

Joseph A. Friedman  
State Bar No. 07468280  
Robert J. Taylor  
State Bar No. 19721200  
**KANE RUSSELL COLEMAN & LOGAN PC**  
3700 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201  
Telephone - (214) 777-4200  
Facsimile - (214) 777-4299  
Email: [ecf@krcel.com](mailto:ecf@krcel.com)

**ATTORNEYS FOR WESTSIDE MECHANICAL GROUP, INC.**

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

<b>In re:</b>	§	<b>CASE NO. 09-37010 (SGJ)</b>
	§	
<b>ERICKSON RETIREMENT COMMUNITIES, LLC, <i>et al.</i><sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

**RESPONSE TO DEBTORS' FIRST OMNIBUS OBJECTION TO CLAIMS  
DUPLICATIVE CLAIMS BY WESTSIDE MECHANICAL GROUP, INC.  
REGARDING CLAIM NUMBERS 74 AND 93**

Westside Mechanical Group, Inc. ("Westside") files this its *Response to Debtors' First Omnibus Objection to Claims – Duplicative Claims By Westside Mechanical Group, Inc. Regarding Claim Numbers 74 and 93* and would respectfully show the Court as follows:

**I.  
BACKGROUND FACTS**

1. In or around December 2007, Erickson Construction, LLC ("Construction"), one of the debtors in the above-styled bankruptcy, as general contractor, entered into at least four contracts with Westside whereby Westside agreed to perform certain HVAC work on construction projects known as Sedgebrook Renaissance Gardens, Sedgebrook Residential

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<sup>1</sup> The Debtors in these Chapter 11 cases are Erickson Retirement Communities, LLC, Ashburn Campus, LLC, Columbus Campus, LLC, Concord Campus GP, LLC, Concord Campus, LP, Dallas Campus GP, LLC, Dallas Campus, LP, Erickson Construction, LLC, Erickson Group, LLC, Houston Campus, LP, Kansas Campus, LLC, Littleton Campus, LLC, Novi Campus, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, Warminster Campus, LP.

Building 1.4, Sedgebrook Residential Building 1.5 and certain time and material work (the “Contracts”), located at 800 Audubon Way, and other addresses, Lincolnshire, Illinois (the “Property”). Erickson Retirement Communities, LLC (“Retirement”), also a debtor in these cases, is identified as the “Developer” in the Contracts. The owner of the Property is Lincolnshire Campus, LLC (“Lincolnshire”). Lincolnshire is not a debtor in these bankruptcy proceedings.

2. Westside completed its work under its Contracts with Debtor on May 7, 2009. However, despite Westside’s full performance and its demand for payment, Debtor failed and refused to pay Westside any of its contract balances, and the aggregate principal sum of \$551,569.60 remains due and owing to Westside. Therefore, in accordance with Illinois law, Westside timely served its notice of lien and subsequently recorded its Subcontractor’s Claim for Mechanics Lien<sup>2</sup> with the Recorder of Deeds of Lake County, Illinois on August 4, 2009. Such Subcontractor’s Claim for Mechanics Lien was timely and properly recorded against the Property under Illinois law.

3. Westside filed a lawsuit against Construction, Retirement and Lincolnshire, among others, seeking foreclosure of its lien. The matter is pending in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois as Case No. 09 CH 3289.

4. October 19, 2009 (the “Petition Date”), the above captioned debtors and debtors in possession (the “Debtors”) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

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<sup>2</sup>Westside recorded a lien only on the Subcontract for the Renaissance Gardens 1.0 Project in the principal amount of \$498,569.60 (plus interest, costs and attorneys’ fees). This mechanics lien is the subject of this motion. Westside also performed work under three other subcontracts for which Westside has unsecured claims in the aggregate principal amount of \$53,000. The unsecured claims remain, but are unaffected by this motion.

5. On October 22, 2009, the Court entered the *Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines* (the "Notice"). Pursuant to the Notice, the general bar date to file a proof of claim against the Debtors' estates for claims which arose prior to the Petition Date was February 28, 2010.

6. On November 20, 2009, Westside filed a proof of claim in the total amount of \$551,569.60, which is now Claim No. 93 ("Claim No. 93").

7. On November 24, 2009, Westside filed Claim No. 74 in the total amount of \$551,569.60 ("Claim No. 74" and collectively with Claim No. 93, the "Claims").

8. On March 26, 2009, the Debtors filed a *First Omnibus Objection to Claims – Duplicative Claims* [Docket Nos. 1076 and 1137]. The sole basis of the Debtor's objection is that it seeks to disallow and expunge Claim No. 74 as a duplicative claim and to keep Claim No. 93 as a surviving claim.

## **II. RESPONSE**

9. Westside's Claims are against two debtors, Erickson Construction, LLC ("Erickson Construction") and Erickson Retirement Communities, LLC ("Erickson Retirement"). Each proof of claim listed both Debtors. The Claims are not duplicative, but should be considered as separate claims against Construction and Retirement, respectively. Construction and Retirement are only jointly administrated by this Court for procedural purposes and there has not been a substantive consolidation of the respective estates.

**WHEREFORE**, Westside requests that the Court deny the Debtor's objection and for such other and further relief as Westside has justly shown itself entitled.

Dated: April 15, 2010

Respectfully submitted,

**KANE RUSSELL COLEMAN & LOGAN PC**

By: /s/ Joseph A. Friedman

Joseph A. Friedman

State Bar No. 07468280

Robert J. Taylor

State Bar No. 19721200

3700 Thanksgiving Tower

1601 Elm Street

Dallas, Texas 75201

Telephone - (214) 777-4200

Facsimile - (214) 777-4299

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**ATTORNEYS FOR WESTSIDE MECHANICAL  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of April, 2010, a true and correct copy of the foregoing document has been duly served on (i) all parties receiving electronic notice through the Bankruptcy Court's electronic notification system (ECF), and (ii) in accordance with the Courts' *Order Granting Complex Chapter 11 Bankruptcy Case Treatment* [Docket No. 242] to all parties listed on the Updated Service List filed in this case on April 10, 2010 [Docket No. 1209].

/s/ Joseph A. Friedman

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