project not then due and payable, (i) the acquisition, construction, installation and equipping of such portion of the Project have been completed substantially in accordance with the terms of this Agreement and all labor, services, materials and supplies used in such construction have been paid for, (ii) all other facilities necessary in connection with the Project have been acquired, constructed, installed and equipped substantially in accordance with the terms of this Agreement and all costs and expenses incurred in connection therewith have been paid, and (iii) that the Owner shall promptly transfer such portion of the Project to the City. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The conveyance of the required portion of the Project to the Nonprofit shall be accomplished in a manner that transfers Federal income tax ownership of the Project to the Nonprofit.

ARTICLE IV

PROVISIONS CONCERNING PAYMENT, MAINTENANCE AND USE OF THE PROJECT

SECTION 4.01. Administrative Expenses. The Owner will pay all Administrative Expenses. In the event the Owner should fail to make any such payment, the payment so in default shall continue as an obligation of the Owner until the amount in default

shall have been fully paid, and the Owner agrees to pay the same with interest thereon until paid at the same rate as the interest on the Bonds.

SECTION 4.02. No Warranty of Project. The City makes no warranty, either express or implied, as to the actual or designed capacity of the Project, as to the suitability of the Project for the purposes specified in this Agreement, as to the condition of the Project, or that the Project will be suitable for the Owner's purposes or needs.

SECTION 4.03. Further Assurances and Corrective Instruments. The City and the Owner will execute and deliver such amendments of or supplements to this Agreement and any such further instruments as may be necessary for the purposes of correcting any inadequate or incorrect description of the Project or carrying out the intention or facilitating the performance of this Agreement.

SECTION 4.04. Maintenance of Project by Owner. The Owner agrees that at all times prior to the Transfer Date, it will, at its own expense, maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition and that it will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals; provided, however, that the Owner shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary portion of the Project. In any instance where the Owner determines that all or any portion of the Project has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Owner may remove all or such portion of the Project and sell, trade-in, exchange or otherwise dispose of the Project or such removed portion without (except to the extent provided in this Section) any responsibility or accountability to the City therefor.

SECTION 4.05. Insurance Required.

(a) The Owner agrees that at all times prior to the Transfer Date, it will, at its own expense, maintain insurance coverage of the types and minimum liability as set forth below. The Owner shall furnish to the City a Certificate of Insurance verifying such coverage, listing the City as the certificate holder.

City of Overland Park, Kansas

8500 Santa Fe Drive

Overland Park, KS 66212

Prior to any material change or cancellation, the City will be given thirty (30) days advanced written notice by registered mail to the stated address of the certificate holder.

(1) **Builder's Risk** insurance upon the entire project during the period of construction to the full insurable value of the project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by the Owner shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as customarily provided. The property insurance shall include physical loss or damage to the work, including materials and equipment in transit, at the Site.

(2) **Commercial Property** insurance for all properties substantially completed, covering all risks of direct physical loss. Such insurance shall be in an amount equal to 100% of the replacement cost value of the property and shall include either an agreed amount endorsement or waiver of coinsurance.

(3) **Commercial General Liability** insurance on an occurrence basis in amounts no less than \$1,000,000 bodily injury and property damage per occurrence, including personal and advertising injury; \$1,000,000 general aggregate.

(4) **Workers' Compensation and Employers' Liability**, protecting against all claims under applicable state Workers' Compensation laws. The Owner shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a Workers' Compensation law. The policy shall include "all states" insurance, and the liability limits shall not be less than Statutory (Workers' Compensation); \$100,000 / \$500,000 / \$100,000 (Employers Liability).

(5) **Professional Liability Insurance**, protecting the Owner against claims for wrongful acts and include employment practices liability. Limits are to be no less than \$500,000 per wrongful act / \$500,000 annual aggregate.

(b) **Industry Ratings**. The City will only accept coverage from an insurance carrier who carries a Best's policyholder rating of A-:VI or better; or is a company mutually agreed upon by the City and the Owner.

SECTION 4.06. Taxes and Other Governmental Charges and Utility Charges. Except as hereinafter provided, the Owner agrees to pay, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Development Site or any machinery, equipment or other property installed or brought by the Owner therein or thereon, all utility or other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project and all assessments and charges lawfully made by any governmental body for public improvements.

The Owner may, at its expense and in its own name and behalf in good faith contest any such taxes, assessments and other charges, other than the special assessments levied to pay the Bonds. Nothing in this Agreement shall reduce the right of the Owner to any exemption from or abatement of taxes to which it is otherwise entitled.

SECTION 4.07. Inspection of the Project. The Owner agrees that the City and its duly authorized agents shall have the right at all reasonable times to enter upon the site where the Project is located, and examine and inspect the Project.

SECTION 4.08. Notice to Bank; Right of Cure. The City shall give notice to the Bank, at the following address, if any special assessments in connection with the Bonds are unpaid and the Bank shall have the opportunity to pay such special assessments and cure any default with respect to the payment of the same. Notice required by any other provision as provided in this Section or as otherwise required herein shall be given in writing to: Mercantile Bank and Trust, 2 Hopkins Plaza, Baltimore, Maryland 21201, Attention: Chip Woelper, or to another location or other officer as shall be directed in writing by the Bank to the City from time to time.

SECTION 4.09. City Legal Expenses. The Owner shall pay the legal fees and expenses of the City's Legal Counsel, Stinson Morrison Hecker LLP, and the City's Bond Counsel, Kutak Rock LLP, incurred in connection with the TDD Project and the negotiation of related agreements at the hourly rate of \$265. Bond Counsel fees incurred for the issuance of the Bonds will be paid from bond proceeds.

ARTICLE V

ASSIGNMENT; INDEMNIFICATION

SECTION 5.01. Assignment. This Agreement may be assigned by the Owner with the consent of the City, which consent shall not be unreasonably withheld, subject, however, to the following conditions:

(a) No assignment shall relieve the Owner from primary liability for any of its obligations hereunder, and in the event of any such assignment the Owner shall continue to remain primarily liable for payment of the amounts specified in this Agreement and for performance and observance of the other agreements to be performed and observed by it hereunder to the same extent as though no assignment had been made; and

(b) The Owner shall, within thirty (30) days after the delivery of each such assignment, furnish or cause to be furnished to the City a true and complete copy thereof.

SECTION 5.02. Release and Indemnification Covenants. The Owner releases the City and each officer or employee of the City from, and covenants and agrees that neither the City nor any officer or employee of the City shall be liable for, and agrees to indemnify and hold the City and each officer or employee of the City harmless against, claims against the City or any such officer or employee of the City, including for any loss or damage to property or any injury to or death of any person, caused by or resulting from any defect in the Project other than such as are caused by the gross negligence or willful misconduct of the City or any of their officers or employees. In case any action shall be brought against the City or any of their officers or employees in respect of which indemnity may be sought against the Owner, the party seeking indemnification shall promptly notify the Owner in writing and the Owner shall assume the defense thereof, including the employment of counsel and the payment of all

expenses. The City or any of their officers or employees who are defendants shall have the right to employ separate counsel in any such action and participate in the defense thereof. The Owner shall not be liable for any settlement of any such action without its consent, or for any judgment for the plaintiff in any such action if the party to be indemnified shall have failed to perform its obligations under this Section.

Further, the Owner agrees to reimburse the expenses incurred by the City in the performance of its obligations under this Agreement not otherwise provided for under the terms of this Agreement and not being performed on behalf of the City by the Owner.

SECTION 5.03. Assignment of Interest in this Agreement by the City.

The City agrees that it shall make no assignment or pledge of any interest in this Agreement and shall be bound by any decision by the Owner to redeem the Bonds pursuant to the terms of the Indenture. Additionally, upon payment in full of the Bonds, the City shall no longer certify the Special Assessment upon any real property in the Transportation Development District.

SECTION 5.04. Installation of Owner's Own Machinery and Equipment. Except for those portions of the Project to be conveyed to the City, the Owner may from time to time, in its sole discretion and at its own expense, construct additional improvements and install additional machinery and equipment on the Development Site, and all machinery and equipment so installed by the Owner shall remain the sole property of the Owner in which the City shall not have any interest, and may be modified or removed at any time by the Owner.

ARTICLE VI

GUARANTY BY DEVELOPER

SECTION 6.01. Guaranty of Liabilities.

(a) Developer hereby unconditionally guarantees the prompt payment of the redemption price of the Bonds, plus interest to the date of redemption and all other amounts payable, solely upon either (i) a Redemption Resulting from Special Assessment Prepayments pursuant to Section 3.05 of the Indenture or (ii) an Extraordinary Redemption on Taxability Event pursuant to Section 3.07 of the Indenture (collectively, the “**Liabilities**”). Developer agrees that its guaranty of the Liabilities hereunder is a guaranty of payment and not of collection, and that its obligations under this Article VI shall be primary, absolute and unconditional, irrespective of and unaffected by:

- (i) the dissolution of or cessation of business by the Developer;
- (ii) any determination by the Internal Revenue Service or a court of competent jurisdiction that the interest paid or to be paid on any Bond is or was includible in the gross income of the owner of such Bond for Federal income tax purposes;
- (iii) the genuineness, validity, regularity, enforceability, accuracy or completeness of the Indenture or any other agreement relating to the Bonds; or
- (iv) the absence of any action to enforce the Indenture, the Bonds or any agreement or document relating to the Bonds, or the waiver or consent by any party with respect to any of the provisions thereof.

(b) The Developer shall be regarded as, and shall be in the same position as, a principal debtor with respect to the Liabilities.

(c) Developer expressly waives all rights it may have, now or in the future, under any statute, or at common law, or at law or in equity, or otherwise, to compel any party to proceed in respect of the Liabilities against the Issuer, the Trustee or any other party, or against

any security other than the Trust Estate for the payment and performance of the Liabilities, before proceeding against, or as a condition to proceeding against, Developer in respect of the guaranty made hereunder. It is agreed among Developer and Issuer that the foregoing waivers are of the essence of the transaction contemplated by the Operative Documents and that, but for this Agreement and such waivers, Issuer would decline to issue the Bonds.

(d) In the event any of the Liabilities become due under Section 3.07 of the Indenture, Developer will make the payments required hereunder pursuant to the terms and conditions of the Indenture.

(e) No supplement, amendment or modification of the Indenture, the Bonds, or any agreement or document relating to the Bonds will impair, discharge or release the obligations of the Developer under this Article VI.

(f) The obligations of the Developer under this Article VI shall remain in full force and effect and continue to be effective in the event any petition be filed by or against the Issuer or the Developer for bankruptcy, liquidation or reorganization, in the event either the Issuer or the Developer become insolvent or in the event a receiver or trustee be appointed for the Issuer or the Developer, and shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Liabilities by the Developer, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by the recipient thereof, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. In the event that any payment by Developer, or any part thereof, is rescinded, reduced, restored or returned, the obligation of the Developer to pay the Liabilities shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. Events of Default Defined. Any one or more of the following shall be “**Events of Default**” under this Agreement:

(a) Failure by the Owner or the Nonprofit to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder for a period of sixty (60) days after written notice, specifying such failure, requesting that it be remedied, and stating that it is a notice of default, has been given to the Owner or the Nonprofit by the City; provided, however, that, if said default is such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Owner or the Nonprofit within the applicable period and diligently pursued until the default is corrected; or

(b) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Owner or the Nonprofit a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Owner or the Nonprofit under the federal Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Owner or the Nonprofit or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(c) The institution by the Owner or the Nonprofit of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or

state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or similar official of the Owner or the Nonprofit or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Owner or the Nonprofit in furtherance of any such action.

The foregoing provisions of subsection (a) of this Section are subject to the following limitations: If by reason of “**force majeure**” the Owner or the Nonprofit is unable in whole or in part to carry out the obligations on its part contained in this Agreement, the Owner or the Nonprofit shall not be deemed in default during the continuance of such inability. The term “**force majeure**” as used in this Agreement shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders, restraints of any kind, action or inaction of the government of the United States or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission lines, pipes or canals; material shortages; delays in transit; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Owner or the Nonprofit. The Owner agrees, however, to use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing the Owner from carrying out this Agreement; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Owner, and the Owner shall not be required to make settlement of strikes, lockouts and other industrial disturbances by

acceding to the demands of the opposing party or parties when such course is in the judgment of the Owner unfavorable to the Owner, and provided that the resolution of any disputes with governmental or regulatory authorities with respect to orders, conditions, restraints, regulations or other actions shall be entirely within the discretion of the Owner, and the Owner shall not be required to accede to any such actions when such course is in the judgment of the Owner unfavorable to it.

SECTION 7.02. Remedies on Default. Whenever an Event of Default shall have happened and be continuing, the City may take whatever action at law or in equity which may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Owner under this Agreement.

SECTION 7.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. To the extent permitted by law, no delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Any such waiver shall be in writing and signed by the party against whom it is to operate. In order to entitle the City to exercise any remedy hereunder, it shall not be necessary to give any notice other than as may be required in this Agreement.

SECTION 7.04. Attorneys' Fees and Expenses. In the event the Owner should default under any of the provisions of this Agreement and the City should employ counsel or incur other reasonable expenses for the enforcement of performance or observance of any

obligation or agreement on the part of the Owner herein contained, the Owner will on demand therefor pay to the City the reasonable fees and disbursements of such counsel and such other reasonable expenses so incurred by the City.

SECTION 7.05. No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. Term of This Agreement. This Agreement shall become effective upon the issuance of the Bonds and shall remain in full force and effect from the date hereof until the Bonds have been fully paid. The provisions of Article V hereof in respect of indemnification by the Owner to the City shall include claims occurring prior to such transfer.

SECTION 8.02. Notices. All notices, certificates or other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or sent by telecopier followed by first class mail, addressed as follows: If to the City: City of Overland Park, Kansas, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212; Attention: Kristy Cannon Stallings, Deputy City Manager; and if to the Owner: 701 Maiden Choice Lane, Baltimore, Maryland 21228, Attention: General Counsel. The City and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 8.03. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, the Owner and the Nonprofit and their respective successors and assigns, subject, however, to the limitations contained in Sections 5.01 and 5.03 hereof, and shall inure to the benefit of and shall be binding upon the Developer as to Section 2.04 and Article VI. No provision hereof shall, however, be construed to impose any personal or pecuniary liability upon the City or any officer or employee of the City. No party shall have any obligation under this Agreement unless and until the Bonds shall have been issued and delivered by the City pursuant to the terms of the Ordinance.

SECTION 8.04. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 8.05. Amendments. This Agreement may only be amended with the written consent of the parties hereto.

SECTION 8.06. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8.07. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State.

SECTION 8.08. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

SECTION 8.09. Filing. Upon the completion of that portion of the Project to be conveyed to the Nonprofit, a memorandum of this Agreement shall be recorded in the land

records of Johnson County, Kansas, currently the Johnson County, Kansas Department of Records and Tax Administration, and shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, assigns and other successors in interest.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City, the Owner the Nonprofit and the Developer have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach, City Mayor

ATTEST:

By: _____
Marian Cook, City Clerk

[CITY SEAL]

KANSAS CAMPUS, LLC
By: Erickson Retirement Communities, LLC
Member

By: _____
Gerald F. Doherty
Executive Vice President

AGREED TO WITH RESPECT TO SECTIONS 2.03
AND 3.01(d) AND OTHERWISE ACKNOWLEDGED:

TALLGRASS CREEK, INC.

By: _____
Ronald E. Walker
President

AGREED WITH RESPECT TO SECTION 2.04 AND
ARTICLE VI AND OTHERWISE ACKNOWLEDGED:

ERICKSON RETIREMENT COMMUNITIES, LLC

By: _____
Gerald F. Doherty
Executive Vice President