

**UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF TEXAS**

**PROOF OF CLAIM**

Name of Debtor: Erickson Retirement Communities, LLC

Case Number: 09-37010

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):

**Sovereign Bank**

Name and address where notices should be sent:

**Vicki A. Woodard**  
**Senior Vice President, Sovereign Bank**  
**Mail Code: MA1 - SST - 0410**  
**75 State Street**  
**Boston, MA 02109**  
**(617) 757-5591**

RECEIVED  
 FEB 24 2010  
 BMC GROUP

Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:

Filed on:

Name and address where payment should be sent (if different from above):

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.

Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: **\$33,107,822.41 in principal plus applicable interest, fees and expenses**

If all or part of your claim is secured, complete item 4 below; however, if your entire claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

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: See Attachment  
 (See instruction #2 on reverse side.)

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:  Real Estate  Motor Vehicle  Other

Describe: See Attachment

Value of Property: \$to be determined Annual Interest Rate 7.00

Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ \_\_\_\_\_ Basis for perfection: see attached

Amount of Secured Claim: **\$33,107,822.41 in principal plus applicable interest, fees and expenses**

Amount Unsecured: **only to extent determined that claimant is undersecured, if at all**

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.

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

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).

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).

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).

Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(\_\_\_\_\_).

Amount entitled to priority:

\$ \_\_\_\_\_

\*Amounts are subject to adjustment on and every 3 years thereafter with respect to cases commenced on or after the date of adjustment..

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date: February 19, 2010

SOVEREIGN BANK

*Vicki A. Woodard*  
 By: Vicki A. Woodard, Senior Vice President

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both.

FOR COURT USE ONLY

Erickson Ret. Comm. LLC



01161

**Sovereign Bank**  
**75 State Street**  
**Mail Code: MA1 - SST - 0410**  
**Boston, MA 02109**

**ATTACHMENT**

**DEBTOR:** Erickson Retirement Communities, LLC  
**DATE OF FILING:** October 19, 2009 (the "Petition Date")

**A. Description of Claim**

Upon information and belief, Wilmington Trust FSB has contemporaneously filed a proof of claim in accordance with the provisions of the "Order Granting Joint Motion to Establish Protocol under Federal Rules of Bankruptcy Procedure 3001 and 2019 for Filing Proofs of Claim" (the "Claim Protocol Order") [Docket No. 797] and solely in its capacity as successor administrative agent to PNC Bank, N.A. (the "Agent"),<sup>1</sup> for all amounts due on behalf of all of the lenders (the "Revolver Lenders") under that certain Credit Agreement dated July 27, 2007 as amended or modified from time to time (the "Credit Agreement"). The Credit Agreement created a revolving credit facility that allowed Erickson Retirement Communities, LLC (the "Debtor") to periodically borrow money from the Revolver Lenders.

Sovereign Bank ("Lender") is one of the financial institutions that is a member of the Revolver Lenders, has the right to assert claims for the pro rata portion of the entire indebtedness under the Credit Agreement owing to it, and hereby accordingly files this proof of claim (the "Claim"), in accordance with the provisions of the Claim Protocol Order for the pro rata amounts owed to Lender under the Credit Agreement. In connection with the Credit Agreement, Lender was issued a "Revolving Credit Note" (the "Note") for the pro rata amounts owed only to it by the Debtor. As of the Petition Date, the Debtor owed Lender a total amount of \$33,107,822.41<sup>2</sup> in principal plus applicable interest, fees and expenses (the "Prepetition Indebtedness")<sup>3</sup> pursuant to the Credit Agreement and Note.

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<sup>1</sup> Wilmington Trust FSB is successor in interest to PNC Bank, N.A. in its capacity as Administrative Agent under the Credit Agreement. Accordingly, herein, with respect to the Credit Agreement, defined herein, the term Agent shall refer to both Wilmington Trust FSB and its predecessor PNC Bank, N.A. solely in their capacity as Agent to the Revolver Lenders.

<sup>2</sup> Because certain securities held by the Agent have not been liquidated, the precise amount of outstanding principal may vary from the stated amount once the securities are sold.

<sup>3</sup> Lender reserves the right to supplement or amend this Claim with additional amounts due under the Credit Agreement and related documents. As of the Petition Date, in addition to the outstanding principal and applicable interest, Lender has incurred professional fees and expenses allowable under the Credit Agreement. Lender asserts such amounts as part of the Claim and reserves all rights to amend the Claim to provide more specific amounts related thereto.

In addition to the repayment obligations, the Credit Agreement required the Debtor to maintain a liquidity level of \$100 million (the "Required Liquidity"). On April 16, 2009, Wilmington Trust FSB (the "Agent"), as administrative agent for the Credit Agreement, entered into a "First Amendment" to the Credit Agreement which reduced the Required Liquidity to \$69.5 million. Upon expiration of the First Amendment on May 29, 2009, the Debtor was in default of the Required Liquidity and various other provisions of the Credit Agreement. Accordingly, the Agent, on behalf of the Revolver Lenders, declared an Event of Default, defined in the Credit Agreement, and accelerated all amounts owing under the Credit Agreement by notice to the Debtor dated May 30, 2009 (the "Default Notice").

The Agent, on behalf of the Revolver Lenders, continued to forbear exercise of its remedies under the Credit Agreement and other loan documentation pursuant to the Second, Third and Fourth Amendment and Forbearance Agreements which further reduced the Required Liquidity to \$64.5 million and eventually down to \$36.3 million. Prior to the Petition Date, the Debtor failed to comply with certain terms, conditions, and/or covenants of the Fourth Amendment and Forbearance Agreement (the "Forbearance Defaults"). The Forbearance Defaults terminated the Fourth Amendment and pursuant to the Default Notice all amounts owing under the Credit Agreement (including past due amounts and accrued and unpaid interest thereon) were already accelerated and were immediately due and payable as of the Petition Date.

Under a "Security Agreement," the Prepetition Indebtedness is secured by a valid, enforceable and perfected first priority security interest in practically all of the Debtor's assets, including a first priority security interest in certain cash and securities in deposit and securities accounts held at various banks, real estate, intellectual property and general intangibles.<sup>4</sup> Specifically, pursuant to Section Two of the Security Agreement, the Agent, on behalf of the Revolver Lenders, was granted a first priority security interest in the following items of collateral (the "Collateral"):

- (i) all Accounts (including Health-Care Insurance Receivables);
- (ii) all Chattel Paper (including Electronic Chattel Paper and Tangible Chattel Paper);
- (iii) all Contracts;
- (iv) all Copyrights and Copyrights Licenses;
- (v) all Deposit Accounts;
- (vi) all Documents;
- (vii) all Equipment;
- (viii) all General Intangibles and Commercial Tort Claims;
- (ix) all Instruments;
- (x) all Inventory;
- (xi) all Investment Property (including Security Entitlement, Financial Assets, Securities Accounts, Commodity Accounts and Commodity Contracts);
- (xii) all Letter-of-Credit rights;

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<sup>4</sup> Lender's security interests have been duly perfected pursuant to the financing statements and control agreements referenced hereto in Exhibit A.

- (xiii) all Patents and Patent Licenses;
- (xiv) all Payment Intangibles;
- (xv) all Software (in whatever form);
- (xvi) all Supporting Obligations;
- (xvii) all Trademarks and Trademark Licenses; and
- (xviii) to the extent not otherwise included, all Proceeds and Products of any and all of the foregoing.

#### **B. Documents Supporting the Claim**

The Credit Agreement and related documents and amendments upon which the Claim is based are voluminous and accordingly, are not produced herein. A list of such documents is attached as "**Exhibit A.**"<sup>5</sup> These documents are in the possession of the Agent and will be made available upon written request to J. William Boone, Alston & Bird LLP, 1201 West Peachtree Street Atlanta, Georgia 30309-3424. In addition, these documents have been placed on a CD-ROM and are being provided to the Debtor's claim agent by the Agent, on behalf of the Revolver Lenders, in accordance with the Claim Protocol Order.

#### **C. Reservation of Rights**

Nothing herein or otherwise, including, but without limitation, any later appearance, pleading, claim, or action, is intended or shall be deemed to be a waiver, release, or modification by Lender of its respective (a) right to have final orders in noncore matters entered after *de novo* review by a District Judge; (b) right to trial by jury in any proceeding so triable in this case or any case, controversy, or proceeding related to these cases; (c) right to have the District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal; or (d) other rights, remedies, claims, actions, defenses, setoffs, or recoupments to which Lender is or may be entitled, all of which are hereby expressly reserved. Lender also specifically reserves all rights to supplement, amend, and/or modify this proof of claim with any information, including, without limitation, updated amounts and/or other claims of liability arising out of or resulting from the Credit Agreement and related documents. Lender also reserves the right to assert the nondischargeability of any and all liability arising from or relating to the Credit Agreement pursuant to 11 U.S.C. § 1141(d)(6).

The foregoing reservations are not intended, and shall not be construed, to limit any reservations of rights that Lender has made in any other claims filed by Lender against any of the other Debtors.

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<sup>5</sup> Lender reserves the right to supplement "Exhibit A" with additional documents pertaining to this Claim.

## EXHIBIT A

1. Credit Agreement dated July 27, 2007 among Erickson Retirement Communities, LLC and PNC Bank, National Association with PNC Capital Markets LLC;
  - a. Revolving Credit Note among Sovereign Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
2. Security Agreement dated July 27, 2007 among Erickson Retirement Communities, LLC, Erickson Construction, LLC, and PNC Bank, National Association;
3. Deed of Trust Security Agreement and Fixture Filing dated July 27, 2007 between Erickson Retirement Communities, LLC and Bruce D. McLean and D. Seward Woelper, as Trustees for the Benefit of PNC Bank, National Association;
4. Guaranty dated July 27, 2007 between Senior Campus Services, LLC, Concord Campus GP, LLC, Dallas Campus GP, LLC and Warminster Campus GP, LLC in favor of PNC Bank, National Association;
5. Security Agreement dated July 27, 2007 among Dallas Campus GP, LLC, Concord Campus GP, LLC, Warminster Campus GP, LLC, Senior Campus Services, LLC and PNC Bank, National Association;
6. Pledge Agreement dated July 27, 2007 made by Erickson Retirement Communities, LLC to PNC Bank, National Association;
7. Pledge Agreement dated July 27, 2007 by Erickson Group, LLC to PNC Bank, National Association;
8. Limited Guaranty dated July 27, 2007 by Erickson Group, LLC to PNC Bank, National Association;
9. Collateral Assignment of Contracts dated July 27, 2007 by Erickson Retirement Communities, LLC and Erickson Construction, LLC in favor of PNC Bank, National Association;
10. UCC Financing Statement-Concord Campus GP, LLC (and assignment);
11. UCC Financing Statement-Dallas Campus GP, LLC (and assignment);

12. UCC Financing Statement-Erickson Construction, LLC (and assignment);
13. UCC Financing Statement-Erickson Group, LLC (and assignment);
14. UCC Financing Statement-Erickson Retirement Communities, LLC (and assignment);
15. UCC Financing Statement-Senior Campus Services, LLC;
16. UCC Financing Statement-Warminster Campus GP, LLC;
17. List of Control Agreements:
  - a. Deposit Account and Control Agreement by and among PNC Bank, National Association, Erickson Construction, LLC and PNC Bank, National Association (Date: 4/15/09);
  - b. Notification and Control Agreement by and among Erickson Retirement Communities, LLC, PNC Bank, N.A. and PNC Bank, National Association (Date: 4/15/09);
  - c. Deposit Account Control Agreement by and among PNC Bank, National Association, Erickson Retirement Communities, LLC and PNC Bank, National Association (Date: 4/15/09);
  - d. Notification and Control Agreement by and among Erickson Retirement Communities, LLC, PNC Bank, N.A., and PNC Bank, National Association (Date: 5/4/09);
  - e. Deposit Account Control Agreement by and among M&T Bank, Erickson Retirement Communities, LLC and PNC Bank, National Association (Date: 4/15/09);
18. Amendment to Credit Agreement between Erickson Retirement Communities, LLC, Erickson Construction, LLC, Concord Campus GP, LLC, Dallas Campus GP, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC, Erickson Group, LLC and PNC Bank, National Association;
19. Second Amendment to Credit Agreement and Forbearance Agreement between Erickson Retirement Communities, LLC, Erickson Construction, LLC, Concord Campus GP, LLC, Dallas Campus GP, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC Erickson Group, LLC and Wilmington Trust FSB: Entered June 1, 2009;
20. Third Amendment to Credit Agreement and Forbearance Agreement between Erickson Retirement Communities, LLC, Erickson Construction, LLC,

Concord Campus GP, LLC, Dallas Campus GP, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC Erickson Group, LLC and Wilmington Trust FSB: Entered June 30, 2009;

21. Fourth Amendment to Credit Agreement and Forbearance Agreement between Erickson Retirement Communities, LLC, Erickson Construction, LLC, Concord Campus GP, LLC, Dallas Campus GP, LLC, Senior Campus Services, LLC, Warminster Campus GP, LLC Erickson Group, LLC and Wilmington Trust FSB: Entered July 10, 2009;
22. Succession Consent Letter dated May 1, 2009 from PNC Bank to PNC Bank, National Association, Hillcrest Bank, Bank of America, Sandy Spring Bank, Wilmington Trust Bank, M&T Bank, Sovereign Bank, Virginia Commerce Bank, First Commonwealth Bank, Commerce Bank, Abington Bank, Provident Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC;
23. Assignment of Deed of Trust, Security Agreement and Fixture Filing from PNC Bank, National Association to Wilmington Trust FSB;
24. Successor Agent Agreement dated May 12, 2009 between Wilmington Trust FSB and PNC Bank, National Association;
25. Assignment of Control Agreements dated May 12, 2009;
26. Assignment of UCC Financing Statements from PNC Bank, National Association to Wilmington Trust FSB; and
27. Direction Letter dated May 30, 2009 from Wilmington Trust to Erickson Retirement Communities, LLC.

CINCINNATI/81586.1

February 23, 2010

**VIA FEDERAL EXPRESS**

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

**Re: *In re Erickson Retirement Communities, LLC, et al.,***  
**Jointly Administered Case No. 09-37010 / Proofs of Claim of Sovereign Bank**

Dear Sir/Madam:

Enclosed please find *twenty-one (21) separate proofs of claim* (each in its own envelope) for filing in certain of the above-referenced cases. Specifically, the following is a listing of the proofs of claim enclosed in this package for filing:

<u>Envelope No.</u>	<u>Debtor</u>	<u>Case No.</u>	<u>Claimant</u>	<u>Contents</u>
1	Erickson Retirement Communities, LLC	09-37010	Sovereign Bank	One Original Two Copies One CD
2	Erickson Retirement Communities, LLC	09-37010	Sovereign Bank	One Original Two Copies One CD
3	Dallas Campus, LP	09-37012	Sovereign Bank	One Original Two Copies One CD
4	Erickson Retirement Communities, LLC	09-37010	Sovereign Bank	One Original Two Copies One CD



BMC Group, Inc.  
 February 23, 2010  
 Page 2

<u>Envelope No.</u>	<u>Debtor</u>	<u>Case No.</u>	<u>Claimant</u>	<u>Contents</u>
5	Erickson Construction, LLC	09-37016	Sovereign Bank	One Original Two Copies One CD
6	Dallas Campus GP, LLC	09-37013	Sovereign Bank	One Original Two Copies One CD
7	Houston Campus, LP	09-37022	Sovereign Bank	One Original Two Copies
8	Erickson Retirement Communities, LLC	09-37010	Sovereign Bank	One Original Two Copies
9	Erickson Group, LLC	09-37015	Sovereign Bank	One Original Two Copies
10	Erickson Construction, LLC	09-37016	Sovereign Bank	One Original Two Copies
11	Senior Campus Services, LLC	09-37017	Sovereign Bank	One Original Two Copies
12	Littleton Campus, LLC	09-37023	Sovereign Bank, as Lender	One Original Two Copies One CD
13	Erickson Retirement Communities, LLC	09-37010	Sovereign Bank, as Lender	One Original Two Copies One CD
14	Erickson Group, LLC	09-37015	Sovereign Bank, as Lender	One Original Two Copies One CD
15	Erickson Retirement Communities, LLC	09-37010	Sovereign Bank	One Original Two Copies
16	Erickson Construction, LLC	09-37016	Sovereign Bank	One Original Two Copies

BMC Group, Inc.  
 February 23, 2010  
 Page 3

<u>Envelope No.</u>	<u>Debtor</u>	<u>Case No.</u>	<u>Claimant</u>	<u>Contents</u>
17	Erickson Group, LLC	09-37015	Sovereign Bank	One Original Two Copies
18	Concord Campus GP, LLC	09-37021	Sovereign Bank	One Original Two Copies
19	Dallas Campus GP, LLC	09-37013	Sovereign Bank	One Original Two Copies
20	Senior Campus Services, LLC	09-37017	Sovereign Bank	One Original Two Copies
21	Warminster Campus GP, LLC	09-37027	Sovereign Bank	One Original Two Copies

Each envelope contains an original and two copies of a proof of claim and, in some instances, a CD with additional exhibits. *Please return a file-stamped copy of each of the twenty-one proofs of claim in the single, self-addressed envelope included with this package.*

If you have any questions, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

  
 Elliot M. Smith