



engagement agreement dated as of November 14, 2020, a copy of which is annexed to this Application as **Exhibit B** (the “Engagement Agreement”); and (b) approving the terms of Prime Clerk’s employment and appointment, including the fee and expense structure and the indemnification and reimbursement provisions set forth in the Engagement Agreement, all as more fully set forth in the Application; and this Court having reviewed the Application, the Steele Declaration, and the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Application and opportunity for a hearing on the relief sought in the Application were appropriate under the circumstances and that no other or further notice need be provided; and this Court having heard the statements in support of the relief requested in the Application at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Application and at the hearing establish just cause for the relief granted in this order (the “Order”); and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain Prime Clerk as Claims, Noticing, and Administrative Agent effective as of the Petition Date under the terms of the Engagement Agreement, and Prime Clerk is authorized and directed to perform noticing services and to

receive, maintain, record, and otherwise administer the proofs of claim filed in these cases, and all related tasks, all as described in the Application.

3. Prime Clerk shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Prime Clerk is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Prime Clerk is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate Prime Clerk in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Prime Clerk and the rates charged for each and to reimburse Prime Clerk for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Prime Clerk to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Prime Clerk shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party-in-interest that specifically requests service of the monthly invoices.

8. If these cases convert to cases under chapter 7 of the Bankruptcy Code, Prime

Clerk will continue to be paid for its services until the claims filed in the chapter 11 cases have been completely processed, at which time Prime Clerk will cooperate with the Clerk to turn over any reasonably requested materials to the Clerk or a new claims agent; if a claims agent representation is necessary in the converted chapter 7 cases, Prime Clerk will continue to be paid in accordance with section 156(c) of title 28 of the United States Code under the terms set out in the Engagement Agreement and this Order.

9. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices; provided that the parties may seek resolution of the matter from the Court if resolution is not achieved.

10. The Debtors shall not be authorized to terminate Prime Clerk's services, nor shall Prime Clerk withdraw from the engagement, absent further court order (which may be sought by Prime Clerk on expedited notice by filing a request with the Court with notice of such request to be provided by overnight or facsimile delivery to the Debtors, the United States Trustee, and counsel to any official committee of creditors appointed in these cases); provided that Prime Clerk shall be compensated in accordance with the terms of the Engagement Agreement and this Order; provided that the foregoing does not obligate a successor trustee to utilize Prime Clerk's services.

11. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Prime Clerk under this Order shall be an administrative expense of the Debtors' estates.

12. Prime Clerk may apply its advance to all prepetition invoices, which advance shall be replenished to the original advance amount, and thereafter, Prime Clerk may hold its advance under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

13. The Debtors shall indemnify Prime Clerk under the terms of the Engagement Agreement, as modified pursuant to this Order.

14. Prime Clerk shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

15. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify Prime Clerk, or provide contribution or reimbursement to Prime Clerk, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Prime Clerk's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege the breach of Prime Clerk's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Prime Clerk should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

16. Notwithstanding anything to the contrary in the Engagement Agreement, including paragraph 6 thereof, by this Order the Court is not authorizing Prime Clerk to establish accounts with financial institutions on behalf of the Debtors.

17. The limitation of liability section in paragraph 10 of the Engagement Agreement is deemed to be of no force or effect with respect to services to be provided pursuant to this Order.

18. Notwithstanding any provision contrary in the Engagement Agreement, any dispute relating to the services provided by Prime Clerk shall be referred to arbitration consistent with the terms of the Engagement Letter only to the extent that this Court does not have, retain or exercise jurisdiction over the dispute.

19. If, before the earlier of: (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal); or (ii) the entry of an order closing these cases, Prime Clerk believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, Prime Clerk must file an application therefor in this Court, and the Debtors may not pay any such amounts to Prime Clerk before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Prime Clerk for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Prime Clerk. All parties in interest shall retain the right to object to any demand by Prime Clerk for indemnification, contribution, or reimbursement.

20. In the event Prime Clerk is unable to provide the services set out in this order, Prime Clerk will immediately notify the Clerk and the Debtors' attorney and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims, noticing, and administrative agent with the advice and consent of the Clerk and the Debtors' attorney.

21. Except as ordered by the Court pursuant to section 107(b) of the Bankruptcy

Code, all papers, dockets, or other material filed in this case with Prime Clerk shall be deemed public records open to examination by any entity at reasonable times without charge. Prime Clerk may charge a fee for copying requested material, but the fee shall not exceed that charged pursuant to the Bankruptcy Court Fee Schedule issued by the Judicial Conference of the United States in accordance with section 1930(b) of title 28 of the United States Code.

22. In the event of any inconsistency between the Engagement Agreement, the Application and this Order, this Order shall govern.

23. The Application satisfies the requirements of Bankruptcy Rule 6003(b).

24. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

25. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

26. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of points and authorities in connection with the Application is waived.

27. The Debtors and Prime Clerk are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

28. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2020

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Richmond, Virginia

- Nov 23 2020

/s/ Kevin R Huennekens

UNITED STATES BANKRUPTCY JUDGE

Entered On Docket: Nov 24 2020





WE ASK FOR THIS:

/s/ Jennifer E. Wuebker

Tyler P. Brown (VSB No. 28072)

Justin F. Paget (VSB No. 77949)

Jennifer E. Wuebker (VSB No. 91184)

**HUNTON ANDREWS KURTH LLP**

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, Virginia 23219

Telephone: (804) 788-8200

Facsimile: (804) 788-8218

- and -

Dennis F. Dunne, Esq. (*pro hac vice* pending)

Andrew M. Leblanc, Esq. (*pro hac vice* pending)

Michael W. Price, Esq. (*pro hac vice* pending)

Lauren C. Doyle, Esq. (*pro hac vice* pending)

**MILBANK LLP**

55 Hudson Yards

New York, New York 10001

Telephone: (212) 530-5000

Facsimile: (212) 530-5219

Thomas R. Kreller, Esq. (*pro hac vice* pending)

**MILBANK LLP**

2029 Century Park East

33rd Floor

Los Angeles, California 90067

Telephone: (424) 386-4000

Facsimile: (213) 629-5063

*Proposed Co-Counsel for Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jennifer E. Wuebker