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January 11, 2010

VIA EMAIL AND FACSIMILE

George F. McElreath, Esq.
Assistant United States Trustee
Office of the United States Trustee
Dallas, Texas 75242

RE: *In re Erickson Retirement Communities, LLC, et al.* (the "Debtors")/Project Level Committee for Littleton Campus, LLC

Dear Mr. McElreath:

As you are aware, this firm represents Capmark Finance, Inc., N.A., as administrative agent ("Project Agent") for itself and certain other financial institutions that have provided construction financing to Littleton Campus, LLC, chapter 11 case no. 09-37023 (the "Littleton Debtor"). The Littleton Debtor's bankruptcy case has been jointly administered, and not substantively consolidated, under the lead case of *In re Erickson Retirement Communities, LLC*, case no. 09-37010.

As discussed on our call on Friday, January 8, 2010, the Project Agent has analyzed the Littleton Debtor's Schedules filed in these chapter 11 cases and has determined that the the Official Committee of Unsecured Creditors (the "Committee") cannot act in the case involving the Littleton Debtor and there is no role for the Committee at the project level with respect to the Littleton Debtor; therefore, the Committee for the Littleton Debtor must be disbanded. By this letter, we formally request William T. Neary, United States Trustee to immediately disband the Committee, solely with respect to the Littleton Debtor. The Project Agent has prepared a motion that it intends to file with the Court to request for the Committee to be disbanded with respect to the Littleton Debtor. This letter outlines the facts and arguments presented in the motion, which the Project Agent intends to file on Monday evening.

The following persons were appointed to the Committee on November 2, 2009: Gary S. Bush, on behalf of BNY Mellon Corporate Trust; Evan S. Daimond, on behalf of W.H. Boyer; Sergio Luciani, on behalf of Regional Construction Resources, Inc., Stephen W. Porter, on behalf of Northwest Electric, Inc., and Matthew G. Summers, on behalf of Windsor OH Holdings, LLC. On November 25, 2009, the United States Trustee filed an Amended Appointment of Official Unsecured Creditors' Committee, adding Paul Ide, on behalf of La Posada at Park Centre, Inc. None of the members of the Committee have been identified as prepetition unsecured creditors of the Littleton Debtor or the Schedules of the Littleton Debtor.

The Committee must be disbanded as it lacks standing to pursue any claims against the Littleton Debtor -- according to the Littleton Debtor's Schedules, none of the members of the Committee are creditors of the Littleton Debtor. The fact that the members of the Committee are each creditors of other jointly-administered debtors does not qualify them to be on the Committee of the Littleton Debtor; the statutory framework of the Bankruptcy Code makes this clear. *See* 11 U.S.C. § 1102(a)(1) (unsecured committee appointment restricted to holders of unsecured claims of the debtor). The case law dictates that a person who is not a creditor of the debtor or who does not represent a specific creditor of the debtor may not serve on a creditors' committee. *See In re Altair Airlines*, 727 F.2d 88 (3rd Cir. 1984) ("Eligibility for service on a Creditors' Committee depends upon status as a 'creditor [] holding unsecured claims."); *see also*, *In re Barney's Inc.*, 197 B.R. 431, 440 (Bankr. S.D.N.Y. 1996) ("All creditors holding unsecured claims are eligible for committee membership"); *In re First Republic Bank Corp.*, 95 B.R. 58, 60 (Bankr. N.D. Tex. 1988) ("To be eligible for committee membership, the creditor must hold an unsecured prepetition claim"). Further, because the Littleton Debtor's case has not been -- and cannot be -- substantively consolidated with the related cases and the definition of "creditor" under 11 U.S.C. § 101(10) does not include an affiliated debtor, section 1102(a)(1) does not permit the current members of the Committee to serve as members of the Littleton Debtor's committee.

Indeed, it makes perfect sense that a creditors' committee in a case that has not been substantively consolidated should be comprised of creditors of that particular debtor, and not of other debtors. A committee is a fiduciary to class members and owes a fiduciary duty to other members of such class. See *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3d Cir. 2001) (stating members of official creditor's committee owe fiduciary duty "toward their constituent members"). Because a committee holds significant leverage in a chapter 11 case through its ability to file motions, object to motions, and pursue claims on behalf of the estate, it is wholly appropriate that the entities making those decisions should be the same entities that hold those rights and would benefit from such actions.

In a case such as this, where the members of the Committee have large claims against Erickson Retirement Communities, LLC and/or other non-Littleton Debtor affiliates, there is the very likely potential that the Committee will use its leverage to promote its own self interests and not the interest of the Littleton Debtor's creditors. Indeed, there is a direct conflict of interest and, thus it is not appropriate to have a single committee represent multiple debtors that have *not* been substantively consolidated. See *In re White Motor Credit Corp.*, 18 B.R. 720 (Bankr. N.D. Ohio 1980) (holding that it is not appropriate to only appoint a single committee for all debtors). Each of the related bankruptcy cases must be treated as separate debtors because these cases may not be substantively consolidated, and thus one Committee comprised solely of persons who are creditors of other debtors is not authorized.

Even if a committee could be comprised of creditors of the Littleton Debtor, the Littleton Debtor's Schedules reveal that there is little, if any unsecured claims, other than the claims of the Project Agent and those claims held by other creditors that have contractually subordinated their

claims to the Project Agent.[1] These entities are each represented by independent counsel and are actively participating in this case. Specifically, an analysis of Schedule F filed by the Littleton Debtor reveals that, exclusive of insider/intercompany claims, subordinated mezzanine claims and claims held by the Project Agent, unsecured claims total just $47,362 and represent 0.013 percent of the total amount of unsecured claims listed on Schedule F.

Because the Project Agent holds or controls the vast majority of the Littleton Debtor's debt, any recovery to unsecured creditors as a result of a challenge by the Committee to the liens of the Project Agent would not benefit general, unsecured creditors, but would revert back to the Project Agent. Specifically, based upon the subordination agreements and the amount of the Project Agent's debt, more than 99% of any recovery obtained by the Committee against the Project Agent will go right back to the Project Agent -- following, of course, payment to the attorneys for the Committee. If the Committee was truly representing its constituency (i.e. the less than one percent (1%) of the unsecured claims in the case) it would certainly pursue some strategy other than this litigation.

The above calculations make clear what is obvious based on the Littleton Debtor's Schedules -- that utilizing a creditors' committee in these cases, particularly one that is intent on using litigation as a negotiating tool, is a disproportionate response to a class of creditors that hold less than one percent in claims not otherwise controlled by the Project Agent. Any fees and expense associated with the Committee will far exceed any benefit to its alleged constituents at the Littleton Debtor. Accordingly, the Project Agent requests the United States Trustee to disband the Committee, solely with respect to the Littleton Debtor, so that the true economic constituencies in the case can resolve any and all issues without the distraction of a Committee that cannot realistically benefit its constituency.

Sincerely,

Daniel S. Bleck

cc: Thomas Califano, Esq. (via electronic copy)
Sam Stricklin, Esq. (via electronic copy)
Brian Swett, Esq. (via electronic copy)
Myja Kjaer, Esq. (via electronic copy)
Jim Smith, Esq. (via electronic copy)
Lisa Tancredi, Esq. (via electronic copy)
Adrienne K. Walker, Esq. (via electronic copy)

[1] Schedule F also includes intercompany claims of various debtor affiliated entities, each of which are represented by DLA Piper.