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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.,¹ § **Case No. 16-34393-hdh**
§
Debtors. § **(Jointly Administered)**

**MOTION FOR APPROVAL OF SECOND STIPULATION BY THE DEBTORS
AND THE UNITED STATES OF AMERICA FOR ADEQUATE PROTECTION
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(D)**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING BY MARCH 28, 2017 (WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE) UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL

¹ 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.



TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Erickson Incorporated and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), file this *Motion for Approval of Second Stipulation by the Debtors and the United States of America for Adequate Protection Pursuant to Federal Rule of Bankruptcy Procedure 4001(d)* (the “**Motion**”) and respectfully represent:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas, dated August 3, 1984. 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. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas (the “**Local Rules**”).

2. On November 8, 2016 (the “**Petition Date**”), each Debtor filed a voluntary petition with this Court commencing a case (the “**Chapter 11 Case(s)**”) under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses and manage their respective properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors’ Chapter 11 Cases are being jointly administered.

3. The Debtors and counsel for the United States of America and its agencies (the “**United States**,” collectively with the Debtors, the “**Parties**”) have been negotiating regarding

certain payments owed by the United States to the Debtors and the adequate protection of the United States' asserted setoff rights.

4. On December 23, 2016, the Debtors filed the *Motion for Approval of Agreed Stipulation by the Debtors and the United States of America for Adequate Protection Pursuant to Federal Rule of Bankruptcy Procedure 4001(d)* (Doc. No. 217) (the “**First Adequate Protection Motion**”)

5. On January 9, 2017, the Court entered its *Order Granting Debtors' Motion for Approval of Stipulation by the Debtors and the United States of America for Adequate Protection* (Doc. No. 320) (the “**First Adequate Protection Order**”). Pursuant to the First Adequate Protection Order, the Debtors received \$516,820.82 for prepetition services that the Debtors provided to the Military Sealift Command's Vertical Replenishment program (the “**Vert Rep Payment**”). In exchange, the United States obtained as adequate protection an allowed administrative claim in the same amount.

6. After the entry of the First Adequate Protection Order, the Parties discovered that in addition to the Vert Rep Payment, the United States also owes the Debtors approximately \$100,485.00 for prepetition services provided by the Debtors to the United States Coast Guard pursuant to a purchase order for air transportation services (the “**Coast Guard Services**”). Accordingly, the Parties entered into negotiations related to the prepetition payments due related to the Coast Guard Services and have agreed upon the terms and conditions set forth in the proposed *Order Granting Debtors' Motion for Approval of Second Stipulation by the Debtors and the United States of America for Adequate Protection* (the “**Proposed Order**”) attached hereto as *Exhibit A*.² The Proposed Order will allow the Debtors to receive \$100,485.00 (the “**Coast Guard Prepetition Payment**”) for the Coast Guard Services provided by the Debtors.

² To the extent this Motion and the Proposed Order conflict, the Proposed Order governs.

Upon receipt of the Coast Guard Prepetition Payment by the Debtors, the United States shall have as adequate protection, solely to the extent of any allowed prepetition claims of the United States and the United States' rights of setoff or recoupment, if any, an allowed administrative expense claim in the amount of \$100,485.00 pursuant to Bankruptcy Code Sections 503(b) and 507(a)(2).

5. The terms and provisions of the Proposed Order and the stipulations between the Debtors and the United States contained therein are in addition to the terms and stipulations contained in the First Adequate Protection Order. It is proposed that all protections and rights under the First Adequate Protection Order will be preserved.

6. The terms and conditions of the Proposed Order are fair and reasonable and consistent with adequate protection provisions provided to the United States under similar circumstances.

WHEREFORE, the Debtors respectfully request that the Court grant the Motion, enter the Proposed Order, and grant the Debtors such other and further relief to which it may be justly entitled.

RESPECTFULLY SUBMITTED this 14th day of March, 2017.

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

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

In re: § **Chapter 11**
§
ERICKSON INCORPORATED, et al.,¹ § **Case No. 16-34393-hdh**
§
Debtors. § **(Jointly Administered)**

**ORDER GRANTING DEBTORS' MOTION FOR APPROVAL OF
SECOND STIPULATION BY THE DEBTORS AND THE UNITED STATES
OF AMERICA FOR ADEQUATE PROTECTION**

This matter is before the Bankruptcy Court on the motion filed March ____, 2017 (Docket No. ____, the "**Motion**") of Erickson Incorporated, a Delaware corporation, as a debtor and debtor in possession ("**Erickson**") and its affiliated debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned jointly administered chapter 11 cases

¹ 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.

(collectively, the “**Chapter 11 Cases**”) for entry of an order seeking approval of a second stipulation by the Debtors and the United States of America for adequate protection.

This Court having found that, under the circumstances, due and sufficient notice of the Motion was provided by the Debtors, and after considering all the pleadings, motions and other papers filed with this Court and after due deliberation and consideration and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Petition Date and Joint Administration. On November 8, 2016 (the “**Petition Date**”), each Debtor filed a voluntary petition with this Court commencing a case under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses and manage their respective properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors’ Chapter 11 Cases are being jointly administered.

B. Jurisdiction and Venue. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas, dated August 3, 1984. 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. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rule 4001 of the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas.

Based on the foregoing, and upon the stipulation of the Debtors and the United States, and good and sufficient cause appearing therefor,

IT IS HEREBY STIPULATED, ORDERED, ADJUDGED AND DECREED THAT:

1. For the purposes of this Order, the term “**United States**” includes the United States of America and all agencies thereof.

2. The United States currently asserts prepetition claims against the Debtors in the amount of at least \$809,386.55², and additional claims may be asserted by the United States.

3. The United States owes the Debtors approximately \$100,485.00 for prepetition services provided by the Debtors to the United States Coast Guard pursuant to a purchase order for air transportation services (the “**Coast Guard Services**”).

4. The United States asserts the right to set off the prepetition obligations due to the Debtors against the Debtors’ prepetition obligations to the United States.

5. The Debtors and the United States have agreed that the United States shall be afforded adequate protection of its asserted setoff rights subject to the terms of this Order, without prejudice to any defenses, claims or objections the Debtors or any other parties-in-interest may have in respect thereof.

6. Upon entry of this Order and the Debtors completing the appropriate steps to correct their vendor name with regard to the Coast Guard Services in order for the payment to be processed pursuant to the System for Award Management, the United States shall promptly pay the Debtors \$100,485.00 (the “**Coast Guard Prepetition Payment**”) for prepetition services provided by the Debtors for the Coast Guard Services.

² See Claim No. 16 filed by the Internal Revenue Service.

7. Upon receipt of the Coast Guard Prepetition Payment by the Debtors, the United States shall have as adequate protection, solely to the extent of any allowed prepetition claims of the United States and the United States' rights of setoff or recoupment, if any, an allowed administrative expense claim in the amount of \$100,485.00 pursuant to Bankruptcy Code Sections 503(b) and 507(a)(2).

8. As additional adequate protection to the extent of the United States' rights of setoff, if any, the United States shall have the right, in addition to other rights that may arise under federal law, to apply postpetition amounts that might otherwise be due the Debtors by the United States (solely up to the amount of the Coast Guard Prepetition Payment received by the Debtors) against allowed claims of the United States. The Debtors or any other parties-in-interest waive any potential objection to the United States' setoff of postpetition amounts up to the amount of the Coast Guard Prepetition Payment received by the Debtors against allowed prepetition claims subject to the terms hereof.

9. Prior to exercising any rights of setoff, in accordance with paragraph 8 above, the United States shall provide not less than fifteen (15) days' written notice (the "**Notice**") to: (i) the Debtors and their counsel, (ii) counsel to the Backstop Parties (as defined in the Final DIP Order), (iii) counsel to the Existing First Lien Agent (as defined in the Final DIP Order), (iv) counsel to the DIP Revolving Facility Agent (as defined in the Final DIP Order), (v) counsel to the DIP Term Facility Agent (as defined in the Final DIP Order), (vi) counsel to the Indenture Trustee (as defined in the Final DIP Order), and (vii) the U.S. Trustee. Following the giving of the Notice, if either (a) the Debtors, or any other party entitled to receive the Notice, do not object to or contest the United States' rights of setoff within fifteen (15) days of receiving the Notice, or (b) the Debtors, or any other party entitled to receive the Notice timely contests,

within fifteen (15) days of receiving the Notice, the United States' rights of setoff and the Bankruptcy Court, after notice and hearing, declines to stay the enforcement thereof, the automatic stay shall be lifted to allow setoff by the United States of the postpetition amounts owed to the Debtors (solely up to the amount of the Coast Guard Prepetition Payment received by the Debtors) against allowed amounts owed to the United States at the end of the fifteen (15) day notice period provided for herein, or the date an order of the Bankruptcy Court declining to stay such action is entered, as applicable.

10. Nothing in this Order or the stipulations between the Debtors and the United States shall impair any further rights of setoff or recoupment of the United States, if any, subject to any defenses, claims or objections the Debtors or any other parties-in-interest may have in respect thereof.

11. This Order and the stipulations between the Debtors and the United States contained herein are subject to the terms and conditions of the *Final Order: (I) Pursuant To 11 U.S.C. §§ 105, 361, 362, 363 and 364 Authorizing the Debtors to (A) Obtain Postpetition Financing on a Superpriority Secured and Priming Basis, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of the Existing First Lien Parties and Existing Second Lien Parties, (D) Grant Adequate Protection to the Existing First Lien Parties and Existing Second Lien Parties, and (E) Enter Into Dip Revolving Credit Facility and Dip Term Facility; (II) Modifying The Automatic Stay; and (III) Granting Related Relief* (Docket No. 133, the "**Final DIP Order**").

12. The Coast Guard Prepetition Payment received by the Debtors shall be applied and used in accordance with the terms and conditions of the Final DIP Order, and to the

extent permitted under the DIP Documents and the DIP Budget, to fund the Debtors' working capital needs.

13. The terms and provisions of this Order and the stipulations between the Debtors and the United States contained herein are in addition to the terms and stipulations contained in the *Order Granting Debtors' Motion for Approval of Stipulation by the Debtors and the United States of America for Adequate Protection* signed by the Court on January 9, 2017, and entered by the Clerk of the Court on January 10, 2017 (Docket No. 320, the "**First Stipulation Order**"). All protections and rights under the First Stipulation Order are preserved.

14. This Order and the stipulations between the Debtors and the United States shall be valid and binding on the parties and any trustee appointed in this chapter 11 case or in any case converted to chapter 7, any purchaser of the stock or assets of the Debtors, any entity providing debtor-in-possession financing, the Reorganized Debtors and the Litigation Trustee (as such terms are defined in the *Second Amended Joint Plan of Reorganization of Erickson Incorporated, et al., Pursuant to Chapter 11 of the Bankruptcy Code* or any amended, modified, or subsequent chapter 11 plan, as applicable).

END OF ORDER

Agreed and Stipulated:

HAYNES AND BOONE, LLP

By: /s/Eli Columbus
Eli O. Columbus

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