UNITED STATES BANRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	
	)	
ERICKSON RETIREMENT	)	
COMMUNITIES, LLC, *et al.*,	)	
	)	
	)	Case No. 09-37010 (SGJ)
	)	
	)	Chapter 11
	)	
Debtors	)	(Jointly Administered)
	)	

MOTION OF THE TREASURER OF DOUGLAS COUNTY, COLORADO FOR ORDER REQUIRING THE DEBTORS TO PAY THE ALLOWED AMOUNT OF DOUGLAS COUNTY'S SECURED CLAIMS AGAINST DEBTOR ERICKSON CONSTRUCTION OUT OF ESTATE ASSETS

The Treasurer of Douglas County, Colorado ("Douglas County") moves for entry of an order requiring the Debtors to pay its $7,245.23[1] allowed secured prepetition Claim against Debtor Erickson Construction for 2009 personal property taxes out of estate assets, Claim No. 00132, Parcel No. P0506679, and its $6,035,98[2] allowed secured administrative expense Claim against Debtor Erickson Construction for 2010 personal property taxes out of estate assets, Claim No. 00132, Parcel No. P0506679.

On December 14, 2009, Douglas County filed a Proof of Claim, Exhibit A hereto, for its prepetition secured Claim for 2009 personal property taxes; on December 14, 2009, Douglas

[1] This Claim breaks out: $5, 573.25 of principal and $1,671.98 of interest.
[2] This Claim breaks out: $5,115.24 of principal and $920.74 of interest

County filed a Proof of Claim, Exhibit B hereto, for its secured administrative expense Claim for 2010 personal property taxes .[3] The Debtors have never filed a claim objection against either of these Claims. However, despite repeated requests, the Debtors have never paid either of these Claims.

Douglas County Douglas County has properly allowable secured Claims for personal property taxes, secured by statutory liens. See, Douglas County's Proofs of Claim. Douglas County's statutory liens are superior to all other liens. "Taxes levied on real and personal property ... shall be a perpetual lien thereon, and such lien shall have priority over all other liens .... " C.R.S. § 39-1-107(2). See, In re Western Pacific Airlines, Inc., 273 F.3d 1288, 1291 (10th Cir. 2001) ("Under the Colorado tax code, taxes on real and personal property create a first and perpetual lien."); United States v. Elliott, 209 F.Supp. 374, 375 (D.Colo.1972).

Douglas County's Claim for 2009 property taxes is a prepetition claim, because the claim for the 2009 property taxes relates back to the prepetition statutory January 1, 2009 assessment date. See, In re Western States Distributors, Inc., 179 B.R. 666, 668 (Bankr.D.Colo.1995); Maryland National Bank v. Mayor and City Council of Baltimore, 723 F. 2d 1138, 1143-44 (4th Cir.1983); In re Thurman, 163 B.R. 95, 98 (Bankr.W.D.Texas.1994); In re Summit Ventures, Inc., 135 B.R. 483, 492 (Bankr.D.Vt.1991).

Douglas County's Claim for 2010 property taxes is a properly allowable administrative expense claim under 11 U.S.C. § 503(b)(1)(B) for property taxes incurred by the bankruptcy estate: the bankruptcy estate was open when these property taxes accrued on January 1, 2010. Pursuant to 11 U.S.C. § 503(b)(1)(D), Douglas County is not required to file an application for

[3] Douglas County has been paid approximately $2 million on its other claims against the Debtors.

administrative expenses as a condition of its § 503(b)(1)(B) administrative expenses being allowed and paid.

WHEREFORE, Douglas County moves for entry of an order requiring the Debtors to pay both its uncontested secured prepetition $7,245.23 Claim for 2009 personal property taxes and its uncontested secured administrative expense $6,035.98 Claim for 2010 personal property taxes within 30 calendar days of entry of the order granting this Motion.

DATED: October 2, 2012

OFFICE OF THE COUNTY ATTORNEY
DOUGLAS COUNTY, COLORADO

/s/ Robert D. Clark, Esq.
ROBERT D. CLARK
Colorado Atty. Reg. # 8103
Senior Assistant County Attorney
100 Third Street
Castle Rock, Colorado 80104
(303) 660-7392
Fax: (303) 668-6596
E-mail: rclark@douglas.co.us

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2012, a true and correct copy of the foregoing, **Motion of the Treasurer of Douglas County, Colorado for Entry of an Order Requiring the Debtors to Pay the Allowed Amount of Douglas County's Secured Claim Against Debtor Erickson Construction Out of Estate Assets ,** was filed electronically with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF systems.

/s/ Tonya McCann

UNITED STATES BANKRUPTCY COURT **NORTHERN DISTRICT OF TEXAS** **(DALLAS)**	PROOF OF CLAIM Joint Admin. 09-37010 SGJ Case No.: 09-37016	
Debtor(s): **ERICKSON RETIREMENT COMMUNITY LLC** **Erickson Construction LLC**	Chapter : 11	RECEIVED DEC 14 2009 BMC GROUP
Name of Creditor: Douglas County	☐ Check if you are aware that anyone else has filed a proof of claim relating to your proof of claim.	
Please mail notices to: Douglas County Treasurer Attn. Stephanie Cook 100 Third Street Castle Rock, Colorado 80104 TEL.: 303.660.7455 FAX: 303.660.9022	☐ Check if you have never received any notices from the bankruptcy court in this case. ☐ Check if the address differs from the address on the envelope sent to you by the court	THIS SPACE IS FOR COURT USE ONLY

Number by which creditor identifies debtor:	This claim ☐ replaces ☐ amends a previously filed claim, dated: ☐ supplements
P0506679	

1. BASIS FOR CLAIM:	AD VALOREM COMMERCIAL PERSONAL PROPERTY TAXES
2. DATE DEBT WAS INCURRED:	January 1, 2009

Colorado Revised Statutes provide that tax liens arise at 12 noon on the assessment date for the current year C.R.S. 39-1-105

3. CLASSIFICATION OF CLAIM: *Secured Claim to extent of collateral value. Unsecured Priority Claim 11 U.S.C. 507(a(8) to the extent of any shortfall in collateral value and or personal liability. Tax Lien created under 39-1-107 of the Colorado Revised Statutes.*

4. Total amount of Claim:

Unsecured	secured	Priority	Total
	$5,604	$	$ 5,604

Check this box if claim includes charges in addition to the principal amount of the claim

Interest accrues at 12% per annum pursuant to Colorado Revised Statute 39-10-104.5 and 11U.S.C 506(b) 11 U.S.C 511

5. Claim secured by:	**OTHER :**
Collateral: Commercial Personal Property 2009 Actual Value $201,752	The 2009 Taxes are estimated. This claim will be supplemented with a liquidated amount once tax statements are generated in January, 2010 in accordance with Colorado State Law.

6. Credits and Setoffs: The amount of the payments on this claim has been credited and deducted for the purpose of making this claim

7. Supporting Documents: Attached

Date : 1-Dec-09 Signature: Sharon K. Jones, Douglas County Treasurer	FOR COURT USE ONLY Erickson Ret. Comm. LLC 00132

Penalty for presenting fraudulent claim: Fine up to $500,000 or imprisonment up to 5 years, or both 18 U.S.C 152 and 3571

EXHIBIT A

UNITED STATES BANKRUPTCY COURT **NORTHERN DISTRICT OF TEXAS** **(DALLAS)**	ADMINISTRATIVE EXPENSE Joint Admin. 09-37010 SGJ Case No.: 09-37016	
Debtor(s): **ERICKSON RETIREMENT COMMUNITY LLC** **Erickson Construction LLC**	Chapter : 11	
Name of Creditor: Douglas County	☐ Check if you are aware that anyone else has filed a proof of claim relating to your proof of claim.	RECEIVED DEC 14 2009 BMC GROUP
Please mail notices to: Douglas County Treasurer Attn. Stephanie Cook 100 Third Street Castle Rock, Colorado 80104 TEL.: 303.660.7455 FAX: 303.660.9022	☐ Check if you have never received any notices from the bankruptcy court in this case. ☐ Check if the address differs from the address on the envelope sent to you by the court	THIS SPACE IS FOR COURT USE ONLY

Number by which creditor identifies debtor: P0506679	This claim ☐ replaces ☐ amends a previously filed claim, dated: ☐ ☐ supplements

1. BASIS FOR CLAIM: AD VALOREM COMMERCIAL PERSONAL PROPERTY TAXES

2. DATE DEBT WAS INCURRED: Janaury 1, 2010

Colorado Revised Statutes provide that tax liens arise at 12 noon on the assessment date for the current year C.R.S. 39-1-105

3. CLASSIFICATION OF CLAIM: Secured Claim to extent of collateral value. Unsecured Priority Claim 11 U.S.C. 507(a(8) to the extent of any shortfall in collateral value and or personal liability. Tax Lien created under 39-1-107 of the Colorado Revised Statutes.

4. Total amount of Claim:

Unsecured	secured	Priority	Total
	$5,604	$	$ 5,604

Check this box if claim includes charges in addition to the principal amount of the claim

Interest accrues at 12% per annum pursuant to Colorado Revised Statute 39-10-104.5 and 11U.S.C 506(b) 11 U.S.C 511

5. Claim secured by:
Collateral: Commercial Personal Property

2010 Estimated Value $201,752

The 2009 actual value and mill levy were used to estimate the 2010 taxes. The 2010 value and mill levy will be available in January 2011

lated in State Law.

6. Credits and Setoffs: The amount of the payments on this claim has been credited and deducted for the purpose of making this claim

7. Supporting Documents: Attached

Date : 1-Dec-09

Signature: Sharon K. Jones, Douglas County Treasurer

FOR COURT USE ONLY
Erickson Ret. Comm. LLC
00133

Penalty for presenting fraudulent claim: Fine up to $500,000 or imprisonment up to 5 years, or both 18 U.S.C 152 and 3571

EXHIBIT B