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Trustee for the Liquidating Creditor Trust

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

In re: § **CASE NO. 09-37010-sgj11**
§
ERICKSON RETIREMENT § **CHAPTER 11**
COMMUNITIES, LLC, et al. §
§
Debtors.¹

**TRUSTEE'S MOTION FOR EXPEDITED HEARING FOR AN EXTENSION OF TIME
TO FILE OBJECTIONS TO CLAIMS**

Dan B. Lain, in his capacity as the Trustee (the "Trustee") for the Liquidating Creditor Trust created in connection with the above-captioned cases (the "Trust"), hereby files this Motion for Expedited Hearing for an Extension of Time to File Objections to Claims (the "Motion") and requests an entry of an order extending the period within which the Trustee must file objections to claims. In support of this Motion, the Trustee respectfully states as follows:

¹ The Reorganized Debtors in these chapter 11 cases (the "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.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

2. On October 19, 2009 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.

3. On November 2, 2009, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee").

4. The Debtors' Fourth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated March 8, 2010 (the "Plan"), was confirmed by this Court on April 16, 2010.

5. Pursuant to the authority granted to the Committee in Section 6.4.11 of the Plan, on April 8, 2010, the Committee filed the definitive trust document establishing and governing the Trust (the "Liquidating Creditor Trust Agreement"). Dan B. Lain was appointed Trustee of the Trust.

6. On the Effective Date, the Liquidating Creditor Trust Agreement was executed by the Trustee, the Committee, the Acquisition Companies, the Debtors and the Reorganized Debtors (collectively, the "Parties").

7. On April 21, 2010, the United States Bankruptcy Judge entered the Chapter 11 Post-Confirmation Order ("Post-Confirmation Order") which required that objections to claims

must be filed and served within 60 days after entry of the Post-Confirmation Order. The deadline to file objections to claims is June 21, 2010.

RELIEF REQUESTED

8. Pursuant to Federal Rule of Bankruptcy Procedure § 9006, the Trustee requests an expedited hearing for this Motion for any time on June 21, 2010, so that this Court extend the deadline for the Trustee's objections to claims to be filed and served to **no sooner than January 21, 2012**. Federal Rule of Bankruptcy Procedure 3007 does not set a bar date to file objections to a proof of claim. *See* FED. R. BANKR. P. § 3007. The deadline in this case was set by the Court's Post-Confirmation Order. *See* Docket No. 1371. This deadline is prejudicial to the Trustee because it prematurely requires him to evaluate claims upon which he has little to no information on yet. Accordingly, the Trustee requests that the Court extend the deadline so the Trustee can adequately analyze which claims are proper and which claims are objectionable.

9. The Trustee was not appointed until April 8, 2010. Under the Liquidating Creditor Trust Agreement, the Trustee has the responsibility and authority to object to the allowance of claims. *See* Docket No. 1263, ¶¶ 5.1 & 5.8. Before he files objections to claims, the Trustee plans to evaluate and categorize all claims consistent with the three subclasses of unsecured claims described in section 6.4.9 of the Plan and section 3.2 of the Liquidating Creditor Trust Agreement. *See* Exhibit A, Affidavit of the Trustee, Mr. Dan B. Lain. For instance, the Trustee will determine which holders of Tier A Interests have valid claims that should be paid subject to the \$7 million cap. *Id.* Likewise, the Trustee will then evaluate which distributions to holders of Tier B Interests should be made subject to the applicable cap, and so forth down the described waterfall. *Id.* The Trustee anticipates that determining which claims are proper claims which should be paid, will be a complex and lengthy process. *Id.* Further, the

Trustee does not want to needlessly evaluate claims in a Tier for which there will be no distribution. *Id.* Therefore, he needs sufficient time to pursue the causes of action transferred to the Trust and evaluate potential distributions to creditors by Tier in order to set a reasonable scope for evaluation of claims falling within each Tier. *Id.*

10. Further, the Trustee may also need to evaluate some of the Reorganized Debtors' documents to aid in his analysis of claims objections. *Id.* Since the Trustee was appointed, he has been working diligently with the Reorganized Debtors and their Chief Restructuring Officer to obtain access to relevant documents needed to resolve claim objections. *Id.* The parties negotiated a confidentiality agreement relating to such documents on June 15, 2010. *Id.* The Reorganized Debtors have transferred some, but not many, documents to the Trustee. *Id.*

11. On June 5, 2010, the Trustee learned that the Reorganized Debtors have approximately 500 computer servers and approximately 4500 personal computers which could include documents that need to be reviewed for relevancy to the Trustee's claims objections. *See* Exhibit A. The Trustee did not learn about the scope of this massive amount of documents until sixteen days before the deadline to object to claims. *Id.* More importantly, as of June 17, 2010, the Trustee still does not have access to these documents. *Id.* In addition, the Trustee may need to review 8,600 boxes of hard-copy documents in the Reorganized Debtors' storage files, before he can accurately and fully determine what claims objections are proper. *Id.*

12. To ensure that no party-in-interest is prejudiced by setting the expedited hearing, the Trustee will promptly provide notice of this Motion and request for an expedited hearing to all other parties-in-interest listed on the Master Service List via ECF and electronic mail.

WHEREFORE, Dan B. Lain, the Trustee of Liquidating Creditor Trust, respectfully requests that this Court enter an Order extending the Trustee's Claim Objection Deadline to

January 21, 2012, giving the Trustee adequate time to determine proper claims' objections, and for such other and further relief as is just and proper.

Dated: June 18, 2010.

Respectfully submitted,

By: /s/Tricia R. DeLeon

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TRUSTEE FOR THE LIQUIDATING CREDITOR TRUST

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the parties receiving electronic notice via the Court's ECF noticing system on this 18th day of June, 2010.

/s/ Tricia R. DeLeon
Tricia R. DeLeon

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