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COUNSEL FOR DAN LAIN, TRUSTEE OF 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]	§	

LIQUIDATING TRUSTEE'S MOTION FOR LEAVE TO FILE
MOTION FOR ORDER APPROVING BIDDING PROCEDURES UNDER SEAL

Dan Lain, in his capacity as Trustee for the Liquidating Creditor Trust created in connection with the above-referenced bankruptcy ("Liquidating Trustee"), files this Motion for Leave to File Motion for Order Approving Bidding Procedures Under Seal ("Motion"), and in support of his Motion would respectfully show the Court the following:

I. INTRODUCTION AND BACKGROUND

1. On June 2, 2011, the Liquidating Trustee filed his Original Complaint seeking damages against the Defendants in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Adversary Proceeding Number 11-03353 ("Adversary Proceeding").

[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.

The Adversary Proceeding brings claims against the Debtors' directors and officers ("D&O Claim") as well as a fraudulent transfer claim against the 2002 John C. Erickson GST Trust and 2002 Nancy A. Erickson GST Trust ("GST Collection Claim"). On October 19, 2011, the Adversary Proceeding was transferred to the District of Maryland, Case Number WDQ-11-3736.

2. The Parties reached a confidential agreement to resolve the Adversary Proceeding ("Original Settlement"). The terms of the Original Settlement were confidential and the Liquidating Trustee intended to provide the Court with a copy of the Original Settlement for *in camera* review, due to this confidentiality requirement. The Liquidating Trustee filed his Motion to Approve the Original Settlement Agreement on November 16, 2012 ("Original 9019 Motion"). [Docket No. 2122]. PNC Bank filed an Objection to the Trustee's Motion to Approve the Original Settlement Agreement on December 3, 2012 because it did not agree with the valuation of the GST Collection Claim under the Original Settlement Agreement. [Docket No. 2128].

3. As a result of PNC's Objection, the Liquidating Trustee renegotiated with the Adversary Proceeding Defendants and settled all claims raised in the Adversary Proceeding except for the GST Collection Claim on or about December 28, 2012. The Liquidating Trustee then negotiated a sale and settlement of the GST Collection Claim ("GST Settlement"). The Liquidating Trustee filed his Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 and Bankruptcy Code Section 363 for Order Approving Compromise, Settlement, and Sale of Litigation Claim ("Motion to Compromise Controversy") and withdrew his Original 9019 Motion on January 7, 2013. [Docket Nos. 2149, 2151]. Once again, this sale and settlement was confidential and the Liquidating Trustee intended to provide a copy of the GST Settlement to the Court for *in camera* review. PNC Bank filed an Objection to the Trustee's Motion to Compromise Controversy on February 4, 2013 ("PNC's Objection") and Capmark Finance, Inc.

filed a Joinder to PNC Bank's Objection ("Capmark's Joinder") on January 31, 2013 (collectively, PNC Bank's Objection and Capmark's Joinder shall be referred to herein as the "EG Lenders' Objection"). [Docket Nos. 2172, 2165]. Pursuant to the confidential nature of the GST Settlement and the parties' requests that documents in this contested proceeding be filed under seal, PNC's Objection was filed under seal.

4. On February 12, 2013, the Court held the hearing on the Liquidating Trustee's Motion to Compromise Controversy. Pursuant to the requests of the parties, the February 12, 2013 hearing was also held under seal. This Court issued its oral bench ruling on the Trustee's Motion to Compromise Controversy and the EG Lenders' Objection, sustaining the EG Lenders' Objection and continuing the Trustee's Motion to Compromise Controversy for 90 days to permit a reasonable period of marketing the GST Collection Claim (the "Sale"). The Court ordered the Liquidating Trustee to file a Motion to Approve Bid Procedures on or before March 12, 2013.

II. RELIEF REQUESTED

5. Pursuant to the Court's bench ruling, the Liquidating Trustee intends to file his Motion for Order Approving Bidding Procedures ("Bid Procedures Motion") on or before March 12, 2013. However, the Bid Procedures Motion discusses certain terms of the GST Settlement; therefore, in order to comply with the GST Settlement and the parties' prior requests in this contested proceeding, the Liquidating Trustee respectfully requests that the Court grant the Liquidating Trustee leave to file his Bid Procedures Motion under seal. A complete copy of the Bid Procedures Motion will be provided to all parties present at the February 12, 2013 hearing.

6. The Court has the power to protect any person, estate, and trust from potential harm that may result from the disclosure of confidential information. *See* 11 U.S.C. §§ 107(b); (101)(15). On a motion or upon its own initiative, the Court may enter any order "which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential

research, development, or commercial information…." Fed. R. Bankr. P. 9018. A court may seal judicial documents after balancing the public's common law right of access against the interest favoring nondisclosure. *U.S. v. Chavis*, 111 F.3d 892, 892 (5th Cir. 1997). Pursuant to the Trust Agreement, the Liquidating Trustee has authority to dispose of the GST Collection Claim upon written consent of the Trust Governing Board, notice to the EG Lenders, and approval by the Bankruptcy Court. *See* Trust Agreement, ¶ 4.2. The EG Lenders and all parties present at the February 12, 2013 hearing on the Liquidating Trustee's Motion to Compromise Controversy will receive copies of the Liquidating Trustee's Bid Procedures Motion even if the Court grants the Liquidating Trustee leave to file under seal. Thus, the relevant parties under the Trust Agreement will not be harmed if the Court grants the Liquidating Trustee leave to file his Bid Procedures Motion under seal. Further, the Liquidating Trustee remains bound by certain confidentiality provisions, and the Liquidating Trustee may be subject to potential harm that could result from disclosure of confidential information if the Bid Procedures Motion is not filed under seal.

III. PRAYER

WHEREFORE, the Liquidating Trustee respectfully requests that the Court grant the Liquidating Trustee leave to file his Bid Procedures Motion under seal, and for such other and further relief as this Court may deem just and proper.

DATE: March 11, 2013

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By: /s/ *Tricia R. DeLeon*

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ATTORNEYS FOR DAN LAIN, TRUSTEE
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CERTIFICATE OF CONFERENCE

On March 11, 2013, I conferred with counsel for the GST Trusts, Justin Levy, and counsel for PNC Bank, Lisa Tancredi, and confirmed that they are unopposed to the relief requested herein. I attempted to contact counsel for Capmark Finance, Inc., Adrienne Walker, by e-mail and phone; however, at the time of filing this Motion, I have not heard back from Ms. Walker regarding the Liquidating Trustee's Motion for Leave to File Under Seal.

/s/ Lauren C. Kessler
Lauren C. Kessler

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on March 11, 2013 via ECF upon all parties consenting to electronic service in this case.

/s/ *Lauren C. Kessler*
Lauren C. Kessler

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