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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.,¹ § **Case No. 16-34393-hdh**
§
Debtors. § **(Joint Administration Requested)**

**DEBTORS’ EMERGENCY MOTION FOR INTERIM AND FINAL
ORDERS UNDER 11 U.S.C. §§ 105(A) AND 366 (I) PROHIBITING
UTILITY COMPANIES FROM ALTERING OR DISCONTINUING
SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II)
APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF
PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR
RESOLVING REQUESTS BY UTILITY COMPANIES FOR
ADDITIONAL ASSURANCE OF PAYMENT**

Erickson Incorporated and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), file this *Debtors’ Emergency Motion for Interim and Final Orders Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility*

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.



Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment (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 under Chapter 11 of the

Bankruptcy Code (the “**Chapter 11 Cases**”). 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.

6. In the normal conduct of their business operations, the Debtors have relationships with many different utility companies and other providers (each a “**Utility Company**” and, collectively, the “**Utility Companies**”) for the provision of electric, water, sewer, natural gas, trash removal, telephone, cellular telephone, internet services, and similar utility products and services (collectively, the “**Utility Services**”) at their corporate headquarters as well as at their various lease locations. The Utility Companies include, without limitation, the entities set forth on the list attached hereto as **Exhibit A**.²

7. The average monthly amount owed to the Utility Companies in the aggregate is approximately \$200,000. The Debtors owe certain amounts to Utility Companies as of the Petition Date for prepetition Utility Services. Due to the timing of the Petition Date in

² While the Debtors have used their best efforts to list their Utility Companies in Exhibit A, the Debtors may have inadvertently omitted certain Utility Companies from Exhibit A. Accordingly, the Debtors request that they be authorized, without further order of the Court, to amend Exhibit A to add any Utility Companies that were omitted therefrom and that the relief requested herein apply to all such entities added to Exhibit A. In addition, the Debtors reserve the right to argue that (a) any of the entities now or hereafter listed in Exhibit A is not a “utility” within the meaning of Bankruptcy Code Section 366, and (b) any such entity is compelled by contractual obligation, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the filing of the Chapter 11 Cases.

relationship to the Utility Companies' billing cycles, certain Utility Services have been invoiced but not yet paid and other Utility Services have been provided but not yet invoiced.

Relief Requested

8. The Debtors respectfully request, pursuant to Bankruptcy Code §§ 105(a) and 366, the entry of an interim order, attached hereto as **Exhibit B** (the "**Interim Order**"), and a final order, attached hereto as **Exhibit C** (the "**Final Order**") (i) prohibiting the Utility Companies from altering or discontinuing service on account of unpaid prepetition invoices, (ii) establishing the Procedures (as defined below) for resolving any disputes regarding requests for adequate assurance of payment, and (iii) scheduling a final hearing on this Motion (the "**Final Hearing**") within thirty (30) days of the Petition Date.

9. Uninterrupted Utility Services are essential to the continued operations of the Debtors' businesses. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted. If such disruption occurred, the impact on the Debtors' business and revenue would be extremely harmful and would jeopardize the Debtors' reorganization efforts. It is critical that Utility Services continue uninterrupted and that the relief in this Motion be granted.

10. By this Motion, the Debtors seek to respect the protections conferred upon the Utility Companies by the Bankruptcy Code, while affording the Debtors an opportunity to provide and negotiate adequate assurance without facing the threat of imminent termination of Utility Services. In particular, the Debtors request approval of certain procedures that balance the protections afforded the Utility Companies under Bankruptcy Code Section 366 and the Debtors' need for continuous and uninterrupted Utility Services.

A. Proposed Adequate Assurance

11. The Debtors anticipate that the cash flow from their ongoing business operations, together with funding from (i) the proposed first lien super-priority revolving credit facility (the “**DIP Revolving Facility**”), with Wells Fargo Bank, N.A., as agent (the “**DIP Revolving Agent**”) and certain lenders (the “**DIP Revolving Lenders**”), and (ii) Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (the “**DIP Term Agent**”) under the second lien super-priority term loan facility (the “**DIP Term Facility**”) with certain lenders (the “**DIP Term Lenders**”), will be sufficient to allow it to satisfy all administrative expenses, and the Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional adequate assurance of payment for future Utility Services, the Debtors will deposit \$100,000, a sum equal to approximately fifty percent (50%) of the Debtors’ estimated monthly cost³ of their Utility Services, into a separate, segregated, interest-bearing account, that will be established and funded within twenty (20) business days after the Petition Date (the “**Utility Deposit Account**”), subject to the terms and conditions of the DIP Facility⁴ and applicable orders authorizing the Debtors to enter into the same. The Debtors will maintain the Utility Deposit Account with a minimum balance equal to 50% of the Debtors’ estimated monthly cost of Utility Services from Utility Companies, which may be adjusted by the Debtors to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with individual Utility Companies. With the funds in the Utility Deposit Account, the Debtors will have approximately \$100,000 in total utility deposits, an amount greater than the Debtors’ average monthly usage.

³ The estimated monthly cost is based on the Debtors’ average utility spend from October 2014 to present.

⁴ The term “**DIP Facility**” shall mean the DIP Revolving Facility and the DIP Term Facility.

12. The Debtors further propose that to the extent the Debtors become delinquent with respect to postpetition payment for Utility Services from a Utility Company, such Utility Company may file a notice of delinquency (a “**Delinquency Notice**”) with the Court and serve such Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) lead counsel and local counsel to Wells Fargo Bank, National Association, the DIP Revolving Agent and Existing First Lien Agent; (d) counsel to ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020; (e) the official committee of unsecured creditors, if one is appointed, and (f) the United States Trustee for the Northern District of Texas (each, a “**Party in Interest**”). The Debtors propose that if such delinquency is not cured and no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then, the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company’s account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company.

13. The Debtors represent that the Utility Deposit Account, together with the Debtors’ ability to pay for future Utility Services in the ordinary course of business, provides protection well in excess of that required to grant adequate assurance to the Utility Companies.

B. The Additional Adequate Assurance Procedures

14. Notwithstanding the foregoing proposed adequate assurance, the Debtors anticipate that certain Utility Companies may not find the Utility Deposit Account together with the Debtors’ ability to pay for future Utility Services in the ordinary course of business, “satisfactory” and, thus, may request additional adequate assurance of payment pursuant to

Bankruptcy Code Section 366(c)(2). Accordingly, the Debtors propose the following procedures (the “**Procedures**”) for the Utility Company to make additional requests for adequate assurance:

- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors’ payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an “**Objection**”).
- (b) The Court has scheduled a final hearing on this Motion on _____, 2016 at __m. (Central) (the “**Hearing Date**”) for the purpose of considering any Objections;
- (c) Any Objection by a Utility Company listed on Exhibit A must be served upon, and actually received by, (i) the Debtors’ counsel, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010, Attn: Kourtney Lyda; 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian T. Peck; (ii) 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; (iii) 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; (iv) 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; (v) 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; (vi) counsel to the official committee of unsecured creditors, if one is appointed; and (vii) the United States Trustee for the Northern District of Texas, by no later than seven (7) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.
- (d) Without further order of the Court, but subject to the terms and conditions of the DIP Facility and applicable orders authorizing the Debtors to enter into the same, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving a timely Objection, if the Debtors in their discretion determine that the Objection is reasonable.
- (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit A, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit A which supplement

shall identify the Utility Company and the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of the Interim Order.

- (f) In the event that a Utility Company not listed on Exhibit A objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors and DIP Lenders an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Interim Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.
- (g) All Utility Companies will be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code Section 366, without the need for an additional deposit or other security, until this Court enters an order to the contrary. Any Utility Company that fails to make a timely Objection shall be deemed to be satisfied that the Utility Deposit Account provides adequate assurance of payment for future services within the meaning of Bankruptcy Code Section 366(c)(2).

15. The Procedures provide a fair, reasonable, and orderly mechanism for the Utility Companies to seek additional adequate assurance, while temporarily maintaining the status quo for the benefit of all stakeholders.

Basis for Relief Requested

16. Bankruptcy Code Section 366 provides that:

Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the Debtors solely on the basis of the commencement of a case under this title or that a debt owed by the Debtors to such utility for service rendered before the order for relief was not paid when due.

11 U.S.C. § 366(a).

17. Congress intended Bankruptcy Code Section 366 to protect debtors from utility service cutoffs upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate assurance that the Debtors will pay for postpetition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306; *see also Jones v.*

Boston Gas Co. (In re Jones), 369 B.R. 745, 748 (B.A.P. 1st Cir. 2007) (“The purpose of § 366 is ‘to prevent the threat of termination from being used to collect pre-petition debts while not forcing the utility to provide services for which it may never be paid.’”) (quoting *Begley v. Phila. Elec. Co. (In re Begley)*, 760 F.2d 46, 49 (3d Cir. 1985)). The relief requested in this Motion is consistent with this policy.

18. Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“**BAPCPA**”), courts, commentators, and legislative history had all confirmed that Bankruptcy Code Section 366 does not require, in every case, that the Debtors provide a deposit or other security to their utilities as adequate assurance of payment. In *Virginia Electric & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 647 (2d. Cir. 1997), the United States Court of Appeals for the Second Circuit affirmed the bankruptcy court’s ruling that the Debtors’ prepetition payment history, their postpetition liquidity, and the administrative expenses afforded postpetition invoices constituted adequate assurance of future performance. The court rejected the argument that Bankruptcy Code Section 366(b) nevertheless requires a “deposit or other security.”

19. A bankruptcy court’s authority to “modify” the level of the “deposit or other security,” provided for under Bankruptcy Code Section 366(b) includes the power to require no “deposit or other security” where none is necessary to provide a utility with “adequate assurance of payment.” *Id.* at 650; *see also Shirey v. Phila. Elec. Co. (In re Shirey)*, 25 B.R. 247, 249 (Bankr E.D. Pa. 1982) (“[S]ection 366(b) . . . does not permit a utility to request adequate assurance of payment for continued service unless there has been a default by the Debtors on a prepetition debt owed for services rendered”).

20. In BAPCPA, Congress added Bankruptcy Code Section 366(c). Bankruptcy Code Section 366(c) provides that in a Chapter 11 case, a utility company may alter, refuse, or discontinue utility service if, within thirty (30) days after commencement of the Chapter 11 case, the utility company does not receive adequate assurance in a form “satisfactory” to the utility company, subject to the Court’s ability to modify the amount of adequate assurance. In making a determination of whether an assurance of payment is adequate, the Court may no longer consider (i) the absence of security before the petition date, (ii) the Debtors’ history of timely payments or (iii) the availability of an administrative expense priority.

21. While the form of adequate assurance may be limited under Bankruptcy Code Section 366(c), the amount of the deposit or other form of security remains fully within the reasonable discretion of the Bankruptcy Court, and Bankruptcy Code Section 366(c) does not require a guarantee of payment. In *In re Adelpia Business Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D. N.Y. 2002), the Bankruptcy Court for the Southern District of New York stated that “[i]n determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment, but must only determine that the utility is not subject to an unreasonable risk of nonpayment for postpetition services.” The essence of the Court’s inquiry is an examination of the totality of the circumstances in making an informed judgment as to whether utilities will be subject to an unreasonable risk of nonpayment. *Id.* at 82-83; see *In re Anchor Glass Container Corp.*, 342 B.R. 872, 875 (Bankr. M.D. Fla. 2005).

22. The Utility Deposit Account provides the Utility Companies with ample adequate assurance of future payment under Bankruptcy Code Section 366(c). Further, the Debtors’ access to the DIP financing means that the Debtors will have sufficient resources to pay all valid postpetition obligations for Utility Services in a timely manner. In addition, the Debtors have

significant incentives to stay current on their Utility Service obligations as they come due because of their reliance on the Utility Services for the operation of their business. These factors, which the Court may—and should—consider when determining the amount of any adequate assurance provided, justify a finding that the Utility Deposit Account together with the Debtors’ access to the DIP financing is more than sufficient to assure the Utility Companies of future payments.

23. Despite the adequate assurance of future payment described above, the Debtors propose to protect the Utility Companies further by establishing the Procedures for requesting additional adequate assurance. Separate negotiations with each of the Utility Companies would be time-consuming and unnecessarily divert the Debtors’ personnel from other critical tasks related to the operation of their business and the restructuring. This is especially true given the fact that the Debtors operate at several different locations, many of which have separate utility arrangements. During the first days of the Chapter 11 Cases it would be incredibly difficult, costly, and would divert the Debtors’ limited personnel resources to engage in separate negotiations with each potential Utility Company. Further, if individual negotiations were required and the Debtors were to fail to reach early agreement with each Utility Company, the Debtors would likely have to file further motions seeking expedited determinations as to adequate assurance or risk service termination.

24. The relief requested in this Motion preserves the status quo and ensures continued Utility Services, while providing a prompt forum for the resolution of any dispute as to adequate assurance. Bankruptcy Code Section 105(a) authorizes the Bankruptcy court to enter “any order . . . that is necessary or appropriate to carry out the provisions of this title.” Because the proposed Procedures protect the Debtors without materially prejudicing the Utility Companies,

the Procedures are fully consistent with the requirements of Bankruptcy Code Section 366 and appropriate under Bankruptcy Code Section 105(a).

25. Courts in this and other jurisdictions have granted similar relief in Chapter 11 cases following the enactment of BAPCPA. *See In re Forest Park Medical Center at Southlake, LLC*, Case No. 16-40273 (RFN) (Bankr. N.D. Tex. Feb. 2, 2016) (approving adequate assurance in the form of a deposit equal to one-half the average monthly utility costs); *In re Spectrum Jungle Labs Corp.*, Case No. 09-50455 (RBK) (Bankr. W.D. Tex. Feb. 6, 2009) (approving adequate assurance in the form of a deposit equal to one-half the average monthly utility costs); *In re Lothian Oil, Inc.*, Case No. 07-70121 (RBK) (Bankr. W.D. Tex. June 15, 2007); (approving adequate assurance in the form of a two-week deposit to requesting utilities); *In re Superior Offshore Int'l, Inc.*, Case No. 08-32590 (WWS) (Bankr. S.D. Tex. May 20, 2008 (approving adequate assurance in the form of a postpetition security deposit equal to one-half of the average monthly utility bill). The present circumstances warrant similar relief in these Chapter 11 Cases.

Request for Waiver of Stay

26. 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.

Notice

27. 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.;⁵ (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; (viii) the Internal Revenue Service, and (ix) the Utility Companies listed on Exhibit A. 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.

⁵ Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

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.

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

Utility Companies

Name	Address	Service(s) Provided	Account Number(s) (If Known)	Average Monthly Expenditure	Proposed Adequate Assurance
ALASKA COMMUNICATIONS	PO BOX 196666 ANCHORAGE, AK 99519	Telcom	ACCT #: 214009; 237472; 1791857; 1876362; 1897244; 1919876	\$2,115.62	\$1,057.81
ALASKA VILLAGE ELECTRIC COOPERATIVE	4831 EAGLE STREET ANCHORAGE, AK 99503	Power	ACCT #: 11346-001	\$308.46	\$154.23
ALASKA WASTE	P.O. BOX 196097 ANCHORAGE, AK 99519	Water / Sewer	ACCT #: 606317	\$117.00	\$58.50
ANCHORAGE WATER AND WASTEWATER UTILITY	PO BOX 196626 ANCHORAGE, AK 99519	Water / Sewer	ACCT #: 117276-530406	\$246.58	\$123.29
AT&T MOBILITY	PO BOX 9004 CAROL STREAM, IL 60197	Telcom	ACCT #: BES02411898	\$28,780.49	\$14,390.24
AT&T	PO BOX 5019 CAROL STREAM, IL 60197	Telcom	ACCT #: 019 189 7284 001; 171-787- 6831 553; 829-000-2263-763; 831- 000-4102-304; 831-000-4102-308	\$3,031.17	\$1,515.58
AVISTA	1411 E MISSION AVE SPOKANE, WA 99252	Gas	ACCT #: 4613850000; 5461850000; 5613850000; 5810000000; 7991850000; 8800900000; 8881360000; 9263460000; 9302540000; 0135630000; 0809320000	\$10,208.08	\$5,104.04
BLUE SKY NETWORKS	1298 PROSPECT ST, STE 1D LA JOLLA, CA 92037	Telcom	ACCT #: E200405100383	\$12,765.33	\$6,382.67
CHARTER COMM/SPECTRUM BUSINESS	PO BOX 60187 LOS ANGELES, CA 90060	Telcom	ACCT #: 8751220011879523; 8751220011879549; 8751220020464410; 8751220020464416	\$441.69	\$220.85
CHEMICAL WASTE MANAGEMENT OF NORTHWEST, INC.	PO BOX 660345 DALLAS, TX 75266	Waste		\$8,403.81	\$4,201.90
CITY OF CENTRAL POINT	140 S THIRD ST CENTRAL POINT, OR 97502	Water / Sewer	ACCT #: 013130-001; 013130-002	\$556.37	\$278.18
CITY OF MEDFORD	200 S IVY STREET, 2ND FLOOR MEDFORD, OR 97501	Water / Sewer	ACCT #: 104745-38589; 99101-46401	\$1,749.60	\$874.80
ELECTRIC LIGHTWAVE	PO BOX 2966 MILWAUKEE, WI 53201	Power		\$15,199.11	\$7,599.56
ENSTAR NATURAL GAS COMPANY	P.O. BOX 34760 SEATTLE, WA 98124	Gas	ACCT #: 4533643056; 5451025484; 5499810000; 7350910000; 7539500000; 7631180903; 3021624023	\$1,394.26	\$697.13
GENERAL COMMUNICATIONS, INC.	3120 DENALI STREET STE 5 ANCHORAGE, AK 99503	Telcom	ACCT #: 001-253808; 001-559422; 001-567651; 001-628511; 001- 645811; 120-225363; 120-413832; 120-561994; 172-247041; 172- 312037; 120-618758; 120-627673; 172-244371; 172-484577; 172- 672460; 172-713133	\$1,147.55	\$573.78
HONEYWELL SKY CONNECT	21380 NETWORK PLACE CHICAGO, IL 60673	Telcom		\$1,474.49	\$737.25
MCMINNVILLE WATER AND LIGHT	P.O. BOX 638 MCMINNVILLE, OR 97128	Water / Sewer	ACCT #: 103285; 104531	\$3,875.37	\$1,937.68
MEDFORD WATER COMMISSION	200 S IVY ST, ROOM 177 MEDFORD, OR 97501	Water / Sewer	ACCT #: 00024123/0676860; 00024123/0676880; 00024123/0676900; 00024123/0676902; 00024123/0681007; 00024123/0681008; 00024123/0862610; 00024123/0862703; 00024123/0862720; 00024123/0862723	\$379.40	\$189.70
MUNICIPAL LIGHT AND POWER	P.O. BOX 196094 ANCHORAGE, AK 99519	Power	ACCT #: 13939001; 13939002; 13939003; 13939005; 13939006; 13939007	\$1,843.87	\$921.94
NOME JOINT UTILITY SYSTEM	P.O. BOX 70 NOME, AK 99762	Power / Water / Waste	ACCT #: 22402	\$731.38	\$365.69
NORGASCO, INC.	4341 B ST, SUITE 306 ANCHORAGE, AK 99503	Gas	ACCT #: N/A	\$828.06	\$414.03
OCEANIC TIME WARNER CABLE	PO BOX 30050 HONOLULU, HI 96820	Telcom	ACCT #: 109-471-360-199; 109-931- 350-239; 1-468092-10-4; 1-993135- 01-5	\$395.64	\$197.82
PACIFIC POWER	1033 N E 6TH AVE PORTLAND, OR 97256	Power	ACCT #: 33123721-001 7; 33123721- 002 5; 33123721-004 1; 33123721- 010 8	\$35,869.59	\$17,934.80
PARK PLAZA II	1553 A STREET ANCHORAGE, AK 99501		ACCT #: WEI-PP2201102210; WEI- PP2201102334	\$2,776.27	\$1,388.13
RECOLOGY WESTERN OREGON	PO BOX 270 MCMINNVILLE, OR 97128	Waste	ACCT #: 1080261941; A0012245	\$1,658.56	\$829.28
ROGUE DISPOSAL & RECYCLING	1 WEST MAIN ST. SUITE 401 MEDFORD, OR 97501	Waste	ACCT #: 05-0016692-1; 05-0030688-1; 05-0139546-1; 05-0140150-9; 05- 31530 4; 05-96965 4	\$2,868.43	\$1,434.22
ROGUE SHRED LLC	1 WEST MAIN ST. SUITE 401 MEDFORD, OR 97501	Waste	ACCT #: 25-2424 3; 25-2718 8; 25- 6253 2	\$447.47	\$223.74
ROGUE VALLEY SEWER SERVICES	PO BOX 3130 CENTRAL POINT, OR 97502	Water / Sewer	ACCT #: 022007-000; 022014-000; 022019-000; 022019-002; 022031- 000; 064294-000	\$469.10	\$234.55
SNIPER HILL INTERNET SERVICES	711 E 20TH STREET HOUSTON, TX 77008	Telcom		\$13,015.63	\$6,507.81
SOLID WASTE SERVICES	P.O. BOX 196637 ANCHORAGE, AK 99519	Water / Sewer	ACCT #: 1003513003	\$1,656.75	\$828.37
TDX NORTH SLOPE GENERATING	615 E. 82ND AVENUE, SUITE 200 ANCHORAGE, AK 99518	Power	ACCT #: 10860.04	\$2,794.97	\$1,397.49
TELALASKA, INC.	201 E 56TH AVE, SUITE 200 ANCHORAGE, AK 99518	Telcom	ACCT #: MTCBUS-0127009	\$132.45	\$66.22
TOUCHPOINT NETWORKS LLC	1150 KNUXTON AVE #10 MEDFORD, OR 97504	Telcom		\$8,907.07	\$4,453.54
VIAWEST INC	P.O. BOX 732368 DALLAS, TX 75373	Telcom / Data		\$31,839.43	\$15,919.72

Exhibit B

**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)

INTERIM ORDER UNDER 11 U.S.C. §§ 105(A) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT

On _____, 2016, the Court conducted a hearing to consider the *Debtors'* *Emergency Motion for Interim and Final Orders Under 11 U.S.C. §§ 105(a) and 366 (I)*

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.

Prohibiting Utility Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment (the “**Motion**”), filed by the above-captioned Debtors (the “**Debtors**”). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estate, and their creditors; (iv) due and proper notice of the Motion has been provided to (a) the Office of the United States Trustee; (b) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.;² (c) 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; (d) 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; (e) 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; (f) 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; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) and the Utility Companies³ listed on Exhibit A to the Motion; and it appearing that no other or further notice need be

² Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

provided; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. Except in accordance with the procedures set forth below, absent further order of the Court, each Utility Company is prohibited from (a) altering, refusing, or discontinuing service to, or discriminating against the Debtors solely on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid invoice for services provided before the Petition Date and (b) requiring the payment of a deposit or other security in connection with the Utility Companies' continued provision of Utility Services, other than the establishment of the Utility Deposit Account.
3. The Debtors are authorized and directed to establish the Utility Deposit Account and shall deposit \$100,000 into the Utility Deposit Account for the purpose of providing Utility Companies adequate assurance of payment for postpetition Utility Services provided to the Debtors, subject to the terms and conditions of the DIP Facility and applicable orders authorizing the Debtors to enter into the same. The Debtors shall maintain the Utility Deposit Account with a minimum balance equal to 50% of the Debtors' estimated monthly cost of Utility Services, which the Debtors may adjust to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with any Utility Company.
4. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall file a Delinquency Notice with the Court and serve such

Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) lead counsel and local counsel to Wells Fargo Bank, National Association, as DIP Revolving Agent and Existing First Lien Agent, (d) counsel to the official committee of unsecured creditors, if one is appointed, (e) counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020, (f) counsel to the indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020, and (g) the United States Trustee for the Northern District of Texas (each, a “**Party in Interest**”). If the Debtors have not cured such delinquency or no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company’s account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company.

5. The following procedures are hereby approved:

- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors’ payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an “**Objection**”).
- (b) The Court has scheduled a final hearing on the Motion on _____, 2016 at _____ .m. (Central) (the “**Hearing Date**”) for the purpose of considering any Objections;
- (c) Any Objection by a Utility Company listed on Exhibit A to the Motion must be served upon, and actually received by, (i) the Debtors’ counsel, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010, Attn: Kourtney Lyda; 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian T. Peck; (ii) 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; (iii) 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; (iv) 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; (v) 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; (vi) counsel to the official committee of unsecured creditors, if one is appointed; and (vii) the United States Trustee for the Northern District of Texas, by no later than seven (7) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.

- (d) Without further order of the Court, but subject to the terms and conditions of the DIP Facility and applicable orders authorizing the Debtors to enter into the same, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company, whether or not such Utility Company has filed an Objection, if the Debtors in their discretion determine that there is a reasonable basis for providing such additional adequate assurance.
- (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit A to the Motion, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit A to the Motion which supplement shall identify for each Utility Company the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of this Interim Order.
- (f) In the event that a Utility Company not listed on Exhibit A to the Motion objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Interim Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.
- (g) All Utility Companies will be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code Section 366, without the need for an additional deposit or other security, until this Court enters an order to the contrary. Any Utility Company that fails to make a timely Objection shall be deemed to be satisfied that the Utility Deposit Account provides adequate assurance of payment for future services within the meaning of Bankruptcy Code Section 366(c)(2).

6. In the event that no timely Objections are filed, this Interim Order shall be deemed a Final Order and immediately effective as a Final Order, without further notice or hearing on the Motion.

7. The Debtors shall serve this Interim Order upon each of the Utility Companies listed on Exhibit A to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, promptly after the entry of this Order.

8. The inclusion or exclusion of any entity on or from Exhibit A to the Motion or on or from any amended Exhibit A shall not constitute an admission that such entity is or is not a “utility” within the meaning of Bankruptcy Code Section 366. This Order specifically reserves the Debtors’ rights to argue that (a) any of the entities listed on Exhibit A to the Motion or any amended Exhibit A is not a “utility” within the meaning of Bankruptcy Code Section 366, and (b) any such entity is compelled by contractual obligation, federal, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the Debtors’ filing of the Chapter 11 Cases.

9. Nothing in this Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by Bankruptcy Code Sections 362 and 365 or other applicable law, and nothing herein or in the Motion shall constitute postpetition assumption or adoption of any agreement pursuant to Bankruptcy Code Section 365. Nothing in this Order shall be deemed a waiver by the Debtors or any other party of any right with respect to the assumption or rejection of an executory contract.

10. The Debtors are authorized to pay on a timely basis in accordance with their prepetition practices all undisputed invoices in respect of prepetition and postpetition Utility Services rendered by the Utility Companies to the Debtors.

11. Notwithstanding anything to the contrary contained herein, any payments made or to be made under this Order with respect to such claims shall be subject to the terms, conditions, and limitations of the DIP Orders in favor of the DIP Revolving Agent and DIP Term Agent.

12. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

14. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

END OF ORDER

Submitted by:

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

Exhibit C

**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)**

FINAL ORDER UNDER 11 U.S.C. §§ 105(A) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT

On _____, 2016, the Court conducted a hearing to consider the *Debtors'*

Emergency Motion for Interim and Final Orders Under 11 U.S.C. §§ 105(a) and 366 (I)

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.

Prohibiting Utility Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment (the “**Motion**”), filed by the above-captioned Debtors (the “**Debtors**”). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estate, and their creditors; (iv) due and proper notice of the Motion has been provided to (a) the Office of the United States Trustee; (b) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.;² (c) 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; (d) 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; (e) 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; (f) 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; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service;³ and (i) and the Utility Companies³ listed on Exhibit A to the Motion; and it appearing that no other or further notice need be

² Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

provided; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. Except in accordance with the procedures set forth below, absent further order of the Court, each Utility Company is prohibited from (a) altering, refusing, or discontinuing service to, or discriminating against the Debtors solely on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid invoice for services provided before the Petition Date and (b) requiring the payment of a deposit or other security in connection with the Utility Companies' continued provision of Utility Services, other than the establishment of the Utility Deposit Account.
3. The Debtors are authorized and directed to establish the Utility Deposit Account and shall deposit \$100,000 into the Utility Deposit Account for the purpose of providing Utility Companies adequate assurance of payment for postpetition Utility Services provided to the Debtors, subject to the terms and conditions of the DIP Facility and applicable orders authorizing the Debtors to enter into the same. The Debtors shall maintain the Utility Deposit Account with a minimum balance equal to 50% of the Debtors' estimated monthly cost of Utility Services, which the Debtors may adjust to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with any Utility Company.
4. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall file a Delinquency Notice with the Court and serve such

Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) lead counsel and local counsel to Wells Fargo Bank, National Association, as DIP Revolving Agent and Existing First Lien Agent, (d) counsel to the official committee of unsecured creditors, if one is appointed, (e) counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020, (f) counsel to the indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020, and (g) the United States Trustee for the Northern District of Texas (each, a “**Party in Interest**”). If the Debtors have not cured such delinquency or no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company’s account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company.

5. The following procedures are hereby approved:

- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors’ payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an “**Objection**”).
- (b) The Court has scheduled a final hearing on the Motion on _____, 2016 at _____ .m. (Central) (the “**Hearing Date**”) for the purpose of considering any Objections;
- (c) Any Objection by a Utility Company listed on Exhibit A to the Motion must be served upon, and actually received by, (i) the Debtors’ counsel, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010, Attn: Kourtney Lyda; 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian T. Peck; (ii) 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; (iii) 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; (iv) 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; (v) 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; (vi) counsel to the official committee of unsecured creditors, if one is appointed; and (vii) the United States Trustee for the Northern District of Texas, by no later than seven (7) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.

- (d) Without further order of the Court, but subject to the terms and conditions of the DIP Facility and applicable orders authorizing the Debtors to enter into the same, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company, whether or not such Utility Company has filed an Objection, if the Debtors in their discretion determine that there is a reasonable basis for providing such additional adequate assurance.
- (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit A to the Motion, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit A to the Motion which supplement shall identify for each Utility Company the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of this Final Order.
- (f) In the event that a Utility Company not listed on Exhibit A to the Motion objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Final Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.
- (g) All Utility Companies will be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code Section 366, without the need for an additional deposit or other security, until this Court enters an order to the contrary. Any Utility Company that fails to make a timely Objection shall be deemed to be satisfied that the Utility Deposit Account provides adequate assurance of payment for future services within the meaning of Bankruptcy Code Section 366(c)(2).

6. The Debtors shall serve this Final Order upon each of the Utility Companies listed on Exhibit A to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, promptly after the entry of this Order.

7. The inclusion or exclusion of any entity on or from Exhibit A to the Motion or on or from any amended Exhibit A shall not constitute an admission that such entity is or is not a “utility” within the meaning of Bankruptcy Code Section 366. This Order specifically reserves the Debtors’ rights to argue that (a) any of the entities listed on Exhibit A to the Motion or any amended Exhibit A is not a “utility” within the meaning of Bankruptcy Code Section 366, and (b) any such entity is compelled by contractual obligation, federal, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the Debtors’ filing of the Chapter 11 Cases.

8. Nothing in this Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by Bankruptcy Code Sections 362 and 365 or other applicable law, and nothing herein or in the Motion shall constitute postpetition assumption or adoption of any agreement pursuant to Bankruptcy Code Section 365. Nothing in this Order shall be deemed a waiver by the Debtors or any other party of any right with respect to the assumption or rejection of an executory contract.

9. The Debtors are authorized to pay on a timely basis in accordance with their prepetition practices all undisputed invoices in respect of prepetition and postpetition Utility Services rendered by the Utility Companies to the Debtors.

10. Notwithstanding anything to the contrary contained herein, any payments made or to be made under this Order with respect to such claims shall be subject to the terms, conditions, and limitations of the DIP Orders in favor of the DIP Revolving Agent and DIP Term Agent.

11. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived.

12. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

13. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

END OF ORDER

Submitted by:

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS