

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): Gary Applebaum

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

Name and address where notices should be sent:

Applebaum, Gary
42 Latimore Way
Owings Mills, MD 21117

FILED
FEB 25 2010

Court Claim Number: (If known)

Telephone number: (410) 627-8859

TAWANA C. MARSHALL, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

Filed on:

RECEIVED

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

MAR 02 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.

Telephone number:

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

1. Amount of Claim as of Date Case Filed: \$ 984,171.67

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.

2. Basis for Claim: Growth Participation Plan (See instruction #2 on reverse side.)

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: 0572

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).

3a. Debtor may have scheduled account as: (See instruction #3a on reverse side.)

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

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

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: \$

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).

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

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

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.)

Amount entitled to priority:

\$

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

If the documents are not available, please explain:

\*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: 02/22/2010

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.

Gary Applebaum

FOR COURT USE ONLY

Erickson Ret. Comm. LLC



01726

**SECOND AMENDMENT TO  
SEPARATION AGREEMENT AND RELEASE**

THIS AMENDMENT TO SEPARATION AGREEMENT AND RELEASE (the "Agreement") is entered into effective the 27<sup>th</sup> day of January, 2009 between Erickson Retirement Communities, LLC ("Company"), and Gary E. Applebaum, M.D. ("Executive").

Recitals

R.1. Company and Executive entered into a Separation Agreement and Release effective September 2, 2005 (the "Separation Agreement"), as thereafter amended, which set forth certain terms and conditions of winding up Executive's employment, including payments to be made by Company for redemption of Executive's Growth Participation Plan ("GPP") Units and Common B shares.

R.2. Due to a material change in financial condition, Erickson needs to re-structure payments to Executive and Executive agrees to the re-structured payments. The parties hereto desire to memorialize the payments due to Executive with respect to the remaining redemptions.

R.3. Capitalized terms used herein and not otherwise defined in this Amendment shall have the meaning given such term in the original Separation Agreement, unless the context clearly indicates otherwise.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Executive acknowledges that Erickson has already redeemed and made the payments for the GPP Units and Common B shares indicated in Exhibit A, attached and incorporated hereto, and that Erickson is thereby released from liability for such payments.

2. The parties agree that Erickson owes and shall pay to Executive the outstanding balance also listed on Exhibit A, attached and incorporated hereto, for the remaining GPP Units and Common B shares as indicated therein. Erickson shall make such payments as soon as practicable per the terms of the GPP Plan. Erickson agrees that remaining payments to Executive shall be made with priority, that is to be paid in full, prior to payments due to other GPP participants, and not pari passu to these payments. Payments that were deferred shall bear simple interest from the date such payment would otherwise have been due to the date when such payment is actually made, at the rate of 9% per annum. Payments made on account of redeemed GPP Units or shares shall be applied first to accrued interest, and then to the outstanding value of unpaid Common B shares, and then to the outstanding value of unpaid GPP Units.

3. The parties acknowledge that redemptions of Executive's GPP Units and Common B shares remain subject to the terms of the Growth Participation Plan. Notwithstanding anything herein to the contrary, no payment shall be made under this Amendment that would cause Erickson, its members, subsidiaries, or affiliates to violate any banking agreement or loan or other financial covenant or cause default of any senior indebtedness of Erickson, its members, subsidiaries or affiliates, regardless of when such agreement, covenant or indebtedness was created, incurred or assumed. Any payment under this Amendment that would cause such violation or default shall be deferred until, in the sole discretion of the GPP Administrator, such payment shall no longer cause any such violation or default.

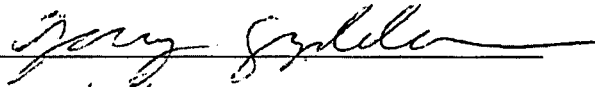
4. It is further understood and agreed that no promise, inducement, or agreement not herein expressed has been made, and further that this Amendment contains the entire agreement of the parties. Executive further states that Executive has carefully read this Amendment, knows the contents, and understands the same, and signs this agreement as Executive's voluntary act and deed.

5. This Amendment, together with the Separation Agreement and the first Amendment to the Separation Agreement, embodies the entire Agreement between Erickson and Executive concerning the redemption of the GPP Units and the Common B shares and may only be modified by a writing signed by all the parties hereto.

WITNESS:

\_\_\_\_\_

EXECUTIVE: Gary Applebaum

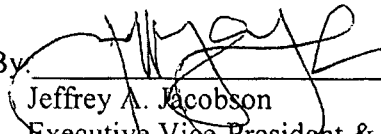
\_\_\_\_\_ 

Date: 2/17/09

WITNESS:

\_\_\_\_\_

ERICKSON RETIREMENT COMMUNITIES, LLC

By:  \_\_\_\_\_  
Jeffrey A. Jacobson  
Executive Vice-President & CFO

Date: \_\_\_\_\_

## EXHIBIT A

Shares redeemed and paid to Executive to date:

- Outstanding Balance due to Executive on 12/30/08 - \$1,626,909.79 total
- Paid on 12/31/08: \$218,000.00 between Executive's two Irrevocable Gift Trusts, leaving a balance of 0
- Paid on 12/31/08: \$500,000.00 to Executive, leaving a balance of \$ 902,909.79 due to Executive