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ATTORNEYS FOR OAKLAND COUNTY TREASURER
AND THE CITY OF NOVI, MICHIGAN

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

In re:

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

Debtors.

Case No. 09-37010 (SGJ)

Chapter 11
(Jointly Administered)

**JOINDER OF THE OAKLAND COUNTY TREASURER AND THE CITY OF
NOVI TO TREASURER OF DOUGLAS COUNTY, COLORADO'S MOTION TO
BIFURCATE CLAIM OBJECTION HEARING**

The Oakland County Treasurer is the tax collecting governmental unit for Oakland County, Michigan. As such, it is the Treasurer's duty to collect past due property taxes for the county and various cities within the County, which accrue on both

real and personal property located within Oakland County, Michigan. The City of Novi is responsible for the assessment of property and the collection of the current year property taxes which accrue on real and personal property located within the City. The Oakland County Treasurer and the City of Novi have an interest in the property located at 41100 Thirteen Mile, Novi, Oakland County, Michigan (“Novi Property”). The Oakland County Treasurer and the City of Novi, by and through counsel, Kilpatrick & Associates, P.C., Secrest Wardle, and Sherman & Yaquinto, LLP, and for their Joinder to the Treasurer’ of Douglas County, Colorado’s Motion to Bifurcate Claim Objection Hearing [Docket No. 1449] (“Motion”) say as follows:

1. Debtors filed the Motion for Determination of Tax Liability [Docket No. 1211], Amended Motion for Determination of Tax Liability [Docket No. 1287] and Second Amended Motion for Determination of Tax Liability [Docket No. 1471] (“Tax Liability Motions”).
2. The Oakland County Treasurer and the City of Novi; the City of Overland Park, Kansas; Loudon County Government; County of Loudon, Virginia; and Douglas County, Colorado have filed objections to the Tax Liability Motions.
3. On May 13, 2010, Douglas County, Colorado filed a Motion to Bifurcate Claim Objection Hearing [Docket No. 1449].
4. The legal issues regarding whether the Court will take jurisdiction over the Tax Liability Motions are significant and impact the following taxing jurisdictions in the United States
 - Baltimore County, Maryland
 - Johnson County, Kansas

- Dallas County, Texas
- Douglas County, Colorado
- Harris County, Texas
- Lexington, Massachusetts
- County of Loudon, Virginia
- Mecklenburg County, North Carolina
- Oakland County, Michigan
- Overland Park, Kansas.

5. The Oakland County Treasurer and the City of Novi request that the Court determine the legal issues raised by the Tax Liability Motions: whether the Court has jurisdiction under 11 U.S.C. § 505(a)(2)(A) to adjudicate the portions of the Oakland County Treasurer's and City of Novi's tax claim when adjudication had begun in the Michigan Tax Tribunal; whether this Court should exercise its discretion under 11 U.S.C. § 505(a)(1) to adjudicate the tax liability owed to the Oakland County Treasurer for the 2009 tax year; and whether this Court has jurisdiction over the tax liability owed to the City of Novi for the 2010 tax year, which begins post confirmation. The issues surrounding whether the Court should abstain are purely legal issues and can be decided without the need for an evidentiary hearing.

6. The Oakland County Treasurer and the City of Novi will not restate their arguments regarding the legal issues, but refer the Court to their Objections filed at Docket No. 1382 and concurrently with the Joinder.

7. Should the Court decide to exercise jurisdiction over the matters, the Court is required to apply Michigan law in the determination of any tax liability as to the Michigan property.

8. Upon information and belief, Michigan law requires that the Court utilize evidence different in type from that required under the applicable law of the states of the other taxing jurisdictions.

9. Should the Court take jurisdiction over the Tax Liability Motions, it would need to review the laws of eight different states and the valuation of at least nine different parcels of property.

10. Should the Court take jurisdiction over the Tax Liability Motions, the Oakland County Treasurer and the City of Novi will need at least 180 days to complete discovery and have the necessary appraisals and valuations of the various completed and partially completed buildings at the Novi Property. The City of Novi has been in discussions with the Debtors' counsel regarding the appraisal and valuation of the Novi Property for the past month, but has yet to receive the necessary information to further the appraisal and valuations.

11. The Oakland County Treasurer and the City of Novi anticipate that the evidentiary portion regarding the determination of the tax liability for the Novi Property alone would exceed several days.

12. As required by Michigan Statute, MCL 205.737(2), the Debtors have the burden of proof in establishing "true cash value", while the City of Novi is required to prove the ratio of the average level of assessment in relation to true cash value, and that the equalization factor was uniformly applied.

13. As required by Michigan Statute, MCL 205.751(1), the ultimate decision and opinion, “shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately . . .”.

14. As required by State of Michigan Tax Tribunal Rule, R 205.1252(1), “valuation disclosures” are required to be filed and exchanged prior to a hearing on valuation.

15. As required by State of Michigan Tax Tribunal Rule, R 205.1252(2), the parties are required to exchange witness lists prior to the hearing as ordered.

16. As contemplated by State of Michigan Tax Tribunal Rules, R 205.1255, R 205.1257, and R 205.1260, the parties are entitled to discovery, including but not necessarily limited to interrogatories, depositions, and requests for production of documents.

17. Pursuant to State of Michigan Tax Tribunal Rule, R 205.1283(3), **a party may not testify as to the value of property without the submission of a valuation disclosure.**

18. The Tribunal explained that a “valuation disclosure” performed by an individual not licensed as an appraiser in the State of Michigan is generally considered insufficient evidence in *Rema Village Mobile Home Park v Township of Ontwa*, MTT Docket No. 273828, 11-14, 2004 Mich. Tax LEXIS 43 (June 4, 2004) where the Tribunal wrote:

Respondent charged that Petitioner was an unlicensed appraiser doing an appraisal. The courts have recognized that a property owner may have specific knowledge about his property and may present evidence and testify about his particular knowledge. Petitioner is a CPA and provided logical information to his profession. The Tribunal does

find that, while it may be considered appropriate for a business investment purpose, the valuation disclosure was not an appropriate income technique for valuation purposes.

When a party submits an "appraisal" to the Tribunal and under oath testifies that the appraisal meets USPAP standards, the Tribunal may consider the valuation disclosure an appraisal subject to licensure. However, when a property owner prepares a valuation disclosure it may or may not be an appraisal depending upon the qualifications of the owner. TTR 101(m).

"Valuation disclosure" means documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and which contains the party's value conclusions and data, valuation methodology, analysis or reasoning in support of the contention.

The Tribunal allows property owners to prepare information and testify as to their knowledge for their specific property. When an "appraisal" is prepared by a party other than the owner and is submitted to the tribunal for valuation evidence, the author of the appraisal falls under the occupational code and licensing act, MCL 339.2601 (a). Goldberg, as an owner, did not prepare an "appraisal."

"Appraisal" is a term of art in the appraisal profession's lexicon and in the Uniform Standards of Professional Appraisal Practice (USPAP), as well as a defined term in Michigan's licensing statute. MCL 339.2601(a). Appraisal is not however defined in the Tax Tribunal's Rules, which opts instead for the more general term "valuation disclosure." Expert testimony and expert work products have effect in Michigan through the operation of MRE 702 (2003) *et seq.* The two terms interact with respect to expert testimony and work products through the operation of the Tribunal's Rules as it considers evidence bearing on valuation issues within the Entire Tribunal and Small Claims Divisions of its jurisdiction. Appraisal is defined in USPAP as the act or process of developing an opinion of value.

TTR 283(3) states in pertinent part:

Without leave of the tribunal, a witness may not testify as to the value of a property without the submission of a valuation disclosure containing that person's value conclusion and the basis for the conclusions.

"Appraisal" is the narrower and more specific of the two terms, and is relevant to the Tribunal in the following ways:

Expert appraisal work product [appraisal, testimony, appraisal reports and reviews] performed under Michigan's Real Estate Licensing Statute [MCL 339.2601 *et seq.*], in turn mandates *inter alia* particular qualifications, education, experience, examinations, and performance under USPAP, advantages the user of that work product, in this case the Tribunal, by ensuring, through the independent third party auspices of the Michigan licensing authority, that it meets the requirements and standards in place at the time of completion, under penalty of violation of Section 601, Article 6 of the Michigan Real Estate Appraisal Licensing Statute and/or USPAP. The entity that administers the licensing statute possesses the ability to penalize non-compliant professional practice within its jurisdiction. *Bass Pro Outdoor World v Auburn Hills*, MTT Docket No. 275731 (2003).

19. The City of Novi requests that it be given an opportunity to provide an “appraisal” of the subject property, and as permitted under Michigan law, and that should this Court determine it should take jurisdiction, that the City and County be permitted to review the Debtors’ required documentary evidence sufficiently prior to the hearing.

20. Furthermore, it would be waste of the limited resources of the Oakland County Treasurer and the City of Novi to have witnesses attend the initial hearing regarding the determination of the legal issues, or the portions of the evidentiary hearing regarding the seven other taxing jurisdictions or properties other than the Novi Property.

WHEREFORE, the Oakland County Treasurer and the City of Novi pray that this Honorable Court enter an order bifurcating the hearing on the Tax Liability Motions, with the first part of the bifurcated hearing to be limited to the legal issues regarding the Court taking jurisdiction or abstaining from taking jurisdiction over the Tax Liability Motions, and the second part of the bifurcated hearing to be on the valuation of the Novi Property, and such other and further relief as is just and necessary.

Respectfully submitted,

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