


B 10 (Official Form 10) (12/08)

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): Capmark Bank		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Capmark Bank c/o Daniel S. Bleck, Esq. Mintz Levin, One Financial Center, Boston, MA 02111		Court Claim Number: _____ (If known)
Telephone number: (617) 542-6000		Filed on: _____
Name and address where payment should be sent (if different from above): Capmark Bank c/o Stephen Power, Vice President - Senior Asset Manager 1600 Tysons Boulevard, Suite 1100, McLean, VA 22102		<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.
Telephone number: (703) 749-4202		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>10,322,471.81</u>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(). 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.
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.		
2. Basis for Claim: <u>Guaranty; see Addendum</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>N/A</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: <u>See Attached Addendum</u> 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: <u>See Attached Addendum</u>		
Date: <u>2/24/10</u> Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. R. Stephen Power, Vice President - Senior Asset Manager		FOR COURT USE ONLY Erickson Ret. Comm. LLC  01560

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.

Addendum to Proof of Claim of:
Capmark Bank, as Lender in
In re Erickson Retirement Communities, et al.
Chapter 11 Case No. 09-37010 (Jointly Administered)
(Erickson Retirement Communities, LLC)

Introduction

Capmark Bank, a Utah industrial bank ("Lender") files its proof of claim (the "Claim") against Erickson Retirement Communities, LLC ("ERC" or "Debtor"), arising out of and relating to that certain Promissory Note given by Westminster Campus, LLC ("Westminster"), and guaranteed by ERC. Westminster Campus, LLC is not a debtor in these jointly administered chapter 11 bankruptcy cases. This claim is filed against ERC, as guarantor. The Lender reserves all of its rights to pursue all claims and causes of action against non-debtor Westminster.

As of October 19, 2009 (the "Petition Date"), the Debtor was obligated to the Lender in the outstanding amount of not less than \$10,322,471.81, plus accruing post petition interest, costs and expenses, arising out of and relating to a loan facility (the "Loan") that the Lender extended to Westminster for the acquisition of the fee simple estate in certain real property located in Adams County, Colorado (the "Property").

Summary of Documents Supporting Lender's Claim

This recitation of Loan documents herein is to provide the Court and parties in interest with a summary of the relevant Loan documents relating to Westminster. The documents referenced and described herein include the primary agreements between the parties; however, not all documents relating to the financing of Westminster's acquisition of the Property are described or otherwise referenced herein. Failure to describe or otherwise reference a document or ancillary document thereto shall not be deemed a waiver of any right, claim or interest by the Lender under such documents or otherwise. All of the loan documents referenced herein, together with all of the other agreements between the parties relating to the Lender's financing the development of the Wind Crest Campus shall be referred to collectively as the "Loan Documents." Copies of all Loan Documents summarized herein have been filed with this Claim as "PDF" file documents on a CD supplied to the Claims Agent pursuant to the Claims Protocol Order. Copies of the Exhibits shall be made available upon request to Adrienne Walker, Esq., Mintz Levin Cohn Ferris Glosky and Popeo, PC., awalker@mintz.com or (617) 348-1612.

1. **The Loan.**

The Lender gave a loan to the Debtor for the acquisition of the Property in the original principal amount of \$9,724,009.00. The Loan was evidenced by a Promissory Note dated January 11, 2007 given by Westminster and payable to the Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Note"). A true and accurate copy of the Note is filed with this Claim as **Exhibit A**.

2. **Guaranty and Subordination.**

Pursuant to that certain Payment and Performance Guaranty, dated January 11, 2007, executed by ERC the ("Guarantor") for the benefit of the Lender (as amended, restated, supplemented or otherwise modified from time to time, the "Guaranty"). The Guarantor unconditionally guaranteed the Guaranty Obligations (as defined in the Guaranty), including but not limited to (i) all amounts due with respect to the Loan; (ii) the payment of all expenses and charges relating to the Loan; (iii) the performance of all obligations of Westminster under the Note; and (iv) Subordination of Guarantor's claims against Westminster until such time as the Guaranty Obligations are paid in full. A true and accurate copy of the Guaranty is filed with this Claim as **Exhibit B**.

3. **Security and Collateral.**

The Note was secured by, *inter alia*, a first-priority lien against substantially all assets of Westminster including, but not limited to Westminster's right, title and interest in the Property. The security interests of the Lender arise under the terms of a variety of collateral agreements, guarantees, instruments and other documents executed in connection with the Loan (collectively, the "Collateral Documents"), including but not limited to: (i) Deed of Trust, Assignment of Rents and Lease and Security Agreement; and (ii) Membership Interest Pledge Agreement. The Lender perfected its right, title and interest in all of the assets of the Debtor relating to the Property as provided in the Collateral Documents:

Summary descriptions of aforementioned Collateral Documents are as follows:

- A. **Deed of Trust.** Pursuant to certain Deed of Trust, Assignment of Rents and Leases and Security Agreement, dated as of January 11, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "DOT"), given by Westminster, for the benefit of the Lender, Westminster secured its obligation under the Loan Documents by a first-priority security interest in and continuing lien on substantially all of Westminster's assets, including, *inter alia*, all of Westminster's real property, equipment, fixtures, receivables and receivable records, and all proceeds, products, accessions, additions to, substitutions for and replacements of or in respect of any of the foregoing, in each case whether then owned or existing or thereafter acquired. In addition, Westminster assigned to Lender all Rents and Leases, each as defined in DOT). A true and accurate copy of the DOT is filed with this Claim as **Exhibit C**.
- B. **Member Interest Pledge.** Pursuant to that certain Member Interest Pledge Agreement, dated as of January 11, 2007, entered into by and between the Lender and ERC (as amended, restated, supplemented or otherwise modified from time to time, the "ERC Member Interest Pledge"), ERC granted to the Lender, to secure ERC's obligations under the Guaranty, a first-priority security interest in and continuing lien on ERC's membership interest in Westminster, whether then owned or thereafter acquired, all present and future rights of ERC to receive any income, cash profits, proceeds, or distributions arising therefrom, together with all proceeds, both cash and non-cash, arising out of or in respect of the foregoing, all

substitutions, additions, interest, dividends and other distributions arising out of or in respect thereof, and all books, records, papers and general intangibles related thereto. A true and accurate copy of the ERC Member Interest Pledge is filed with this Claim as **Exhibit D**.

Amount and Priority of Lender's Claim

Prior to the Petition Date, Westminster defaulted on its obligations to the Lender under the terms of the Loan Documents. As of the Petition Date, the amounts owed to the Lender by the Debtor under the Loan Documents was not less than the following:

Capmark Bank

Principal:	\$9,724,009.00
Interest:	\$489,982.01
Late Charges:	\$2,903.71
Legal Counsel expenses (counsel for Lender):	\$8,000.00
Professional Fees (non-legal):	\$97,550.09
<hr/>	
Total (as of Petition Date):	<u>\$10,322,471.81</u>

Lender additionally asserts contingent and/or unliquidated claims against the Debtor for any damages or losses that Lender may suffer as a result of Westminster's breach of its obligations relating to any of the Loan Documents.

Lender asserts the right to (a) recover post-petition amounts due under the Loan Documents, including ongoing costs of collection (including attorney's fees), principal, interest, premium, fees, costs and charges, which amounts may be unliquidated in whole or in part and continue to accrue, and (b) assert any additional claims including unsecured claims, administrative expense claims, priority and/or super-priority claims pursuant to sections 503 and 507 of the Bankruptcy Code and nothing contained herein shall be deemed a waiver or release of such claims or rights.

Reservations

Lender expressly reserves its right to modify, amend or supplement this Claim at any time and in any respect. This Claim is made without prejudice to Lender filing additional claims with respect to any other indebtedness or liability of ERC.

By executing and filing this Claim, Lender does not waive any right with respect to any security or any other claim it has or may have against Westminster or any other person or entity. The filing of this Claim is not intended and should not be construed to be an election of remedies or waiver of any past, present or future defaults or events of default under the Loan Documents.

Lender submits itself to the jurisdiction of the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") and, to the extent the Bankruptcy Court may constitutionally exercise the powers of the District Court for the Northern District of Texas, to the Bankruptcy Court solely for the purpose of the resolution of the claims set forth herein. Lender objects to the exercise of jurisdiction by the Bankruptcy Court over Lender or over any cases or controversies concerning Lender for any other purpose. Lender demands trial by jury on all issues so triable.

Northern District of Texas Claims Register

09-37010-sgj11 Erickson Retirement Communities, LLC

Judge: Stacey G. Jernigan **Chapter:** 11

Office: Dallas

Last Date to file claims: 02/28/2010

Trustee:

Last Date to file (Govt):

Creditor: (13035219) Capmark Bank c/o Daniel S. Bleck Minz Levin One Financial Center Boston, MA 02111	Claim No: 35 <i>Original Filed</i> Date: 02/26/2010 <i>Original Entered</i> Date: 02/26/2010	Status: <i>Filed by:</i> CR <i>Entered by:</i> Blacker, Monica <i>Modified:</i>
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Secured claimed: \$10322471.81

Total claimed: \$10322471.81

History:

Details 35-1 02/26/2010 Claim #35 filed by Capmark Bank, total amount claimed: \$10322471.81
 (Blacker, Monica)

Description: (35-1) Guaranty

Remarks:

Claims Register Summary

Case Name: Erickson Retirement Communities, LLC

Case Number: 09-37010-sgj11

Chapter: 11

Date Filed: 10/19/2009

Total Number Of Claims: 1

	Total Amount Claimed	Total Amount Allowed
Unsecured		
Secured	\$10322471.81	
Priority		
Unknown		
Administrative		
Total	\$10322471.81	\$0.00