

Arlene Elgart Mirsky (*pro hac vice*)
Stuart J. Glick (*pro hac vice*)
SILLS CUMMIS & GROSS P.C.
One Riverfront Plaza
Newark, New Jersey 07102
Telephone: (973) 643-7000
Facsimile: (973) 643-6500

Deirdre B. Ruckman (# 21196500)
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Telephone: (214) 999-3000
Facsimile: (214) 999-4667

CO-COUNSEL FOR M&T BANK, AS
COLLATERAL AND ADMINISTRATIVE AGENT

CO-COUNSEL FOR M&T BANK, AS
COLLATERAL AND ADMINISTRATIVE AGENT

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

IN RE:	§	Case No. 09-37010
	§	
ERICKSON RETIREMENT COMMUNITIES, LLC, <i>et al.</i>,¹	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

**EMERGENCY MOTION OF M&T BANK, AS COLLATERAL AND
ADMINISTRATIVE AGENT, CONCERNING UMBC BUILDING CONSTRUCTION
LOAN CLAIMS UNDER FOURTH AMENDED JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Manufacturers and Traders Trust Company, a/k/a M&T Bank (“M&T”), in its capacity as collateral and administrative agent (the “Administrative Agent”) under the UMBC Building Construction Loan Agreement, by filing this emergency motion (the “Motion”), seeks to preserve the status of the UMBC Building Construction Loan Claims, the UMBC Building, the leases and contracts related the UMBC Building and the rights of the Administrative Agent and each Holder of an Allowed UMBC Building Construction Loan Claim under §§ 4.2.6, 4.3.5, and

¹ 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 GPO, LLC, Warminster Campus, LP.

4.4.3 of the *Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Plan”) of Erickson Retirement Communities, LLC and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), and to clarify in conjunction therewith ¶¶ 11 and 47 the *Amended Findings of Fact, Conclusions of Law, and Order Confirming the Debtors’ Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Confirmation Order”). In support of the Motion to Preserve, the Administrative Agent respectfully represents as follows:

BACKGROUND

I. Case Background

1. On October 19, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Code”), 11 U.S.C. § 101, *et seq.* The Debtors’ cases are being administered jointly.
2. The Debtors remain in possession of their properties and continue to manage their businesses as debtors in possession pursuant to Code §§ 1107 and 1108.
3. M&T and Wilmington Trust, FSB (the “M&T/Wilmington Lenders”) hold first priority secured claims against certain of the Debtors, as set forth in the Plan.

II. Confirmation of the Plan & Treatment of the M&T/Wilmington Lenders’ Secured Claims

4. On March 8, 2010, the Debtors filed the Plan [Docket No. 1005], which the Court confirmed by order entered on April 16, 2010 [Docket No. 1355] and amended by entry of the Confirmation Order [Docket No. 1373].

5. The Plan addresses the M&T/Wilmington Lenders' secured claim relating to the UMBC Building pursuant to the UMBC Building Construction Loan, which terms are defined under the Plan as follows:

- 1.191 **UMBC Building** means that certain building owned by ERC located at the following address: 5525 Research Park Drive, Baltimore, Maryland 21250.
- 1.192 **UMBC Building Construction Loan** means the loans made pursuant to that certain Building Loan Agreement between Erickson Construction, Senior Campus, Senior Campus Care, LLC, and SCL Realty, LLC, as Borrowers, ERC, as guarantor, Manufacturers and Traders Trust Company as Lender and Administrative Agent, and Wilmington Trust, FSB, as Lender, dated July 31, 2008.
- 1.193 **UMBC Building Construction Loan Claim** means a Claim arising under the UMBC Building Construction Loan.

6. The M&T/Wilmington Lenders' secured claims are classified under the Plan as follows:

- The M&T/Wilmington Lenders' secured claims against Erickson Retirement Communities, LLC are classified as Class 6 UMBC Building Construction Loan Claims pursuant to Section 4.2.6 of the Plan;
- The M&T/Wilmington Lenders' secured claims against Erickson Construction, LLC are classified as Class 5 UMBC Building Construction Loan Claims pursuant to Section 4.3.5 of the Plan; and
- The M&T/Wilmington Lenders' secured claims against Senior Campus Services, LLC, are classified as Class 3 UMBC Building Construction Loan Claims pursuant to Section 4.4.3 of the Plan.

7. Sections 4.2.6, 4.3.5 and 4.4.3 of the Plan each provides for the following treatment of the UMBC Building Construction Loan Claims and specifies that such treatment may occur after the Effective Date:

On the Effective Date or *as soon thereafter as is reasonably practicable based on consultations among the Debtors and M&T Bank in its capacity as Agent*, each Holder of an Allowed UMBC Building Construction Loan Claim shall (i) receive the property securing such Claim or (ii) the Debtors shall dispose of the property securing such Claim in a manner agreed upon by M&T Bank in its capacity as Agent, in full satisfaction of the Holder's Allowed Claim. To the extent that (y) Redwood has obtained a lease (the "**Redwood Lease**") in connection with the UMBC Building pursuant to the Definitive Agreement to which M&T Bank, in its capacity as Agent, has consented in writing, and the Debtors have assumed and assigned to M&T Bank the ground sublease, the Redwood Lease, if applicable, and any other lease relating to the UMBC Building ("**Additional Leases**") and any building improvements that M&T Bank in its capacity as Agent specifically requests that the Debtors assume and assign to M&T Bank pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code prior to such transfer or other disposition of such property pursuant to clauses (i) or (ii) above; then (z) the ground sublease, the Redwood Lease, Additional Leases, and any so assumed, transferred and assigned shall remain in full force and effect for the benefit of the transferee or assignee in accordance with its terms, notwithstanding any provision in such ground sublease (including those of the type described in sections 365(b)(2) of the Bankruptcy Code) that prohibits, restricts, or conditions such transfer or assignment. Notwithstanding anything to the contrary in this Plan or any Order of the Court, the property securing the UMBC Building Construction Loan Claim shall not be transferred to the Liquidating Creditor Trust.

Plan, §§ 4.2.6, 4.3.5, 4.4.3 (Emphasis added).

8. Paragraph 11 of the Confirmation Order provides as follows with respect to the for the treatment of estate property that is not, *inter alia*, otherwise disposed of under the Plan:

Except as otherwise provided in the Plan Supplement and Definitive Agreement, as of the Effective Date, pursuant to Bankruptcy Code section 1141(b) and (c), all property of the Debtors' Estates, and any property acquired by a Debtor or Reorganized Debtor under the Plan, the Plan Supplement and the Definitive Agreement shall vest in the Reorganized Debtors, the Liquidating Creditor Trust, or the Acquisition Companies, as applicable, free and clear of all claims, liens, encumbrances, charges, and other interests, except as expressly provided herein, in the Liquidating Creditor Trust documents, Definitive Agreement, any stipulation and order resolving an objection to confirmation of the Plan, or the Plan.

RELIEF SOUGHT

9. The Administrative Agent and Redwood are in the process of negotiating a potential transfer of certain of the property securing the UMBC Building Construction Loan Claims to a Redwood affiliated entity consistent with §§ 4.2.6, 4.3.5 and 4.4.3 of the Plan.

10. Presently, it appears unlikely that this transaction will be finalized and closed on or before the Effective Date.

11. As reflected above, the Plan contemplates that the transactions under §§ 4.2.6, 4.3.5 and 4.4.3 thereof may not be completed on or before the Effective Date, and permits such transaction to occur “as soon as reasonably practicable after the Effective Date. . .”

12. Out of an abundance of caution in order to preserve the M&T/Wilmington Lenders’ rights under the Plan, the Administrative Agent seeks the entry of an order that confirms pending the completion of the transactions contemplated under §§4.2.6, 4.3.5 and 4.4.3 of the Plan:

(i) the liens, security interests, and rights of the Administrative Agent and each Holder of an Allowed UMBC Building Construction Loan Claim relating to the property securing such claim shall continue unaffected by the occurrence of the Effective Date under the Plan;

(ii) certain specified leases and contracts relating to the UMBC Building are assumed pursuant to the Plan and will be subsequently assigned in accordance with §§ 4.2.6, 4.3.5 and 4.4.3 of the Plan (Exhibit “A” hereto); and

(iii) the Reorganized Debtors shall continue to manage and operate the UMBC Building after the occurrence of the Effective Date.

13. Last, ¶ 47 of the Confirmation Order addresses the exemption of certain transactions under the Plan from certain taxes. That paragraph expressly identifies a Redwood affiliated entity, “a subsidiary of Allegis Property Holdings, LLC,” because it was anticipated

that the potential transaction between the M&T/Wilmington Lenders and a Redwood affiliated entity would close on or before the Effective Date.

14. To provide for the possibility that the UMBC Building and related leases, contracts and other property might necessarily need to be transferred to an entity affiliated with the M&T/Wilmington Lenders, the Administrative Agent seeks to clarify ¶ 47 of the Confirmation Order to apply to either a Redwood or a M&T/Wilmington Lenders affiliated entity.

15. More specifically, the Administrative Agent seeks to clarify that the phrase in ¶ 47 of the Confirmation Order that reads “a subsidiary of Allegis Property Holdings, LLC,” means “either to a subsidiary of Allegis Property Holdings, LLC or to Chesapeake Holdings Research, LLC, as directed by M&T Bank, as Agent for each Holder of an UMBC Building Construction Loan Claim.”

CONCLUSION

WHEREFORE, the Administrative Agent, on behalf of the M&T/Wilmington Lenders, respectfully requests that the Court grant this motion and implement the aforementioned protective measures to preserve the M&T/Wilmington Lenders bargained for rights under the Plan and Confirmation Order, and requests such other and further relief as the Court deems necessary and just.

Dated: April 26, 2010
Dallas, Texas

GARDERE WYNNE SEWELL LLP

By: /s/ Deirdre B. Ruckman
Deirdre B. Ruckman (# 21196500)
1601 Elm Street, Suite 3000
Dallas, Texas 75201
Telephone: (214) 999-4250
Facsimile: (214) 999-3250

- and -

Arlene Elgart Mirsky (*pro hac vice*)
Stuart J. Glick (*pro hac vice*)
SILLS CUMMIS & GROSS P.C.
The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102
Telephone: (973) 643-7000
Facsimile: (973) 643-6500

CO-COUNSEL FOR M&T BANK, AS
COLLATERAL AND ADMINISTRATIVE
AGENT

Exhibit A

1. Ground Sublease Agreement dated November 15, 2006, as amended, by and between The UMBC Research Park Corporation, Inc. and Erickson Retirement Communities, LLC for property located in Baltimore County, Maryland at the University of Maryland Baltimore County Campus.
2. Lease Agreement entered into September 1, 2009, as amended, by and between Erickson Retirement Communities, LLC and Chesapeake Regional Information System for our Patients, Inc. (CRISP) for 1,000 rentable square feet in a building known as "UMBC Tech Park" located at 5525 Research Park Drive, Catonsville, Maryland.
3. Services Contract entered into in or about November 2008, as amended, by and between Erickson Retirement Communities, LLC and Glenmore Catering.

CERTIFICATE OF SERVICE

The undersigned certifies that, on April 26, 2010, a true and correct copy of the foregoing document was served electronically via the Court's Electronic Filing System on those parties that have consented to such service, including the Debtors, and was caused to be served by overnight mail upon the below entities at their below addresses:

The UMBC Research Park Corporation, Inc.
5523 Research Park Drive
Suite 310
Baltimore, Maryland 21228
Attn: Ms. Ellen Hemmerly, Executive Director

Chesapeake Regional Information System for our Patients, Inc. (CRISP)
701 Maiden Choice Lane
Baltimore, Maryland 21228

Glenmore Caterers
4924 Campbell Boulevard
White Marsh, MD 21236
Attn: Scott Parry

/s/ Deirdre B. Ruckman
Deirdre B. Ruckman

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

IN RE:	§	Case No. 09-37010
	§	
ERICKSON RETIREMENT COMMUNITIES, LLC, et al.,	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	

**ORDER CONCERNING UMBC BUILDING
CONSTRUCTION LOAN CLAIMS UNDER THE
DEBTORS' FOURTH AMENDED JOINT PLAN OF
REORGANIZATION UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE**

WHEREAS this Court has confirmed the *Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Plan")¹ of Erickson Retirement Communities, LLC and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors")² and has entered the *Amended Findings of*

¹ All capitalized terms shall be defined as set forth in the Plan unless otherwise indicated.

² 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,

Fact, Conclusions of Law, and Order Confirming the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the "Confirmation Order");

WHEREAS Manufacturers and Traders Trust Company, a/k/a M&T Bank ("M&T"), in its capacity as collateral and administrative agent (the "Administrative Agent") under the UMBC Building Construction Loan Agreement, has filed an emergency motion (the "Motion"), to preserve the status of the UMBC Building Construction Loan Claim, the UMBC Building, the leases and contracts related the UMBC Building and the rights of the Administrative Agent and each Holder of an Allowed UMBC Building Construction Loan Claim under §§ 4.2.6, 4.3.5, and 4.4.3 of the Plan, and to clarify ¶¶ 11 and 47 of the Confirmation Order in conjunction therewith;

WHEREAS §§ 4.2.6, 4.3.5, and 4.4.3 of the Plan provide for the disposition of the UMBC Building Construction Loan Claim "[o]n the Effective Date or as soon thereafter as is reasonably practicable based on consultations among the Debtors and M&T Bank in its capacity as Agent;"

WHEREAS it appears that the disposition of the UMBC Building Construction Loan Claim pursuant to the Plan will not occur on or before the Effective Date;

WHEREAS notice of the aforementioned motion and the relief sought therein was duly provided and is sufficient under the circumstances and no further notice is required; and

NOW, THEREFORE, based upon the Court's consideration of the Motion, Plan and Confirmation Order, and for good cause shown,

IT IS HEREBY ORDERED:

Kansas Campus, LLC, Littleton Campus, LLC, Novi Campus, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, Warminster Campus, LP.

1. The liens, security interests, and rights of the Administrative Agent and each Holder of an Allowed UMBC Building Construction Loan Claim relating to the property securing such claim, including, without limitation, the UMBC Building and the leases and contracts related thereto, shall continue unaffected by the occurrence of the Effective Date under the Plan pending the completion of the transactions contemplated under §§ 4.2.6, 4.3.5 and 4.4.3 of the Plan.

2. The leases and contracts identified on Exhibit "A" hereto, as they relate to the UMBC Building, shall be deemed to have been assumed pursuant to the Plan and shall be subsequently assigned in accordance with §§ 4.2.6, 4.3.5 and 4.4.3 of the Plan.

3. The Reorganized Debtors shall continue to manage and operate the UMBC Building after the occurrence of the Effective Date, including, without limitation, insuring, maintaining, and funding the operations thereof, and dispose of the rents derived in connection therewith, consistent with their practice prior to the Effective Date pending the completion of the transactions contemplated under §§ 4.2.6, 4.3.5 and 4.4.3 of the Plan unless otherwise agreed to in writing by the Reorganized Debtors and the Administrative Agent.

4. The sentence found in ¶ 47 of the Confirmation Order, beginning on page 63 and continuing to page 64 thereof, that presently reads –

The recordation of the Deed of Assignment from ERC to a subsidiary of Allegis Property Holdings, LLC and any instruments related thereto, is pursuant to the Plan, including sections 4.2.6, 4.3.5 and 4.4.3 of the confirmed Plan, and thus shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, or governmental assessment, and the appropriate state or local government officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation such Deed of Assignment and any instruments related thereto without the payment of any such tax or governmental assessment pursuant to section 1146(a) of the Bankruptcy Code and section 12.10 of the confirmed Plan.

shall be interpreted such that the phrase “to a subsidiary of Allegis Property Holdings, LLC” shall mean “either to a subsidiary of Allegis Property Holdings, LLC or to Chesapeake Holdings Research, LLC, as directed by M&T Bank, as Agent for each Holder of an UMBC Building Construction Loan Claim.”

Exhibit A

1. Ground Sublease Agreement dated November 15, 2006, as amended, by and between The UMBC Research Park Corporation, Inc. and Erickson Retirement Communities, LLC for property located in Baltimore County, Maryland at the University of Maryland Baltimore County Campus.
2. Lease Agreement entered into September 1, 2009, as amended, by and between Erickson Retirement Communities, LLC and Chesapeake Regional Information System for our Patients, Inc. (CRISP) for 1,000 rentable square feet in a building known as "UMBC Tech Park" located at 5525 Research Park Drive, Catonsville, Maryland.
3. Services Contract entered into in or about November 2008, as amended, by and between Erickson Retirement Communities, LLC and Glenmore Catering.

End of Order

Prepared and Submitted by:

Deirdre B. Ruckman (21196500)
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Telephone: 214.999.3000
Facsimile: 214.999.4667

- and -

Arlene Elgart Mirsky (pro hac vice)
Stuart J. Glick (pro hac vice)
SILLS CUMMIS & GROSS P.C.
The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102
Telephone: (973) 643-7000
Facsimile: (973) 643-6500

CO-COUNSEL FOR M&T BANK, AS
COLLATERAL AND ADMINISTRATIVE
AGENT