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**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 ORDER (I) AUTHORIZING DEBTORS TO  
PAY CERTAIN PREPETITION (A) EMPLOYEE WAGES, OTHER COMPENSATION  
AND REIMBURSABLE EMPLOYEE EXPENSES AND (B) INDEPENDENT  
CONTRACTOR OBLIGATIONS; (II) CONTINUING EMPLOYEE BENEFITS  
PROGRAMS; (III) MODIFYING THE AUTOMATIC STAY WITH RESPECT TO  
WORKERS’ COMPENSATION CLAIMS, AND (IV) AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED  
TO SUCH OBLIGATIONS PURSUANT TO SECTIONS 105(a), 363(a), AND 507(a) OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004**

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*

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<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.



*Motion for Order (I) Authorizing Debtors to Pay Certain Prepetition (A) Employee Wages, Other Compensation and Reimbursable Employee Expenses and (B) Independent Contractor Obligations; (II) Continuing Employee Benefits Programs; (III) Modifying the Automatic Stay with Respect to Workers' Compensation Claims; and (IV) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations Pursuant to Sections 105(a), 363(a), and 507(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 (this "Motion") and respectfully represent:*

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion 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 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 this 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. Pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors request entry of an order (i) authorizing, but not directing, the Debtors to (a) pay, in their sole discretion, all obligations incurred under or related to wages, salaries, other compensation, payroll taxes and deductions, reimbursable employee expenses, payroll benefit providers, employee benefits, and service fees (collectively, the "**Employee Obligations**") and all costs related to the foregoing, and (b) maintain and continue to honor their practices, programs, and policies in place for their employees, as such may be modified, amended, or supplemented from

time to time in the ordinary course of business,<sup>2</sup> (ii) authorizing, but not directing, the Debtors to pay, in their sole discretion, all prepetition claims of Independent Contractors (as hereinafter defined) (the “**Independent Contractor Obligations**”) and (iii) authorizing and directing the Debtors’ banks and financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to the Employee Obligations and the Independent Contractor Obligations, subject to the terms set forth in the Order attached hereto. The Debtors are not seeking authority to pay any employee of any of their non-Debtor affiliates. Additionally, the Debtors seek to modify the automatic stay in favor of claimants seeking to recover under the workers compensation programs; provided, however, that such claims are pursued in accordance with the workers compensation programs, and recoveries, if any, are limited to the proceeds from the applicable workers compensation programs.

7. A proposed form of order approving the relief requested herein is annexed hereto as **Exhibit A** (the “**Order**”).

#### **Overview of the Debtors’ Workforce**

8. As of the Petition Date, Erickson Incorporated employs 711 employees, including 680 full-time employees and 31 part-time employees (the “**Employees**”). Six hundred forty three (643) of the Employees are domestic and the remainder are foreign nationals.

9. Included among the Employees are pilots and maintenance crews that work in various operating jurisdictions, domestic aircrew, mechanics, engineers, and warehousemen. Many of the Employees have specific skill sets, licenses, and expertise that are essential to the

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<sup>2</sup> The summary of the Debtors’ various Employee Obligations provided herein is qualified entirely by the Debtors’ official policies or other practices, programs or agreements, whether written or unwritten, evidencing an arrangement among the Debtors and their Employees (as defined herein) (each, an “**Official Policy**”). In the event of any inconsistency or ambiguity between the summary contained in the Motion and an Official Policy, the terms of such Official Policy shall govern.

Debtors' operations. The crew and other flight-related employees are critical to the Debtors' operations, and without which all operations would cease. Additionally, the Employees responsible for the ongoing business operations, including sales, customer service, information technology, accounting and finance, legal, and other related tasks are equally as important to the business operations. Their skills, knowledge and understanding with respect to the Debtors' business operations, customer relations, and infrastructure are required for the effective reorganization of the Debtors' business.

### **Employee Obligations**

#### **A. Wages Obligations**

10. The Debtors typically pay obligations relating to Employee wages and salary on a biweekly basis. In the ordinary course of business, the Debtors pay their domestic Employees through Automatic Data Processing, Inc. (“ADP”), a third-party service provider, which makes payments either directly to Employees through direct deposits with funds advanced by the Debtors or by check. For the Debtors' domestic Employees, to facilitate payments, the Debtors advance funds to ADP approximately 2–3 days prior to the Debtors' regularly-scheduled payroll. Subsequently, ADP makes payments to the Employees and to various third parties as described below. The Debtors pay their foreign-based Employees by wire directly to such Employee's foreign bank account. The Debtors are not seeking authority to pay any employee of any of their non-Debtor affiliates.

11. The Debtors estimate their average gross bi-weekly payroll to be approximately \$2.4 million. The Debtors' most recent bi-weekly payroll was funded to ADP on November 8, 2016 prior to the Debtors' filing and covers the time period from October 23, 2016 to November

5, 2016.<sup>3</sup> The Debtors estimate that, as of the Petition Date, approximately \$430,000 in wages and salaries earned by the Employees prior to the Petition Date have accrued and remain unpaid (collectively, the “**Wage Obligations**”). The Debtors do not believe that any of the Employees are owed prepetition Wage Obligations in an amount exceeding the \$12,850 priority cap imposed by Section 507(a)(4) of the Bankruptcy Code (the “**Priority Wage Cap**”) and, accordingly, do not seek relief to pay any prepetition Wage Obligations in excess of such cap. The Debtors seek authority, but not direction, to pay all Wage Obligations to the extent permitted by section 507(a)(4) of the Bankruptcy Code and to continue to satisfy all Wage Obligations in the ordinary course of business.

**B. Payroll Taxes and Deductions**

12. In various jurisdictions, Erickson is required by law to withhold amounts from the Wage Obligations related to income taxes, healthcare taxes, and other social welfare benefits, including social security, Medicare taxes, and unemployment insurance (collectively, the “**Withholding Taxes**”) and to remit the same and certain other amounts to the appropriate taxing authorities (collectively, the “**Taxing Authorities**”) according to schedules established by such Taxing Authorities. Additionally, in cases in which an Employee is a resident of one jurisdiction while working in another, Erickson is required to remit a separate payment on account of certain foreign taxes, which are not withheld from such Employee’s wages (the “**Foreign Wage Taxes**”). The Debtors do not believe they owe any amounts for prepetition Foreign Wage Taxes as of the Petition Date.

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<sup>3</sup> Certain Employees work on a rotational schedule, working 6-weeks on and 6-weeks off. Although these Employees are paid as part of the bi-weekly payroll, they only receive wages for the weeks in which they work.

13. In certain circumstances, Erickson is also required to make additional payments from its own funds in connection with the Withholding Taxes (the “**Employer Taxes**” and, together with the Withholding Taxes and the Foreign Wage Taxes, the “**Payroll Taxes**”). In the aggregate, the Payroll Taxes, including both the Employee and Employer portions, total approximately \$733,000 for each bi-weekly payroll. As of the Petition Date, the Debtors estimate that they owe approximately \$160,000 on account of prepetition Payroll Taxes.

14. During each applicable pay period, Erickson, either directly or through ADP, also routinely withholds other amounts from certain Employees’ gross pay, including garnishments, child support, and deductions related to various Retirement Plans and other Employee Benefits (each hereinafter defined) and loan repayments (collectively, the “**Deductions**” and, together with the Payroll Taxes, the “**Payroll Taxes and Deductions**”). As of the Petition Date, the Debtors estimate that they owe approximately \$215,000 on account of prepetition Deductions.

15. To the extent any of the Payroll Taxes and Deductions may not have been forwarded to the appropriate third-party recipients or checks or electronic transfers in respect thereof may not have cleared prior to the Petition Date, the Debtors seek authority to remit such Payroll Taxes and Deductions (and to continue to forward Payroll Taxes and Deductions on a postpetition basis whether or not related to the prepetition period) to the applicable third-party recipients in the ordinary course of business.<sup>4</sup>

**C. Reimbursable Expenses and the Erickson Credit Cards**

16. In the ordinary course of business, the Debtors reimburse certain Employees in accordance with the Debtors’ policies for reasonable, customary, and approved expenses incurred on behalf of the Debtors in the scope of such Employees’ employment and service,

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<sup>4</sup> All Payroll Taxes and Deductions, except the Foreign Wage Taxes, are administered by ADP.

including travel mileage, hotel rooms, meals, and business-related telephone charges (collectively, the “**Reimbursable Expenses**”). Erickson reimburses the Reimbursable Expenses as part of the scheduled payroll immediately following Erickson’s approval. Because of the irregular nature of requests for Reimbursable Expenses, it is difficult to determine the amount of Reimbursable Expenses outstanding at any given time.<sup>5</sup> Employees generally have sixty (60) days to make their requests for Reimbursable Expenses. The Debtors estimate that Reimbursable Expenses average approximately \$200,000 per month, and approximately one month of Reimbursable Expenses may remain outstanding as of the Petition Date. The Debtors seek authority, but not direction, to continue to satisfy all Reimbursable Expenses in the ordinary course of business.

17. Additionally, the Debtors provide many Employees with business-related credit cards (collectively, the “**Erickson Credit Cards**”) through Wells Fargo Bank, N.A. The Erickson Credit Cards are used to pay certain business expenses on behalf of the Debtors, including travel expenses. The Debtors then pay Wells Fargo Bank, N.A. for amounts due on the Erickson Credit Cards in the ordinary course of business. Generally, the payment to Wells Fargo Bank, N.A. occurs once a month when due, and the balance for the Erickson Credit Cards is paid in full at such time. The Debtors estimate a pre-petition balance owing on the Erickson Credit Cards as of the Petition Date of approximately \$1.2 million. All obligations owing to Wells Fargo Bank, N.A., as Existing First Lien Agent, under the Erickson Credit Cards are secured obligations under the First Lien Credit Agreement, dated May 2, 2013, as amended, restated, and modified thereafter. The Debtors request authority, but not direction, to pay to Wells Fargo

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<sup>5</sup> Certain Employees have had to use their own personal credit cards for business operation expenses, including but not limited to the purchase of fuel for aircraft located in foreign locations.



Bank, N.A. any pre-petition amounts due and outstanding to Wells Fargo Bank, N.A. on the Erickson Credit Cards and to continue to pay the Erickson Credit Cards in the ordinary course so that the Employees shall have the continued ability to use the Erickson Credit Cards (subject to the terms, conditions, requirements, and limitations set forth in the financing orders entered in the Chapter 11 Cases, together with any approved budgets thereto) for business expenses required to maintain operations.

**D. Vacation and Flexible Time Off**

18. The Debtors provide the Employees with flexible time off (“**FTO**”) for vacation, holidays, parental leave, bereavement, and other personal leave. Vacation accrues per pay period, and the available leave is dependent upon an Employee’s length of employment. If an Employee does not use his or her vacation time in a given year, the Employee may carry over up to eighty (80) hours of vacation for use in the following calendar year, but loses any unused hours in excess of eighty (80) hours. If an Employee is terminated or resigns, such Employee is paid for any unused vacation time up to eighty (80) hours.

19. When the current FTO policy was put in place, 83 Employees had accrued FTO in excess of 80 hours under a previous iteration of the Debtors’ policy (“**Excess FTO**”). To address these “grandfathered” benefits, the Debtors’ current policy permits the relevant Employees to bank the Excess FTO until the end of 2018. Prior to the end of 2018, Eligible Employees may either cash out the Excess FTO at a fifty percent (50%) payout (which is allowed once per year each November), use Excess FTO as regular time off, or be paid for unused PV Vacation upon resignation or termination from the Company. The cash balance of Excess FTO as of the Petition Date is \$302,000, with 5 Employees having a cash-out balance greater than \$10,000.

20. By this Motion, the Debtors seek authority to honor their respective vacation and other leave policies to all Employees in the ordinary course of Debtors' business. The Debtors request authority to permit their Employees to use accrued vacation and other leave, and are asking for authority, but not direction, to pay Employees for unused FTO in accordance with their prepetition policies.

**E. Other Benefits**

21. The Debtors also provide certain other benefits to eligible Employees (collectively, the "**Other Benefits**"), including domestic relocation costs and temporary housing allowances. The Debtors pay approximately \$6,500 per month on account of all Other Benefits. As of the Petition Date, the Debtors estimate that the maximum amount that may be owed prepetition on account of Other Benefits is \$8,000. The Debtors seek authority, but not direction, to satisfy all such prepetition obligations and to continue offering the Other Benefits to Employees and making postpetition payments thereunder in the ordinary course of business.

**Benefit Services Providers**

22. The Debtors engage certain benefit service providers (each, a "**Benefit Service Provider**") to help administer many of their human resources functions, including but not limited to, calculating and remitting payments related to payroll and benefits, tracking certification and training hours, and assisting with other employment related matters. The scope of services provided varies from contract to contract, but in each instance, Erickson pays a fee to the Benefit Service Provider (the "**Benefit Service Provider Fees**")

23. As mentioned above, ADP is a Benefit Service Provider which facilitates the administration of payroll and payment of payroll taxes and deductions for domestic Employees. The Debtors use certain foreign Benefit Service Providers for similar purposes for non-domestic

Employees. The Debtors also engage certain other Benefit Service Providers to assist with employment related functions. These include, among others:

- **Cornerstone OnDemand** for learning management systems, including tracking of pilot records, certifications and training;
- **Concur** for expense reimbursements and expense management software;
- **KS&Co.** for various 401(k) audit and tax reconciliation services;
- **ICims** for applicant tracking and posting job descriptions on websites;
- **Cascade Employers Association** for assistance with the Debtors' affirmative action plan, which is required for government contracts;
- **Direct Employers Association** for an outreach program to ensure the Debtors are compliant and able to perform under government contracts.
- **Discovery Benefits** to assist the Debtors in administration of COBRA benefits, which includes sending initial COBRA notices, sending qualifying event COBRA notices, accepting COBRA enrollments, billing COBRA participants, accepting COBRA premiums from participants and notifying the insurance carriers of new enrollments and enrollment terminations; and
- **Ajilon Staffing and Plane Techs** ("Ajilon") for staffing of particular jobs related to specific contracts. The Debtors currently have 18 full time temporary Employees that are paid through Ajilon.

24. The Debtors pay approximately \$165,000 per month in aggregate Benefit Service Provider Fees. The Debtors also pay their temporary Employees through Ajilon. In the recent months, the Debtors have experienced difficulty hiring for some of their open positions and have been forced to rely more on temporary Employees to assist with performing critical operations. As of the Petition Date, the Debtors owe approximately \$150,000 on account of prepetition Benefit Service Provider Fees (which includes amounts due to Ajilon for payment to temporary Employees). The Debtors seek authority to honor the prepetition Benefit Service Provider Fees and to satisfy all postpetition Benefit Service Provider Fees in the ordinary course of business.

### **Independent Contractor Obligations**

25. In addition to Employees, the Debtors utilize various contractors, including mechanics, technicians and accounting personnel, among others (the “**Independent Contractors**”) to perform a range of functions. Each Independent Contractor performs tasks that are essential to the operation of the Debtors’ business. As of the Petition Date, the Debtors have engaged approximately 23 Independent Contractors who the Debtors believe are critical to the Debtors’ operations and who would be difficult to replace. The Debtors pay the Independent Contractors approximately \$250,000 per month. As of the Petition Date, the Debtors estimate that approximately \$110,000 in fees are owed to Independent Contractors for accrued and outstanding prepetition services (the “**Independent Contractor Compensation**”). Because continued performance and contributions by the Independent Contractors are so important to the Debtors’ operations and reorganization efforts, the Debtors seek authority, but not direction, to pay the Independent Contractor Compensation in the ordinary course of business and consistent with past practice.

### **Employee Benefit Plans**

26. The Debtors maintain various employee benefit plans and policies for health care, dental, vision, disability, life, accidental death and dismemberment insurance, 401(k) savings plans, workers’ compensation and employee assistance for mental health needs (collectively, and as discussed in more detail below, the “**Employee Benefits**”). The Employee Benefits are administered by several different providers (collectively the “**Benefits Providers**”), depending upon the benefit.

27. Each Benefits Provider charges the Debtors either an annual or a monthly premium for the provision of the Employee Benefits. These premiums are either wholly or

partially borne by the Debtors. When the Debtors fund only a portion of these premiums, covered Employees contribute their pro rata portion of the remainder, which is withheld from these Employees' paychecks. Pursuant to this Motion, the Debtors seek authority, but not direction, to pay certain prepetition amounts in respect of the Employee Benefits and to continue the Employee Benefits programs in the ordinary course of business, and to make payments thereunder.

**A. Health Benefits**

28. All regular, full-time Employees are eligible to receive medical, prescription drug, dental, and vision insurance coverage (collectively, the "**Health Benefits**"), provided by various health care providers, including:

- **Regence Blue Cross Blue Shield of Oregon ("Regence")**, who administers the Debtors' self-funded medical plan;
- **Moda Health ("Moda")**, who administers the Debtors' PPO dental plan for covered Employees; and
- **RxBenefits** (Express Scripts), administers the Debtors' prescription drug plan for covered Employees, all under a self-funded health plan (the "**Self-Funded Health Plans**").

As part of the Regence Self-Funded Health Plan, Employees may choose from a PPO Plan or health saving account ("**HSA**") Plan. Amounts contributed to the HSA are deducted from an Employee's payroll and deposited into an account over which such Employee has control.

29. The Debtors pay allowable insurance claims to Regence, Moda and RX Benefits that are highly variable and cannot be estimated. The Debtors fund the amount owed for payment of allowable insurance claims to Regence on a weekly basis, to Moda on a monthly basis, and to RX Benefits on a bi-weekly basis. The average amount funded for allowable insurance claims for the last 4 months has been approximately \$360,000 per month (\$332,142 to Regence and RX Benefits for medical and prescription drug claims and \$27,605 to Moda for

dental claims). Because of the nature of a self-funded insurance plan, the Debtors do not have accurate visibility regarding the number or amount of insurance claims that have arisen prior to the Petition Date, and thus, the Debtors are unable to estimate with certainty the amount that is owed on allowable health insurance claims for services rendered prior to the Petition Date.

30. The Debtors also provide other Health Benefits to their Employees through third party servicers and administrators, including:

- **Cigna Global Health Benefits:** administers the Debtors' medical, vision, medical evacuation and repatriation benefits for certain Employees who are based in foreign countries or working short term abroad.
- **Health Equity:** provides services related to health savings account and health reimbursement accounts.
- **PacificSource Administrators:** administers the Debtors' Flexible Spending Account Plan, which is a cafeteria plan intended to qualify under Section 125 of the Internal Revenue Code.
- **Willamette Dental Insurance:** administers the Debtors' DMO dental plan; and
- **Superior Vision Services:** provides vision benefits for covered Employees.

There are fees and funding requirements due to providers for each of these Health Benefits.

31. Since the Debtors have Self-Funded Health Plans, the Debtors have purchased stop-loss insurance through Regence that provides coverage against large claims made by Employees that are above \$150,000 per covered individual during the plan year) (the "**Stop Loss Insurance**"). Stop Loss Insurance is an integral part of the Debtors' management of the risk of the self-insured health plan, and loss of the coverage would subject the Debtors to undue risk. The premiums for stop loss insurance are imbedded in cost of the relevant Self-Funded Health Plans.

32. The Debtors pay the employer portion for the Health Benefits, and the Employees' portion of premiums for the Health Benefits is deducted from each participating

Employees' payroll amount. The Employees' contribution for Health Benefits is approximately \$100,000 per pay period while the Debtors' portion is approximately \$154,000 per pay period. As of the Petition Date, the Debtors estimate that they owe approximately \$425,000 of prepetition obligations for premiums under the Health Plan as well as additional amounts due for unpaid claims under the Self-Funded Health Plans. Considering that the Health Benefits are vital to the Debtors' Employees, the Debtors seek authority to remit any unpaid Health Benefits and premium costs to administer the Health Benefits, to fund any amounts needed to pay the Stop Loss Insurance, and to continue providing the Health Benefits in the ordinary course of business on a postpetition basis.

**B. Life and Accidental Death and Dismemberment Insurance**

33. The Debtors provide basic life, accidental death, long-term disability, and certain other risk and disability insurance benefits (collectively, the "**Employee Insurance Coverage**"). The Debtors provide Basic Life and Accidental Death and Dismemberment Insurance through Standard Insurance Company at the Debtors' cost. The Basic Life and Accidental Death and Disability Insurance benefit is equal to an Employee's annual salary, subject to a minimum of \$50,000 and a maximum of \$200,000. Additionally, Employees may elect to receive additional life insurance on behalf of the Employee, his or her spouse, or child; however, the cost of such life insurance is borne completely by the Employee.

34. In addition, each Employee that works at least thirty hours per week may elect to receive short or long term disability insurance through The Prudential Insurance Company of America. The short term disability plan entitles an Employee to receive a weekly benefit of \$1,153.85 for up to twelve weeks. The long term disability plan entitles an Employee to receive 60% of his or her monthly earnings (up to \$6,000 per month) for various periods of duration,

depending on age. The Debtors pay 50% of the cost for long term disability, while the Employee is responsible for the other 50% and for 100% of the cost of short term disability to the extent coverage is elected.

35. In order to retain the Employee Insurance Coverage, the Debtors are required to pay premiums to the providers of the Employee Insurance Coverage. On average, the Debtors pay approximately \$24,000 per month on account of Employee Insurance Coverage premiums. The Debtors estimate that approximately \$100,000 is owed to the providers of the Employee Insurance Coverage for all amounts outstanding as of the Petition Date. The Debtors seek authority to pay such prepetition obligations and to continue the Employee Insurance Coverage on a postpetition basis and to continue offering the Employee Insurance Coverage in the ordinary course of business on a postpetition basis.

### **C. Retirement Plans**

36. The Debtors also provide certain eligible Employees with retirement benefits. The Debtors maintain a retirement savings plan with Principal Financial Group (“**Principal**”) for the benefit of all Employees who meet the requirements of section 401(k) of the Internal Revenue Code (the “**401(k) Plan**”). The 401(k) Plan is a defined contribution 401(k) profit sharing plan and is compliant with ERISA 404(c). Employees have the option to contribute to a Roth 401(k) as well as a traditional 401(k). All amounts contributed to the 401(k) Plan are wired directly from the Debtors to Principal.

37. Employees are automatically enrolled to defer 4% of their pay as of the date they become eligible to participate in the 401(k) Plan, which is the first day of the month after the date of hire. The 401(k) Plan currently has a total of 845 participants, including 626 active participants and 183 inactive participants. For each Employee who participates in the 401(k)



Plan, the Debtors contribute 100% of the first \$1,000 contributed by each Employee and 50% of the next \$2,000 contributed by each Employee, which results in a maximum matching contribution by Erickson of \$2,000 annually per employee (the “**Matching Contributions**”). As of the Petition Date, the Debtors estimate that the maximum amount that may be owed prepetition on account of Matching Contributions is approximately \$15,000.

38. In the third quarter of 2016, the Debtors withheld an aggregate amount of approximately \$50,000 each month from participants’ paychecks on account of their 401(k) contributions. As of the Petition Date, the Debtors do not believe they hold any amounts related to Employee 401(k) Plan contributions that have not been remitted to the 401(k) Plan (the “**Unremitted 401(k) Contributions**”); however, to the extent the Debtors do owe any Matching Contributions or have Unremitted 401(k) Contributions, the Debtors seek authority to pay such amounts. Thus, the Debtors seek authority to: (a) pay any Matching Contributions outstanding as of the Petition Date; (b) release the Unremitted 401(k) Contributions, if any, held in trust for their Employees; and (c) continue operating and making contributions to the 401(k) Plan in the ordinary course of business on a postpetition basis. In addition, the Debtors seek authority, but not direction, to continue the 401(k) Plan and to make all prepetition and postpetition payments thereunder, including associated administration fees.

**D. Workers Compensation Programs**

39. The Debtors also provide Employees with workers compensation and employer’s liability coverage (the “**Workers Compensation Programs**”) through Allied World Assurance Company, Pacific Indemnity Company and Vigilant (collectively, the “**Workers’ Compensation Providers**”). The Debtors are responsible for the full amount of the premiums for the Workers Compensation Programs for the benefit of Employees. Premiums are adjusted

annually based on claims made during the previous year. The only amounts due and outstanding on the Workers' Compensation Programs include the 2015-2016 premium true-up. Although the Debtors have not yet been invoiced for this amount, the Debtors believe the amount will be approximately \$75,000. The Debtors seek authority, but not direction, to pay any and all prepetition obligations related to Workers' Compensation Programs. Additionally, the Debtors request authority to continue the Workers' Compensation Programs and make postpetition payments thereunder in the ordinary course of business.

**E. Employee Assistance Program**

40. The Debtors provide the Employees with access to Employee Assistance Program (“EAP”) through MHN (Mental Health Network) (“MHN”). MHN provides Employees access to a website, a 1-800 number, and free counseling and referral programs for mental health needs. The Debtors cost to provide this EAP is approximately \$1,100 per month. As of the Petition Date, the Debtors estimate they owe \$2,200 to MHN for EAP benefits. The Debtors seek authority, but not direction, to pay any and all prepetition obligations related to MHN and to continue MHN and make postpetition payments thereunder in the ordinary course of business.

**Basis for Relief Requested**

**A. Certain of the Employee Obligations are Entitled to Priority Treatment.**

41. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims of Employees for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days of the petition date are granted priority unsecured status up to \$12,850 per employee. 11 U.S.C. § 507(a)(4)(A). Additionally, section 507(a)(5) of the Bankruptcy Code provides that claims for contributions to employee benefit plans are also afforded priority

unsecured status up to \$12,850 per employee covered by applicable benefits plans, less any amount paid pursuant to section 507(a)(4). 11 U.S.C. § 507(a)(5)(A).

42. Many of the prepetition Employee Obligations constitute priority claims under sections 507(a)(4) or (5) of the Bankruptcy Code. To the extent such claims are afforded priority status, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries or commissions, including vacation, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). As priority claims, the Employee Obligations are entitled to payment in full before any general unsecured claims asserted against the Debtors can be satisfied and would be entitled to payment in full under any plan of reorganization. Authorizing the Debtors to make these payments at this time will affect only the timing of such payments.

**B. Payment of Payroll Taxes and Deductions Is Required by Law.**

43. The Debtors also seek authority to pay Payroll Taxes and Deductions to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including Employee contributions to the Employee Benefit Plans, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b). Further, federal and state laws require the Debtors and their officers to remit certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust

relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. State of Mich. (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that this Court authorize them to remit the Deductions and Payroll Taxes to the proper parties in the ordinary course of business.

**C. Ample Authority Exists to Authorize the Debtors to Honor Employee Obligations.**

44. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174-75 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers who were potential lien claimants). As set forth herein, in authorizing payments of certain prepetition obligations, including Employee Obligations, courts have relied on several legal theories, based on sections 1107(a), 1108, 363(b), and 105(a) of the Bankruptcy Code.

45. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to "protect and preserve the estate, including an operating business's going-concern value." *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a

valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate . . . ." *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").

46. 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) (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b) of the Bankruptcy Code; relief appropriate where payment was needed to "preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale."); *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"); *see also Armstrong*, 29 B.R. at 397 (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

47. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court,

empowers the bankruptcy court to “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.”). Under section 105(a), courts may permit preplan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, when nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

48. Courts have repeatedly recognized the importance of employees to a debtor’s reorganization and the severe harm to employees that can arise if courts do not grant motions such as this one. *In re Braniff, Inc.*, 218 B.R. 628, 633 (Bankr. M.D. Fla. 1998) (approving payment of prepetition employee wage claims due to the vital role the employees play to the debtor’s reorganization). Courts have regularly granted motions to pay prepetition employee wages and honor employee benefits when the employees’ continued efforts are necessary to the debtor’s effective reorganization. *See, e.g., In re The Nat’l Benevolent Ass’n of the Christian*

*Church (Disciples of Christ), et al.*, Chapter 11 Case No. 04-50948 (Bankr. W.D. Tex. Feb. 18, 2004) (Order Authorizing Debtors' Expedited Motion for Authority to Pay Prepetition Wages, Compensation and Employee Benefits); *In re JIT Holdings, Inc.*, Chapter 11 Case No. 02-21102 (Bankr. S.D. Tex. May 24, 2002) (Order Authorizing the Debtor to Pay and Honor Prepetition Personal and Paid Leave Policies, and Pay Medical Benefits and Reimbursable Employee Expenses); *In re Kitty Hawk, Inc.*, Case No. 00-42141-BJH (Bankr. N.D. Tex. May 4, 2000) (Order Granting Motion to Pay Pre-Petition Debt for Salaries, Wages, Employee Benefits and Payroll Taxes).

49. Accordingly, pursuant to sections 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 harm to the Debtors' businesses.

50. In this case, the relief requested will benefit the Debtors' estates and creditors by allowing the Debtors' business operations to continue without interruption. As stated previously, the Debtors believe that the vast majority of the Employee Obligations constitute priority claims. The Debtors submit, however, that to the extent any Employee is owed more than \$12,850 for Employee Obligations, allowance of payment of those amounts is necessary and appropriate and is authorized under sections 363(b) and 105(a) of the Bankruptcy Code. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Debtors' workforce, hinder the Debtors' ability to meet their customer obligations, and likely diminish creditors' and customers' confidence in the Debtors. Moreover, the loss of valuable individuals and the recruiting efforts that would be required to replace them would be a massive

and costly distraction at a time when the Debtors should be focusing on maintaining operations. For these same reasons, failure to pay the Employee Obligations will adversely impact the Debtors' relationships with their Employees at a time when the Employees' support is critical to the Debtors' success in chapter 11.

51. Due to the nature of the Debtors' businesses and their highly-skilled workforce, Employees of an equivalent level of skill and knowledge would be difficult and costly for the Debtors to find and to integrate into their operations in an efficient manner. It is necessary that the Debtors continue to maintain Employee Benefits. Satisfying prepetition and postpetition obligations related to the Employee Benefits will ultimately allow the Debtors to focus on effecting a more cost-efficient reorganization. The Debtors also believe it is necessary to continue payment of the Benefit Service Provider Fees in order to maintain the smooth administration of programs related to the Employee Obligations. Without the continued services of the Benefit Service Provider(s), the Debtors will be unable to continue to honor their Employee Obligations in an efficient and cost-effective manner.

52. Furthermore, the payment of Payroll Taxes similarly will not prejudice other creditors of the Debtors' estates as the relevant Taxing Authorities will generally hold priority claims under section 507(a)(8) of the Bankruptcy Code with respect to the Payroll Taxes. Moreover, the portion of the Payroll Taxes withheld from an Employee's wages on behalf of the applicable Taxing Authority are held in trust by the Debtors, and thus, are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53, 62-63 (1990) (holding that withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtors' estates). Failure to remit Payroll Taxes to a Taxing Authority may give rise to personal liability for the Debtors' officers and directors. 26



U.S.C. § 6672; *see In re DuCharmes & Co.*, 852 F.2d 194, 196 (6<sup>th</sup> Cir. 1988) (failure to pay trust fund taxes may give rise to personal liability for a company's officers). As such, payment of Payroll Taxes is reasonable and in the best interest of the Debtors' estates and all parties in interest.

**D. Payment of the Independent Contractor Obligations Would Facilitate the Debtors' Successful Reorganization.**

53. The Debtors also believe that the uninterrupted performance by the Independent Contractors is essential to conducting services that are critical to the Debtors' operations and to the Debtors' efforts to maintain a steady cash flow from their business throughout these chapter 11 cases. The Independent Contractors also assist the Debtors with short-term projects that often demand irregular hours. Given the specialized nature of the Debtors' business, it would be difficult and costly to find and integrate new workers into the Debtors' operations who have an equivalent level of skill and knowledge. Requiring the Debtors to seek to replace the Independent Contractors would significantly disrupt their operations and hamper their reorganization efforts.

54. Courts in this jurisdiction have regularly granted relief similar to that requested herein. *See, e.g., In re CHC Group Ltd.*, Case No. 16-31854 (Bankr. N.D. Tex. June 8, 2016)(Docket No. 289); *In re Energy & Exploration Partners, Inc.*, Case No. 15-44931 (Bankr. N.D. Tex. Dec. 23, 2015) (Docket No. 147); *In re ALCO Stores*, Case No. 14-34941 (Bankr. N.D. Tex. Oct. 16, 2014) (Docket No. 68); *In re Reddy Ice Holdings, Inc.*, Case No. 12-32349 (Bankr. N.D. Tex. Apr. 17, 2012) (Docket No. 83); *In re Texas Rangers Baseball Partners*, Case No. 10-43400 (Bankr. N.D. Tex. June 15, 2010) (Docket No. 203); *In re Idearc Inc.*, Case No. 09-31828 (Bankr. N.D. Tex. Apr. 30, 2009) (Docket No. 195); *In re Pilgrim's Pride Corp*, Case No. 08- 45664 (Bankr. N.D. Tex. Dec. 2, 2008) (Docket No. 65).

**The Automatic Stay Should be Modified for Workers Compensation Claims**

55. The Debtors also seek to modify the automatic stay with respect to Workers Compensation Claims. Section 362(a) of the Bankruptcy Code, commonly known as the “automatic stay,” operates to stay

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1). Section 362, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* § 362(d)(1).

56. To the extent the Debtors’ Employees hold valid claims under any of the Debtor’s workers compensation policies, the Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit these Employees to proceed with their claims in the appropriate judicial or administrative forum, subject to the conditional lift stay terms set forth in the Order. The Debtors believe cause exists to modify the automatic stay because prohibiting the Debtors’ Employees from proceeding with their claims could have a detrimental effect on the financial well-being and morale of such employees and lead to their departure. Thus, solely with respect to workers’ compensation claims, the Debtors seek to modify the automatic stay; provided, however, that such claims are pursued in accordance with the Workers’ Compensation Programs, and recoveries, if any, are limited to the proceeds from the applicable Workers’ Compensation Programs. All other claims, including any claims relating to matters covered by other Employee Obligations or Independent Contractor Obligations, will remain subject to the automatic stay.

57. Pursuant to this Motion, the Debtors do not seek a waiver, termination, or modification of the automatic stay with respect to any other claims or matters, and nothing in this Motion should be construed as a request therefor.

**Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers Requested to Pay the Employee Obligations and Independent Contractor Obligations**

58. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral, provided that any such access to cash collateral shall be subject to the terms, conditions, limitations, and requirements under any financing orders entered in the Chapter 11 Cases, together with any approved budget thereto. Under the Debtors' existing cash management system, the Debtors can identify checks or wire transfer requests as relating to an authorized payment made to Employees or on account of Employee Obligations and Independent Contractor Obligations. Accordingly, when requested by the Debtors, the Debtors request that the Court authorize its financial institutions to receive process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein, to the extent of available, cleared funds in the Debtors' accounts and be subject to the terms, conditions, limitations, and requirements under any financing orders entered in the Chapter 11 Cases, together with any approved budget thereto.. 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 Employee Obligations or the Independent Contractor Obligations dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

**Request for Waiver of Stay**

59. 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.

**Reservation of Rights**

60. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for or validity of any claim of the Employees, Independent Contractors, Benefit Service Providers, Taxing Authorities, or Benefits Providers under applicable nonbankruptcy law, (iii) a waiver of any claims or causes of action which may exist against any Employee, Independent Contractor, Benefit Service Provider, Taxing Authority, or Benefits Provider or (iv) an assumption, adoption or rejection of any contract or lease between the Debtors and any third party under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim and any payment made pursuant to the Court's order granting this Motion is not intended and should not be construed as a waiver of the Debtors' rights to subsequently dispute such claim.

**Notice**

61. 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>6</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 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, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

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<sup>6</sup> Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

RESPECTFULLY SUBMITTED this 9th day of November, 2016.

**HAYNES AND BOONE, LLP**

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**PROPOSED ATTORNEYS FOR DEBTORS**

**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**

**Proposed 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, <i>et al.</i>,<sup>1</sup></b>	§	<b>Case No. 16-34393-hdh</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>

**ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION (A)  
EMPLOYEE WAGES, OTHER COMPENSATION AND REIMBURSABLE  
EMPLOYEE EXPENSES AND (B) INDEPENDENT CONTRACTOR OBLIGATIONS;  
(II) CONTINUING EMPLOYEE BENEFITS PROGRAMS; (III) MODIFYING THE  
AUTOMATIC STAY WITH RESPECT TO WORKERS' COMPENSATION CLAIMS,  
AND (IV) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS  
CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS PURSUANT TO  
SECTIONS 105(a), 363(a), AND 507(a) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULES 6003 AND 6004**

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<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.

Upon the Motion, dated November 8, 2016 (the “**Motion**”),<sup>2</sup> of Erickson Incorporated and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), for an order pursuant to section 105(a), 363(b) and 507(a) 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**”) (i) authorizing, but not directing, the Debtors to (a) pay, in their sole discretion, Employee Obligations and all costs incident to the foregoing, and (b) maintain and continue to honor their practices, programs, and policies in place for the Employees as they were in effect as of the Petition Date, as such may be modified, amended, or supplemented from time to time in the ordinary course of business, (ii) authorizing, but not directing, the Debtors to pay, in their sole discretion, Independent Contractor Obligations, (iii) modifying the automatic stay with respect to workers compensation claims, and (iv) authorizing the Banks (as defined below) to receive, honor, process, and pay all checks issued or to be issued and electronic funds transfers requested or to be requested related to such obligations, 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); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been 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-

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

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

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 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; (viii) the Internal Revenue Service and (ix) the affected parties; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion; and upon the *Declaration of David Lancelot in Support of the Debtors' Chapter 11 Petitions and First Day Motions*, filed contemporaneously with the Motion, the record of the Final Hearing and all of the 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, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted below; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, in their discretion, to pay and remit in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, prepetition Employee Obligations and Independent Contractor Obligations and all costs incident to the foregoing in accordance with the Debtors' customary policies, including, but not limited to, (i)

Wage Obligations, (ii) Payroll Taxes and Deductions, (iii) Reimbursable Expenses, (iv) Benefit Service Provider Fees, and (v) Employee Benefits and fees related thereto in the ordinary course of business as they come due.

3. The Debtors are authorized, but not required, to maintain and continue to honor on a postpetition basis their practices, programs and policies in place for the benefit of their Employees as were in effect as of the Petition Date, as such may be modified, amended, or supplemented from time to time in the ordinary course of business.

4. Subject to the terms, conditions, and limitations of the DIP Orders (as defined below), the Debtors' banks and financial institutions (collectively, the "**Banks**") on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, to the extent of available, cleared funds in such accounts, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order. If any of the Banks honors a prepetition check or other item drawn on any account that is the subject of this Order, including the payment of Employee Obligations and Independent Contractor Obligations: (a) at the direction of the Debtors to honor such prepetition check or item, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake, such Banks shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

5. The Banks are authorized to rely upon the representations of the Debtors as to which checks and transfers to honor with respect to the payment of Employee Obligations and Independent Contractor Obligations.

6. The Banks are prohibited from placing any holds on, or attempting to reverse or otherwise interfere with, any checks or transfers to the Employees' accounts on account of the Employee Obligations, the Independent Contractor Obligations, and the costs and expenses incident thereto.

7. The Debtors are authorized, but not directed, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the Employee Obligations or Independent Contractor Obligations dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

8. The Debtors are authorized, but not directed, to pay all postpetition costs and expenses incident to the Employee Obligations and Independent Contractor Obligations, including administrative and processing fees (including but not limited to, the Benefit Service Provider Fees) to outside professionals in the ordinary course of business.

9. Notwithstanding anything to the contrary in this Order, payments authorized by, and any authorizations contained in, this Order (including any authorization for the Debtors and Employees to continue using the Erickson Credit Cards) are 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 the financial institution to serve as the administrative agent (the "**DIP Term Agent**," together with the DIP Revolving Agent, the "**DIP Agents**") under the proposed second lien super-priority term loan facility (the "**DIP Term Facility**," together with the DIP Revolving Facility, the "**DIP Facility**").

10. Nothing contained in this Order or any action taken by the Debtors in implementing this Order shall be deemed (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for or validity of any claim of the Employees, Independent Contractors, Benefit Service Providers, Taxing Authorities, or Benefits Providers under applicable nonbankruptcy law, (iii) a waiver of any claims or causes of action which may exist against any Employees, Independent Contractors, Benefit Service Providers, Taxing Authorities, or Benefits Providers, or (iv) an assumption, adoption or rejection of any contract or lease between the Debtors and any third party under section 365 of the Bankruptcy Code.

11. Notwithstanding any other provision of this Order, no payments to any individual Employee or Independent Contractor on account of prepetition wages, salaries, or commissions, including severance earned by such individual Employee or Independent Contractor, or on account of contributions to an employee benefit plan shall exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

12. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified to allow holders of workers' compensation claims to proceed in adjudicating such claims in the appropriate forum; provided, however, that such claims must be pursued in accordance with the Workers' Compensation Programs, and recoveries, if any, are limited to the proceeds from the applicable Workers' Compensation Programs.

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

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

15. 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.

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

17. 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:**

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**PROPOSED ATTORNEYS FOR DEBTORS**