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ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

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

| | | |
|--|---|--------------------------------|
| In re: | § | Case No. 09-37010 (SGJ) |
| | § | |
| ERICKSON RETIREMENT | § | Chapter 11 |
| COMMUNITIES, LLC, <i>et al.</i>¹ | § | |
| | § | (Jointly Administered) |
| Debtors. | § | |

**DEBTORS' OBJECTION TO 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**

The above-captioned debtors and debtors in possession (the "Debtors"), by and through their undersigned counsel, file this objection (the "Objection") to the Emergency Motion (the "Motion") of M&T Bank ("M&T"), as Collateral and Administrative Agent, Concerning UMBC

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,

Building Construction Loan Claims Under Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code [Dkt. No. 1394]. In support of this Objection, the Debtors respectfully represent as follows:

Preliminary Statement

1. The Motion filed by M&T Bank was filed 11 days after the completion of the Confirmation Hearings held in this case and 10 days after entry of the Plan Confirmation Order (as defined below). The substantive subject matter of the Motion was not discussed with the Debtors at any time prior to the filing of the Motion. While Debtors' counsel was given a heads up that the Motion was going to be filed that warning came approximately 1 hour prior to the filing of the Motion. Throughout this case, the Debtors have diligently worked to resolve the obstacles presented by various constituents in the path to confirmation of their plan. As this Court is aware those efforts resulted in stipulations resolving all of the plan and assumption and cure objections paving the way for the entry of the Plan Confirmation Order. Had the Debtors been included in the discussions between M&T and Redwood described in the Motion at an earlier date, or at all for that matter, it is very likely that an agreed resolution would have been reached. Instead the Motion was filed and the Debtors are now forced to oppose the relief requested therein.

2. Six months ago, the Debtors commenced these chapter 11 proceedings. After rather contentious and extensive negotiations, the Debtors, Agents², Lenders, Committee, and other parties in interest reached a confirmable Plan. Creditors entitled to vote on the Plan received Solicitation Packages, which included disclosure of the treatment of claims under the

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

Plan and a description of the process of implementation of the Plan. The Plan was accepted by all classes of creditors that voted on the Plan. Interestingly, Holders of UMBC Construction Loan Claims voted unanimously to accept the Plan.

3. The Plan Confirmation Hearing has been held. Holders of UMBC Construction Loan Claims were afforded the opportunity to object to the Plan in writing and be heard at the Plan Confirmation Hearing. Due process has been afforded to this class of claim holders. It is perplexing why M&T seeks to file the Motion at this stage in these chapter 11 proceedings. The Plan has been confirmed, the Plan Confirmation Order has been entered (which the attorneys for the Holders of UMBC Construction Loan Claims commented on and consented to), and the Debtors are moving to close the deal with Redwood and emerge from chapter 11 bankruptcy protection as soon as possible.

4. The relief requested in M&T's Motion should be denied because the Motion is not necessary. The Plan and Plan Confirmation Order provisions clearly set forth the treatment of the UMBC Construction Loan Claims and implementation of the terms of the Plan. Any additional order or changes to the Plan and Plan Confirmation Order are superfluous and modify the confirmed terms of the Plan.

Background

Filing of Chapter 11 Cases

5. On October 19, 2009, the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

6. The Debtors continue to possess their properties and to manage their businesses as

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan

debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. On November 2, 2009, the Committee was appointed by the United States Trustee. No trustee or examiner has been appointed in these cases.

General Factual Background

8. Additional factual background regarding each of the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings is set forth in detail in the Affidavit of Paul Rundell in Support of First Day Motions, and is incorporated herein by reference

The Plan and Disclosure Statement

9. On November 13, 2009, the Debtors filed the Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code and the related disclosure statement [Dkt. Nos. 293 and 292, respectively].

10. After an auction of substantially all of the Debtors assets, and on several subsequent occasions, the Debtors filed amended plans and related disclosure statements with the Court which reflected various negotiations, compromises and agreements with certain parties in interest. On March 8, 2010, the Debtors filed the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as amended and supplemented, the "Plan") and the Disclosure Statement for the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as amended and supplemented, the "Disclosure Statement") [Dkt. Nos. 1005 and 1001, respectively].

11. On March 8, 2010, the Court entered an order, among other things, (a) approving the adequacy of the Disclosure Statement, (b) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, and (c) fixing the date, time and place for the Plan

[Dkt No. 1005].

Confirmation Hearing for use by the Debtors in soliciting acceptances or rejections of the Plan from holders of Allowed Claims as of the Voting Record Date in an Impaired Class or Classes who may or may not be entitled to vote on the Plan [Dkt. No. 1007].

12. On March 12, 2010, the Debtors commenced solicitation of creditors' acceptance of the Plan. All classes of creditors that voted on the Plan, voted to accept the Plan. See Declaration of Balloting Agent [Dkt. No. 1324].

13. The Plan Confirmation Hearing was held on April 15, 2010. On April 16, 2010, the Court entered an order ("Plan Confirmation Order") confirming the Plan [Dkt. No. 1355]. The Court entered the amended Plan Confirmation Order on April 22, 2010 [Dkt. No. 1373].

Jurisdiction

14. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Relief Requested in M&T's Motion Should Be Denied

15. Despite the fact that M&T was involved in negotiating the terms of the Plan that affected the UMBC Construction Loan Claims, received notice of the Plan and Plan Confirmation Hearing, was provided an opportunity to object to the Plan provisions and be heard at the Plan Confirmation Hearing, M&T now believes the terms of the Plan should be "clarified" in an order and the Plan Confirmation Order.

16. Specifically, M&T would like the Court "out of an abundance of caution" to enter an order providing for the following:

- (i) the liens, security interests, and rights of the Administrative Agent and each Holder of an Allowed MBC 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; and

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

17. M&T would also like the Court to amend paragraph 47 of the Plan Confirmation Order to read “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.”

18. The Debtors believe the terms of the Plan and the Plan Confirmation Order are clear and unambiguous and accordingly M&T’s request is unnecessary and seeks to modify the terms of the Plan by providing for an indefinite period of time in which the Reorganized Debtors will continue to manage and operate the UMBC Building.

19. Sections 4.2.6, 4.3.5, and 4.4.3 of the Plan provide for the treatment of UMBC Building Construction Loan Claims. Holders of UMBC Construction Loan Claims will receive a distribution according to Sections 4.2.6, 4.3.5, and 4.4.3 on the Effective Date or as soon thereafter as is practicable:

The UMBC Building Construction Loan Claims shall be Allowed as of the Effective Date in the amount set forth in the Proofs of Claim timely filed by the Holders of the UMBC Building Construction Loan Claims or, if no Proof of Claim is timely filed by a Holder, the Proof of Claim timely filed by M&T Bank, as Agent for the Holders of the UMBC Building Construction Loan Claims. 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.

20. Paragraph 11 of the Plan Confirmation Order provides that property of the Debtors' estates and property acquired by the Reorganized Debtors shall vest in the Reorganized Debtors, the Liquidating Creditor Trust or the Acquisition Companies, except as expressly provided in the Plan Confirmation Order, the Liquidating Creditor Trust documents, the Definitive Agreement, any stipulation and order resolving an objection to confirmation of the Plan, or 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.

21. Sections 4.2.6, 4.3.5, and 4.4.3 expressly provide that the property securing the UMBC Construction Loan Claims will be disposed of pursuant to the terms of those Sections and shall not be transferred to the Liquidating Creditor Trust. These Sections allow for the Reorganized Debtors to manage and operate the UMBC Building for a reasonable time after the Effective Date rather than an indefinite period of time post-Effective Date as proposed by M&T. The Plan does not contemplate the management and operation of the UMBC Building for an

indefinite period of time post-Effective Date, and any Reorganized Debtor tasked with managing and operating the UMBC Building until such indefinite time when the sale transaction is completed would have no funding to do so.

22. Moreover, paragraph 11 of the Plan Confirmation Order provides that all property of the Debtors' estates will vest in the delineated entities unless the Plan provides otherwise. The language of the Plan and Plan Confirmation Order could not be any clearer or unambiguous with respect to what happens to the UMBC Construction Loan Claims and the property securing such claims.

23. For similar reasons, the Debtors object to the proposed changes to paragraph 47 of the Plan Confirmation Order. M&T would like to have the proverbial "second bite at the apple" and add terms to the Plan and Plan Confirmation Order when M&T has had its day in the plan negotiation, plan confirmation and plan confirmation order drafting process. Such relief clearly is not warranted.

24. In the Motion, M&T seeks to have the Debtors retain the UMBC building for an indefinite period of time. The Motion is silent, and M&T has had no discussions with the Debtors, concerning the payment of costs associated with the continued operations and maintenance of the UMBC building and any compensation to the Debtors for its continued management of the asset. On the effective date, the Debtors will have few if any employees and virtually no cash on hand other than that necessary to complete the wind down of the Estates. The burden of holding onto the UMBC building, and the costs associated therewith beyond the short time provided for in the Plan was not calculated into that wind down budget.

25. For the foregoing reasons, the Debtors respectfully request that the Court deny the relief requested in M&T's Motion.

WHEREFORE, the Debtors respectfully request that the Court deny relief requested in the Motion and grant such other relief as is just and proper.

Dated: April 27, 2010
Dallas, Texas

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