


<b>UNITED STATES BANKRUPTCY COURT</b> <b>Northern District of Texas</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>ERICKSON CONSTRUCTION, LLC</b>		Case Number: <b>09-37016</b>
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.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>PNC Bank, National Association, Successor To Mercantile-Safe Deposit and Trust Company</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: <b>PNC Bank, National Association, Mail Stop: C3-CA01-19-1</b> <b>Two Hopkins Plaza, 19th Floor, Baltimore, MD 21201</b> <b>Attn: Wendy Andrus, Vice President</b>  Telephone number: <b>(410) 237-5923</b>		Court Claim Number: _____ (If known)
Name and address where payment should be sent (if different from above): <b>PNC Bank, National Association</b> <b>Mail Stop: C3-CA01-19-1, Two Hopkins Plaza, 19th Floor, Baltimore, MD 21201</b> <b>Attn: Wendy Andrus, Vice President</b>  Telephone number: <b>(410) 237-5923</b>		<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.  <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:      \$ <b>896,761.13**</b>  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 checked="" 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.		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.
2. Basis for Claim: <u>Letters of Credit -- See Attached</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
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.)		<input 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).
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 checked="" type="checkbox"/> Other Describe: <b>SEE ATTACHED</b>  Value of Property: \$ <b>TBD</b> Annual Interest Rate <b>See attached</b>  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ <b>SEE ATTACHED</b> Basis for perfection: <b>SEE ATTACHED</b>  Amount of Secured Claim: \$ <b>896,761.13</b> Amount Unsecured: \$ _____ plus interest, attorneys' fees, late charges and fees continuing to accrue		<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)( ).
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.) <b>SEE ATTACHED</b> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		Amount entitled to priority: \$ _____  *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.
Date: <b>2-23-10</b>  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.  <b>PNC BANK, NATIONAL ASSOCIATION, SUCCESSOR TO MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY</b> By: <b>Wendy Andrus, Vice President</b>		<b>FOR COURT USE ONLY</b>  <b>Erickson Ret. Comm. LLC</b>  01106

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

**\*\* Post-petition amounts also set forth in the attached Rider.**

## RIDER TO PROOF OF CLAIM

*In re Erickson Construction, LLC, Case No. 09-37016*

ERICKSON CONSTRUCTION, LLC ("**Debtor**") is indebted to PNC Bank, National Association, successor to Mercantile-Safe Deposit and Trust Company ("**Bank**"), under and in connection with the irrevocable standby letter of credit No. 18106730-00-000 (formerly letter of credit no. 8166) issued March 22, 2006, for the account of the Debtor by the Bank, in the stated amount of \$893,880.00 in favor of The Travelers Indemnity Company (as amended from time to time, "**Letter of Credit**"). The Letter of Credit and the Debtor's liabilities and obligations in connection therewith are further evidenced and secured pursuant to the Application for Irrevocable Letter of Credit dated May 4, 2007 ("**Application**") and the Indemnification Agreement dated as of May 4, 2007 ("**Indemnification Agreement**"), and the Assignment of Savings Account or Money Market or Certificate of Deposit dated as of March 13, 2006 (together with the Letter of Credit, the Application, and the Indemnification Agreement, collectively, "**LC Documents**"). Pursuant to the Indemnification Agreement, the Letter of Credit and all of the existing and future obligations of Debtor (including reimbursement obligations) in connection therewith are secured by all existing and future deposit accounts of the Debtor with the Bank and all property and securities at any time delivered to, or in the possession of the Bank, and all products and proceeds thereof. Pursuant to the *Debtor's Amended Motion for Order Authorizing the Debtors to Continue Their Liability and Other Insurance Programs and To Enter Into Financing Agreements Related Thereto*, entered on or about January 6, 2010 [Docket no. 759] ("**Order**"), the Letter of Credit is also collateralized by a Certificate of Deposit no. (xxxxxxx6005) in the amount of at least \$893,800.00 held by the Bank on which the Bank has a first priority lien ("**Certificate of Deposit**"), as well as additional Certificates of Deposit identified therein.

A true and correct copy of the Letter of Credit, the LC Documents, and the Order are attached hereto as **Exhibit 1**.

Prior to October 19, 2009 (the "**Petition Date**"), the Debtor defaulted on its payment obligations to the Bank under the terms and conditions of the LC Documents. As of Petition Date, the amounts owed to the Bank under the LC Documents, exclusive of attorneys' fees and expenses, were not less than the following:

Principal:	\$ 893,880.00
Letter of credit fees:	\$ 2,756.13
Letter of credit issuance fees:	\$ 125.00
Legal fees and expenses	
(Counsel for Bank):	\$ _____
Other fees and charges:	\$ _____
<b>Total (as of Petition Date):</b>	<b><u>\$ 896,761.13</u></b>

*Per diem letter of credit fees as of Petition Date are \$24.83.*

As of December 31, 2009, additional amounts owed to the Bank, exclusive of attorneys' fees and expenses, under LC Documents, were not less than the following:

Letter of Credit Fees:	\$ 1,812.59
Legal fees and expenses	
(Counsel for Bank):	\$
<b>Total (10/19/09 – 12/31/09):</b>	<b><u>\$ 1,821.59</u></b>

*(Per diem letter of credit fees are as set forth above)*

In addition to the foregoing amounts, the Bank reserves the right to collect as part of its claim against the Debtor, in accordance with the terms of the LC Documents and applicable law, (i) all post-petition interest and late charges that accrue under the LC Documents after the Petition Date, and (ii) all pre-petition and post-petition attorneys' fees and expenses that the Bank has incurred and hereafter incurs as a result of the filing of this bankruptcy case, the defaults existing under the LC Documents and the enforcement of rights and remedies of the Bank under the LC Documents, including but not limited to continuing interest, reasonable fees, costs and charges pursuant to 11 U.S.C. § 506(b).

The Bank reserves the right to periodically supplement and/or amend this Proof of Claim from time to time and to assert an unsecured claim in this bankruptcy case to the extent that the value of the Collateral is insufficient to satisfy the Bank's claims against the Debtor under the LC Documents. The Bank also reserves the right to amend and/or supplement this Proof of Claim in all other respects and to add additional claims of any nature whatsoever, including but not limited to claims entitled to administrative priority.

The filing of this Proof of Claim is not an acknowledgment or admission that the Bankruptcy Court has jurisdiction over the Bank and/or the Bank's claims against any debtor or non-debtor entity, and the Bank reserves all rights with respect thereto. The Bank does not waive any rights to a jury trial, arbitration or enforcement of a choice of law or venue selection clause by filing this Proof of Claim. The filing of this Proof of Claim is without prejudice to any and all claims, causes of action and remedies that the Bank may have against any debtor or any non-debtors entities, all of which are expressly preserved. This Proof of Claim shall not operate as an admission or waiver of claims, causes of action or remedies that the Bank may have against any debtor or non-debtor entities under applicable law. The Bank may file additional, supplemental and/or amended Proofs of Claim, which claims shall be considered a part of this Proof of Claim.

PNC Bank, National Association  
Trade Service Operations  
3rd Floor  
500 First Avenue  
Pittsburgh, PA 15219  
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33  
Telephone: 1-800-682-4689



DATE: APRIL 27, 2009

BENEFICIARY:  
THE TRAVELERS INDEMNITY COMPANY  
CREDIT RISK MANAGEMENT  
ONE TOWER SQUARE - 10 CR  
HARTFORD CT 06183

APPLICANT:  
ERICKSON CONSTRUCTION LLC  
991 CORPORATE BLVD  
LINTHICUM HEIGHTS, MD 21090-2227

ATTENTION: R. THOMAS COFFEY

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

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OUR REFERENCE:	18106730-00-000
AMENDMENT NUMBER:	6

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WE HEREBY AMEND OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER  
18106730-00-000 AS FOLLOWS:

THE AMOUNT IS DECREASED BY: USD \$142,000.00  
TOTAL LIABILITY AMOUNT NOW TO READ: USD \$893,880.00

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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PNC BANK, NATIONAL ASSOCIATION  
GLOBAL TRADE SERVICE OPERATIONS

PNC Bank, National Association  
Trade Service Operations  
3rd Floor  
500 First Avenue  
Pittsburgh, PA 15219  
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33  
Telephone: 1-800-682-4689



DATE: DECEMBER 09, 2008

THE TRAVELERS INDEMNITY COMPANY  
ATTENTION: R. THOMAS COFFEY  
CREDIT RISK MANAGEMENT  
ONE TOWER SQUARE - 10 CR  
HARTFORD CT 06183

NOTICE OF AUTOMATIC EXTENSION

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OUR REFERENCE:	18106730-00-000
TRANSACTION NUMBER:	4
APPLICANT:	ERICKSON CONSTRUCTION LLC

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THIS NOTICE IS TO ADVISE YOU THAT THE EXPIRATION DATE OF THE REFERENCED LETTER OF CREDIT NUMBER 18106730-00-000 HAS BEEN EXTENDED TO MARCH 22, 2010.

THIS IS NOT TO BE CONSIDERED AS AN AMENDMENT TO THE LETTER OF CREDIT.  
THIS IS FOR INFORMATION PURPOSES ONLY.

PNC BANK, NATIONAL ASSOCIATION  
GLOBAL TRADE SERVICE OPERATIONS

THIS IS A COMPUTER GENERATED DOCUMENT; A MANUAL SIGNATURE IS NOT REQUIRED.

PNC Bank, National Association  
Trade Service Operations  
3rd Floor  
500 First Avenue  
Pittsburgh, PA 15219  
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33  
Telephone: 1-800-682-4689



DATE: APRIL 04, 2008

BENEFICIARY:  
THE TRAVELERS INDEMNITY CO.  
CREDIT RISK MANAGEMENT, ONE TOWER  
SQUARE - 10 CR  
HARTFORD CT 06183

APPLICANT:  
ERICKSON CONSTRUCTION LLC  
991 CORPORATE BLVD  
LINTHICUM HEIGHTS, MD 21090-2227

ATTENTION: THOMAS COFFEY

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

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OUR REFERENCE:	18106730-00-000
AMENDMENT NUMBER:	3

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WE HEREBY AMEND OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER  
18106730-00-000 AS FOLLOWS:

THE AMOUNT IS INCREASED BY: USD \$260,000.00  
TOTAL LIABILITY AMOUNT NOW TO READ: USD \$1,035,880.00

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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PNC BANK, NATIONAL ASSOCIATION  
GLOBAL TRADE SERVICE OPERATIONS

DATE: NOVEMBER 19, 2007

THE TRAVELERS INDEMNITY CO.  
ATTENTION: THOMAS COFFEY  
CREDIT RISK MANAGEMENT, ONE TOWER  
SQUARE - 10 CR  
HARTFORD CT 06183

NOTICE OF AUTOMATIC EXTENSION

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OUR REFERENCE:	18106730-00-000
TRANSACTION NUMBER:	2
APPLICANT:	ERICKSON CONSTRUCTION LLC

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THIS NOTICE IS TO ADVISE YOU THAT THE EXPIRATION DATE OF THE REFERENCED LETTER OF CREDIT NUMBER 18106730-00-000 HAS BEEN EXTENDED TO MARCH 22, 2009.

THIS IS NOT TO BE CONSIDERED AS AN AMENDMENT TO THE LETTER OF CREDIT.  
THIS IS FOR INFORMATION PURPOSES ONLY.

PNC BANK, NATIONAL ASSOCIATION  
GLOBAL TRADE SERVICE OPERATIONS

THIS IS A COMPUTER GENERATED DOCUMENT; A MANUAL SIGNATURE IS NOT REQUIRED.

PNC Bank, National Association  
Trade Service Operations  
3rd Floor  
500 First Avenue  
Pittsburgh, PA 15219  
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33  
Telephone: 1-800-682-4689



DATE: SEPTEMBER 17, 2007

THE TRAVELERS INDEMNITY CO.  
ATTENTION: THOMAS COFFEY  
CREDIT RISK MANAGEMENT, ONE TOWER  
SQUARE - 10 CR  
HARTFORD CT 06183

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

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OUR REFERENCE:	18106730-00-000
APPLICANT:	ERICKSON CONSTRUCTION LLC
AMOUNT:	USD \$775,880.00
EXPIRY DATE:	MARCH 22, 2008
EXPIRY PLACE:	BALTIMORE, MARYLAND

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WE HEREBY AMEND IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER 8166 AS FOLLOWS:

THE ISSUING BANK IS NOW TO READ PNC BANK, NATIONAL ASSOCIATION.

THIS LETTER OF CREDIT IS NOW AVAILABLE FOR PAYMENT AT THE COUNTERS OF PNC BANK, NATIONAL ASSOCIATION, TWO HOPKINS PLAZA, 5TH FLOOR, BALTIMORE, MD 21201.

THE LETTER OF CREDIT NUMBER IS NOW TO READ 18106730-00-000.

DRAFTS, IF REQUIRED BY THE EXISTING TERMS OF THE LETTER OF CREDIT, MUST NOW BE DRAWN ON PNC BANK, NATIONAL ASSOCIATION, BALTIMORE, MD AND REFERENCE OUR LETTER OF CREDIT NO. 18106730-00-000

ALL REFERENCES IN THE LETTER OF CREDIT TO THE ISSUING BANK SHOULD NOW READ PNC BANK, NATIONAL ASSOCIATION.

ALL REFERENCES IN THE LETTER OF CREDIT TO THE LETTER OF CREDIT NUMBER SHOULD NOW READ 18106730-00-000.

PLEASE ADDRESS ALL CORRESPONDENCE TO PNC BANK, NATIONAL ASSOCIATION, TWO HOPKINS PLAZA, 5TH FLOOR, BALTIMORE, MD 21201 TO THE ATTENTION OF NORMA BANKS, PHONE NUMBER 410-237-5305.





# MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

## AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NO. 8166

Date: May 17, 2007

**BENEFICIARY:**

The Travelers Indemnity Company  
Credit Risk Management  
Attn: Mr. Thomas Coffey  
One Tower Square 10CR  
Hartford, Ct 06183

When communicating with us please give our  
Ref: L/C 8166

**APPLICANT:**

Erickson Construction LLC  
991 Corporate Blvd  
Linthicum, MD 21090

Gentlemen:

The above mentioned letter of credit is amended as follows:

The stated amount available for drawing under this letter of credit will be automatically increased on the effective dates and to the amounts indicated in the following schedule:

Effective Date:	Amount of Increase:	The Stated Amount:
5/17/2007	\$155,000.00	\$465,880.00
6/01/2007	\$155,000.00	\$620,880.00
9/01/2007	\$155,000.00	\$775,880.00

After all of the scheduled changes, the total amount of this Letter of Credit shall be \$775,880.00 which amount shall remain the total amount of this Letter of Credit until the expiry date, or any future expiration date.

All other terms and conditions as previously advised remain unchanged.

Immediate notification must be given to us if this amendment is not accepted.

This Letter of Credit is to be attached to and become an integral part of the original Letter of Credit Instrument.

### MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

By: Barbara R. Wallace  
Barbara R. Wallace, Senior Vice President

By: Bruce D. McLean  
Bruce D. McLean, Senior Vice President



**John Bagdasarian**

*Assistant Director - Credit Risk Management  
Travelers  
Business Insurance, Hartford*

(860) 954-4967  
(860) 954-3787 (fax)

One Tower Square - 10CR  
Hartford, CT 06183

May 11, 2007

Mr. Chip Woelper  
Mercantile Bank & Trust  
Two Hopkins Plaza  
PO Box 1477  
Baltimore, MD 21203

Re: Erickson Construction LLC -- Irrevocable Letter of Credit No. 8166

Dear Mr. Woelper,

Pursuant to your request, please amend Erickson Construction LLC's Irrevocable Letter of Credit No. 8166 according to the schedule in the attached draft letter of credit amendment.

Please feel free to call me if you have questions.

Sincerely,

John Bagdasarian.

enclosure

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Beneficiary:

The Travelers Indemnity Company (Beneficiary)  
Credit Risk Management  
Attn: R. Thomas Coffey  
One Tower Square 10CR  
Hartford, CT 06183

STEP UP LOC

Applicant:

[Type Company Name Here]  
[Type Street Address Here]  
[Type City, State, Zip Here]

The above mentioned letter of credit is amended as follows:

The stated amount available for drawing under this letter of credit will be automatically increased on the effective dates and to the amounts indicated in the following schedule:

Effective date of increase:	Amount of Increase:	The stated amount:
3/1/07	\$155,000	\$465,880
6/1/07	\$155,000	\$620,880
9/1/07	\$155,000	\$775,880

144,190.46

tax

465,880.00

After all of the scheduled changes, the total amount of this Letter of Credit shall be ~~775,880.00~~ ~~\$775,880.00~~ which amount shall remain the total amount until the expiry date, or any future ex

272 4078 - 08166

All other terms and condition

Very truly yours,

Authorized Signature

321,567.36

321,567.36  
122.18

321,689.54

320,880.00

5-14

321,689.54

652 7108



# MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

18106730

## AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NO. 8166

Date: May 17, 2007

### BENEFICIARY:

The Travelers Indemnity Company  
Credit Risk Management  
Attn: Mr. Thomas Coffey  
One Tower Square 10CR  
Hartford, Ct 06183

When communicating with us please give our  
Ref: L/C 8166

### APPLICANT:

Erickson Construction LLC  
991 Corporate Blvd  
Linthicum, MD 21090

Gentlemen:

The above mentioned letter of credit is amended as follows:

The stated amount available for drawing under this letter of credit will be automatically increased on the effective dates and to the amounts indicated in the following schedule:

Effective Date:	Amount of Increase:	The Stated Amount:
5/17/2007	\$155,000.00	\$465,880.00
6/01/2007	\$155,000.00	\$620,880.00
9/01/2007	\$155,000.00	\$775,880.00

After all of the scheduled changes, the total amount of this Letter of Credit shall be \$775,880.00 which amount shall remain the total amount of this Letter of Credit until the expiry date, or any future expiration date.

All other terms and conditions as previously advised remain unchanged.

Immediate notification must be given to us if this amendment is not accepted.

This Letter of Credit is to be attached to and become an integral part of the original Letter of Credit Instrument.

## MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

By: Barbara R. Wallace  
Barbara R. Wallace, Senior Vice President

By: Bruce D. McLean  
Bruce D. McLean, Senior Vice President



# MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

## IRREVOCABLE STANDBY LETTER OF CREDIT NO. 8166

18106730

**BENEFICIARY:**

The Travelers Indemnity Company (Beneficiary)  
Credit Risk Management  
Attn: R. Thomas Coffey  
One Tower Square – 10 CR  
Hartford, CT 06183

**DATE:** March 22, 2006

**EXPIRATION:** March 22, 2007

**APPLICANT:** Erickson Construction LLC  
991 Corporate Blvd.  
Linthicum, MD 21090

We hereby establish this clean irrevocable Letter of Credit in favor of the aforesaid addressee ("Beneficiary") for drawings up to United States \$310,880.00 (Three Hundred Ten Thousand Eight Hundred Eighty and 00/100 )US Dollars effective immediately. This Letter of Credit is issued, presentable and payable at our office at Two Hopkins Plaza, 5<sup>th</sup> Floor, Baltimore, MD 21201 and expires with our close of business on March 22, 2007. After the Letter of Credit has been issued, it cannot be revoked or reduced without the consent of the Beneficiary.

The term "Beneficiary" includes any successor by operation of law of the named Beneficiary including, without limitation, any liquidator, rehabilitator, receiver or conservator.

We hereby undertake to promptly honor your sight draft(s) drawn on us, indicating our Credit No. 8166, for all or any part of this Credit if presented at our office specified in paragraph one on or before the expiry date or any automatically extended expiry date. If you so choose, you will be able to draw on this Letter of Credit more than once, so long as the sum of the amounts which you have drawn does not exceed the full amount of the Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates and any such reference shall not be deemed to be incorporated herein by reference. The obligation of Mercantile-Safe Deposit and Trust Company under this Letter of Credit is the individual obligation of Mercantile-Safe Deposit and Trust Company, and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless 90 days prior to any expiration date we notify you by registered mail that we elect not to consider this Letter of Credit renewed for any such additional period. In the event, you may draw hereunder on or prior to the then relevant expiration date, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this Letter of Credit.



**MERCANTILE-SAFE DEPOSIT  
AND TRUST COMPANY**

L/C 8166

Page 2

This Letter of Credit is subject to and governed by the Laws of the State of Connecticut and the 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication No. 500) and, in the event of any conflict, the Laws of the State of Connecticut will control. If this Credit expires during an interruption of business as described in Article 17 of said Publication 500, the bank hereby specifically agrees to effect payment if this Credit is drawn against within 30 days after the resumption of business.

**MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY**

By: Stephen P. Richter  
Stephen P. Richter, Vice President

By: D. Seward Woelper  
D. Seward Woelper, Vice President

# APPLICATION FOR IRREVOCABLE LETTER OF CREDIT

ACCOUNT NAME: Erickson Construction, LLC Date: 3/4/07  
 Billing Address: 701 Maiden Choice Lane Zip: 21228 Deposit A/C No.: \_\_\_\_\_  
 Amount \$ 620,880 increase in ☒ Secured ☐ Unsecured Expiration Date: \_\_\_\_\_ Line of Credit: \_\_\_\_\_  
to 775,880  
on 9/1/07  
 Letter Credit Favor Of: Travelers Indemnity Company If Yes, Amount \$ \_\_\_\_\_  
 Address: One Tower Square 10CR Date Approved: \_\_\_\_\_  
Hartford, CT 06183

If L/C is Drawn Against How Will Reimbursement be Provided?

- ☒ Checking Acct. ☐ Loan Advance  
☐ Savings Acct. ☐ Other (Describe) \_\_\_\_\_

Purpose of Letter Credit: Amend 4c 8166

State Conditional Terms Governing Drawings Under Letter of Credit: \_\_\_\_\_

List Collateral If Secured: Certificate of Deposit

(Corporations or Partnership Sign Below)

Erickson Construction, LLC  
By Erickson Retirement Communities, LLC, member  
 Name of Corporation or Partnership

By: Kevin Brown

By: Sr. Vice President

(Individuals Sign Below)

(Seal)

(Seal)

(Seal)

## FOLLOWING DOCUMENTS ATTACHED:

- ☐ Signed Indemnification Agreement  
☐ Assignment of Savings or C.D.  
☐ Signed Note  
☐ Form of: Authorization Corporate Accts.  
☐ Other: Specify \_\_\_\_\_

Lending Officer

PLEASE NOTE: UPON ISSUANCE OF THIS LETTER OF CREDIT IT CANNOT BE CANCELLED WITHOUT WRITTEN APPROVAL OF BENEFICIARY AND ACCOUNT PARTY AND RETURN OF THE ORIGINAL LETTER CREDIT





**MERCANTILE-SAFE DEPOSIT & TRUST COMPANY**  
**BALTIMORE, MARYLAND 21201**

**INDEMNIFICATION AGREEMENT**

Date 5/4/07

In consideration of your issuance of Irrevocable Clean Letter of Credit ("Credit") No. 81166  
for \$ 620,880 increasing to 775,880 9/1/07 in favor of Travelers Indemnity Company

For the account of: Erickson Construction, LLC

And as security for any and all obligations and/or liabilities of the undersigned, we hereby pledge, assign and grant a security interest to THE ABOVE NAMED BANK in the following property:

Certificate of Deposit  
and all property listed on the attached schedule, which property, together with all additions, substitutions and proceeds hereinafter shall be referred to as "collateral", and

WE, JOINTLY AND SEVERALLY, HEREBY AGREE,

1. To indemnify and save you harmless from any and all loss, liability or expense arising from or in connection with the Credit;
2. To reimburse you on your demand the equivalent of any and all drafts that may be drawn under it;
3. To pay you, on demand, your commission at such rate as you determine to be proper and, in any event, a minimum commission, together with all expenses and charges (including charges for legal services) paid or incurred by you in connection with the Credit or any draft accepted by you.
4. As security for the payment, performance and discharge of any and all of our obligations and liabilities to you, direct or indirect, absolute or contingent, due or not due, now existing or hereafter arising, we hereby pledge to you, and/or give to you a lien upon, and/or right of set-off against, all deposit balances now or hereafter arising in any of our accounts, and all property and securities of every kind and nature which have been or at any time shall be delivered to or otherwise come into your possession, custody or control for any purpose whatever, whether or not for the express purpose of being used by you as collateral security or for safekeeping or for any other or different purpose, or which shall be in transit to you or set apart for you, or anyone for you, in any way, by us or for our account, or in which we may have any interest, whether you shall accept the same for the purpose for which delivered or not, and any and all proceeds of said property and securities and every part thereof; with the right to you, in your discretion, to resort first to any part of said security.

The Undersigned shall pay and be jointly and severally liable to the Bank for all reasonable expenses, including attorneys' fees, incident to the enforcement of any of the provisions of the Credit and all such expenses shall be added to and be made a part of the principal amount due pursuant to this Credit.

This agreement shall be binding upon us, our successors, transferees and assigns, and shall inure to the benefit of, and be enforceable by, you and your respective successors, transferees and assigns. You may assign or transfer this agreement and give all or any of the property held as security therefor to the transferee, who shall thereupon become vested with all the powers and rights in respect thereto, given you herein, and you shall thereafter be forever released and fully discharged from any liability or responsibility with respect thereto.

A copy of said Letter of Credit is attached hereto and we hereby confirm and agree to the terms and conditions thereof.

This Indemnification Agreement shall be construed in accordance with the Laws of the State of Maryland.

CORPORATIONS OR PARTNERSHIPS SIGN BELOW

INDIVIDUALS SIGN BELOW

Erickson Construction, LLC  
Name of Corporation or Partnership

By Erickson Retirement Communities

By [Signature]  
Sr. Vice President

(SEAL)

(SEAL)

(SEAL)



ASSIGNMENT OF SAVINGS ACCOUNT, MONEY MARKET ACCOUNT  
OR

CERTIFICATE OF DEPOSIT

18106730

ERICKSON Construction

240 OT

Loan Type

Loan Account Name

Collateral Account Name

BR # TYPE #

Date: 3/13/06

FOR VALUE RECEIVED, the undersigned (jointly and severally) hereby assign(s), set(s) over and transfers to MERCANTILE-SAFE DEPOSIT AND TRUST CO. (herein called the "Bank"), it's successors and assigns, and grants the Bank a security interest in, the undersigned's ☐ savings ☐ money market ☒ certificate of deposit account, number 168004914 nol., together with all monies and claims for monies now and hereinafter due or payable thereon or in respect thereof; the term "account" includes (without limitations) all shares, deposits, investments, principal and interest of every kind of the undersigned evidenced by said account or to any extensions or renewals thereof or to any substitutions therefore. The undersigned represents and warrants that the present value of said account is \$ 310,880.00

This Assignment is made as and shall constitute collateral security for any and all indebtedness and liabilities of any kind and nature of the undersigned to the Bank, howsoever evidenced, whether now existing or hereafter arising, direct or indirect, absolute, contingent, joint or several.

The undersigned hereby irrevocably authorize(s) and empower(s) the Bank at any time in its own name or in the name of the undersigned and notwithstanding the death, disability or incapacity of the undersigned, to demand, apply for withdrawal, receive and give acquittance for any and all monies and claims for monies hereby assigned and to exercise any and all rights and privileges and receive all benefits accorded by said account and to execute any and all instruments required therefor.

Notwithstanding anything to the contrary in the law permitting electronic communications, all requests or demands to the Bank under Title 9 of the Commercial Law Article of the Annotated Code of Maryland, as now or hereinafter in effect, including without limitation requests for accounting, requests regarding lists of collateral, requests regarding statement of account, demands for termination statements, and demands for releases of collateral or account debtors, shall be made in writing, signed by the undersigned, and be delivered by certified mail, return receipt requested, to the Bank at:

MERCANTILE-SAFE DEPOSIT AND TRUST CO.

2 Hopkins Plaza 5<sup>th</sup> Floor

Baltimore, Maryland 21201

Attn: Commercial Loan Department

The undersigned agrees that Bank shall not be required to respond to any request or demand that is not in compliance with the requirements of this paragraph, nor shall Bank be liable for, not its security interest affected or diminished in any way by, the failure to respond to any request or demand that is not in compliance with the requirements of this paragraph.

The undersigned represents and warrants that the account is genuine and in all respects is what it purports to be; that the undersigned is the owner thereof free and clear of all liens and encumbrances of any nature whatsoever; that the undersigned has not withdrawn, repurchased or redeemed all or any part thereof and there is no pending application for withdrawal, repurchase or redemption of all or any part thereof; and that the undersigned has full power, right and authority to execute and deliver this Assignment.

Witness:

Jeri Eastland (SEAL)

[Signature] (SEAL)

FOR BANK USE ONLY  
HOLD/ Release

Hold place date - Initials

Hold Released date - Initials

[Signature] (SEAL)

[Signature] (SEAL)

[Signature] (SEAL)

# ASSIGNMENT OF SAVINGS ACCOUNT, MONEY MARKET ACCOUNT OR CERTIFICATE OF DEPOSIT

Loan Type \_\_\_\_\_  
Loan Account Name \_\_\_\_\_  
Collateral Account Name \_\_\_\_\_

BR # \_\_\_\_\_ TYPE # \_\_\_\_\_

Date: 3/13/06

FOR VALUE RECEIVED, the undersigned (jointly and severally) hereby assign(s), set(s) over and transfers to MERCANTILE-SAFE DEPOSIT AND TRUST CO. (herein called the "Bank"), its successors and assigns, and grants the Bank a security interest in, the undersigned's ☐ savings ☐ money market ☒ certificate of deposit account, number 168004914, together with all monies and claims for monies now and hereinafter due or payable thereon or in respect thereof; the term "account" includes (without limitations) all shares, deposits, investments, principal and interest of every kind of the undersigned evidenced by said account or to any extensions or renewals thereof or to any substitutions therefore. The undersigned represents and warrants that the present value of said account is \$ 310,880.00

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MERCANTILE-SAFE DEPOSIT AND TRUST CO.  
2 Hopkins Plaza 5<sup>th</sup> Floor  
Baltimore, Maryland 21201  
Attn: Commercial Loan Department

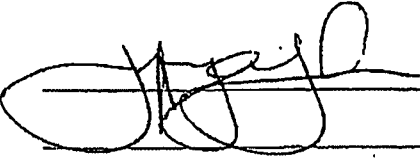
The undersigned agrees that Bank shall not be required to respond to any request or demand that is not in compliance with the requirements of this paragraph, nor shall Bank be liable for, not its security interest affected or diminished in any way by, the failure to respond to any request or demand that is not in compliance with the requirements of this paragraph.

The undersigned represents and warrants that the account is genuine and in all respects is what it purports to be; that the undersigned is the owner thereof free and clear of all liens and encumbrances of any nature whatsoever; that the undersigned has not withdrawn, repurchased or redeemed all or any part thereof and there is no pending application for withdrawal, repurchase or redemption of all or any part thereof; and that the undersigned has full power, right and authority to execute and deliver this Assignment.

Witness:

Jeri Eastland (SEAL)

FOR BANK USE ONLY	
HOLD/ Release	
Hold place date	Initials
Hold Released date	Initials

 (SEAL)  
 \_\_\_\_\_ (SEAL)  
 \_\_\_\_\_ (SEAL)  
 \_\_\_\_\_ (SEAL)

**Johnson, Michele**

---

**From:** Banks, Norma  
**Sent:** Friday, May 11, 2007 4:02 PM  
**To:** Johnson, Michele  
**Cc:** Woelper, Chip; Weddington, Joyce  
**Subject:** RE: Scanned document from Ecopy Corp FN

The letter of credit number on the Indemnification agreement is incorrect, it should be **8166**. The customer has already signed, so I will need a new one.

Norma C. Banks  
Assistant Vice President  
Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza-5th Floor  
Baltimore, Maryland 21201  
phone (410) 237-5305  
fax (410) 237-5351  
email: Norma.Banks@mercantile.com

---

**From:** Johnson, Michele  
**Sent:** Friday, May 11, 2007 1:59 PM  
**To:** Banks, Norma  
**Subject:** FW: Scanned document from Ecopy Corp FN

Not sure if you all of this or not. Can you let me know if I need to do something else.

...ks

---

**From:** Woelper, Chip  
**Sent:** Wednesday, May 09, 2007 2:15 PM  
**To:** Johnson, Michele  
**Subject:** FW: Scanned document from Ecopy Corp FN

FYI

Chip Woelper  
Mercantile Bank & Trust  
2 Hopkins Plaza 21st floor  
Baltimore, Maryland 21201  
410-237-5216  
410-237-5703 (fax)

---

**From:** Sherrie Rovnan [mailto:Sherrie.Rovnan@erickson.com]  
**Sent:** Friday, May 04, 2007 10:32 AM  
**To:** Woelper, Chip  
**Subject:** FW: Scanned document from Ecopy Corp FN

Is the application – Zelda mentioned I needed to do some sort of letter – let me know

---

**From:** Ecopy Corp FN  
**Sent:** Friday, May 04, 2007 10:32 AM  
**To:** Sherrie Rovnan

**Subject:** Scanned document from Ecoply Corp FN

*The information in this email is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmissions, dissemination or other use of or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you receive this email in error, please contact the sender and delete the material from any computer..*

PNC Bank, National Association  
Trade Service Operations  
500 First Avenue - 3rd Floor  
Pittsburgh, PA 15219  
Mail stop: P7-PFSC-03-T

Customer Service: 1-800-682-4689  
SWIFT Address: PNCCUS33



DATE: APRIL 27, 2009

ERICKSON CONSTRUCTION LLC  
991 CORPORATE BLVD  
LINTHICUM HEIGHTS, MD 21090-2227

ACCOUNTS RECEIVABLE ADVICE

---

OUR REFERENCE:	18106730-00-000
APPLICANT:	ERICKSON CONSTRUCTION LLC
BENEFICIARY:	THE TRAVELERS INDEMNITY COMPANY

---

THE FOLLOWING FEES ARE NOW DUE:

DOMESTIC COURIER	\$25.00
STANDBY AMENDMENT FEE	\$100.00
	-----
TOTAL AMOUNT DUE:	\$125.00

PLEASE SEND YOUR REMITTANCE BY CHECK PAYABLE TO PNC BANK, NATIONAL ASSOCIATION, INCLUDING OUR REFERENCE NUMBER AS IT APPEARS ABOVE. PLEASE ATTACH A COPY OF THIS ADVICE TO YOUR REMITTANCE AND FORWARD IT TO:

PNC BANK NATIONAL ASSOCIATION  
500 FIRST AVENUE  
TRADE SERVICE OPERATIONS, 3RD FLOOR  
PITTSBURGH, PA 15219

OR

SETTLEMENT CAN BE MADE VIA FEDWIRE TRANSFER TO PNC BANK N.A. FEDERAL RESERVE OF PITTSBURGH ABA 043000096, ACCOUNT 1017238669 ATTN: TRADE SERVICE OPERATIONS, PITTSBURGH, PA UNDER ADVICE TO US QUOTING OUR REFERENCE AS IT APPEARS ABOVE.

\*\* IN THE EVENT THIS INVOICE IS NOT PAID WITHIN 30 DAYS, A TRACER FEE WILL BE INCURRED.

THIS IS A COMPUTER GENERATED DOCUMENT; A MANUAL SIGNATURE IS NOT REQUIRED.

PNC Bank, National Association  
Trade Service Operations  
500 First Avenue - 3rd Floor  
Pittsburgh, PA 15219  
Mail stop: P7-PFSC-03-T

Customer Service: 1-800-682-4689  
SWIFT Address: PNCCUS33



DATE: SEPTEMBER 30, 2009

ERICKSON CONSTRUCTION LLC  
P.O. BOX 2200  
MAIL STOP 501  
CATONSVILLE, MD 21228-0002

ACCOUNTS RECEIVABLE ADVICE

---

OUR REFERENCE: 18106730-00-000  
APPLICANT: ERICKSON CONSTRUCTION LLC  
BENEFICIARY: THE TRAVELERS INDEMNITY COMPANY

---

THE FOLLOWING FEES ARE NOW DUE:

STANDBY COMMISSION	BILLING PERIOD:	DAYS	BASIS AMOUNT	RATE	FEE AMOUNT	
	07/01/2009	09/30/2009	92	893,880.00	1.00%	2,284.36
						\$2,284.36

TOTAL AMOUNT DUE: \$2,284.36

PLEASE SEND YOUR REMITTANCE BY CHECK PAYABLE TO PNC BANK, NATIONAL ASSOCIATION, INCLUDING OUR REFERENCE NUMBER AS IT APPEARS ABOVE. PLEASE ATTACH A COPY OF THIS ADVICE TO YOUR REMITTANCE AND FORWARD IT TO:

PNC BANK NATIONAL ASSOCIATION  
500 FIRST AVENUE  
TRADE SERVICE OPERATIONS, 3RD FLOOR  
PITTSBURGH, PA 15219

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THIS IS A COMPUTER GENERATED DOCUMENT; A MANUAL SIGNATURE IS NOT  
Page 1 of 2 18106730-00-000

PNC Bank, National Association  
Trade Service Operations  
500 First Avenue - 3rd Floor  
Pittsburgh, PA 15219  
Mail stop: P7-PFSC-03-T

Customer Service: 1-800-682-4689  
SWIFT Address: PNCCUS33



DATE: DECEMBER 31, 2009

ERICKSON CONSTRUCTION LLC  
P.O. BOX 2200  
MAIL STOP 501  
CATONSVILLE, MD 21228-0002

ACCOUNTS RECEIVABLE ADVICE

---

OUR REFERENCE: 18106730-00-000  
APPLICANT: ERICKSON CONSTRUCTION LLC  
BENEFICIARY: THE TRAVELERS INDEMNITY COMPANY

---

THE FOLLOWING FEES ARE NOW DUE:

STANDBY COMMISSION					
BILLING PERIOD:	DAYS	BASIS AMOUNT	RATE	FEE AMOUNT	
10/01/2009 12/31/2009	92	893,880.00	1.00%	2,284.36	
				\$2,284.36	
				-----	
				\$2,284.36	

TOTAL AMOUNT DUE:

PLEASE SEND YOUR REMITTANCE BY CHECK PAYABLE TO PNC BANK, NATIONAL ASSOCIATION, INCLUDING OUR REFERENCE NUMBER AS IT APPEARS ABOVE.  
PLEASE ATTACH A COPY OF THIS ADVICE TO YOUR REMITTANCE AND FORWARD IT TO:

PNC BANK NATIONAL ASSOCIATION  
500 FIRST AVENUE  
TRADE SERVICE OPERATIONS, 3RD FLOOR  
PITTSBURGH, PA 15219

OR

SETTLEMENT CAN BE MADE VIA FEDWIRE TRANSFER TO PNC BANK N.A.  
FEDERAL RESERVE OF PITTSBURGH ABA 043000096, ACCOUNT 1017238669 ATTN:  
TRADE SERVICE OPERATIONS, PITTSBURGH, PA UNDER ADVICE TO US QUOTING OUR  
REFERENCE AS IT APPEARS ABOVE.

\*\* IN THE EVENT THIS INVOICE IS NOT PAID WITHIN 30 DAYS, A TRACER FEE  
WILL BE INCURRED.

THIS IS A COMPUTER GENERATED DOCUMENT; A MANUAL SIGNATURE IS NOT  
REQUIRED.

CI15 2 IDS CDA/REA CUSTOMER INQUIRY 02/17/10 10.04.22  
BANK 40 MS ACTION SUCCESSFUL  
ACCT> [REDACTED] 6005 PROD> CDA BRANCH 00411 COST CENTER 0005592  
CUSTOMER NUMBER 3300133656 SUBPRDCT 01 FIXED RATE  
NAME ERICKSON CONSTRUCTION LLC SUBOWNER 05 CORPORATION

NAME ERICKSON CONSTRUCTION LLC RELATIONSHIP  
& ATTN SR ACCOUNTANT TIN 52-2012727  
ADDR 701 MAIDEN CHOICE LN WTHLD CD PC CERTIFIED TIN  
BALTIMORE MD 21228-5968 DATE WTHLD CERT 01/06/2010  
BIRTH DATE  
LAST MAINT DATE 01/06/2010  
REA PLAN  
PACKAGE CD ADDED  
COUNTRY REMOVED

SEL	SUB	ACCOUNT	RST	ISS/RENEW	MATURES	PKG	APY	CURRENT BALANCE	STAT
01		[REDACTED] 6005	Y	09/17/2009	03/17/2010		.40	898,900.55	99

TOTAL 1 898,900.55

PF: 1-HELP 2-MSGS 3-PLVL 4-RRS 6-CIF 7-SB 8-SF 9-CI34 10-CI10 11-CI11 12-CI50

REDACTED



CI10 3 IDS CDA/REA FINANCIAL INQUIRY 02/17/10 10.31.31  
BANK 40 MS ACTION SUCCESSFUL  
ACCT> ██████████6005 PROD> CDA BRANCH 00411 COST CENTER 0005592  
CUSTOMER NUMBER 3300133656 SUBPRDCT 01 FIXED RATE  
NAME ERICKSON CONSTRUCTION LLC SUBOWNER 05 CORPORATION

ORIGINAL PURCHASE 465,880.00 ISSUED 09/17/2009 STAT 99 ACTIVE  
MATURE 03/17/2010 TERM 6 M  
CURRENT BALANCE 898,900.55  
ASSIGNMENTS/PLEDGES 893,800.00 REA PLAN  
LAST REA RATE CHANGE  
INT ACCRUED TO 02/17/2010 295.53 PYMT METHOD TA INTEREST PYMT TO ACCT  
LAST INT PYMT 01/17/2010 305.28 PYMT FREQ IM MONTHLY FROM ISSUE  
W/H CODE PC LAST INT W/H INT ACCT#  
INTEREST PAID YTD 305.28 MAIL CODE 01 REGULAR MAIL  
INTEREST WITHHELD YTD AIP STAT AIP GEN DATE  
INTEREST PAID LAST YR 15,686.60 AIP PAYMENT AMT  
INTEREST WHLD LAST YR 3,345.12 AIP NEXT INT PYMT DATE  
LAST DEPOSIT 01/17/2010 305.28 AIP NEXT INT AMT  
FEATURE  
OPENED 03/17/2008 LAST ACTY 06/10/2009 REDEFINED 04/11/2008 TYPE EC  
CLOSED LAST MAINT 01/06/2010 BR/CC XFR

PF: 1-HELP 2-MSGs 3-PLVL 9-CI34 10-CI50 11-CI11 12-CI15

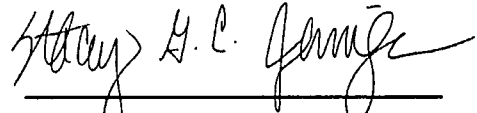
REDACTED



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

  
United States Bankruptcy Judge

Signed January 25, 2010

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

In re:

ERICKSON RETIREMENT  
COMMUNITIES, LLC, *et al.*,<sup>1</sup>

Debtors.

§  
§  
§  
§  
§  
§

CASE NO. 09-37010 (SGJ)

CHAPTER 11

Jointly Administered

**ORDER AUTHORIZING DEBTORS TO CONTINUE THEIR  
LIABILITY AND OTHER INSURANCE PROGRAMS AND  
TO ENTER INTO FINANCING AGREEMENTS RELATED THERETO**

Upon the Debtors' motion for an order authorizing the Debtors to continue their liability and other insurance programs and to enter into financing agreements related thereto (the "Motion"), and all as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C.

<sup>1</sup> 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, Warminster Campus, LP.

§§ 157(b) and 364; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and due and proper notice of the Motion having been provided to the necessary parties; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the record of the Hearing and all of the proceedings had before the Court; and no objections having been received; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore:

**BASED UPON THE RECORD ESTABLISHED BEFORE THE COURT AT THE HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. Petition Date. Commencing on October 19, 2009 (the "Petition Date"), the Debtors each filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court" or this "Court"). The Debtors have continued in the management and operation of their business and property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

B. Jurisdiction and Venue. This Court has core jurisdiction over the cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for relief sought herein are sections 105, 361, 362, 363 and 364

of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004 and 9014 and the Local Bankruptcy Rules.

C. Notice. Due and appropriate notice of the Motion, the relief requested therein and the hearing having been served by the Debtors on (i) the Office of the United States Trustee for the Northern District of Texas; (ii) counsel to the Official Creditors' Committee; (iii) counsel to PNC Bank, National Association ("PNC"); (iv) counsel to the prepetition secured lenders; and (v) any known lienholders whose liens are being primed in compliance with Bankruptcy Rule 4001(b) and (c) and the Local Bankruptcy Rules.

D. Opportunity to be Heard. Pursuant to Bankruptcy Rule 4001, the Hearing on the Motion was held before this Court to consider entry of this Order on or about January 13, 2009.

E. Disposition. The Motion is granted. Any objections to the Motion with respect to entry of this Order that have not been withdrawn, waived or settled, and all reservations of rights therein, are hereby denied and overruled for purposes of this Order.

F. Findings Regarding the Insurance Program and Related Extension of Credit. Good cause has been shown for entry of this Order. The Debtors have an immediate need to enter into the various agreements relating to the Liability Insurance Policies and Workers Compensation Policies as set forth in the Motion, including but not limited to the Collateral Trust Agreement, and to obtain the extension of credit contemplated in the Motion, including the extension and issuance of Letters of Credit, in order to, among other things, maintain their general liability, workers compensation and other insurance critical and necessary for their operations. The access of the Debtors to credit pursuant to the Motion is essential to the preservation and maintenance of the

going concern values of the Debtors and to a successful reorganization. The Debtors are currently unable to obtain the necessary credit on more favorable terms from sources other than PNC and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting PNC the liens on the LOC Collateral (as defined below) and the administrative claims under the terms and conditions set forth in this Order. The terms of the proposed credit are fair and reasonable, a reflection of the Debtors' prudent business judgment and constitute reasonably equivalent value and fair consideration. The extension of credit has been negotiated in good faith and at arm's length between the Debtors and PNC, and the credit extended by PNC shall be deemed to be extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code, which section shall be applicable in the event this Order or any provision herein is vacated, reversed or modified, on appeal or otherwise.

G. PNC's Protections. PNC is willing to provide certain financial accommodations (the "Letter of Credit Facility") to the Debtors by renewing and/or issuing letters of credit identified on Exhibit A attached hereto, and such additional letters of credit as may be issued or renewed by PNC in its sole and absolute discretion (collectively, the "Letters of Credit") only on the terms and conditions and with the protections provided herein, and PNC is relying on such terms, conditions, and protections in agreeing to provide financial accommodations to the Debtors hereunder.

H. Immediate Entry of Order. The Debtors have requested that this Order become immediately effective and enforceable upon entry, notwithstanding any

provisions that may apply in Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure. The Debtors have demonstrated good cause for entry of this Order and for this Order to become immediately effective and enforceable upon entry. Among other things, entry of this Order and the immediate effectiveness and enforceability of this Order upon entry will minimize disruption of the Debtors' business operations and permit the Debtors to maintain insurance necessary for their operations, will increase the possibility for confirmation of a successful Chapter 11 plan, and is in the best interests of the Debtors, their creditors and the bankruptcy estates. The terms of the borrowings and other financial accommodations authorized hereby are fair and reasonable under the circumstances and reflect the Debtors' exercise of prudent business judgment.

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. Incorporation of Stipulations and Findings. The above-described stipulations and findings are incorporated as if fully set forth herein, and the parties are hereby authorized to take all actions necessary to effectuate the terms and conditions of this Order.

2. Authorization to Incur Secured Credit and Enter Into Letter of Credit Agreement. The Debtors shall be and they each hereby are, authorized to enter into, perform, execute and deliver all documents, take all actions necessary to immediately continue and fully implement the Letter of Credit Facility in accordance with the terms, conditions, agreements and releases set forth herein, all of which are hereby approved. This Order shall serve as a written security agreement in all respects for purposes of confirming and granting to PNC prior, superior, valid and perfected liens and security

interests in and to any and all certificates of deposit (INCLUDING THOSE IDENTIFIED ON EXHIBIT A HERETO) securing the LOC Obligations (defined below), and all proceeds and replacements thereof (collectively, the "LOC Collateral"). There are no liens, claims, encumbrances or interests of any kind or nature whatsoever, which shall be senior to the liens and security interests of PNC granted herein in and to the LOC Collateral. The LOC Collateral shall not be deemed "DIP Collateral" as that term is defined in the Final Order (I) Authorizing Borrowers to Obtain Postpetition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364; (II) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 363 and 364; and (III) Granting Related Relief (the "DIP Financing Order").

3.     LOC Obligations. The Debtors jointly and severally shall reimburse PNC on the day of drawing (or upon such later date as the Debtors receive notice of the payment of a presented draft by PNC) upon any Letter of Credit (either with the proceeds of the LOC Collateral or otherwise) in same day funds in the amount of the drawing. If the Debtors fail to reimburse PNC as provided herein, the unreimbursed amount of such drawing shall bear interest at a per annum rate equal to 2% over PNC's prime rate. The Debtors' reimbursement obligations hereunder shall be absolute and unconditional under all circumstances irrespective of any rights of set-off, counterclaim or defense to payment any of the Debtors may have against PNC, the beneficiary of any Letter of Credit or any other person, including without limitation any defense based on any failure of the Debtors to receive consideration, or the legality, validity, regularity or enforceability of the Letter of Credit, or any claim related to the presentment of the draft presented upon the Letter of

Credit. The Debtors jointly and severally agree to reimburse PNC on account of any claim, loss or expense related to the issuance of Letters of Credit, including but not limited to reasonable attorneys fees incurred by PNC. The Debtors jointly and severally agree to pay to PNC such issuance, amendment and other fees as PNC quotes from time to time with respect to each Letter of Credit, and shall execute such applications, reimbursement agreements, or other documents as PNC requires (and consistent with this Order) from time to time with respect to the issuance, extension, amendment or any requested or required action concerning a Letter of Credit. The obligations set forth in this Paragraph shall be referred to as the "LOC Obligations." For so long as any LOC Obligations remain outstanding, the Debtors shall maintain, for the benefit of PNC and in such form as PNC may require, LOC Collateral in an amount sufficient to secure and satisfy all LOC Obligations. It is a condition for the extension of Letter of Credit No. 18106086 that an additional \$220,000 certificate of deposit be provided by 5 p.m. E.T. on January 30, 2009.

4. Grant of Security Interest. To secure the LOC Obligations and as adequate protection for PNC's interests in the LOC Collateral, the Debtors hereby grant, assign and convey to PNC a superior, perfected, non-avoidable, lien on and security interest in, all of the Debtors' right, title and interest in and to the LOC Collateral, and any and all proceeds of the foregoing. All liens and security interests granted herein shall be deemed valid and perfected without the need of the execution or filing of any financing statements, control agreements, assignments or other documents and without regard to applicable state, federal or local filing or recording statutes which may affect the perfection of liens and security interests in or assignment of property. The security



interests and liens granted herein shall be, and hereby are, in addition to all security interests, liens and right existing in favor of PNC as of the Petition Date.

5. Liens and Priorities Granted to PNC. The rights and interests of PNC granted pursuant to this Order shall be for all purposes as follows:

(a) The liens and security interests of PNC granted herein are and shall be at all times and for all purposes remain paramount and superior, pursuant to 11 U.S.C. §§ 364(c)(2) and (d)(1), to any other debts, obligations, interests or liens of any kind or nature asserted against any or all of the LOC Collateral, whether arising prior to or after the Petition Date, including but not limited to any rights which may have been or may hereafter be granted in any cash collateral or financing order, including but not limited to the DIP Financing Order.

(b) If PNC has exhausted the LOC Collateral provided by the Debtors in accordance with this Order, all remaining LOC Obligations shall be deemed administrative claims pursuant to 503(b)(1) of the Bankruptcy Code, equal or superior to other allowed administrative claims in these estates; provided, however, that any administrative priority claims of PNC shall be subject to the Carve-Out, as defined and provided in the DIP Financing Order. The administrative priority claim of PNC arising from this Order shall not be subject to objection by the Debtors, any subsequently appointed trustee(s) or any party in interest for any reason whatsoever other than to verify the actual amount thereof.

6. Non-Surcharge of LOC Collateral. The LOC Collateral shall not be subject to any claim, cost or charge asserted pursuant to 11 U.S.C. § 506(c) by any person or entity. Any and all rights to payment, rights to surcharge or any other right which may

be asserted pursuant to 11 U.S.C. § 506(c) against the LOC Collateral by the Debtors shall be, and are deemed to be, voluntarily released and waived in favor of PNC.

7. Release of LOC Collateral. PNC shall have no obligation to: (a) release any of the LOC Collateral delivered to it pursuant to the terms hereof; or (b) turnover or otherwise transfer the proceeds thereof, until such time as the Letters of Credit are returned, released and discharged, in form and substance satisfactory to PNC. Any return of LOC Collateral shall be conditioned upon the remaining LOC Obligations being fully collateralized.

8. No Commitment. Except as expressly provided herein, entry of this Order and consummation of the transactions contemplated herein shall not be a commitment by PNC to renew and/or issue additional letters of credit on behalf of the Debtors or any party or increase the amount of any existing Letters of Credit. PNC, in its sole and absolute discretion, may renew, extend and/or issue additional Letters of Credit at the request of the Debtors on a fully-collateralized basis. The terms of this Order, including the LOC Obligations, priorities and liens set forth herein, shall apply to all Letters of Credit renewed, extended or issued by PNC after entry of this Order, and to the collateral provided to PNC in relation thereto.

9. No Impairment. This transaction, the execution of the documents, instruments and agreements contemplated hereby, shall not impair or otherwise affect any rights which PNC may have by contract or applicable law. This transaction, the execution of the documents, instruments and agreements contemplated hereby, and the enforcement of rights hereunder shall not be deemed an election or exercise of remedies by PNC.

10. Notice. Any notice to be given or other written matter to be delivered pursuant to this Order shall be deemed validly served either upon personal delivery thereof or via a nationally-recognized courier service or upon written acknowledgement of receipt if transmitted via facsimile transmission:

If to the Debtors:

Thomas R. Califano, Esquire  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020-1104  
Facsimile: (212) 884-8690

If to PNC:

James M. Smith, Esquire  
Lisa Bittle Tancredi, Esquire  
Gebhardt & Smith, LLP  
One South Street, Suite 2200  
Baltimore, Maryland, 21202  
Facsimile: (410) 385-5119

11. Binding Effect. The terms and conditions of this Order and any actions taken pursuant hereto are binding upon and shall inure to the benefit of the Debtors, their creditors, any representatives of these estates, any official or unofficial committees, PNC and any and all successors and assigns of the foregoing, including but not limited to any reorganized or successor entities.

12. Survival of Rights. The liens, security interests, priorities, remedies, rights to payment and all other rights granted to PNC pursuant to this Order may not, and shall not be, affected, modified, altered, impaired or amended by, and shall survive without modification in any way: (a) the dismissal of any of these cases; (b) the conversion of any of these cases to Chapter 7 of the Bankruptcy Code; (c) the confirmation of any plan of reorganization or liquidation of any of these cases, whether

filed by one or more of the Debtors or a party in interest; (d) any order confirming such plan(s); (e) the filing of a new bankruptcy case by or against the Debtors or their successors; and (f) any other financing, extensions of credit or grant of adequate protection, whether made pursuant to sections 361, 362, 363 or 364 of the Bankruptcy Code or otherwise, absent express written consent of PNC. Notwithstanding the satisfaction of the LOC Obligations, the liens and security interests of PNC in existence as of the Petition Date and granted pursuant to this Order shall continue and remain in effect until all LOC Obligations have been finally and indefeasibly paid and PNC is granted an enforceable release of all letter of credit obligations on behalf of the Debtors' estates and the applicable letter of credit beneficiaries through the date of such final payment.

13. Final Order. This Order is a final order of the Bankruptcy Court. Notwithstanding Bankruptcy Rule 7062, the terms and conditions of this Order shall be effective and immediately enforceable upon its entry pursuant to Bankruptcy Rule 8005; and (b) shall not be stayed absent: (i) an application by a party in interest for such stay in accordance with Bankruptcy rule 8005; and (ii) a hearing upon notice to the Debtors and PNC.

14. Reversal or Modification of Order. If any or all of the provisions of this Order are reversed, modified, vacated or stayed then such reversal, stay or modification or vacation shall not affect: (a) the validity of any rights, lien, security interest, obligation, indebtedness or liability, or (b) the validity and enforceability of any priority granted to any lien, security interest, obligations, indebtedness or liability incurred, authorized or created hereunder prior to the receipt of notice by PNC of such reversal,

modification, vacation or stay, and any such indebtedness, obligation or liability shall be governed in all respects by the original provisions of this Order.

15. Modification of Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified to the extent necessary to permit PNC, without further notice or order of the Court, to receive proceeds of LOC Collateral and apply them to the LOC Obligations, or to file any financing statements or other instruments and documents, if any, evidencing its security interests in and liens on the LOC Collateral, and for all other purposes necessary to effect the terms and conditions of this Order and to afford PNC the benefits, safeguards and protections provided for herein.

16. Headings and Capitalized Terms. The headings used herein are for convenience only, and do not in any way limit, amplify or affect the terms or conditions hereof. All capitalized terms used but not defined herein shall have the meanings provided in the Motion.

17. Insurance Policies. Pursuant to Bankruptcy Code sections 363, 364 and 105(a), the Debtors are authorized, but not directed, to renew their Insurance Policies and enter into any Financing Agreements or other agreements related thereto, all of which will be on substantially similar terms as the policies and agreements that existed prior to the Petition Date. The Debtors are authorized to execute any other documents required to facilitate the Financing Agreements and renew the Insurance Policies.

**EXHIBIT A**  
**Letters of Credit and Pledged Certificates of Deposit**

**Letters of Credit**

<u>Beneficiary</u>	<u>LOC Number</u>	<u>Amount</u>
CNA	18107082	\$3,000,000
CNA	18106388	\$1,500,000
Travelers	18106730	\$ 893,800
Zurich	18107083	\$1,000,000
Zurich	18107421	\$1,250,000
Zurich	18108167	\$1,875,000
Zurich	18106392	\$1,875,000
Pa. Manufacturers	18106690	\$ 220,000
United Healthcare Services	18106086	\$ 500,000

**Certificates of Deposit**

<u>COD Number</u>	<u>Amount</u>
31300320742	\$3,253,869.76
31000323111	\$1,500,000.00
31300326005	\$ 898,595.27
31100346209	\$1,086,777.41
31000323068	\$1,292,703.45
31200326030	\$1,875,000.00
31600321887	\$1,896,487.02
31500337058	\$ 506,376.70

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Attorneys for the Debtors  
and Debtors in Possession

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

<b>In re:</b>	§	<b>CASE NO. 09-37010 (SGJ)</b>
	§	
<b>ERICKSON RETIREMENT COMMUNITIES, LLC, <i>et al.</i>,<sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

**DEBTORS' AMENDED MOTION FOR ORDER AUTHORIZING THE DEBTORS TO  
CONTINUE THEIR LIABILITY AND OTHER INSURANCE PROGRAMS AND  
TO ENTER INTO FINANCING AGREEMENTS RELATED THERETO**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") by their proposed attorneys, DLA Piper LLP (US) ("DLA Piper"), hereby move (the "Motion"), pursuant to section 105(a), 361, 362, 363, and 364 of title 11 of the United States Code (the "Bankruptcy Code"), this Court for entry of an order authorizing the Debtors to continue their

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<sup>1</sup> 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, Warminster Campus, LP.

liability and other insurance programs and to enter into financing and other agreements related thereto. In support of the Motion, the Debtors respectfully state as follows:

### **JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1334. This matter is a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This Motion is made pursuant to sections 105(a), 361, 362, 363(b), and 364(d) of the Bankruptcy Code.

### **BACKGROUND**

3. On October 19, 2009 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to possess their properties and to manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. On November 2, 2009, the Office of the United States Trustee appointed a committee of unsecured creditors (the "Committee") in these cases. No trustee or examiner has been appointed.

6. The factual background regarding each of the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings, is set forth in detail in the Affidavit of Paul Rundell in Support of First Day Motions [Docket No. 15] (the "Rundell Affidavit"), and is incorporated herein by reference.

7. On October 22, 2009, the Debtors filed their Motion for an Order (I) Approving Commitment Fee, Break-up Fee, Expense Reimbursement Payments to Plan Sponsor and Shop Provisions; (II) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (III) Approving Procedures for the Cure, Assumption and Assignment of Contracts; (IV)



Scheduling Hearings to Consider (A) Approval of the Disclosure Statement and Approval of Solicitation Procedures and (B) Confirmation of Plan of Reorganization; (V) Establishing Deadlines to Object to the Disclosure Statement and Plan of Reorganization; and (VI) Granting Related Relief [Docket No. 81] (the "Sale Motion"). Pursuant to the Sale Motion, the Debtors requested that the Court approve bidding procedures, bidding protections, a breakup fee, and the sale of the Assets.

8. On November 6, 2009, the Court entered an order approving the bidding procedures, breakup fee, and other bidding protections [Docket No. 272] (the "Bidding Procedures Order"). Pursuant to the Bidding Procedures Order, the Court set the deadline for submitting qualified bids for December 14, 2009 with an auction (the "Auction") to be held on December 22, 2009 in the event qualified bids were submitted. No hearing date has been set for the final sale hearing, but the Debtors expect the final sale hearing to occur on or about January 2010.

9. On November 13, 2009, the Debtors filed their plan of reorganization [Docket No. 293] (the "Plan") and related disclosure statement [Docket No. 292] (the "Disclosure Statement"). Pursuant to the Plan, the Debtors seek to sell substantially all of their assets to Redwood-ERC Senior Living Holdings, LLC, Redwood-ERC Management, LLC, Redwood-ERC Development, LLC, Redwood-ERC Properties, LLC and Redwood-ERC Kansas, LLC (collectively, "Redwood") or such other higher or better bidder determined through the sale process.

10. On December 22, 2009, an auction was held in which Redwood and related entities were determined to be the successful bidder of substantially all of the Debtors' assets.

11. On December 30, 2009, the Debtors filed their amended plan of reorganization

[Docket No. 605] and amended disclosure statement [Docket No. 604] to address the outcome of the Auction and the successful bid of Redwood for the purchase of substantially all of the Debtors' assets.

### **INSURANCE AGREEMENTS**

12. The Debtors maintain two (2) professional and general liability insurance policies (the "Liability Insurance Policies") and two (2) workers' compensation insurance policies (the "Workers' Compensation Policies", collectively with the Liability Insurance, the "Insurance Policies") in connection with the operation of their business. The Liability Insurance Policies are provided by Continental Casualty Company and Columbia Casualty Company (collectively "CCC") and Travelers Companies, Inc. ("Travelers"). The Workers' Compensation Policies are provided by Zurich American Insurance Company ("Zurich") and Pennsylvania Manufacturers' Association Insurance Company ("PMAIC", collectively with CCC, Travelers, and Zurich, the "Insurance Providers").<sup>2</sup>

13. In lieu of paying the insurance premiums on all of the Insurance Policies on a lump-sum basis, in the ordinary course of the Debtors' business, the Debtors finance the premiums on their Insurance Policies pursuant to premium financing agreements with third-party lenders. In exchange for the financing, the Debtors pay monthly installments in accordance with a pre-set payment schedule. For current year policies, the Debtors have paid all premiums and are not obligated to make postpetition payments.

14. Pursuant to the Insurance Policies, the Debtors are required to issue letters of credit (the "Letters of Credit") for the benefit of each of the Insurance Providers. Each of the Letters of Credit relating to the Insurance Policies are provided by PNC Bank, National

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<sup>2</sup> The Workers' Compensation Policy provided by PMAIC is not a current policy, but there are a few outstanding claims under this policy.

Association ("PNC Bank") and are collateralized by certificate of deposits, on which PNC Bank has a first priority lien (the "Certificates of Deposits"). The Letters of Credit are described below:

- Letter of Credit (xxxx7421) totals \$1,250,000 and is collateralized by a Certificate of Deposit (xxxxxx3068) in an amount of at least \$1,250,000. The Letter of Credit is issued for the beneficiary of Zurich and relates to Erickson Retirement Communities, LLC's ("ERC's") self-insured master workers' compensation insurance program, which covers ERC, its subsidiaries, and the independent not-for-profit organizations managed by the Debtors (the "NFPs").<sup>3</sup> The primary purpose of this Letter of Credit is to collateralize potential future workers' compensation claims that have been incurred but not reported to date;
- Letter of Credit (xxxx6392) totals \$1,875,000 and is collateralized by a Certificate of Deposit (xxxxxx1887) in an amount of at least \$1,875,000. This Letter of Credit is issued for the beneficiary of Zurich and relates to ERC's self-insured master workers' compensation insurance program, which covers ERC, its subsidiaries, and the NFPs. The primary purpose of this Letter of Credit is to collateralize potential future workers' compensation claims that have been incurred but not reported to date;
- Letter of Credit (xxxx7082) totals \$3,000,270 and is collateralized by a Certificate of Deposit (xxxxxxx0742) in an amount of at least \$3,000,270. This Letter of Credit is issued for the beneficiary of CCC and relates to ERC's self-insured master professional and general liability insurance program, which covers ERC, its subsidiaries, and the NFPs. The primary purpose of this Letter of Credit is to collateralize potential future professional and general liability insurance claims that have been incurred but not reported to date;
- Letter of Credit (xxxx6730) totals \$894,443.64 and is collateralized by a Certificate of Deposit (xxxxxxx6005) in an amount of at least \$894,443.64. This Letter of Credit is issued for the beneficiary of Travelers and relates to Erickson Construction, LLC's ("Erickson Construction's") self-insured professional and general liability insurance program, which covers ERC, its subsidiaries, and the NFPs. The primary purpose of this Letter of Credit is to collateralize potential future professional and general liability insurance claims that have been incurred but not reported to date;
- Letter of Credit (xxxx6388) totals \$1,500,000 and is collateralized by a Certificate of Deposit (xxxxxxx3111) in an amount of at least \$1,500,000. This Letter of Credit is issued for the benefit of CCC and relates to ERC's self-insured master professional and general liability insurance program, which covers ERC, its subsidiaries, and the NFPs. The primary purpose of this Letter of Credit is to collateralize potential future

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<sup>3</sup> Note that this program does not cover Dallas Campus, LP, Houston Campus, LP, or the Highland Springs, Inc. or Eagle's Trace, Inc., the Texas not-for-profit organizations. These entities have special Texas benefit plans.

general liability insurance claims that have been incurred but not reported;

- Letter of Credit (xxxx8167) totals \$1,875,000 and is collateralized by a Certificate of Deposit (xxxxxxx6030) in an amount of at least \$1,875,000. This Letter of Credit is issued for the benefit of Zurich and relates to ERC's self-insured master workers' compensation insurance program, which covers ERC, its subsidiaries, and the NFPs. The primary purpose of this Letter of Credit is to collateralize potential future workers' compensation claims that have been incurred but not reported;
- Letter of Credit (xxxx7083) totals \$1,000,000 and is collateralized by a Certificate of Deposit (xxxxxxx6209) in an amount of at least \$1,000,000. This Letter of Credit is issued for the benefit of Zurich and relates to ERC's self-insured master workers' compensation insurance program, which covers ERC, its subsidiaries, and the NFPs. The primary purpose of this Letter of Credit is to collateralize potential future workers' compensation claims that have been incurred but not reported; and
- Letter of Credit (xxxx6690) totals \$220,000 and is issued for the beneficiary of PMAIC. The Letter of Credit relates to ERC's self-insured master workers' compensation insurance program, which covers ERC, its subsidiaries and the NFPs. The primary purpose of the Letter of Credit is to collateralize potential future workers' compensation claims that have been incurred but not reported to date. This is the only Letter of Credit that is not collateralized with a Certificate of Deposit, and the Debtors shall provide PNC Bank with a certificate of deposit in the amount of at least \$220,000 on or before the later of (a) ten (10) days after the entry of an Order approving this Motion, or (b) January 31, 2010.

15. With respect to the renewal of the Insurance Policies, the Debtors seek authorization to permit them to enter into new premium financing agreements (the "Financing Agreements") with the Insurance Providers, obtain the renewal of the Letters of Credit related thereto, pledge additional collateral sufficient to fully secure the Letters of Credit, confirm that PNC holds first priority liens on the collateral securing the Letters of Credit, and enter into any related agreements necessary to effectuate the renewal of the Insurance Policies.

16. Each of the Insurance Policies and related Letters of Credit expired on or after January 1, 2010. The Debtors are in the process of negotiating the renewal of the Insurance Policies, Letters of Credit, and Financing Agreements, all of which will be on substantially similar terms as the policies and agreements that existed prior to the Petition Date and/or as set

forth in the attached proposed order.

17. The Debtors recently negotiated an agreement with CCC for the renewal of their Liability Insurance Policy. Under the renewed Liability Insurance Policy, the annual premium is approximately \$1.355 million, which the Debtors will finance in two installments over the course of the year. Moreover, the Debtors are required to establish a collateral trust pursuant to a collateral trust agreement (the "Collateral Trust Agreement"). The funds from the collateral trust will be used to reimburse, as needed, on-going claims asserted under the policy for 2010. Pursuant to the Collateral Trust Agreement, the Debtors are required to make a down payment of approximately \$490,000 to the trust on January 15, 2010, and a payment of \$196,000 per month for ten months thereafter.

18. The Debtors are still in the process of negotiating the details of the remaining Insurance Policy renewals and related Financing Agreements.

#### **REQUESTED RELIEF**

19. By this Motion, the Debtors request the entry of an order pursuant to Bankruptcy Code sections 105(a), 361, 362, 363(b), and 364(d) authorizing, but not requiring, the Debtors, in accordance with their stated Insurance Policies and in the ordinary course of business, to honor the obligations under their current insurance premium financing agreements as well as to enter into new Financing Agreements (on terms substantially similar to those in place) with respect to the renewal of the Insurance Policies, to renew the Letters of Credit as set forth in the Order submitted with this Motion, and to enter into the Collateral Trust Agreement and enter into any related agreements necessary to effectuate the renewal of the Insurance Policies and enter into any related agreements necessary to effectuate the renewal of the Insurance Policies.

### **BASIS FOR REQUESTED RELIEF**

20. Bankruptcy Code section 105(a) provides that a court may issue any order that is "necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

21. Bankruptcy Code section 363(b)(1) governs transactions outside the ordinary course of business and provides that a trustee or debtor in possession may enter into such transactions after notice and a hearing. See 11 U.S.C. § 363(b). It is well recognized that the use, sale, or lease of assets outside the ordinary course of business is permitted if supported by a sound business justification for the transaction. See In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); see also In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983). The debtor in possession or trustee must establish that there is some articulated business justification for using, selling, or leasing the property outside the ordinary course of business. See Continental, 780 F.2d at 1226; Matter of Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984) (debtor in possession is required to "justify the proposed [transaction] with sound business reasons"); Matter of St. Petersburg Hotel Assoc. Ltd., 37 B.R. 341, 343 (Bankr. M.D. Fla. 1983) (Bankruptcy Code section 363 "also impliedly requires the Court to find that it is good business judgment for the Debtor to enter into" the transaction). Whether the proffered business justification is sufficient depends on the facts of each case, and the bankruptcy court "should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders." Lionel, 722 at 1071.

22. Bankruptcy Code section 364(d) addresses the extension of credit to a debtor and provides that the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior/equal lien on the estate's property that is subject to a lien if: "(A) the trustee is unable to obtain such credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d)(1).

23. In this case, the Debtors believe that sufficient business justifications exist to renew the Insurance Policies and to finance the renewal of the same by means of the Financing Agreements and the Collateral Trust Agreement. The Debtors submit that the use of their estates' funds for payment of the Insurance Policies is permitted by Bankruptcy Code sections 363(b) and 105(a) as necessary costs of preserving the estates. Because of the nature of the Debtors' business, it is essential that the Debtors maintain uninterrupted insurance coverage and enter into the Financing Agreements and Collateral Trust Agreement and renew the Letters of Credit. If the Debtors are not able to enter into the Financing Agreements, then the Debtors would be required to pay up-front for the Insurance Policies. Such a requirement would negatively impact the Debtors' cash flow and their estates. The Debtors believe that it is in their best interest to renew their current Insurance Policies, enter into new Financing Agreements and the Collateral Trust Agreement, and renew the Letters of Credit, as required by the Debtors' prudent business practices.

24. In addition, with respect to the Letters of Credit, the Debtors satisfy the requirements of Bankruptcy Code section 364(d) because the Debtors are not able to obtain or renew letters of credit unless the letters of credit are fully collateralized. If the Debtors were to seek a letter of credit facility from a party other than PNC, they would be required pledge new

collateral in an amount sufficient to fully secure their reimbursement obligations. The Debtors do not have ready access to new cash or cash equivalents in an amount that would be required by a new issuer of letters of credit.

WHEREFORE, the Debtors respectfully request this Court grant the relief requested in the Motion, enter an order in the form attached hereto and grant such other and further relief as may be just and proper.

Dated: January 6, 2009  
Dallas, Texas

**DLA PIPER LLP (US)**

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WRITER'S DIRECT DIAL NUMBER:

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February 24, 2010

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VIA HAND DELIVERY

BMC Group, Inc.  
Attn.: Erickson Retirement Communities, LLC  
Claims Processing  
18750 Lake Drive East  
Chanhassen, Minnesota 55317

RECEIVED

FEB 24 2010

BMC GROUP

Re: Debtor: Erickson Construction, LLC  
Case No.: 09-37016  
Creditor: PNC Bank, National Association, successor to  
Mercantile-Safe Deposit and Trust Company

Dear Sir or Madame:

Enclosed for filing in the above-referenced bankruptcy case is a Proof of Claim by PNC Bank, National Association, successor to Mercantile-Safe Deposit And Trust Company. The Proof of Claim consists of: (1) the original, fully executed Proof of Claim cover sheet; and (2) the Rider to the Proof of Claim cover sheet (with exhibits).

Please file the Proof of Claim in the Debtor's bankruptcy case, date stamp the enclosed copy of the Proof of Claim cover sheet, and return it to the person delivering this package.

Thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Very truly yours,



Jean Sheftic Bilodeau  
Counsel for PNC Bank, National Association

Enclosures  
JSB:lb