

ENTERED

TAWANA C. MARSHALL, CLERK
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The following constitutes the ruling of the court and has the force and effect therein described.

Hay G. C. Jones

United States Bankruptcy Judge

Signed April 29, 2010

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

In re:

**ERICKSON RETIREMENT
COMMUNITIES, LLC, *et al.***

Debtors.

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Case No. 09-37010 (SGJ)

Chapter 11

(Jointly Administered)

**STIPULATION AND ORDER CONCERNING POST
EFFECTIVE DATE TREATMENT OF 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

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

possession (collectively, the “Debtors”)² and has entered 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”);

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 to 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 the Debtors have filed an objection to the Motion (the “Objection”); and

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

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

NOW, IT IS THEREFORE STIPULATED AND AGREED, by and among (i) the Debtors, (ii) the Administrative Agent, and (iii) Redwood Capital Investments, Redwood ERC-Management, LLC, and Allegis Property Holdings, LLC (collectively “Redwood”), through their respective counsel, as follows:

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, and paragraph 3 through 10 hereof.

3. The Reorganized Debtors shall continue to manage and operate the UMBC Building after the occurrence of the Effective Date until the occurrence of the Termination Date (as hereinafter defined), including, without limitation, insuring and maintaining the operations thereof, consistent with their practice prior to the Effective Date as set forth in the Budget attached hereto as Exhibit “B” (the “Budget”). The Reorganized Debtors shall only have the obligation to pay the expenses set forth in the Budget (the “Budgeted Expenses”) to the extent the Rents as defined herein are sufficient to pay such expenses. To the extent the Reorganized Debtors anticipate that Rents will be insufficient to cover Budgeted Expenses, they will promptly notify the Administrative Agent and shall provide to the

Administrative Agent a written statement of income and expenses with respect to the UMBC Building for the period from the Effective Date to the date of such notification, plus supporting documentation with respect to the anticipated insufficiency.

4. The Administrative Agent shall indemnify the Reorganized Debtor and its professionals from, and hold them harmless against, any claims or loss related to the UMBC Building arising during the period from the Effective Date to the Termination Date; provided that the foregoing indemnity shall not extend to any claim or loss resulting from the willful misconduct or gross negligence of any Reorganized Debtor or any of their professionals or their respective employees or agents. Notwithstanding any provisions of any lease with respect to the UMBC Building requiring the payment of rent, “additional rents” or the like (collectively “Rents”) to the Administrative Agent (including the leases listed in items 2, 3 and 4 on Exhibit “A” hereto and the lease to be entered into by ERC and Redwood-ERC Management, LLC as of the Effective Date (the “Redwood Lease”), a copy of which is annexed hereto as Exhibit “C”), all Rents paid by any tenant under any such lease during the period from the Effective Date until the occurrence of the Termination Date shall be paid to ERC as one of the Reorganized Debtors (“Reorganized ERC”), and shall be applied by Reorganized ERC to the payment of the expenses set forth in the Budget of the UMBC Building.

5. At the Termination Date, Reorganized ERC shall provide to the Administrative Agent a written statement of income and expenses with respect to the UMBC Building for the period from the Effective Date to the Termination Date.

6. On the Termination Date (and at any time Rents are received by Reorganized ERC after the Termination Date), Reorganized ERC shall pay any and all Rents in its possession or control in excess of the Budget expenses, together with a reasonable reserve for

accrued expenses and costs as determined by Paul Rundell as Executive Vice President, Restructuring, to such entity as the Administrative Agent shall direct (or, in absence of such direction, to the Administrative Agent) and will furnish to the Administrative Agent written back-up information with respect to any such reserve.

7. At any time on or prior to the occurrence of the ninetieth (90th) day after the Effective Date, the Administrative Agent shall have the right, by written notice sent by overnight mail to Reorganized ERC (c/o Paul Rundell), to direct Reorganized ERC to transfer and assign all of Reorganized ERC's right, title and interest in and to the UMBC Building and all other property securing the UMBC Building Construction Loan Claims (including, without limitation, the leases and contracts identified on Exhibit "A" hereto and the Redwood Lease) to a subsidiary of Allegis Property Holdings, LLC (provided that the Administrative Agent and Redwood have reached an agreement to so transfer the foregoing), to Chesapeake Holdings Research, LLC or to such other entity as the Administrative Agent shall direct, such transfer and assignment to be made on such date (not later than the ninetieth (90th) day after the Effective Date) and pursuant to such deeds of assignment or other transfer documents, and related documents, as the Administrative Agent shall direct. The Administrative Agent shall bear all of Reorganized ERC's necessary costs, including reasonable legal fees, with respect to the transaction contemplated by this paragraph 7.

8. For so long as there exists no default under the Redwood Lease by the tenant thereunder, then the Administrative Agent, each Holder of an Allowed UMBC Building Construction Loan Claim, their affiliates and their successors-in-interest shall not, in foreclosing against, taking possession of, or taking title to the property securing the UMBC Building Construction Loan Claims, or in otherwise exercising any of their rights under any document, at

law or in equity, disturb the tenant under the Redwood Lease's rights under such Redwood Lease, including, without limitation, possession of the premises leased under the Redwood Lease.

9. Upon the occurrence of the ninetieth (90th) day after the Effective Date, if Reorganized ERC has not received any such written direction from the Administrative Agent, Reorganized ERC shall convey all of its right, title and interest in and to the UMBC Building and all other property securing the UMBC Building Construction Loan Claims (including, without limitation, the leases and contracts identified on Exhibit "A" hereto and the Redwood Lease) to Chesapeake Holdings Research, LLC. Reorganized ERC shall have the right to deduct from the Rents the reasonable costs, including legal fees, of such transfer.

10. As used herein, "Termination Date" shall mean the earlier of (a) the ninetieth (90th) day after the Effective Date or (b) the date on which Reorganized ERC transfers and assigns, pursuant to the written direction of the Administrative Agent, all of its right, title and interest in and to the UMBC Building and all other property securing the UMBC Building Construction Loan Claims to such entity as the Administrative Agent shall direct, or (c) such earlier date as may be determined by order of this Court. Upon the Termination Date, Reorganized ERC shall be released from any obligations related to the UMBC Building, including any under the Redwood Lease to the Administrative Agent, Redwood or the Holders of UMBC Building Construction Loan Claims, except for the obligation to pay Rents to the Administrative Agent or its designee pursuant to paragraph 6 hereof.

11. The phrase "to a subsidiary of Allegis Property Holdings, LLC" in the following sentence found in ¶47 of the Confirmation Order, beginning on page 63 and continuing to page 64 thereof, shall be superseded by the phrase "to a subsidiary of Allegis

Property Holdings, LLC, to Chesapeake Holdings Research, LLC, or to such other person or entity as directed by M&T Bank, as Agent for each Holder of an UMBC Building Construction Loan Claim” and be deemed to read as follows –

The recordation of the Deed of Assignment from ERC to a subsidiary of Allegis Property Holdings, LLC, to Chesapeake Holdings Research, LLC, or to such other person or entity as directed by M&T Bank, as Agent for each Holder of an UMBC Building Construction Loan Claim, 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, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar 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.

12. The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Stipulation.

13. This Stipulation may be executed by facsimile or electronic signature in separate counterparts and shall become effective when such separate counterparts have been exchanged among the Parties.

14. This Stipulation is subject to the approval of the Bankruptcy Court.

###END OF ORDER###

Dated: Dallas, Texas
April 29, 2010

Stipulated and Agreed:

Deirdre B. Ruckman, Bar No. 21196500
GARDERE WYNNE SEWELL LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667

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

ATTORNEYS FOR M&T BANK, AS
COLLATERAL AND
ADMINISTRATIVE AGENT

Stipulated and Agreed:

Vincent P. Slusher, Bar No. 00785480
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 743-4572
Telecopy: (972) 813-6267

Thomas R. Califano (Pro Hac Vice)
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Telephone: (212) 835-6000
Telecopy: (212) 835-6001

ATTORNEYS FOR DEBTORS AND
DEBTORS-IN-POSSESSION

Stipulated and Agreed:

Troy Majou, Bar No. 24067738
Quilling, Selander, Cummiskey & Lownds,
P.C.
2001 Bryan Street, Suit 1800
Dallas, Texas 75201
Telephone: (214) 871-2100
Telecopy: (214)871-2111

Carollynn H.G. Callari
Venable, LLP
Rockefeller Center
1270 Avenue of the Americas
Twenty-Fifth Floor
New York, NY 10020
Telephone: (212) 301-5500
Telecopy: (212) 307-5598

ATTORNEYS FOR REDWOOD CAPITAL
INVESTMENTS, REDWOOD ERC-
MANAGEMENT, LLC, AND ALLEGIS
PROPERTY HOLDINGS, LLC