

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

In re:	§	Case No. 09-37010 (SGJ)
	§	
ERICKSON RETIREMENT COMMUNITIES, LLC, et al.	§	Chapter 11
	§	
Debtors.	§	(Jointly Administered)
	§	

**STIPULATION AND AGREED ORDER PURSUANT TO § 363 OF THE
BANKRUPTCY CODE AND RULE 9019(a) OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE DISPOSING OF CERTAIN
PROPERTY OWNED BY COLUMBUS CAMPUS, LLC**

Upon consideration of the motion (the “Motion”) of Columbus Campus, LLC (the “Columbus Debtor”) and Erickson Retirement Communities, LLC (“ERC Debtor”), each a debtor and debtor in possession in the above-captioned bankruptcy cases, seeking entry of this stipulation and agreed order with KeyBank National Association, as Administrative Agent (the “Administrative Agent”) under that certain Construction Loan Agreement (the “Columbus Construction Loan Agreement”) among the Columbus Debtor, and various lenders thereunder (collectively, “Columbus Construction Lenders”) dated April 16, 2008, and KeyBank National Association individually as one of the Construction Lenders (“KeyBank,” and together with the Columbus Debtor and the Agent, the “Parties”), transferring the Columbus Debtor’s interest in the real and personal property located at 4383 Davidson Road, Hilliard, Franklin County, Ohio, commonly known as the “Hickory Chase Campus” pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and granting certain other relief; due and proper notice of the Motion having been given; it appearing that the relief provided for herein is in the best interests of the Columbus Debtor’s estate and the ERC Debtor’s estate, its creditors and

other parties in interest; it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); the Court being advised that the parties have reached an agreement as set forth herein; the Court otherwise being fully advised in the premises; and after due deliberation and cause appearing therefor;

**THE PARTIES HEREBY STIPULATE, AND THE COURT HEREBY FINDS,
THAT:**

1. The Columbus Debtor currently holds legal title to the real and personal property comprising the Hickory Chase Campus.

2. On or about April 16, 2008, the Columbus Debtor entered into a Construction Loan Agreement, pursuant to which the Columbus Construction Lenders lent over \$50 million.

3. To secure the payment of its obligations owing under the Columbus Construction Loan Agreement and related documents, including those evidenced by the Columbus Construction Revolving Notes¹ and the Swap Agreement, the Columbus Debtor executed an Open-End Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (hereinafter the "Mortgage"), pledging as collateral its interest in the real and personal property comprising the Hickory Chase Campus.

4. The Mortgage was recorded on April 22, 2008 with the Recorder of Franklin County, Ohio as Instrument Number 200804220061335.

5. Financing statements perfecting Columbus Construction Lenders' security interest in the Hickory Chase Campus were filed with the Maryland Department of Assessments and Taxes on March 27, 2008 as financing statement number 181337670, and with the Franklin County Recorder on April 14, 2008 as financing statement number 200804140056782.

¹ Capitalized terms not defined here in shall have the meaning ascribed to them in the Motion.

6. On or about June 1, 2009, the Columbus Debtor defaulted under the Columbus Construction Loan Agreement.

7. On or about July 2, 2009, the Columbus Construction Lenders commenced a foreclosure action captioned *KeyBank National Association v. Columbus Campus, LLC*, Case No. 09CVE-07-9921 (the “Foreclosure Action”), filed in the Civil Division in the Court Of Common Pleas, Franklin County, Ohio (the “State Court,” by filing a complaint (the “Foreclosure Complaint”) seeking to collect the amount owed to the Columbus Construction Lenders under the Columbus Construction Loan Agreement and related documents, foreclose on the Hickory Chase Campus, and the appointment of a receiver Court to manage, maintain, preserve and protect the Hickory Chase Campus.

8. On July 8, 2009, the Columbus Debtor filed in the Foreclosure Action its Consent Of Defendant Columbus Campus, LLC To Foreclosure, Money Judgment And The Appointment Of A Receiver consenting to the entry of judgment against it as requested by Columbus Construction Lenders in the Foreclosure Complaint for a money judgment, foreclosure of the Mortgage and for the appointment of a receiver, and specifically admitting owing the Columbus Construction Lenders in excess of \$50,000,000.

9. Most of the other parties to the Foreclosure Action have answered the complaint, with many asserting an interest in the Hickory Chase Campus.

10. On July 19, 2009, the State Court entered in the Foreclosure Action an order appointing John A. Rothschild, Jr. receiver (the “Receiver”) for the Hickory Chase Campus.

11. On October 19, 2009 (the “Petition Date”), the Columbus Debtor, the ERC Debtor and several related entities commenced the above-captioned cases by each filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

12. All construction of the Hickory Chase Campus ceased, deposits received from potential residents in anticipation of completion of the Campus were returned, and the Campus has been secured and there are currently no residents at the Hickory Chase Campus.

13. The Receiver has remained in possession and control of the Hickory Chase Campus pursuant to a December 7, 2009 order of the Court [Docket No. 483].

14. The Parties believe that the total debt secured by liens on the Hickory Chase Campus far exceed the present value of the property.

15. Columbus Construction Lenders desire the Foreclosure Action to proceed so as to resolve the disputes among those claiming an interest in the Hickory Chase Campus.

**THE PARTIES HEREBY AGREE, AND THE COURT HEREBY ORDERS,
THAT:**

A. The Motion is GRANTED in its entirety.

B. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits;

C. Within seven days, the Administrative Agent will cause a new entity to be formed, for the purpose of holding title to the real and personal property comprising the Hickory Chase Campus ("NewCo") subject to all existing liens and encumbrances and the pending Foreclosure Action.

D. Within five days following the formation of NewCo, pursuant to section 363(b) of the Bankruptcy Code and the terms of this Order, the Columbus Debtor shall cause its interest in the real and personal property comprising the Hickory Chase Campus to be transferred to

NewCo (the "Transfer") by quit claim deed, in recordable form and otherwise satisfactory, in form and substance to the Administrative Agent..

E. The Columbus Debtor is authorized and directed to execute and deliver, and are empowered to perform under, consummate and implement, the Transfer, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Transfer, and to take all further actions as may be requested by NewCo or the Administrative Agent for the purpose of assigning, transferring, granting, conveying and conferring to NewCo or reducing to possession, the Hickory Chase Campus, or as may be necessary or appropriate to the performance of the obligations as contemplated herein.

F. The Transfer will be a legal, valid and effective transfer of the Hickory Chase Campus, and will vest NewCo with all right, title and interest of the Columbus Debtor to the Hickory Chase Campus.

G. The Transfer is subject to all liens and encumbrances and, with the exception of the Columbus Debtor's interest, all interest in the Hickory Chase Campus shall remain to the same extent and priority as they now exist.

H. Following the Closing, NewCo shall be required to comply with all applicable law, including but not limited to, local, state and federal rules, regulations, statutes, and permits with respect to the Hickory Chase Campus.

I. Nothing herein is intended to modify any right or obligation arising under any agreement with any of the above-captioned Columbus Debtors, including any right the Administrative Agent or the Columbus Construction Lenders may have under the Columbus Construction Guaranty.

J. To the extent necessary, the automatic stay under section 362 is modified for the limited purpose of permitting the Foreclosure Action to proceed.

K. The Court shall retain jurisdiction over the subject matter of the Motion and this Order.

Dated: March ____, 2010

ENTER:

UNITED STATES BANKRUPTCY JUDGE

AGREED AS TO SUBSTANCE AND FORM:

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