

**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):

**Wilmington Trust FSB as administrative agent**

Name and address where notices should be sent:

**Wilmington Trust FSB as Agent**  
 c/o Julie J. Becker  
 Corporate Client Services  
 50 South Sixth Street, Suite 1290  
 Minneapolis, Minnesota 55402-1544  
 (612) 217-5628

**Alston & Bird LLP**  
 c/o J. William Boone  
 1201 West Peachtree Street  
 Atlanta, GA 30309-3424  
 (404) 881-7282

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):

**Wilmington Trust FSB as Agent**  
 c/o Julie J. Becker  
 Corporate Client Services  
 50 South Sixth Street, Suite 1290  
 Minneapolis, Minnesota 55402-1544

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 FEB 24 2010  
 BMC GROUP

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: \$190,682,573.00 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.

**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.

**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: \$190,682,573.00 in principal plus applicable interest, fees and expenses

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

**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 definition of "redacted" on reverse side.)

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

If the documents are not available, please explain:

Date: Wilmington Trust FSB, as Administrative Agent

2.19.10 *Julie J. Becker*  
 BY Julie J. Becker, 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**



**Wilmington Trust FSB**  
**50 South Sixth Street, Suite 1290**  
**Minneapolis, Minnesota 55402-1544**

**ATTACHMENT**

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

**A. Description of Claim**

Wilmington Trust FSB files this proof of claim (the "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> on behalf 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, among other things, established a revolving credit facility that allowed Erickson Retirement Communities, LLC (the "Debtor") to periodically borrow money from the Revolver Lenders. As of the Petition Date, the Debtor owed the Revolver Lenders a total amount of \$190,682,573.00<sup>2</sup> in principal plus applicable interest, fees and expenses (the "Prepetition Indebtedness") under the Credit Agreement.<sup>3</sup>

The Credit Agreement required the Debtor to maintain a liquidity level of \$100 million (the "Required Liquidity"). On April 16, 2009, the Revolver Lenders 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 and the Revolver Lenders continued to forbear exercising their

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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> The Agent reserves the right to amend or supplement this Claim with additional amounts due under the Credit Agreement and related documents. As of the Petition Date, in addition to the outstanding principal, applicable interest in the amount of \$2,710,330.98 was due. In addition, as of the Petition Date, professional fees and expenses incurred by the Agent in the amount of \$30,535.91 were due. Furthermore, the Revolver Lenders have also incurred their own respective professional fees and expenses allowable under the Credit Agreement and the Agent asserts such amounts as part of the Claim and reserves all rights to amend the Claim to provide more specific amounts related thereto.

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.

Pursuant to a "Security Agreement" executed by the Debtors, 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 Revolver Lenders were 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;
- (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.

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

## **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 in accordance with the Claim Protocol Order. Furthermore, it is possible individual Revolver Lenders may file a separate proof of claim for their share of interest in the Credit Agreement. The documents on the CD-ROM that is being provided to the Debtor's claim agent also support any such individual claim of the Revolver Lenders.

## **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 the Agent and the Revolver Lenders of their 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 the Agent and Revolver Lenders are or may be entitled, all of which are hereby expressly reserved. The Agent and Revolver Lenders also specifically reserve 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. The Agent and the Revolver Lenders also reserve 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).

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<sup>5</sup> The Agent 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, Erickson Construction, LLC and PNC Bank, National Association;
  - a. Revolving Credit Note among Abington Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - b. Revolving Credit Note among Bank of America, N.A., Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - c. Revolving Credit Note among TD Bank, N.A. as successor in interest to Commerce Bank, N.A., Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - d. Revolving Credit Note among First Commonwealth Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - e. Revolving Credit Note among Hillcrest Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - f. Revolving Credit Note among Manufacturers and Traders Trust Company, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - g. Revolving Credit Note among PNC Bank, National Association, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - h. Revolving Credit Note among Provident Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - i. Revolving Credit Note among Sandy Spring Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - j. Revolving Credit Note among Sovereign Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - k. Revolving Credit Note among Virginia Commerce Bank, Erickson Retirement Communities, LLC and Erickson Construction, LLC dated July 27, 2007.
  - l. Revolving Credit Note among Wilmington Trust FSB, 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.



# ALSTON & BIRD LLP

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

404-881-7000  
Fax: 404-881-7777  
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Tedra N. Ellison

Direct Dial: 404-881-4514

E-mail: tedra.ellison@alston.com

February 23, 2010

**VIA: UPS OVERNIGHT DELIVERY**

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

Re: *In re: Erickson Retirement Communities, LLC*  
Case No. 09-37010

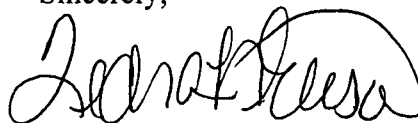
Dear Sir or Madam:

Enclosed please find an original and two (2) copies of the proof of claim, along with a CD that contains supporting documents, to be filed on behalf of Wilmington Trust FSB as administrative agent in the above-referenced Chapter 11 bankruptcy case.

I would appreciate you filing the original proof of claim and the CD containing the supporting documents and returning the "filed" stamped duplicates in the enclosed self-addressed envelope.

Your attention to this matter is greatly appreciated. Should you have any questions, please feel free to contact me at (404) 881-4514.

Sincerely,



Tedra N. Ellison  
Paralegal

TNE:tne  
Enclosures