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ATTORNEYS FOR PNC BANK,
NATIONAL ASSOCIATION

**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.¹	§	CHAPTER 11
	§	Jointly Administered
	§	
Debtors.	§	

**OBJECTION OF PNC BANK, NATIONAL ASSOCIATION TO
DEBTORS' MOTION FOR AN ORDER AUTHORIZING
DEBTORS TO ESCROW INITIAL ENTRANCE DEPOSITS**

PNC Bank, National Association ("PNC"), by its undersigned counsel, objects to the Debtors' Motion For An Order Authorizing Debtors To Escrow Initial Entrance Deposits (the "Motion"). PNC submits this objection in PNC's capacity as Administrative Agent for the "Senior Secured Project Loan Lenders" that are parties to "Senior Secured Project Loans" having aggregate unpaid balances in excess of Two Hundred Sixty-Four Million Dollars (\$264,000,000.00) (as such terms are defined in Exhibit "A" attached hereto (the "Summary")) and in PNC's individual capacity as a Senior Secured Project Loan Lender The Senior Secured

¹ The Debtors in these chapter 11 cases are Erickson Retirement Communities, LLC, Ashburn Campus, LLC, Columbus Campus, LP, 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.

Project Loans and the collateral securing the Senior Secured Project Loans are more particularly described in the Summary. In support of this Objection, PNC states the following:

I. PRELIMINARY STATEMENT

An Initial Entrance Deposit is the first entrance deposit paid by a Resident for a newly-constructed unit. Initial Entrance Deposits² (“IEDs”) are a critical pillar of the Senior Secured Project Loan Lenders’ collateral packages. The IEDs are the primary source of repayment of the Senior Secured Project Loans, and they are irreplaceable. There can be only one (1) IED for each unit. That IED was always intended to be used to repay the Senior Secured Project Loan which financed the construction of the unit that generated the IED. Every subsequent entrance deposit for that unit is used to repay the prior resident (or that resident’s estate) for the entrance deposit (and in some cases, the IED) that it paid and is not used to repay the applicable Senior Secured Project Loan. Indeed, the only scheduled principal payments upon the Senior Secured Project Loans are two (2) payments scheduled each month that are required by the Revolving Loan Notes evidencing the Senior Secured Project Loans, each of such payments to be in the amount of “one hundred percent (100%) of all Initial Entrance Deposits.” *See* Summary at page (ii).

Given their importance, the IEDs are subject to numerous security agreements, pledges, trust agreements and escrow agreements for the benefit of the Senior Secured Project Lenders. *See* Summary at page (v). PNC objects to the entry of any Order that disturbs the rights of PNC under the existing agreements, pledges, assignments and any other documents that relate to the IEDs.

² For purposes of this Objection, the term IEDs will include both cash and promissory notes executed by Residents.

II. BACKGROUND

The Debtors claim in the Motion that the IEDs are the “lifeblood” of the Debtor Landowner’s operations. This is not an accurate statement. The Debtors’ daily operations are financed through the monthly payments made by residents under their Residence And Care Agreements. IED’s are dedicated to the repayment of the construction loans.

Each Residence And Care Agreement signed by each Resident at the “Concord,” “Kansas” and “Novi” (as such terms are defined in the Summary) campuses contains an explicit acknowledgement and agreement from the Resident that the Resident’s IED will be used to “pay off the cost of the construction loan” (i.e., the applicable Senior Secured Project Loan). This language has been used in the Erickson form of Residence And Care Agreement since the inception of the relationships of the Senior Secured Project Loan Lenders with the Senior Secured Project Loan Borrowers. This specific language has been on file with the applicable state regulators since such inception. However, within recent weeks, this language was modified by the Houston and Kansas Debtors and their not-for-profit Tenants over the objections of the applicable Senior Secured Project Loan Lenders. Even still, after such unpermitted modifications, the operative language as drafted and approved by those Debtors and Tenants still authorizes the use of its IEDs of those campuses “to pay off the cost of the construction loan” in addition to other expanded permitted uses. Put simply, every Resident has agreed to the use of the Resident’s IED to pay off the Senior Secured Project Loan applicable to such Resident’s unit, and such use of the IED to repay the applicable construction loan has been clearly and consistently disclosed to the applicable regulators.

The Debtors have filed the Motion to “escrow” the IEDs. The relief sought by the Debtors drastically alters the rights and securities of the Senior Secured Project Loan Lenders. Debtors cite no authority or Bankruptcy Code provision that would afford the Debtors this extraordinary relief. The Debtors do not even articulate what form an escrow would take, the identity of the escrow agent, the location of the escrow account or the terms of an escrow agreement.

The sole “justification” offered by the Debtors for this relief is to “provide assurance to new residents that the Debtor Landowners’ bankruptcy cases will not affect the residents’ rights to a refund.” However, the Debtors have not articulated why their vague “escrow” will provide any assurance to residents. Indeed, each prospective new Resident will clearly have the information sufficient for the Resident to evaluate the wisdom of paying an IED for a new unit. These bankruptcy proceedings are not secret proceedings. Prospective Residents may protect themselves by simply reading the Residence And Care Agreement that they will be requested to sign.

The Motion is really just a thinly disguised attempt to part IEDs from the Senior Secured Project Loan Lenders, thus stripping the Senior Secured Project Loan Lender of valuable collateral which is needed to secure the repayment of the Senior Secured Project Loans. The Debtors have not offered any adequate protection to the Senior Secured Project Loan Lenders. The Motion should be denied.

II. LEGAL ARGUMENT

The Debtors bear the burden of showing adequate protection. *See* 11 U.S.C. § 363(p). Adequate protection is not defined in the Bankruptcy Code, but Section 361 states that it may be provided by cash payments, an additional or replacement lien, or granting other relief as will

result in the “indubitable equivalent” of the creditors’ interest in property. *See* 11 U.S.C. § 361; *See also In re Knight Energy Corp.*, 2009 WL 1851739 (Bankr. N.D.Tex. 2009) (requiring the Debtors to pay monthly cash payments as adequate protection).

As articulated in PNC’s objection to the proposed debtor-in-possession financing with the stalking horse bidder, simply maintaining business operations may not be “adequate protection” within the meaning of Section 361. Tampering with the Senior Secured Project Loan Lender’s collateral rights in the IEDs for the stated purpose of persuading new residents to pay more IEDs (as to which the Senior Secured Project Loan Lenders’ collateral rights will be prejudiced) does not afford any adequate protection to the Secured Senior Project Loan Lenders.

If the Court is inclined to grant the Motion over PNC’s objections, the terms of any escrow need to be clearly articulated and the Senior Secured Project Lenders’ collateral rights in the IEDs must be protected.

III. CONCLUSION

WHEREFORE, PNC respectfully requests that the Court enter an Order (i) denying the Motion, and (ii) granting PNC such other and further relief as may be just and proper.

By: /s/ Daniel I. Morenoff

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 2009, a true and correct copy of the foregoing was served via email through the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service, including the movant-Debtors.

By: /s/ Daniel I. Morenoff
Daniel I. Morenoff, Esquire