

Kenric D. Kattner  
State Bar No. 11108400  
Kourtney Lyda  
State Bar No. 24013330  
**HAYNES AND BOONE, LLP**  
1221 McKinney Street, Suite 2100  
Houston, TX 77010  
Telephone: 713.547.2000  
Facsimile: 713.547.2600  
Email: kenric.kattner@haynesboone.com  
Email: kourtney.lyda@haynesboone.com

Ian T. Peck  
State Bar No. 24013306  
David Staab  
State Bar No. 24093194  
**HAYNES AND BOONE, LLP**  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219  
Telephone: 214.651.5000  
Facsimile: 214.651.5940  
Email: ian.peck@haynesboone.com  
Email: david.staab@haynesboone.com

**PROPOSED ATTORNEYS FOR DEBTORS**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re** § **Chapter 11**  
§  
**ERICKSON INCORPORATED, et al.,<sup>1</sup>** § **Case No. 16-34393-hdh**  
§  
**Debtors.** § **(Joint Administration Requested)**  
§

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS AUTHORIZING DEBTORS TO MAINTAIN AND HONOR PREPETITION  
WARRANTY PROGRAMS PURSUANT TO SECTIONS 363(b) AND 105(a) OF THE  
BANKRUPTCY CODE**

Erickson Incorporated and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) file this *Debtors’ Emergency Motion for Entry of Interim and Final Orders Authorizing Debtors to Maintain and Honor Prepetition Warranty Programs Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code* (this “**Motion**”), and respectfully represent:

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Erickson Incorporated (7561); EAC Acquisition Corporation (3733); Erickson Helicopters, Inc. (5052); Erickson Transport, Inc. (9162); Evergreen Helicopters International, Inc. (1311); Evergreen Equity, Inc. (9209); and Evergreen Unmanned Systems, Inc. (3961). The location of the Debtors’ service address is 5550 SW Macadam Avenue, Suite 200, Portland, OR 97239.



### Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### Background

2. The Debtors, together with their non-debtor affiliates (collectively, “**Erickson**”), are a vertically-integrated manufacturer and operator of the powerful heavy-lift Erickson S-64 Aircrane helicopter (the “**Aircrane**”), and are a leading global provider of aviation services. Erickson currently possesses a diverse fleet of 69 rotary-wing and fixed-wing aircraft that support a variety of government and civil customers worldwide. These customers rely on Erickson for a broad range of aerial services, including critical supply and logistics for deployed military forces, humanitarian relief, firefighting, timber harvesting, infrastructure construction, and crewing.

3. Included among Erickson’s fleet are 20 Aircranes, for which Erickson owns the Type and Production Certificates. Erickson manufactures the Aircranes and related components for sale to government and commercial customers. Erickson also provides aftermarket support and maintenance, repair, and overhaul services for the Aircranes and other aircraft.

4. To facilitate a further restructuring of the Debtors’ businesses, on the date hereof (the “**Petition Date**”), each of the Debtors commenced cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of the Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11

Cases. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases, and no committees have been appointed or designated.

5. Additional information about Erickson's businesses, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases can be found in the *Declaration of David Lancelot in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**Lancelot Declaration**"), filed concurrently herewith.

#### **Relief Requested**

6. The Debtors request, pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "**Bankruptcy Code**"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), authority to maintain and honor the prepetition Warranty Program (as defined below) and obligations thereunder.

#### **Basis for Relief Requested**

##### **A. Erickson's MRO Business**

7. Erickson's operations include providing helicopter services on behalf of customers and operating a helicopter maintenance, repair, and overhaul ("**MRO**") business that services both its own helicopter fleet as well as third party customers' fleets. Erickson has decades of experience as an operator, an original equipment manufacturer and service provider of several legacy helicopters, including the S-64/CH54 Aircrane. Erickson's MRO business segment provides support for S-64/CH54 Aircranes, Bell 214 B/ST, SA330 J Puma, S-61/SH2, Bell 212, and numerous other platforms. As part of their MRO service, Erickson provides dedicated and innovative support, sustaining and extending aircraft performance, while ensuring the safety and reliability of the aircraft.

**B. The Warranty Program**

8. As part of Erickson's MRO business, Erickson issues standard terms and conditions on the parts and services that they provide, including providing certain warranties to their customers (the "**Warranty Program**"). The standard terms and conditions of the Warranty Program are set forth in Erickson's Standard Conditions of Sale Parts & Services, attached hereto as **Exhibit A** (the "**Standard Conditions**").

9. It is customary and expected in the MRO industry that customers obtain a warranty to assure the value and quality of services provided. The damage to the Debtors' reputation in the event that the Debtors are not able to honor and maintain the Warranty Program would be significant and perhaps permanent. It is, therefore, critical to the ongoing success of the Debtors' operations that the Debtors honor and maintain the Warranty Program.

10. In 2015, the Debtors' customers made claims under the Warranty Program in the approximate amount of \$50,000. As of the Petition Date, the Debtors do not have any open warranty claims under the Warranty Program. Pursuant to this Motion, the Debtors seek authority, but not direction, to maintain and honor all prepetition and postpetition Warranty Program obligations in the ordinary course of business.

**C. The Court has Authority to Grant the Requested Relief**

11. The Court may grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code. Section 363(b) provides, in pertinent part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts have long recognized that, where a sound business justification can be articulated, payment of prepetition claims under section 363(b) of the Bankruptcy Code is permitted. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr.S.D.N.Y. 1989) (holding that section 363(b) gives the court "broad flexibility" to

authorize a debtor to expend funds on account of prepetition claims if there is “some business justification” to justify payment); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (use of assets outside the ordinary course of business permitted if “sound business purpose justifies such actions”); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct).

12. The Court also may grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Courts generally recognize that payments to prepetition creditors are appropriate pursuant to section 105(a) of the Bankruptcy Code under the “doctrine of necessity” or the “necessity of payment” rule, where such payments are necessary to the continued operation of the debtor’s business. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 487 (Bankr. N.D. Tex. 2002) (“[I]t is only logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”); *see also In re Matter of Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to the continued operation of the debtor); *In re Friedman’s, Inc.*, 2011 WL 5975283, at \*3 (Bankr. D. Del. Nov. 30, 2011) (“[M]ost courts will allow payments [for prepetition claims] under the ‘doctrine of necessity,’ if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor’s business”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) “provides a

statutory basis for the payment of pre-petition claims” under the doctrine of necessity and noting that the Supreme Court accepts the authority of the bankruptcy court “to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.”). Indeed, a bankruptcy court’s use of its equitable powers under the “doctrine of necessity” to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. The United States Supreme Court first articulated the equitable common law principle commonly referred to as the “doctrine of necessity” over 130 years ago in *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Courts today continue to recognize that the rationale for the “doctrine of necessity” is consistent with the “paramount goal” of chapter 11: “facilitating the continued operation and rehabilitation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176.

13. In addition, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of creditors . . . .” *In re CoServ*, 273 B.R. at 497. Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.*; see also *In re Mirant Corp.*, 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003) (allowing debtors to pay claims “reasonably believe[d]” to be authorized under the *CoServ* test or whose payment was necessary “in the exercise of their business judgment . . . in order for [the d]ebtors to continue their respective businesses”). This Court in *CoServ* noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *In re CoServ*, 273

B.R. at 497. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498. For the reasons set forth in the Lancelot Declaration, maintaining and honoring the prepetition Warranty Program in this instance meets each element of the *CoServ* test.

14. Accordingly, pursuant to section 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, this Court is empowered to grant the relief requested herein and such relief is necessary, in the Debtors' discretion and business judgment, in order to prevent damage to the Debtors' businesses.

15. The Debtors submit that there is a sound business justification to maintain and honor the Warranty Program, and doing so is necessary to the ongoing success of the Debtors' operations. Without the ability to continue to honor the Warranty Program in the ordinary course of business, the Debtors' Customers may simply take their business elsewhere. In this scenario, the Debtors' market share and revenue stream would be at risk. The Debtors' ability to maintain valuable customer relationships and revenue will inure to the benefit of all of the Debtors' stakeholders by maximizing the value of the Debtors' assets and their estates.

16. Courts in this and other districts specifically have authorized debtors to honor prepetition obligations arising from customer arrangements. *See e.g., In re Intermediate Holdings, LLC*, Case No. 15-31858 (HDH) (Bankr. N.D. Tex. May 6, 2015) (Docket No. 53); *In re ALCO Stores, Inc.*, 14-34941 (SGJ) (Bankr. N.D. Tex. Oct. 16, 2014) (Docket No. 65); *In re Idearc, Inc.*, Case No. 09-31828 (BJH) (Bankr. N.D. Tex. Apr. 1, 2009) (Docket No. 42); *In re*

*Pilgrim's Pride Corp.*, Case No. 08-45664 (DML) (Bankr. N.D. Tex. Dec. 3, 2008) (Docket No. 80); *In re Keys Fitness Prods., L.P.*, Case No. 08-31790 (HDH) (Bankr. N.D. Tex. Apr. 18, 2008) (Docket No. 37); *In re Bombay Co., Inc.*, Case No. 07-44084 (DML) (Bankr. N.D. Tex. Oct. 17, 2007) (Docket No. 404); *In re AWI Delaware, Inc.*, Case No. 14-12092 (KJC) (Bankr. D. Del. Sept. 10, 2014) (Docket No. 54); *In re Bruno's, Inc.*, Case No. 09-00634 (BGC) (Bankr. N.D. Ala. Feb. 17, 2009) (Docket No. 144); *In re Sbarro LLC*, Case No. 14-10557 (MG) (Bankr. S.D.N.Y. Apr. 7, 2014) (Docket No. 129).

**C. Banks Should be Authorized to Receive, Process, Honor, and Pay Checks Issued and Transfers Requested to Pay the Warranty Program**

18. The Debtors further request that the Court authorize the Debtors' banks which hold the Debtors' funds and process payments (the "**Banks**") to the extent of cleared and sufficient funds on deposit, to receive, process, honor, and pay any and all checks issued or to be issued and electronic funds transfers requested or to be requested by the Debtors relating to the Warranty Program, to the extent that the Debtors direct the Banks to honor such prepetition checks or items sought to be honored with such prepetition check numbers<sup>2</sup>. The Debtors also seek authority, but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the Warranty Program dishonored or rejected as a result of the commencement of the Chapter 11 Cases, to the extent of cleared and sufficient funds on deposit.

---

<sup>2</sup> If the Banks honor a prepetition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtors to honor such prepetition check or item, (b) in good faith belief that the Bankruptcy Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake, the Banks shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of any order entered in connection with this Motion.



**Request for Waiver of Stay**

19. To the extent that the relief sought in this Motion constitutes a use of property under Bankruptcy Code Section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their business and preserve the value of the estates.

**The Debtors' Reservation of Rights**

20. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim or an approval or assumption of any agreement, agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Notice**

21. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.<sup>3</sup>; (iii) Randall Klein, Goldberg Kohn, Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 60603-5792, lead counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (iv) David Weitman, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201, local counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent

---

<sup>3</sup> Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

and Existing First Lien Agent; (v) Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020; (vi) Edward M. Fox, Esq., Seyfarth Shaw LLP, 620 8th Avenue, New York, NY 10018, counsel to Wilmington Trust, National Association, as indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020; (vii) the Securities and Exchange Commission; and (viii) the Internal Revenue Service. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE, for the reasons set forth herein and the Lancelot Declaration, the Debtors respectfully request entry of the Interim Order and Final Order granting the relief requested herein and such other relief as may be appropriate under the circumstances.

Dated: November 9, 2016

Respectfully submitted,

**HAYNES AND BOONE, LLP**

By: /s/ Kenric D. Kattner

Kenric D. Kattner

State Bar No. 11108400

Kourtney Lyda

State Bar No. 24013330

1221 McKinney Street, Suite 2100

Houston, TX 77010

Telephone: 713.547.2000

Facsimile: 713.547.2600

Email: kenric.kattner@haynesboone.com

Email: kourtney.lyda@haynesboone.com

and

Ian T. Peck

State Bar No. 24013306

David Staab

State Bar No. 24093194

2323 Victory Avenue, Suite 700

Dallas, TX 75219

Telephone: 214.651.5000

Facsimile: 214.651.5940

Email: ian.peck@haynesboone.com

Email: david.staab@haynesboone.com

**PROPOSED ATTORNEYS FOR DEBTOR**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on or before November 8, 2016, the undersigned counsel for the Debtors conferred with and received comments to this Motion from (i) Randall Klein, Goldberg Kohn, Ltd., lead counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent, (ii) Scott L. Alberino and Brad M. Kahn, Akin Gump Strauss Hauer & Feld LLP, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020, and (iii) Edward M. Fox, Esq., Seyfarth Shaw LLP, counsel to Wilmington Trust, National Association, as indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020.

I hereby also certify that on November 8, 2016, the undersigned counsel for the Debtors Conferred regarding this Motion with the Office of the United States Trustee for the Northern District of Texas, which has not indicated whether it consents or objects to this Motion.

*/s/ Ian T. Peck*

\_\_\_\_\_  
Ian T. Peck

**EXHIBIT A**

**STANDARD CONDITIONS OF SALE**

**PARTS & SERVICES**

Erickson Incorporated & Affiliates (“Erickson”)

**1. PRICE and PAYMENT:**

- A. All prices are EXW – Ex Works Central Point, Oregon, and do not include transportation, insurance, taxes, duties, or other similar charges, all of which shall be the responsibility of Customer.
- B. Prices as quoted are valid until expired under the terms of the quote. Thereafter prices are subject to change without notice.
- C. At time of sale (prior to shipment), Customer must make arrangements for pre-payment, credit card payment or COD. Alternatively, upon approval of credit, all balances shall be payable net thirty (30) days of invoice date. ALL sums past due shall bear interest at one and one-half percent (1.5%) per month.

- a) Conditions resulting from normal wear and tear.
- b) Conditions resulting from improper storage, use or other negligent acts or omissions of Customer.
- c) Conditions resulting from failure to properly install, service, and/or maintain the part and/or component.
- d) Conditions resulting from the use of Customer supplied parts.
- e) Conditions resulting from corrosion.
- f) Conditions resulting from accident or incident or any other sources external to the part at issue, including but not limited to foreign object damage (FOD).

**2. DELIVERY and INSPECTION:**

- A. Unless otherwise agreed, parts or components delivered will be packed for shipment in accordance with ERICKSON's standard packing procedures for such products. If, upon receipt of the parts by Customer, the parts appear not to conform to the order, Customer shall, within ten (10) days after receipt thereof, notify ERICKSON of such condition and afford ERICKSON a reasonable opportunity to inspect the products and make any appropriate adjustment or replacement, at ERICKSON's sole discretion.
- B. ERICKSON is authorized to advance the delivery date, or complete performance of any order, prior to the time set forth in such order. Unless otherwise agreed, ERICKSON shall have the right to deliver the parts in partial shipments and invoice Customer for that portion which was shipped.

**C. Warranty Periods**

i For all ERICKSON manufactured or overhauled parts or components other than parts manufactured or overhauled for the Bell 214ST/B:

- a) Two years from date of delivery of part(s) and/or completion of service, or 500 flight hours, whichever comes first.
- b) The warranty period applicable to a repaired or replaced part is the remainder of the warranty in effect from the original date of delivery and/or completion of service, or the remainder of the original 500 flight hours, whichever comes first, for the part repaired or replaced.

ii. For all ERICKSON supplied, manufactured or overhauled parts for the Bell 214ST/B:

- a) The warranty period for parts and services related to the Bell 214ST/B/B1 shall be 1,000 flight hours of operation or one (1) year after installation, whichever comes first. After 200 hours of use, there will be a prorated charge to Customer for replacement parts.

**3. WARRANTY:**

**A. Coverage:**

- a) For the duration of the Warranty Periods set forth in Paragraph 3.C. below, ERICKSON warrants that new parts or components manufactured by ERICKSON, or parts newly repaired or overhauled by ERICKSON, will be free of defects of material and workmanship under normal use and service.
- b) Parts or components not manufactured or serviced by ERICKSON are sold and conveyed to Customer “AS IS” without any ERICKSON warranty or certification. To the extent such parts or components carry a contractually assignable warranty of the manufacturer or repair facility of record, ERICKSON will assign such warranty for the benefit of Customer.
- c) Any surplus parts (including “new surplus”) are sold and conveyed to Customer “AS IS” in the same condition as received by ERICKSON, and ERICKSON neither implies nor offers any certification or warranty.

**D. Discovery and Notice Periods:**

- a) Any claimed defect must be discovered during the warranty period; and
- b) ERICKSON must receive written notice of the discovery no later than ninety (90) days after discovery of the defect. The notice must include sufficient information to substantiate the claim.

**E. Remedies:**

Remedies for warranty claims are limited to repair or replacement of any part or component. Determination of whether a particular part will be repaired or replaced will be at ERICKSON's sole discretion. Replacement of parts may be with either new or reconditioned parts, at ERICKSON's election.

**F. Disclaimer and Limitations:**

EXCEPT AS SPECIFIED IN PARAGRAPH 3.A.(a) HEREIN, ALL PARTS AND SERVICES ARE DELIVERED AND SOLD TO CUSTOMER “AS IS”, “WHERE IS” AND “WITH ALL FAULTS” AND ERICKSON HEREBY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT

**B. Exceptions:**

The following conditions do not constitute a defect under this warranty:

LIMITATION, ANY WARRANTY OF TITLE, AIRWORTHINESS, CONDITION, DESIGN, OPERATION, FREEDOM FROM INFRINGEMENT, ABSENCE OF LATENT OR OTHER DEFECTS, QUALITY OF MATERIAL OR WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ERICKSON DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING, TO THE EXTENT PERMITTED BY LAW, ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN CONTRACT OR IN TORT, INCLUDING PRODUCT LIABILITIES BASED UPON STRICT LIABILITY, NEGLIGENCE, OR IMPLIED WARRANTY IN LAW.

ERICKSON WILL NOT BE LIABLE FOR REMOVAL OR INSTALLATION COSTS, EXPENSES INCURRED FOR REPAIR OR REPLACEMENT OF PRODUCTS RETURNED UNDER WARRANTY, LOST PROFITS, LOSS OF BUSINESS OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES. THIS LIMITATION OF LIABILITY APPLIES BOTH TO PRODUCTS AND SERVICES. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, ERICKSON IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGE ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PURCHASE OF THE PRODUCT OR SERVICE UNDER THIS AGREEMENT.

4. INDEMNITY:

Customer will indemnify, defend and hold harmless ERICKSON from and against all liabilities, claims, losses and damages of any nature, including, but not limited to, all expenses (including attorneys' fees), costs, and judgments for property damage or injury to or death of any person and any other direct, indirect, incidental, consequential, economic or statutory civil damages, any of which arise out of or in any way related to the use, operation, repair, maintenance, or disposition of parts or components provided under any order, whether or not arising from breach of contract, strict liability or tort (including negligence), provided, however, Customer shall not be required to indemnify ERICKSON for claims or liabilities arising from ERICKSON's gross negligence or willful misconduct or breach of its obligations arising under this agreement.

5. DELAY:

ERICKSON will not be liable for any delay in performance due to causes beyond ERICKSON's reasonable control and, in the event of such delay the date of delivery shall be extended for a period of time as may be reasonably necessary to compensate for any such

delay.

6. EXPORT/IMPORT COMPLIANCE:

A. Export Restrictions:

The parts, components ("Articles") and/or related technical data may be subject to restrictions under the Arms Export Control Act (22 U.S.C. §§ 2751-2799aa-1), and its implementing regulations, the International Traffic in Arms Regulations (22 C.F.R. §§120-130), and/or the Export Administration Act of 1979 (50 U.S.C. App. §§ 2401-2420), and its implementing regulations, the International Emergency Economic Powers Act, as amended (50 U.S.C. §§ 1701-1706) and the Export Administration Regulations (15 C.F.R. §§ 730 - 774). Customer acknowledges that these statutes and regulations impose restrictions on: (a) the import, export, and transfer of certain categories of Articles and information/data to any foreign entity or country including to any embassy, any agency or subdivision of a foreign government (e.g., diplomatic mission), including oral or visual disclosure; and (b) the disclosure of certain categories of information/data to anyone who is not a U.S. Person as defined in 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3), whether in the U.S. or abroad, including oral or visual disclosure.

Further, Customer acknowledges the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC") administers a number of U.S. economic sanctions and embargoes that target geographic regions, governments, entities (companies, organizations) and/or individuals. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Sanctioned countries include, but are not limited to Cote d' Ivoire (Ivory Coast), Cuba, Democratic Republic of Congo, Iran, Iraq, Lebanon, Liberia, Libya, North Korea, Republic of Sudan (North Sudan), Somalia, Syria, and Yemen. Engaging in any transactions including brokering transactions involving a sanctioned or embargoed government, entity, and/or individual is prohibited.

Customer acknowledges, agrees, and hereby certifies that it will comply with the requirements of these statutes and regulations in connection with the disclosure, import, export, resale, and/or transfer of Articles and/or technical data falling within such certain categories.

B. Governmental Authorizations:

The Customer acknowledges that licenses and/or permits from the relevant U.S. agency may be required before ERICKSON is permitted to provide controlled Articles to Customer, before ERICKSON is permitted

to export controlled Articles to Customer, or before Customer is permitted to import controlled Articles from Seller. The Parties acknowledge that such licenses or permits may impose restrictions on use of the controlled articles, technical data, and/or software subject to the contract. Customer shall comply with all U.S. license and/or permit requirements and all other applicable export and import laws and regulations controlling the import and/or export of the subject controlled articles.

In all cases, Customer shall be the importer or exporter of record and shall be responsible for timely obtaining any required governmental authorization such as import license, export license, exchange permit or any other required governmental authorization.

In the event ERICKSON obtains any export approvals on behalf of the Customer, the Customer reaffirms intent to comply with the terms of the approval(s).

**7. ENTIRE AGREEMENT, AUTHORITY:**

No prior proposals, statements, negotiations, warranties, course of dealing or usage of trade will be part of this Agreement regarding the sale between ERICKSON and Customer. ERICKSON objects to Customer's inconsistent or additional terms, whether submitted before or after the terms and conditions herein, in purchase orders or however stated, and such shall not be part of this Agreement, unless specific and explicit references to changes to this Agreement are made in writing and signed by an authorized representative of ERICKSON.

ANYONE SIGNING FOR THE CUSTOMER REPRESENTS THAT SHE OR HE IS EMPLOYED BY THE CUSTOMER IN THE CAPACITY INDICATED AND IS UNEQUIVOCALLY AUTHORIZED TO BIND THE CUSTOMER TO THIS AGREEMENT.

**8. PROPRIETARY INFORMATION:**

Title to and interest in all confidential, proprietary or trade secret information (Proprietary Information) belonging to ERICKSON or a third party will at all times remain with ERICKSON or such third party. Customer will treat all Proprietary Information in confidence and use and disclose the same only as specifically authorized by ERICKSON. Customer further agrees to notify Erickson immediately upon learning of any unauthorized distribution, disclosure, or use of Proprietary Information.

**9. GOVERNING LAW & VENUE:**

These terms and conditions will be interpreted under and governed by the laws of the State of Oregon, except that Oregon's choice of laws and rules shall not be invoked for the purpose of applying the law of another jurisdiction. In the event of any dispute or claim, the parties hereby agree that any lawsuit or other legal actions shall be filed in the court of general jurisdiction in the County of Multnomah, State of Oregon, U.S.A., or in the Federal District Court, Portland, Oregon, U.S.A. The parties agree to submit to the jurisdiction of any such court; agree to venue in such court; and waive any defense of forum non conveniens. In the event Customer files a legal action in a court other than those specified, and ERICKSON successfully obtains dismissal of that action or transfer thereof to the above described court systems, then Customer shall indemnify ERICKSON for all costs, expenses and attorneys' fees incurred by ERICKSON in obtaining such dismissal or transfer.

**10. SEVERABILITY:**

In the event of any of the aforesaid terms & conditions should for any reason be held ineffective, unenforceable, or contrary to public policy, the remainder of the agreement shall remain in full force and effect notwithstanding.

**11. CONSTRUCTION:**

In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**These Terms & Conditions are hereby accepted by an authorized representative of Customer as of the date set forth below:**

\_\_\_\_\_  
Print Name of Customer

\_\_\_\_\_  
Print Name and Title of Customer Representative

\_\_\_\_\_  
Signature of Customer Representative                      Date



**EXHIBIT B**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re</b>	§	<b>Chapter 11</b>
	§	
<b>ERICKSON INCORPORATED, et al.,<sup>1</sup></b>	§	<b>Case No. 16-34393-hdh</b>
	§	
<b>Debtors.</b>	§	<b>(Joint Administration Requested)</b>
	§	

**INTERIM ORDER AUTHORIZING DEBTORS TO MAINTAIN AND HONOR  
PREPETITION WARRANTY PROGRAMS PURSUANT TO SECTIONS 363(b) AND  
105(a) OF THE BANKRUPTCY CODE**

Upon the emergency motion (the “**Motion**”)<sup>2</sup> of the above-referenced Debtors (the “**Debtors**”) for entry of an interim order (this “**Order**”) authorizing Debtors to maintain and

---

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Erickson Incorporated (7561); EAC Acquisition Corporation (3733); Erickson Helicopters, Inc. (5052); Erickson Transport, Inc. (9162); Evergreen Helicopters International, Inc. (1311); Evergreen Equity, Inc. (9209); and Evergreen Unmanned Systems, Inc. (3961). The location of the Debtors’ service address is 5550 SW Macadam Avenue, Suite 200, Portland, OR 97239.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

honor prepetition the Warranty Program, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. § 1408; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the “**Hearing**”); and upon consideration of the Lancelot Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, to maintain and honor the Warranty Program in the ordinary course of business and consistent with past practice.
3. The Debtors shall instruct the Banks to honor certain prepetition checks or other items issued by the Debtors in connection with the Warranty Program, to the extent of cleared and sufficient funds on deposit, with the Debtors providing to the Banks the prepetition check number and payee. To the extent the Banks honor such prepetition checks or other items drawn on any accounts: (a) at the direction of the Debtors to honor such prepetition check or item, (b) in good faith belief that the Bankruptcy Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake, the Banks shall not be deemed to be liable to

the Debtors or their estates or otherwise in violation of this Order. The Banks may rely on the representations of the Debtors which checks that were drawn or instructions that were issued by the Debtors before the Petition Date should be honored postpetition pursuant to an order of this Court.

4. To the extent necessary, the Final Hearing on the Motion shall be held on \_\_\_\_\_, 2016 at \_\_\_:\_\_\_ a.m./p.m. prevailing Central Time. Any objections to the relief requested in the Motion on a final basis must be filed no later than \_\_\_\_\_, 2016 at \_\_\_:\_\_\_ p.m. (Central Time) (the “**Objection Deadline**”) and served on the following parties: (a) the Debtors, Erickson Incorporated, 5550 S.W. Macadam Avenue, Suite 200, Portland, Oregon 97239, Attn: Melissa Berube; (b) proposed counsel for the Debtors, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010, Attn: Kourtney Lyda, Esq.; (c) the Office of the United States Trustee; (d) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.<sup>3</sup>; (e) Randall Klein, Goldberg Kohn, Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 60603-5792, lead counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (f) David Weitman, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201, local counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (g) Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020; and (h) counsel to the official committee of unsecured creditors, if one is appointed.

5. If an objection is timely filed and served so as to be received on or before the Objection Deadline, such objection shall be set for the Final Hearing on \_\_\_\_\_, 2016 at \_\_\_:\_\_\_

---

<sup>3</sup> Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

a.m./p.m. (Central Time). This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

8. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. Notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived.

10. Notwithstanding anything to the contrary herein, any payments made or to be made under this Order with respect to such claims shall be subject to the terms, conditions, limitations, and requirements of the financing orders entered in these Chapter 11 Cases (together with any approved budgets in connection therewith, the "**DIP Orders**") in favor of Wells Fargo Bank, N.A., as agent (the "**DIP Revolving Agent**") under the proposed first lien super-priority revolving credit facility (the "**DIP Revolving Facility**"), and Wilmington Trust, National Association, as indenture trustee and notes collateral agent (the "**DIP Term Agent**") under the proposed second lien super-priority term loan facility (the "**DIP Term Facility**").

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion

12. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Interim Order.

###END OF ORDER###

**Submitted by:**

**HAYNES AND BOONE, LLP**

Kenric D. Kattner  
State Bar No. 11108400  
Kourtney Lyda  
State Bar No. 24013330  
1221 McKinney Street, Suite 2100  
Houston, TX 77010  
Telephone: 713.547.2000  
Facsimile: 713.547.2600  
Email: [kenric.kattner@haynesboone.com](mailto:kenric.kattner@haynesboone.com)  
Email: [kourtney.lyda@haynesboone.com](mailto:kourtney.lyda@haynesboone.com)

and

Ian T. Peck  
State Bar No. 24013306  
David Staab  
State Bar No. 24093194  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219  
Telephone: 214.651.5000  
Facsimile: 214.651.5940  
Email: [ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com)  
Email: [david.staab@haynesboone.com](mailto:david.staab@haynesboone.com)

**PROPOSED ATTORNEYS FOR DEBTORS**

**EXHIBIT C**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re</b>	§	<b>Chapter 11</b>
	§	
<b>ERICKSON INCORPORATED, et al.,<sup>1</sup></b>	§	<b>Case No. 16-34393-hdh</b>
	§	
<b>Debtors.</b>	§	<b>(Joint Administration Requested)</b>
	§	

**FINAL ORDER AUTHORIZING DEBTORS TO MAINTAIN AND HONOR  
PREPETITION WARRANTY PROGRAMS PURSUANT TO SECTIONS 363(b)  
AND 105(a) OF THE BANKRUPTCY CODE**

Upon the emergency motion (the “**Motion**”)<sup>2</sup> of the above-referenced Debtors (the “**Debtors**”) for entry of a final order (this “**Order**”) authorizing Debtors to maintain and honor

---

<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Erickson Incorporated (7561); EAC Acquisition Corporation (3733); Erickson Helicopters, Inc. (5052); Erickson Transport, Inc. (9162); Evergreen Helicopters International, Inc. (1311); Evergreen Equity, Inc. (9209); and Evergreen Unmanned Systems, Inc. (3961). The location of the Debtors’ service address is 5550 SW Macadam Avenue, Suite 200, Portland, OR 97239.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.



the Warranty Program, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. § 1408; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the “**Hearing**”); and upon consideration of the Lancelot Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. The Motion is granted on a final basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code to maintain and honor the Warranty Program in the ordinary course of business and consistent with past practice.
3. The Banks are authorized, at the Debtors’ request, to receive, process, honor and pay, any and all checks issued or to be issued or electronic funds transfers requested or to be requested by the Debtors relating to the Warranty Program, to the extent of cleared and sufficient funds on deposit.
4. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the

Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

5. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

6. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. Notice of the Motion as provided herein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived.

8. Notwithstanding anything to the contrary herein, any payments made or to be made under this Order with respect to such claims shall be subject to the terms, conditions, limitations, and requirements of the financing orders entered in these Chapter 11 Cases (together with any approved budgets in connection therewith, the "**DIP Orders**") in favor of Wells Fargo Bank, N.A., as agent (the "**DIP Revolving Agent**") under the proposed first lien super-priority revolving credit facility (the "**DIP Revolving Facility**"), and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (the "**DIP Term Agent**") under the proposed second lien super-priority term loan facility (the "**DIP Term Facility**").

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion

10. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

###END OF ORDER###

**Submitted by:**

**HAYNES AND BOONE, LLP**

Kenric D. Kattner  
State Bar No. 11108400  
Kourtney Lyda  
State Bar No. 24013330  
1221 McKinney Street, Suite 2100  
Houston, TX 77010  
Telephone: 713.547.2000  
Facsimile: 713.547.2600  
Email: kenric.kattner@haynesboone.com  
Email: kourtney.lyda@haynesboone.com

and

Ian T. Peck  
State Bar No. 24013306  
David Staab  
State Bar No. 24093194  
2323 Victory Avenue, Suite 700  
Dallas, TX 75219  
Telephone: 214.651.5000  
Facsimile: 214.651.5940  
Email: ian.peck@haynesboone.com  
Email: david.staab@haynesboone.com

**PROPOSED ATTORNEYS FOR DEBTORS**