

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

<b>IN RE:</b>	§	<b>CASE NO. 09-37010</b>
	§	
<b>ERICKSON RETIREMENT COMMUNITIES, LLC, et al.<sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	<b>Jointly Administered</b>
	§	
<b>Debtors.</b>	§	

**STIPULATION AND ORDER CONCERNING TAX OVERPAYMENTS**

The above-captioned debtors and debtors-in possession (the “Debtors”) and PNC Bank, National Association (“PNC”), as collateral and administrative agent and on its own behalf (collectively, the “Parties”) having stipulated to the entry of this Order as evidenced by their signatures below, and this Court having determined that entry of this Stipulation and Order is in the best interest of creditors and the estates, and after due deliberation and sufficient cause appearing therefore, the Court hereby finds:

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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, and Warminster Campus, LP.

A. This Court conducted a hearing on confirmation of the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as supplemented, the "Plan") on April 15, 2010, following which the Court entered its Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Fourth Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as amended, the "Confirmation Order").

B. The Debtors filed the Debtors' Amended Motion for Determination of Tax Liability on April 9, 2010 [DE 1287] (the "505 Motion"), pursuant to which the Debtors asked the Court to determine certain tax liabilities.

C. As of the time of the confirmation hearing, the 505 Motion had not yet been determined.

D. The Confirmation Order provides, in relevant part, the following:  
"In the event the Closing occurs prior to resolution of the Debtors' Amended Motion for Determination of Tax Liability, the undisputed amounts due such taxing authority shall be paid to the Holder of such Secured Tax Claim on the Closing Date. The disputed balance claimed by such Holder of a Secured Tax Claim together with interest thereon and other amounts allowed by section 506(b) of the Bankruptcy Code shall be escrowed in a separate escrow account, the form of which escrow shall be agreed to by the applicable Agent, the Holder of the Secured Tax Claim and the Debtors (and, in the case of Dallas Campus, the Holders of the Texas A&M Note Claim) with the liens of the Agents Lenders and applicable taxing authorities continuing to attach to the escrowed funds in the same order of priority as existed against the respective real property. The escrowed funds shall be in an amount approved by the Holder of each Secured Tax

Claim. In the event the applicable Agent, the Debtor and the Holder of each Secured Tax Claim (and in the case of Dallas Campus the Holders of the Texas A&M Note Claim) do not agree on the amount to be escrowed, this Court shall, upon request, determine such amount. Upon resolution of the Debtors' Amended Motion for Determination of Tax Liability (relating to a particular taxing authority), any funds relating to that particular taxing authority shall be released from escrow and paid first to the Holder of the applicable Allowed Secured Tax Claim with any excess funds to be paid over to the applicable Agent (and, in the case of Dallas Campus, the Holders of the Texas A&M Note Claim to the extent set forth in Section 4.9.5 of the Plan)." Confirmation Order at Paragraph 41.

E. The Debtors have determined that, in lieu of escrowing funds on account of disputed taxes, they desire to pay the disputed taxes to the pertinent taxing authorities "under protest" (to the extent such payments are made, the "Protested Payments"). Payment of the taxes under protest, rather than establishing an escrow, stops the accrual of any asserted interest and penalties, as provided under the relevant tax laws. Paying disputed taxes under protest also eliminates the need for the escrow described in Paragraph D above.

F. Payment of the property taxes under protest is in the best interest of the Debtors, their estates and creditors.

G. It would be inequitable if payment of taxes under protest extinguished or otherwise prejudiced the liens of the Administrative Agent, which were expressly preserved in the Confirmation Order.

H. The Debtors and the Administrative Agent enter into this Stipulation to confirm and ensure that the liens of the Administrative Agent (which liens are currently attached to the funds that will be used to pay the applicable property taxes), on behalf of the lenders in its respective lending facilities, attach to the rights to any refund of the Protested Payments (the “Refund Rights”).

WHEREFORE, in consideration of the foregoing, it is hereby,

ORDERED, that the Administrative Agent, on behalf of the lenders in its respective lending facilities, is granted and shall have a perfected, first priority security interest in and lien on the Refund Rights, without the necessity of execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements or similar documents, or the possession or control of the Administrative Agent of any property; and it is further,

ORDERED, the Administrative Agent’s liens in the Refund Rights are valid, binding, continuing, enforceable, fully-perfected first priority senior priming liens on, and security interests in, the Refund Rights. The Administrative Agent’s liens in the Refund Rights shall not be subject or subordinated to any lien or security interest, surcharged or otherwise impaired, whether consensually by the Debtors or Reorganized Debtors, or through an order of the Court.

ORDERED, that promptly upon receipt of cash refund or overpayment on account of any Refund Right (a “Cash Payment”), the receiving Debtor shall promptly pay the Cash Payment over to the Administrative Agent; and it is further,

ORDERED, that the automatic stay provisions of section 362 are hereby modified and vacated without further notice, application or order of the Court, to the extent

necessary to permit the Administrative Agent to (a) take any act to create, validate, evidence, attach or perfect the lien and security interest confirmed herein, (b) collect the Cash Payments and any other proceeds of the Refund Rights, and (c) otherwise enforce its rights under this Order, including but not limited to its liens and security interests in the Refund Rights.

<p>Stipulated and Agreed:</p> <p><u>/s/ Daniel I. Morenoff</u>  David Weitman, Bar No. 21116200  Daniel I. Morenoff, Bar No. 24032760  K&amp;L GATES LLP  1717 Main Street, Suite 2800  Dallas, Texas 75201  Telephone: 214.939.5500  Telecopy: 214.939.5849</p> <p>and</p> <p>James M. Smith (Pro Hac Vice)  Lisa Bittle Tancredi (Pro Hac Vice)  GEBHARDT &amp; SMITH LLP  One South Street, Suite 2200  Baltimore, Maryland 21202  Telephone: 410.752.5830  Telecopy: 410.385.5118</p> <p>ATTORNEYS FOR PNC BANK,  NATIONAL ASSOCIATION</p>	<p>Stipulated and Agreed:</p> <p><u>/s/ Vincent P. Slusher</u>  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</p> <p>and</p> <p>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</p> <p>ATTORNEYS FOR DEBTORS AND  DEBTORS-IN-POSSESSION</p>
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