


UNITED STATES BANKRUPTCY COURT Northern District of Texas (Dallas Division)		PROOF OF CLAIM
Name of Debtor: <u>Erickson Retirement Communities, LLC</u>		Case Number: <u>09-37010</u>
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>Robert D. Weaver</u>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: <u>9920 Frederick Road Ellicott City, MD 21042</u>		Court Claim Number: _____ (If known)
Telephone number: <u>410-480-2755</u>		Filed on: _____
Name and address where payment should be sent (if different from above): <u>Same</u>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
RECEIVED DEC 08 2009 BMC GROUP		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: <u>\$ 19,903</u>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: <u>Accrued Vacation/PTO see attached Exhibits A, B, & C</u> (See instruction #2 on reverse side.)		Amount entitled to priority: <u>\$ 10,950</u> <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) <u>See attached Exhibits A, B, & C</u> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: <u>12/3/09</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>Robert D. Weaver Former VP, Master Planning & Architecture</u>	
		FOR COURT USE ONLY Erickson Ret. Comm. LLC  00116

Exhibit A

Supporting documentation/calculation for Proof of Claim for **Accrued Vacation/Paid Time Off (PTO)**

Name of Debtor: Erickson Retirement Communities, LLC
Case Number: 09-37010

Name of Creditor: Robert D. Weaver
Address: 9920 Frederick Road
Ellicott City, MD 21042

Exhibits referenced in this documentation:

Exhibit B: Separation Agreement and Release

Exhibit C: Paycheck showing pay rate for calculation and showing number of hours accrued

Per Separation and Agreement Release (Exhibit B), per paragraph 1 on page 1, I am due the following accrued, unused PTO hours (Paid Time Off/Accrued Vacation): \$ 19,903.30

Through no fault of our own, a very small number of employees (less than 10 out of over 400 employees laid off) were not paid PTO. As this was to be a lump-sum payment for hours already earned and should have been paid out before the bankruptcy date for most of this aggrieved group, this represents a unique and immediate hardship. This failure to pay out PTO was an egregious error made by Erickson's payroll and HR departments. Furthermore, Erickson consistently assured employees with termination dates that PTO/accrued vacation was safe and protected from bankruptcy.

Calculation:

(Hourly Rate) x (# of hours of accrued PTO) = Total PTO Payout that is owed to me
63.5665 x 313.11 = \$ 19,903.30

Calculation sources:

Hourly Rate from Paycheck (Exhibit C)

of weeks of hours of Accrued PTO from final Paycheck (Exhibit C)

Exhibit B page 1 of 4
Supporting Documentation for Proof of Claim
for Accrued Vacation/PTO

TO: Robert Weaver
DATE: July 16, 2009
RE: Separation Agreement and Release

Name of Debtor: Erickson Retirement Communities, LLC
Case #: 09-37010

Name of Creditor: Robert Weaver
Address: 9920 Frederick Road, Ellicott City, MD 21042

Erickson Retirement Communities, LLC ("Company") must regretfully initiate a reduction in force. This agreement (the "Agreement") sets forth the terms and conditions for your separation from employment.

1. If you sign this Agreement, we will maintain your employment in your current position through the close of business on October 2, 2009 (the "Effective Date"). After the close of business on the Effective Date, you will be separated from employment. You will remain an employee at-will through the Effective Date, subject to Company's normal rules and standards of conduct for employees. If you need time for job search or interviews, we will try to accommodate your schedule. You will receive a final paycheck for your wages, minus taxes, deductions, and withholdings, through the Effective Date at your current 2009 salary level, on the normal Company pay dates. Your current benefits package remains in effect through the end of October 2009 with the standard payroll deduction. You will also receive a check for any accrued, unused PTO hours, minus taxes, deductions, and withholdings, you have as of the Effective Date on the next regular payday after the Effective Date.

2. If you currently participate in our benefits plan, beginning November 1, 2009, you may elect to continue your current health benefits package under COBRA. If you make this election, you may be eligible for a subsidy of the cost of maintaining your COBRA benefits under a new federal law, the Americans Recovery and Reinvestment Act of 2009 ("ARRA"). Under ARRA, for a limited period, you would be responsible for paying 35% of the ordinary COBRA premium for your benefits. For that same period, Company would be responsible for paying 65% of the ordinary COBRA premium for your benefits. According to current information, this subsidy towards your COBRA premium is for a period of up to 9 months starting with your first month of COBRA eligibility and may be discontinued if you become eligible for other benefits in certain circumstances. Further details on your rights under COBRA are included in the information package with this Agreement. Your eligibility for this subsidy does not depend on signing this Agreement. You will need to make your payments directly to our third party COBRA benefits administrator.

3. If you sign this Agreement, we will also provide the benefits listed below. You will not be entitled to any other compensation, payments or benefits; however, this doesn't affect your vested retirement benefits nor any rights you have to continue your health insurance under COBRA.

- 26 weeks of separation pay at your current 2009 salary level, minus taxes, deductions, and withholdings. The separation pay will be made in bi-weekly payments in accordance with Company's regular pay dates. These payments will start on the first pay period following the later of: (i) the Effective Date, or (ii) your signature of this Agreement. However, if you accept another position with Company or another company which is managed by Company during the separation pay period, then your separation pay will end as of the start date for your new position.
- You will be eligible to participate in any group outplacement services offered by Company through its contractor(s) as part of the Company July 2009 reduction-in-force program.
- If you participate in Company's 401k plan, you are fully vested in the employer's matching contributions towards your plan. Per the terms of the plan, you cannot make any further contributions during the separation pay period.
- If you participate and are currently vested in Company's Growth Participation Plan (GPP) Units under the terms of the old 2005 plan and/ or the terms of the 2006 plan, your vesting remains the same as of the Effective Date. All payments of GPP value will be made per the terms of the plans and may be delayed or deferred per the terms of the plans.

Name of Debtor: Erickson Retirement Communities, LLC

Case#: 09-3700

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Supporting Documentation for Proof of Claim
for Accrued Vacation/PTO

Name of Creditor: Robert Weaver

Address: 9920 Frederick Road Ellicott City, MD 21042

- If you have an outstanding employee assistance loan, we will continue to deduct the amounts you agreed upon from your final paycheck, PTO, and separation paychecks. If there is still an outstanding balance after the separation pay is ended, we will forgive the outstanding balance.
- If you have a current agreement for tuition reimbursement, we will continue the reimbursement per the terms of our tuition reimbursement policy for this current semester only.
- If you are uncertain about your participation or vesting level in the benefits or plans named above, you may contact the HR Representative at the number provided in your separation packet.

4. You agree to return promptly all of Company's property including, but not limited to, your ID card, keys, parking pass, laptop, blackberry/ phone, equipment, and any documents or files concerning residents, employees, services, software, and business information for Company or its retirement communities, their members, subsidiaries, or affiliates. You agree to be reasonably available for discussions with your manager about transitioning your work. You agree to submit any expenses which you believe are reimbursable business expenses to Company within 30 days from your separation date. Company will only reimburse business expenses that are timely, genuine and reasonable, and supported by documentation as determined by Company. If you wish to keep your company phone, you will be required to transfer the account to your name and will be responsible for all charges after the Effective Date. You agree to refrain from disclosing any of Company's trade secrets, business practices, proprietary information or confidential information which you acquired during the course of your employment with Company. You also agree to keep the terms and the existence of this Agreement confidential and not to disclose this Agreement to any other person or entity, except for your attorney, your tax advisor, or your spouse, as applicable, unless otherwise required by law.

5. You agree not to communicate any derogatory or defamatory information concerning Company, its subsidiaries, affiliates, or its managed retirement communities, including their directors, officers, and employees to any other person or entity. Company agrees not to condone its managers communicating any derogatory or defamatory information concerning you to any other person or entity. If Company becomes aware of such conduct, Company will make a prompt and good faith effort to stop same. Company also agrees that it will not contest your application for unemployment compensation benefits.

6. In consideration for the benefits listed in Sections 1, 3, 4, and 5 of this Agreement, you hereby release Erickson Retirement Communities, its owners, members, directors, officers, employees, agents, insurers, employee benefit plans and fiduciaries/ administrators of such plans, its managed retirement communities, and all related or affiliated persons or entities (collectively the "Released Parties") of and from any and all known and unknown liability, claims, causes, demands, attorneys fees, damages, and rights, including, but not limited to, any claims which you have or may have arising out of or related to your employment, including the separation of your employment. This waiver and release includes all rights and obligations under any federal, state, or local laws, regulations, ordinances, or common law, including but not limited to all employment discrimination laws such as Title VII of the Civil Rights Act of 1964, as amended, the Maryland Human Rights Act, the Family & Medical Leave Act, the Worker Adjustment and Retraining Notification Act ("WARN"), the Americans with Disabilities Act of 1990, Sections 1981 through 1988 of Title 42 of the United States Code, the Employee Retirement Income Security Act of 1974 ("ERISA"), and all other employment laws, claims for wrongful discharge, claims of unfair dealing, claims in connection with any employment contract, and claims for personal injury, emotional distress, pain and suffering, compensatory or punitive damages.

7. You agree that you have not filed nor commenced any charges, complaints, claims, civil actions or other proceedings against the Released Parties in any federal, state, local or other agency, court, or tribunal. You agree not to seek or request damages in connection with any other claim, demand or charge against the Released Parties. This Agreement is not intended to interfere with any right you have to file a charge with any federal, state or local governmental agency, except that you agree that by entering into this Agreement, you waive any claim to

Name of Debtor: Erickson Retirement Communities, LLC

Case # 09-37010

Name of Creditor: Robert Weaver

Address: 9920 Frederick Road, Ellicott City, MD 21042

Exhibit B Page 3 of 4

Supporting Documentation for Proof of Claim
for Accrued Vacation/PTO

recovery of any remedy beyond what is provided in this Agreement. You also agree that you have not been denied any leave requested under the Family and Medical Leave Act or any applicable state/ local leave laws. This paragraph does not preclude you from bringing an action to enforce the terms of this Agreement or to challenge the validity of this Agreement.

8. You agree that you had the opportunity to report to Company any violations of the Corporate Compliance Plan during your employment and you further agree that you have no knowledge of any violations of the Plan except as otherwise reported. You agree that your obligations under this Agreement are material obligations on which Company is reasonably relying. If you breach your obligations under this Agreement, Company may immediately suspend or terminate its own obligations under the Agreement, including but not limited to, its obligations to pay any and all compensation or other amounts listed in Section 3 of this Agreement or pursue an action to recover any such compensation paid or enforce performance of this Agreement.

9. This Agreement shall not be in any way construed as an admission by Company, its owners, members, directors, officers, employees, or agents of any liability, wrongdoing, discrimination, fault, or breach.

10. You have the right to with an attorney concerning this Agreement. This offer will be held open for no more than fourteen (14) days from the date of this Agreement first listed above. If you do not sign and return the Agreement within the 14 day period, the offer will automatically expire.

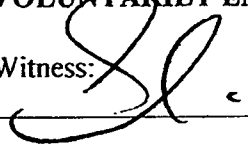
11. Your signature confirms that you are entering into this Agreement voluntarily, you understand all of its terms, and that you are not relying upon any other representations or agreements of Company except for those expressly set forth in this Agreement. Once signed, this Agreement will set forth the entire agreement between Company and you and supersedes any previous agreements or discussions concerning your employment or the termination thereof, except as expressly noted above. No changes in this Agreement will be valid unless in writing and signed by both parties. In the event that any one or more of the provisions of this Agreement other than the general release language in Section 6 shall for any reason be held to be invalid, illegal or unenforceable, the invalidity, illegality, or unenforceability shall not affect any other provision, and the Agreement shall be construed as though it had not contained the invalid, illegal, or unenforceable provision.

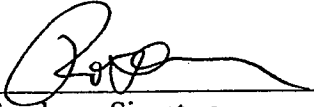
12. Any need for interpretation or enforcement of this Agreement will be in accordance with Maryland law, without regard to its conflict of laws provisions. Company and you agree that any action or proceeding relating to the enforcement of this Agreement will only be brought in the courts of Baltimore County, Maryland or in the U.S. District Court for the State of Maryland. Company and you further agree that any such action or proceeding will be heard without a jury or an advisory jury. You and Company waive your respective rights to bring any such action or proceeding in any other jurisdiction, or to have any such action or proceeding heard before a jury or an advisory jury.

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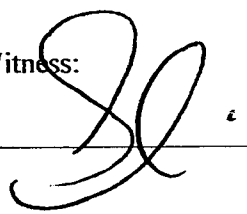
Exhibit B page 4 of 4
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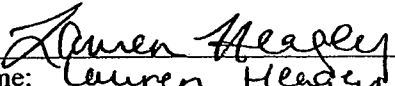
PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS AS OF THE DATE OF THIS AGREEMENT. BY SIGNING BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND ARE VOLUNTARILY ENTERING INTO IT.

Witness: 



Employee Signature
Robert Weaver
Date: 7/27/09

Witness: 

Erickson Retirement Communities, LLC
Signed by: 
Printed Name: Lauren Healey
Date: 7/27/09

Earnings Statement

Erickson Retirement Communities, LLC
701 Maiden Choice Lane
Baltimore, MD 21228

Page 001 of 001
Period Ending: 10/03/2009
Advice Date: 10/09/2009
Advice Number: 0000484656
Batch Number: 000000002920

ROBERT D. WEAVER
9920 Frederick Road
Ellicott City, MD 21042

Earnings	Rate	Hours	This Period	Year-to-Date
Regular Pay	63.5665	80.00	5085.32	94078.42
PTO	0.0000	0.00	0.00	9662.09
Holiday	0.0000	0.00	0.00	3051.18

Gross Pay	80.00	5085.32	106791.69
Tot PROD	80.00	5085.32	
Tot NON PROD	0.00	0.00	

Leave Summary

PTO 313.11

ELB 714.69

Message

Exhibit C

Supporting Documentation for Proof of Claim
for Accrued Vacation / PTO

Name of Debtor: Erickson Retirement Communities, LLC

Case #: 09-37010

Name of Creditor: Robert Weaver

Address: 9920 Frederick Road
Ellicott City, MD 21042