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ATTORNEYS FOR DAN LAIN, TRUSTEE
OF THE LIQUIDATING CREDITOR TRUST

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	**CASE NO. 09-37010-sgj11**
ERICKSON RETIREMENT	§	
COMMUNITIES, LLC, *et al.*[1]	§	**CHAPTER 11**
	§	
Debtors	§	
	§	

LIQUIDATING TRUSTEE'S OBJECTION TO PROOF OF CLAIM NUMBER
1046 FILED BY MICROSOFT CORPORATION AND MICROSOFT LICENSING GP

TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:

Dan B. Lain, Trustee of the Liquidating Creditor Trust ("Liquidating Trustee") files this Objection to Proof of Claim Number 1046 filed by Microsoft Corporation and Microsoft Licensing, GP (the "Objection"), objecting to Proof of Claim No. 1046 and seeking entry of an order pursuant to sections 502(a) and (b) and 503 of Title 11 of the United States Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure, disallowing

[1]The Debtors in these Chapter 11 Cases (the "Cases") were 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.

and/or expunging such claim. In support of his Objection, the Trustee respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b). Venue is proper in this District pursuant to 28 U.S.C. § 1409(a).

BACKGROUND

2. On October 19, 2009 ("Petition Date"), the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

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

4. This Court confirmed the Debtors' Fourth Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated March 8, 2010 (the "Plan") on April 16, 2010.[2] [Docket No. 1355]. The Liquidating Trustee has authority to object to Claims pursuant to Section 6.4.12 of the Plan. [Docket No. 1005].

5. Pursuant to the authority granted to the Creditors' Committee in Section 6.4.11 of the Plan, on April 8, 2010, the Committee filed the definitive trust document establishing and governing the Liquidating Creditor Trust (the "Trust Agreement"). Dan B. Lain was appointed Trustee of the Liquidating Creditor Trust ("Trust"). On April 30, 2010, the Plan became effective (the "Effective Date"). On the Effective Date, the Trust Agreement was executed by

[2] Unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed to them in the Plan.

the Liquidating Trustee, the Creditors' Committee, the Acquisition Companies,[3] the Debtors, and the Reorganized Debtors (collectively, the "Parties").

6. Each of the Debtors filed Schedules of Assets and Liabilities (collectively the "Schedules") with the Court. In addition to the Claims scheduled by the Debtors, various parties filed proofs of claim against the Debtors' bankruptcy estates pursuant to § 501 of the Bankruptcy Code. The Court's deadline for creditors' proofs of claim to be received by the bankruptcy clerk's office was February 28, 2010. [Docket No. 61].

RELIEF REQUESTED AND BASIS FOR RELIEF

7. The Liquidating Trustee has examined the schedules and the proofs of claim filed in each of the Debtors' cases, along with the supporting documentation (if any) submitted with each proof of claim. In addition, the Liquidating Trustee has inspected the Debtors' books and records in order to determine whether the various proofs of claim filed in these cases are accurate and represent bona fide liabilities.

8. As a result of this detailed review process, the Liquidating Trustee has determined that Proof of Claim Number 1046 filed by Microsoft Corporation and Microsoft Licensing GP ("Microsoft") in the amount of "$1,655,906.10 – Prepetition plus $3,729,812.20 CONTINGENT CLAIM" ("Microsoft Proof of Claim") is objectionable because the liabilities comprising the basis for the Microsoft Proof of Claim were assumed by the Debtors. *See* Microsoft Proof of Claim, attached hereto as Exhibit A and Notice of Filing of Fourth Amended Contract Assumption List ("Assumed Contract List"), attached hereto as Exhibit B. Under the Plan, anything in the Debtors' schedules and any proofs of claim filed with respect to any assumed

[3] The Acquisition Companies in these Cases are the following companies that formed to acquire substantially all of the assets relating to the Debtors' business as of the Petition Date: Redwood, ManagementCo, DevCo, PropCo, Redwood Kansas, Redwood Concord, Redwood Dallas, Redwood Houston, Redwood Ashburn, Redwood Littleton, Redwood Novi, Redwood-ERC Tinton Falls II, LLC, and Redwood-ERC Senior Care, LLC.

contract or lease shall be "deemed disallowed and expunged." *See* Plan, Section 10.1.1. The beneficiaries of the Trust are limited to holders of allowed general unsecured claims against the Debtors' estates. *See* Plan, Section 1.21. Upon assumption, the Microsoft Proof of Claim became a post-petition administrative claim and, therefore, is no longer an allowed general unsecured claim against the Debtors' estates. *See Pheonix Mutual Life Ins. Co. v. Greystone III Joint Venture* (*In re Greystone III Joint Venture*), 995 F.2d 1274, 1281 (5th Cir. 1991). Therefore, the Microsoft Proof of Claim should be disallowed as a claim against the Trust.

9. Under § 502(a) of the Bankruptcy Code, a claim is "deemed allowed unless a party-in-interest . . . objects." 11 U.S.C. § 502(a). Consequently, absent this Objection, the Microsoft Proof of Claim would be allowed against the Trust despite the fact that the Debtors assumed the contract and, pursuant to the Plan, the Microsoft claim is not a Beneficiary to the Trust.

10. The Liquidating Trustee hereby objects to the Microsoft Proof of Claim, and requests that the Court disallow this claim in its entirety. This objection is made so that the Liquidating Trustee will not be required to pay any claim that has already been assumed by the Debtors, is not a beneficiary of the Trust and is not entitled to a distribution from the Trust under the Plan.

RESERVATION OF RIGHTS

11. The Liquidating Trustee reserves the right to object to the Microsoft Proof of Claim on further and different grounds.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests that the Court disallow, as a claim against the Trust, the Microsoft Proof of Claim. The Liquidating Trustee further seeks such other and further relief to which he may show himself justly entitled at law or in equity.

Date: July 6, 2012.

Respectfully submitted,

ANDERSON TOBIN, PLLC

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ATTORNEYS FOR DAN LAIN, TRUSTEE
OF THE LIQUIDATING CREDITOR TRUST

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and complete copy of the Trustee's Objection to Proof of Claim Number 1046 Filed by Microsoft Corporation and Microsoft Licensing GP and Exhibits were served on this 6th day of July 2012 via ECF notice upon all parties who consent to such service and via first class United States mail, postage prepaid, upon the following:

Microsoft Corporation and Microsoft Licensing GP
c/o Marla Ann Milano
Riddell Williams, PS
1001 4th Avenue, Ste. 4500
Seattle, WA 96154-1065

/s/ Aaron Z. Tobin
Aaron Z. Tobin