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ATTORNEYS FOR PNC BANK, NATIONAL ASSOCIATION

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

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

MOTION OF PNC BANK, NATIONAL ASSOCIATION TO DISBAND OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NOVI CAMPUS, LLC AND FOR RELATED RELIEF.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON FEBRUARY 5, 2010 AT 9:30 A.M. IN THE COURTROOM OF THE HONORABLE STACEY G.C. JERNIGAN, UNITED STATES BANKRUPTCY JUDGE, UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, 1100 COMMERCE STREET, 14th FLOOR, DALLAS, TEXAS.

[1] The Debtors in these chapter 11 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.

PNC Bank, National Association, in its capacity as administrative agent for various senior secured project lenders (including PNC in its individual capacity as a senior secured project lender) ("PNC") of Novi Campus LLC ("Project Debtor"), moves the Court pursuant to Bankruptcy Rules 2020 and 9014 to:

a. Disband the Official Committee of Unsecured Creditors in the bankruptcy case of Novi Campus, LLC, Case No. 09-37025 ("Project Debtor Case");

b. Declare null and void and of no force and effect all acts taken by the Committee in the Project Debtor Case; and

c. Bar the Committee and its counsel from receiving any expense reimbursement or compensation, including attorneys fees, from the assets of the Project Debtor.

The grounds for this motion, which are more fully discussed in the accompanying memorandum, are as follows:

1. On October 19, 2009, the Project Debtor filed its petition for relief under Chapter 11 of the United States Bankruptcy Code. On this same date, 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, L.P., Kansas Campus, LLC, Littleton Campus, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, and Warminster Campus, L.P. also filed petitions for relief.

2. On October 22, 2009, this Court entered an order that all of the bankruptcy cases be jointly administered under the case title and number *In re Erickson Retirement Communities, LLC,*

et al., Case No. 09-37010-SGJ-11. The order did not substantively consolidate the cases. No ground or lawful basis exists to substantively consolidate the cases.

3. On November 2, 2009, the United States Trustee appointed an Official Committee of Unsecured Creditors ("Committee") for all of the jointly administered but not substantively consolidated cases. The creditors appointed initially are Gary S. Bush, BNY Mellon Corporate Trust, Default Administration Group; Evan S. Daimond, W.H. Boyer; Sergio Luciani, Regional Construction Resources, Inc.; Stephen W. Porter, Northwest Electric, Inc.; and Matthew G. Summers, Windsor OH Holdings, LLC. On November 25, 2009, the United States Trustee amended the appointment to add Paul Ide, La Posada at Park Centre, Inc. On January 8, 2010, the United States Trustee amended the appointment to add Andrew S. Bauman, Morgan Stanley, and remove Matthew G. Summers, Windsor OH Holdings, LLC.

4. Not one member of the Committee is a prepetition unsecured creditor of the Project Debtor or a person representing a prepetition unsecured creditor as their appointed agent.

5. Bankruptcy Code § 1102(a) authorizes the United States Trustee to appoint a committee of unsecured creditors for a case proceeding under Chapter 11. The statute does not permit persons who are not creditors of the debtor (or a specific representative of a creditor of the debtor) to be a member of the committee.

6. Because none of the members of the Committee are unsecured creditors of the Project Debtor, they are ineligible to serve on the Committee, which does not include even one prepetition unsecured creditor of the Project Debtor. For this reason, the Committee is illegally constituted and its appointment violated Bankruptcy Code § 1102(a).

7. PNC requested the United States Trustee to disband the Committee, but as of the filing of this motion, the United States Trustee has not done so or unequivocally agreed to do so.

8. Since the date of its appointment, the Committee has taken various actions in or affecting the Project Debtor's case, including filing a motion asking the Court to hold that PNC does not have a continuing security interest in postpetition Initial Entrance Deposits due to Bankruptcy Code § 552(a). These actions of the Committee are illegal and *ultra vires* and are null and void and of no force and effect. Unless the Committee is promptly disbanded in the Project Debtor case, the Committee can be expected to take additional illegal, *ultra vires* actions that both dissipate the resources of the Project Debtor's estate (and waste the time and resources of PNC and its co-lenders) and impede an effective reorganization and confirmation of a plan from occurring.

9. The Committee is incurring expenses, principally in the form of attorneys fees of its selected counsel. The Committee's counsel will seek to be paid as an administrative expense of the Project Debtor's estate. The illegal composition of the Committee and the illegal and *ultra vires* actions of its counsel preclude any compensation or expense reimbursement of the Committee or its counsel from the assets and resources of the Project Debtor. PNC does not consent, and objects to a surcharge of its collateral to pay any fees or expenses incurred by the illegally constituted Committee.

In support of this motion, PNC requests the Court to refer to the Schedules filed by the Project Debtor and to the Affidavit of Paul Rundell ("Rundell Affidavit") attached hereto.

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NATIONAL ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2010, a true and correct copy of the foregoing was served via the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service. In addition, in accordance with the Courts' *Order Granting Complex Chapter 11 Bankruptcy Case Treatment* [Docket No. 242], on this 12th day of January, 2010, this Motion was also served on all parties listed on the Updated Service List filed in this case on January 4, 2010 [Docket No. 610].

/s/ Daniel I. Morenoff
Daniel I. Morenoff