

UNITED STATES BANKRUPTCY COURT Northern District of Texas (Dallas Division)

PROOF OF CLAIM

Name of Debtor: **Concord Campus, LP**

Case Number: **09-37020**

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):
Westchester Fire Insurance Company, et al. (see Exhibit A)

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

Name and address where notices should be sent:
**c/o Helen Heifets, Esquire
Michael A. Shapiro, Esquire
Bazelon Less & Feldman, 1515 Market Street, Suite 700, Philadelphia, PA 19102**
Telephone number:
215.568.1155

Court Claim Number: _____
(If known)

Filed on: _____

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

RECEIVED

FEB 25 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: \$unliquidated

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.

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 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

2. Basis for Claim: Surety Bond, Indemnity Agreement (see Exhibit A)
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: See Exhibit A

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:

Value of Property: \$ _____ Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: \$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

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

If the documents are not available, please explain:

Date: 2/24/10

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.

**Henry Minissale, ACE USA, Vice President-Claims
P.O Box 5108, Scranton, PA 18505-0525 (215.640.2641)**

Henry Minissale
2/23/10

FOR COURT USE ONLY

Erickson Ret. Comm. LLC



01382

EXHIBIT A TO PROOF OF CLAIM OF
WESTCHESTER FIRE INSURANCE COMPANY, ET AL
In re Concord Campus, LP, Case No. 09-37020
(Bankr. Northern District of Texas)

Creditors Westchester Fire Insurance Company and/or possibly other affiliated members of the ACE group of companies (collectively referred to as "ACE") submit the foregoing Proof of Claim and in support thereof aver as follows:

1. Prior to the Petition Date, ACE issued a construction performance bond No. K07621899 (hereinafter, the "ACE Bond") naming Concord Campus, L.P., c/o Erickson Retirement Communities, LLC ("ERC") as principal and Concord Township, Pennsylvania as the obligee. The ACE Bond pertains to the construction of a retirement community campus in the Concord Township.

2. As a condition for ACE issuing the ACE Bond and other surety bonds, ERC signed an indemnity agreement (the "Indemnity Agreement"), pursuant to which ERC agreed to indemnify ACE for any liability and losses under the surety bonds issued by ACE on behalf of ERC and any of its subsidiary or affiliate.

3. A copy of the Performance Bond and Indemnity Agreement are attached hereto as Exhibits 1 and 2 respectively.

4. On October 19, 2009, ERC and its various subsidiaries and affiliated companies, including Concord Campus, LP, (collectively "Debtors") filed for Chapter 11 bankruptcy in this Court.

5. The precise nature and amount of ACE's claim or claims against the Debtors are still under investigation and therefore are not yet liquidated.

6. In filing this Proof of Claim, ACE is not waiving or prejudicing its rights to (a) require the Debtors to satisfy their obligations under the ACE Bond and the Indemnity

Agreement and/or to (b) deny or refuse coverage based upon the Debtors' failure to satisfy their obligations, all as set forth in the ACE Bond and the Indemnity Agreement.

7. In filing this Proof of Claim, ACE is not consenting to Bankruptcy Court jurisdiction over any coverage issues that may arise under the ACE Bond.

8. In filing this Proof of Claim, ACE is not waiving any applicable right it may have to arbitrate any disputes with the Debtors.

9. To the extent the Debtors provided any collateral, including but not limited to cash and/or letters of credit, to pay for and/or secure their obligations under the ACE Bond or the Indemnity Agreement, it is the position of ACE that such collateral is not property of the Debtors' estate.

10. Some or all of ACE's claims may be entitled to treatment as an administrative claim.

11. ACE also asserts recoupment and set-off rights in any amounts (including but not limited to any return premium and/or premium reimbursement) that ACE might otherwise owe to the Debtors.

12. This Proof of Claim is filed pursuant to the Court's Bar Date Order. ACE consents only to this Court's jurisdiction to determine the amount of ACE's allowed claim against the bankruptcy estate and not for any other purpose, including without limitations, the sufficiency of the collateral held by ACE or any disputes regarding coverage.

13. The filing of this Proof of Claim shall not constitute (a) a waiver of ACE's rights, claims, defenses, and remedies under the ACE Bond or the Indemnity Agreement, whether against the Debtors or any other person or entity, (b) a waiver of ACE's rights of indemnification, reimbursement or subrogation against the Debtors or any creditor of the Debtors

or any other party, (c) a waiver of any past, present or future default under the ACE Bond or the Indemnity Agreement or (d) an admission that any collateral held by ACE is property of the estate.

14. ACE reserves the right to amend this Proof of Claim.

PERFORMANCE BOND
Maris Grove – Neighborhood 2

KNOW ALL MEN BY THESE PRESENTS, That We, Concord Campus, L.P., a Maryland limited partnership, c/o Erickson Retirement Communities, LLC, a Maryland limited liability company, authorized to do business in the Commonwealth of Pennsylvania, having an office and place of business at 701 Maiden Choice Lane, Baltimore, MD 21228, as Principal and Westchester Fire Insurance Company having an office and place of business at 436 Walnut St., Philadelphia, PA 19106, as Surety, are held and firmly bound unto Concord Township (the "Obligee") in the full and just sum of Two Million Nine Hundred Ninety Six Thousand Nine Hundred Ninety Seven and 77/100 DOLLARS (\$2,996,997.77), lawful money of the United States for the payment of which sum the said Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Concord Campus, L.P., has entered into a Development Agreement with Concord Township, dated _____ ("the agreement") for the work described and plans prepared by Bohler Engineering, Inc. , a copy of which is attached hereto as Exhibit "A", and is to be read and considered as a part hereof; and

WHEREAS, the Agreement requires Concord Campus, L.P., to furnish to the Concord Township, a Performance Bond to be not less than Two Million Nine Hundred Ninety Six Thousand Nine Hundred Ninety Seven and 77/100 DOLLARS (\$2,996,997.77), to guarantee the completion of all onsite improvements (the "Improvements") to be constructed by Concord Campus L.P., as set forth in the Agreement.

Whenever the Principal shall be, and is declared by the Obligee to be in default under the Agreement, within twenty (20) days after receipt of notice of this default, the Surety shall promptly and at the Surety's expense take one of the following actions:

- Arrange for the Principal, with consent of the Obligee, to perform and complete the Improvements; or
- Undertake to perform and complete the Improvements themselves, through their agents or through independent contractors; or
- Obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Improvements; arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence to be secured with performance bond executed by a qualified surety equivalent to the bond issued on the Improvements, and pay to the Obligee the amount of damages incurred by the Obligee resulting from the Principal's default; or
- Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 - After investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee; or
 - Deny liability in whole or in part and notify the Obligee citing reasons therefore.

If the Surety does not proceed as outlined above with reasonable promptness the Surety shall be deemed to be in default on this Performance Bond fifteen (15) days after receipt of an

additional written notice from the Obligee to the Surety demanding that the Surety perform its obligations under this Performance Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If the Surety proceeds as provided above, and Obligee refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Obligee shall be entitled to enforce any remedy available to the Obligee.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall in all respects comply with the conditions set forth in aforesaid agreement, this obligation is to be null and void; otherwise to remain in full force and effect.

No party other than the Obligee shall have any rights hereunder as against the Surety.

The aggregate liability of the Surety on the bond obligation shall not exceed the sum thereof for any cause or reason whatsoever.

SIGNED, SEALED AND DATED THIS 18th day of April, 2007.

Concord Campus, L.P. (Principal)
By: Erickson Retirement Communities, LLC, member

By: _____

Witness:

Westchester Fire Insurance Company

By: _____
Steven T. Johnson
Attorney-in-Fact

Agreement of Indemnity

(Commercial Surety)

ACE-USA
ACE Surety

- o Insurance Company of North America
- o Pacific Employers Insurance Company
- o Westchester Fire Insurance Company
- o Indemnity Insurance Company of North America

Whereas the undersigned (hereinafter individually and collectively called "INDEMNITOR") desires one or more of the companies named above, as the case may be, (hereinafter called "SURETY") to execute bonds including undertakings and other obligations, including any bond or bonds predating this Agreement, (hereinafter referred to as "Bonds") on its behalf and on behalf of any of its present or future, directly or indirectly owned or controlled subsidiaries or affiliates, whether alone or in joint venture with others whether or not named herein, and any corporation, partnership or person upon the written request of any of the undersigned (collectively hereinafter referred to as "Principals") or to renew or continue and to refrain from canceling the Bonds, as the case may be, and

NOW THEREFORE, in consideration of the SURETY executing the Bonds, the INDEMNITOR agrees that:

1. **PREMIUMS & COLLATERAL FOR SURETYSHIP-** The INDEMNITOR shall pay or cause to be paid to the SURETY both the agreed premium and, on request of the surety procure the discharge of Surety from any Bonds and all liability by reason thereof. If such discharge is unattainable, the INDEMNITOR will, if requested by Surety, either deposit collateral with Surety, acceptable to Surety, sufficient to cover all exposure under such bond or bonds, or make provisions acceptable to Surety for the funding of the bonded obligation(s). The Surety's election not to demand collateral at the inception of the suretyship obligation shall not operate as a waiver of the right to demand and receive such collateral at any time before liability has terminated under any Bonds.
2. **INDEMNITY & COLLATERAL FOR CLAIM-** The INDEMNITOR shall indemnify and save harmless the SURETY from and against any and all liability, claim, demand, loss, damages, expense, cost, attorney's fees and expenses, including without limitation, fees and disbursements of counsel incurred by the SURETY in any action or proceeding between the INDEMNITOR and the SURETY, or between the SURETY and any third party, which SURETY shall at any time incur by reason of its execution of any Bond or its payment of or its liability to pay any claim, irrespective of whether the claim is made against the SURETY as a joint or several obligor and whether the INDEMNITOR is then liable to make such payment, and to place the SURETY in funds to meet all of its liability under any Bond, promptly upon request and before the SURETY may be required to make any payment thereunder; and copy of the claim, demand, voucher or other evidence of the payment by the SURETY of any liability, claim, demand, loss, damage, expense, cost and attorney's fees, shall be prima facie evidence of the fact and amount of INDEMNITOR'S liability to the SURETY under this Agreement. Any demand upon the SURETY by the Obligee shall be sufficient to conclude that a liability exists and the INDEMNITOR shall then place the SURETY with sufficient funds in a form and amount deemed acceptable in the SURETY'S sole discretion, as collateral security to cover the liability.
3. **OTHER INDEMNITY-** The INDEMNITOR shall continue to remain bound under the terms of this Agreement even though the SURETY may have heretofore or hereafter, with or without notice to or knowledge of the Principals and the INDEMNITOR, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the principals or INDEMNITOR or others. The rights, powers and remedies given the SURETY under this Agreement shall be and are in addition to and not in lieu of, any and all other rights, powers and remedies which the SURETY may have or acquire against the Principals and INDEMNITOR or others, whether by the terms of any agreement or by operation of law or otherwise.

IN WITNESS WHEREOF, INDEMNITOR has signed this Agreement this 4th day of May, 20 07.

(Full Name & Address of INDEMNITOR)

(Full Name & Address of INDEMNITOR)

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

By: [Signature] (Seal)
Name: Jeffrey A. Jacobson
Title: Executive Vice President

By: _____ (Seal)
Name: _____
Title: _____

By: _____ (Seal)
Name: _____
Title: _____

By: _____ (Seal)
Name: _____
Title: _____

(Either attach copies of resolutions of Boards of Directors or execute notarial acknowledgment.)

**FOR NOTARIAL ACKNOWLEDGMENT OF PRINCIPAL/INDEMNITOR'S
CORPORATE ACKNOWLEDGMENT**

State of Maryland
County of Baltimore ss:

On this 4th day of May, 20 07, before me personally came Jeffrey A. Jacobson to me known, who being by me duly sworn, deposed and says that he he is the Treasurer of Erickson Retirement Communities, LLC, the corporation described in and which executed the foregoing Agreement; that he knows the seal of the said corporation; that the seal affixed to the said Agreement is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he he signed (her)(his) name thereto by like order.

Lois M. Shaw
(Signature of Notary Public)
My commission expires _____

**LOIS M. SHAW
NOTARY PUBLIC STATE OF MARYLAND
My Comm. Exp. October 1, 2008**

BLF Bazelon Less & Feldman, P.C.

1515 Market Street Suite 700 Philadelphia Pennsylvania 19102-1907 215.568.1155 215.568.9319 fax www.bazless.com

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February 24, 2010

Michael A. Shapiro
mshapiro@bazless.com

VIA FEDERAL EXPRESS

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

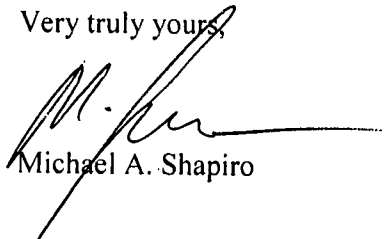
Re: In re Erickson Retirement Communities, LLC, Bankr. N.D.Tex., No. 09-37010
In re Concord Campus, LP, Bankr. N.D.Tex., No. 09-37020
BL&F File No.: 3732-185

Dear Madam/Sir:

Enclosed for filing, please find original Proofs of Claims on behalf of Westchester Fire Insurance Co., et al. the above listed matters.

A copy of the first page of each Proof of Claim is enclosed to be time-stamped and returned to me in the enclosed self-addressed stamped envelope.

Very truly yours,



Michael A. Shapiro

Enclosure