

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

IN RE:

KNIGHT ENERGY HOLDINGS, LLC, *ET AL.*<sup>1</sup>

DEBTORS

CASE NO. 17-51014

(JOINT ADMINISTRATION REQUESTED)

CHAPTER 11

CHIEF JUDGE ROBERT SUMMERHAYS

**MOTION FOR AN ORDER (I) APPROVING CONTINUED USE OF CASH  
MANAGEMENT SYSTEM, (II) AUTHORIZING MAINTENANCE OF PRE-PETITION  
BANK ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS FORMS, AND  
(III) WAIVING THE REQUIREMENTS OF BANKRUPTCY CODE § 345(b)**

Knicht Energy Holdings, LLC; Knicht Oil Tools, LLC; Knicht Manufacturing, LLC; KDCC, LLC f/k/a Knicht Well Services, LLC; Tri-Drill, LLC; Advanced Safety & Training Management, LLC; Knicht Security, LLC; Knicht Information Systems, LLC; El Caballero Ranch, Inc.; Rayne Properties, LLC; Knicht Aviation, LLC; Knicht Research & Development, LLC; Knicht Family Enterprises, LLC; HMC Leasing, LLC; and HMC Investments, LLC (collectively, the “Debtors”), as debtors-in-possession, file this *Motion for an Order (i) Approving Continued use of Cash Management System, (ii) Authorizing Maintenance of Pre-Petition Bank Accounts and Continued use of Existing Business Forms, and (iii) Waiving the*

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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, are Knicht Energy Holdings, LLC (1930) (Case No. 17-51014); Knicht Oil Tools, LLC (2667) (Case No. 17-51015); Knicht Manufacturing, LLC (0600) (Case No. 17-51016); KDCC, LLC, f/k/a Knicht Well Services, LLC (4156) (Case No. 17-51017); Tri-Drill, LLC (4957) (Case No. 17-51018); Advanced Safety & Training Management, LLC, (0510) (Case No. 17-51019); Knicht Security, LLC (0923) (Case No. 17-51020); Knicht Information Systems, LLC (0000) (Case No. 17-51021); El Caballero Ranch, Inc. (7345) (Case No. 17-51022); Rayne Properties, LLC (0000) (Case No. 17-51023); Knicht Aviation, LLC (3329) (Case No. 17-51024); Knicht Research & Development, LLC (3760) (Case No. 17-51025); Knicht Family Enterprises, LLC (7190) (Case No. 17-51026); HMC Leasing, LLC (0814) (Case No. 17-51027) and HMC Investments, LLC (0000) (Case No. 17-51029). The Debtors' service address is 2272 SE Evangeline Thruway, Lafayette, Louisiana 70508 other than Knicht Manufacturing, LLC and Advanced Safety & Training Management, LLC. Knicht Manufacturing, LLC's service address is 2810-A Melancon Road, Broussard, Louisiana 70518 and Advanced Safety & Training Management, LLC's service address is 1042 Forum Drive, Broussard, Louisiana 70518.

*Requirements of Bankruptcy Code § 345(b)* (the “Motion”) and in support thereof, respectfully represent as follows:

### **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.

2. The statutory bases for the relief requested herein are sections 105(a), 363, 364, 1107 and 1108 of title 11 of the United States Code (11 U.S.C. §§ 101 et seq., as amended, the “Bankruptcy Code”).

### **Background**

3. On this date (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code commencing the above-captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

4. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 cases. Further, no trustee or examiner has been requested or appointed in any of these Chapter 11 cases.

5. The Debtors have filed with the Court the *Statement of Background Information and Declaration in Support of Debtors’ Chapter 11 Petitions and First-Day Motions* (the “First Day Declaration”), which is incorporated by reference in this Motion.

6. The Debtors have filed with the Court the *Debtors’ Motion for an Order Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Post-Petition Financing, (C) Granting Security Interests and Superpriority Administrative Expense Status to the DIP Agent*

and the DIP Lenders, (D) Granting Adequate Protection to Existing Lienholders, (E) Scheduling a Final Hearing, and (F) Granting Related Relief (the “DIP Motion”) seeking entry of interim and final orders (the “DIP Orders”) which includes a Debtor-proposed 13-week budget (the “Budget”). The terms of the DIP Motion, the DIP Orders, and the Budget are incorporated by reference in this Motion.

### **Relief Requested**

7. By this Motion, and subject to the entry of an Order concerning the Debtors’ use of cash collateral pursuant to Bankruptcy Code § 363, the Debtors seek the entry of an order (a) authorizing the continued use of their (i) existing cash management system, (ii) existing bank accounts and business forms, and (iii) deposit practices, and (b) waiving the requirements of Bankruptcy Code § 345(b). In connection with this relief, the Debtors request a waiver of certain of the operating guidelines established by the Office of the United States Trustee for the Western District of Louisiana<sup>2</sup> that require debtors to close all pre-petition bank accounts, open new accounts designated as debtor-in-possession accounts, and provide new business forms and stationary.

### **The Debtors’ Pre-Petition Cash Management System**

#### **A. Cash Management System**

8. Prior to the Petition Date, in the ordinary course of their business, the Debtors used a cash management system (the “Cash Management System”) to efficiently collect, transfer,

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<sup>2</sup> The Office of the United States Trustee for the Western District of Louisiana (the “UST”) has established certain operating guidelines for debtors in possession in chapter 11 cases. These guidelines require debtors in possession to, among other things, (a) close existing bank accounts and open new accounts, (b) obtain checks for all debtor-in-possession accounts that bear the designation “Debtors in Possession” and the bankruptcy case number, and (c) deposit funds only in authorized financial institutions. Chapter 11 Operating Guidelines and Reporting Requirements of the U.S. Trustee, Region 5, Judicial Districts of Louisiana and Mississippi ([www.usdoj.gov/ust/r05](http://www.usdoj.gov/ust/r05)) § II.C. These requirements, designed to provide a clear line of demarcation between pre-petition and post-petition claims and payments, help prevent the inadvertent payment of a pre-petition claims by preventing banks from honoring checks drawn before the bankruptcy filing.

and disburse funds generated by their business operations. The Cash Management System consists of forty-seven (47) accounts maintained by Knight Energy Holdings, LLC and its subsidiaries thirty-three (33) at various branches of Iberia Bank (“Iberia”), five (5) at Regions Bank (“Regions”), two (2) at Chase Bank (“Chase”), and one each at The First National Bank (“FNB”), Four Corners Community Bank (“FCB”), Rocky Mountain Bank (“RMB”), Dilley State Bank (“DSB”), First National Bank Alaska (“FNBA”), Whitney Bank (“Whitney”), and Wells Fargo Bank (“Wells Fargo”) (collectively, the “Accounts” or “Bank Accounts”).

9. The Debtors have designed the Cash Management System to efficiently collect, transfer, and disburse funds for each of the Debtors. The Debtors maintain current and accurate accounting records of daily cash transactions and submits that maintenance of the Cash Management System will prevent undue disruption to the Debtors’ business operations while protecting the Debtors’ cash for the benefit of the estate. Substantially disrupting the Debtors’ current cash management procedures would impair the Debtors’ ability to optimize their business performance and to successfully prosecute these chapter 11 cases.

10. The Debtors use the Bank Accounts to effectively and efficiently collect, transfer, and disburse funds as needed for general business operations. The Cash Management System provides significant benefits to the Debtors, including, without limitation, the ability to (a) closely track, and thus control, all corporate funds, (b) ensure cash availability, and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. Indeed, a disruption in the Cash Management System could cause delays in the collection and disbursement of funds, and, thus, impede the Debtors’ ability to carry out their normal business operations.

11. The Cash Management System includes the necessary accounting controls to enable the Debtors, as well as their creditors and this Court, to trace funds through the system and ensure that all transactions are accurately documented. The Debtors will continue to maintain detailed records reflecting all transfers of funds. The Debtors will therefore be able to accurately document and record the post-petition transactions that will occur within the Cash Management System.

12. The attached **Exhibit A** contains a listing of all bank accounts maintained by the Debtors, with partially redacted account numbers. A brief description of each of the Accounts is provided below. A chart of the cash management system is attached hereto as **Exhibit B**.

(a) **KEH Accounts**. The majority of the Debtors' accounts are maintained by KEH and its subsidiaries. Debtor KEH maintains six (6) of the KEH Accounts (the "**KEH Parent Accounts**"). Debtor Knight Oil Tools, LLC ("**KOT**"), and its divisions, maintain twenty-nine (29) of the KEH Accounts (the "**KOT Accounts**"). Debtor Knight Manufacturing, LLC maintains six (6) of the KEH Accounts (the "**KMI Accounts**"). Debtor Tri Drill, LLC, maintains two (2) of the KEH Accounts (the "**TRI Accounts**"). El Caballero Ranch, Inc. maintains one (1) of the KEH Accounts. Debtor Advanced Safety & Training Management, LLC maintains one (1) of the KEH Accounts. KDCC, LLC f/k/a Knight Well Services, LLC maintains two (2) of the KEH Accounts.

i. KEH Parent Accounts:

1. The KEH operating account (XXXXXX7851) at Regions is the Debtors' primary operating account for the entire Knight business enterprise (the "**KEH Operating Account**"). The KEH Operating Account is primarily funded by customer deposits, wire transfers and checks. Funds from the KEH Iberia Account (defined below) are also periodically transferred into the KEH Operating Account. The KEH Operating Account transfers funds to the AP Account, the Payroll Account, the Employee Benefit Account, the Flexible Spending Account, WC Account, and all intercompany transfers (each as defined below).
2. The KEH payroll account (XXXXXX4939) at Regions is the account through which all of the Debtors' payroll obligations are funded (the "**Payroll Account**"). The Payroll Account is funded by the KEH Operating Account.

3. The KEH accounts payable account (XXXXXXX4920) at Regions is the account through which the Debtors pay their vendor obligations, The AP Account is funded by the KEH Operating Account.
4. The KEH deposit account (XXXXXXX0300) at Iberia is primarily funded by customer deposits (the "KEH Iberia Account"). Funds in the KEH Iberia Account are automatically transferred to the KEH sweep account (XXXXXXX6700) at Iberia daily.
5. The KEH sweep account (XXXXXXX6700) at Iberia is a sweep account ("Iberia Sweep Account"). Funds in the KEH sweep account are transferred to the KEH operating account (XXXXXXX7851) at Regions Bank on an as needed basis.
6. The First National Bank deposit account (XX1577). Funds are periodically transferred from the KEH operating account. The Debtors do not expect to use this account during the course of the Chapter 11 cases.

ii. KOT Accounts:

1. The employee benefit account (XXXXXXX5267) at Chase is the account from which the Debtors' previously disbursed tuition reimbursements under its tuition reimbursement plan (the "Employee Benefit Account"). The tuition reimbursement plan has not been used for an extended period of time. The Debtors do not intend to use this account during the course of the Chapter 11 cases.
2. The flexible spending account (XXXXXXX3602) at Iberia is the account that manages the flexible spending accounts for the Debtors' employees (the "Flexible Spending Account"). Each payroll period, the Flexible Spending Account is funded from the KEH Operating Account with the predetermined amount of funds to be placed in the employees' flexible spending accounts.
3. The workers compensation account (XXXXXXXX6378) at Iberia is the account from which workers compensation payments are disbursed (the "WC Account"). The Debtors WC Account is funded by the KEH Operating Account as necessary to pay workers compensation claims.
4. The KOT Aviation account (XXXXXXXX2201) at Iberia is the account from which airplane hangar expenses were made. It is currently a dormant account.

5. The credit card security account (XXXXXXX2958) at Whitney is an account where cash sits providing security on the credit card balance with Whitney Bank.
6. The remaining KOT Accounts are Petty Cash Accounts (as defined below).

iii. Petty Cash Accounts:

1. The KEH Debtors maintain the petty cash accounts listed below primarily for the petty cash needs at the Debtors' various store locations throughout the United States (the "Petty Cash Accounts"). All Petty Cash Accounts combined collectively hold less than \$25,000 most of the time.

a. Iberia Petty Cash Accounts:

- i. (KOT) (i) Acct. ending in 4800; (ii) Acct. ending in 8648; (iii) Acct. ending in 6440; (iv) Acct. ending in 3721; (v) Acct. ending in 6513; (vi) Acct. ending in 7498; (vii) Acct. ending in 9620; (viii) Acct. ending in 3895; (ix) Acct. ending in 6785; (x) Acct. ending in 4876; (xi) Acct. ending in 6459; (xii) Acct. ending in 8664; (xiii) Acct. ending in 4085; (xiv) Acct. ending in 5800; (xv) Acct. ending in 9300; (xvi) Acct. ending in 9639; (xvii) Acct. ending in 3168; (xviii) Acct. ending in 7510; (xix) Acct. ending in 9349;

- ii. (KMI) (i) Acct. ending in 6289; (ii) Acct. ending in 4043; (iii) Acct. ending in 4328; (iv) Acct. ending in 3225; (v) Acct. ending in 3217;

- iii. (Tri Drill, LLC) (i) Acct. Ending in 1200; (ii) Acct Ending in 6556;

- iv. (ASTM) (i) Acct. Ending in 6653;

- v. (KDCC) (i) Acct. Ending in 0121,

- b. Miscellaneous Bank Petty Cash Accounts: (i) Account (XXX13) at FCB (KOT); (ii) Account (XXXXXXX2251) at Chase (KOT); (iii) Account (XXX1087) at RMB (KOT); (iv) Account (XXXX2369) at FNB (KOT); (v) Account (XXX641) at DSB (El Caballero Ranch, LLC); (vi) Acct. ending in 8420 at Wells (KOT); Account (XXXXXXX4209) at Regions Bank Odessa (KOT).

iv. Knight Manufacturing, LLC

1. The KMI Debtor maintains a deposit account (XXXXXXX4688) at Regions Bank. Deposits received from customers on down payments are deposited in this account.

(b) HMC Accounts:

- i. Regions Account (XXXXXXX1376) acts as HMC's operating account.

13. The primary components of the Debtors' Cash Management System are described below.

**B. The KEH Accounts**

14. The Debtors' Cash Management System is primarily controlled through the KEH Parent Accounts. The KEH Operating Account is the primary Account in the Debtors' Cash Management System. The KEH Operating Account is funded by customer deposits, wire transfers, checks, and any other customer receipts. The KEH Iberia Account is also funded by customer deposits. The funds from the KEH Iberia Account are transferred to the KEH Iberia Sweep Account.

15. The KEH Operating Account is the Account that funds the AP Account, the Payroll Account, the WC Account, the Flexible Spending Account, and the Employee Benefit Account and all intercompany transfers. The KEH Operating Account is also the account that receives intercompany transfers from the other Bank Accounts.

16. All intercompany transfers from the KEH Operating Account are recorded in "Investment in Subsidiary" and "Contributed Capital" accounts maintained on the books of KEH and the entity receiving the transfer, respectively.

17. During the proceedings, the Debtors will “wall-off” the Non-Debtor<sup>3</sup> entities from the Debtor entities. Intercompany cash transfers between Debtors and Non-Debtors will not occur.

*i. Employee Related Transfers*

18. The payroll obligations of all of the Debtors are funded through the Payroll Account.

19. Each pay period, funds are deposited from the KEH Operating Account into the Payroll Account for disbursement to the Debtors’ employees. The vast majority of Knight employees are paid by direct deposit from the Payroll Account. Because all employees are paid from the Payroll Account, the Debtors track payroll on a per entity basis and make offsetting book entries in the intercompany books to account for payroll.

20. The Debtors have established an Employee Benefit Plan Account, a Flexible Spending Account, and a WC Account. Each of the foregoing accounts is funded from the KEH Operating Account as needed.

*ii. KEH AP Account*

21. Most of the Debtors’ non-employee related payments are disbursed from the AP Account. The Debtors disburse funds from the KEH Operating Account to the AP Account as needed to fund payments to vendors.

**B. The KFE and HMC Accounts**

22. As more fully discussed in the Declarations, the business of both KFE and HMC is to own real estate. KFE owns the Knight Headquarters property. HMC either owns or leases most of the real estate used in the Debtors’ domestic operations. HMC in turn leases (or

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<sup>3</sup> Non-Debtor entities “Non-Debtors” include Knight International, Knight Resources LLC, and the associated subsidiaries of both.

subleases as applicable) the property it owns (or leases) to the KEH Debtors in connection with the Debtors' business operations.

23. Lease payments have historically been disbursed from the AP Account to the HMC Iberia Account and the KFE Operating Account, and the funds in those accounts have been used to pay (i) the mortgage payments to Iberia and JP Morgan, (ii) to pay lease payments for all HMC lease obligations, and (iii) to pay certain other small miscellaneous expenses (e.g. taxes, bank fees etc.).

24. Except as otherwise described herein, there is no co-mingling with any other accounts.

**Continued Use of Corporate Bank Accounts and Cash Management System**

25. The Debtors respectfully request authority to maintain their existing Bank Accounts and Cash Management System in accordance with their usual and customary practices, including their practice of conducting transactions through ACH, wires and other similar methods, to ensure a smooth transition into chapter 11 with minimal disruption to operations. In addition, subject to the limitations contained in the proposed DIP Facility (as defined in the DIP Motion), the Debtors request authority to close any of the Bank Accounts or open new bank accounts if, in the exercise of their business judgment, the Debtors determine that such action is in the best interest of their estates or if a new bank account is required to comply with an order of this Court.

26. Only if the Debtors continue to use the Bank Accounts with the same account numbers can the transition into chapter 11 be smooth and orderly, with minimal interference with continuing operations. Requiring the Debtors to open new accounts and obtain checks for those accounts will cause delay and disruption to the Debtors' businesses. Due to the expected time

and costs associated with adding the designation “Debtor-in-Possession” or “DIP” to any checks in the Debtors’ possession, the Debtors request authority to continue using their current stock of checks without including “Debtor-in-Possession” or “DIP” on the face of the checks. The Debtors, however, will instruct their banks to add the designations to current and any future Accounts.

27. By preserving business continuity and avoiding operational and administrative paralysis that closing the existing Bank Accounts and opening new ones would necessarily create, all parties-in-interest will be best served and the benefit to the Debtors’ estates will be considerable. To the best of the Debtors’ knowledge, the Bank Accounts are in financially stable institutions that are insured by the Federal Deposit Insurance Corporation up to the applicable limit. The confusion that would otherwise result could only work to the detriment of the Chapter 11 Cases. The Debtors will continue to maintain records respecting all transfers between and among the Bank Accounts so that all transactions can be ascertained after they have occurred.

28. The Debtors’ Cash Management System constitutes an ordinary course, essential business practice providing significant benefits to the Debtors including, among other things, the ability to (i) control funds, (ii) ensure the availability of funds when necessary, and (iii) reduce costs and administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. Any disruption of the Cash Management System could have a severe and adverse impact upon the Debtors’ reorganization efforts.

29. The relief requested in this Motion is vital to ensuring the Debtors’ seamless transition into bankruptcy. Authorizing the Debtors to maintain their Cash Management System, as modified, will avoid many of the possible disruptions and distractions that could divert the Debtors’ attention from more pressing matters during the initial days of these Chapter 11 Cases.

**Allowance of Outstanding Checks**

30. To prevent business interruption and to allow payment to clear for necessary business expenses incurred and paid prior to the petition date, the Debtors request permission to allow all outstanding un-deposited checks.

**Continued Use of Existing Business Forms and Records**

31. The Debtors request authority to continue to use all existing correspondence and business forms (including, but not limited to, checks, invoices, stationery, and other business forms). By virtue of the nature and scope of the businesses in which the Debtors are engaged and the numerous other parties with whom they deal, the Debtors use of their existing business forms without alteration or change is necessary to avoid any disruptions in the business. Printing new business forms would take an undue amount of time and expense. Fulfillment of the requirement would likely delay the payment of post-petition claims and negatively affect operations and the value of these estates. Accordingly, the Debtors respectfully request that the Court authorize them to continue to use their existing business forms and to maintain their existing business records.

**Continued Maintenance of Accounts at Non-Depository Banks**

32. To the best of Debtors' knowledge, Wells Fargo, Iberia, Chase, FCB, RMB, FNB, FNBA, Whitney, and DSB are not authorized depositories in the Western District. Pursuant to Bankruptcy Code § 105, the Debtors request a waiver of the U.S. Trustee Guidelines to allow the Debtors to maintain the Bank Accounts at Wells Fargo, Iberia, Chase, FCB, RMB, FNB, FNBA, Whitney, and DSB.

33. The deposit of funds with recognized and stable financial institutions such as Wells Fargo, Iberia, FNB, Whitney, and Chase should not pose a substantial risk to the Debtors'

estates or creditors. Further, the accounts at regional banks FCB, RMB, FNBA, and DSB are Petty Cash Accounts. As previously mentioned, the Debtors' combined Petty Cash Accounts hold less than \$25,000, and therefore maintaining funds in those banks likewise does not pose a material risk to the Debtors' estates or creditors.

34. Requiring the Debtors to change their deposits and other procedures could result in harm to the Debtors, their estates, and creditors because such change would disrupt the Cash Management System. Conversely, the Debtors' estates and creditors will not be harmed by the Debtors' maintenance of the status quo because of the relatively safe and prudent practices already utilized by the Debtors.

35. In the interest of maintaining the continued and efficient operation of the Cash Management System during the pendency of the Chapter 11 Cases, the Debtors request that Wells Fargo, Iberia, Chase, FCB, RMB, FNB, FNBA, Whitney, and DSB be authorized and directed to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course, and to pay any and all checks, drafts, wires, ACH transfers, electronic fund transfers, or other items presented, issued, or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date so long as there are sufficient funds in the relevant Bank Accounts.

36. Further, most, if not all, of the Debtors' banks charge monthly fees to the Debtors for maintaining the Bank Accounts, which may vary monthly based on actual usage.<sup>4</sup> The Debtors were current on payment of these monthly fees as of the Petition Date. The Debtors request authority to continue paying the monthly fees in the ordinary course of business, including any portion of the fee attributable to pre-petition services.

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<sup>4</sup> The Debtors' average monthly banking fees during 2017 were approximately \$4,207.02. A schedule of the fees by bank is attached as **EXHIBIT C**.

**Waiver of Conflicting U.S. Trustee Guidelines or Provisions Bankruptcy Code § 345(b)**

37. The U.S. Trustee has established its *Chapter 11 Operating Guidelines and Reporting Requirements of the U.S. Trustee, Region 5, Judicial Districts of Louisiana and Mississippi* ([www.usdoj.gov/ust/r05](http://www.usdoj.gov/ust/r05)) § II.C. (the “Guidelines”) in order to supervise the administration of Chapter 11 cases. These Guidelines require debtors-in-possession to, among other things, (a) close all existing bank accounts and open new accounts, (b) obtain checks for all debtor-in-possession accounts that have the designation “Debtors in Possession,” and the bankruptcy case number, and (c) maintain their bank accounts with a depository bank approved by the U.S. Trustee. The U.S. Trustee designed these requirements to provide, among other things, a clear demarcation between pre-petition and post-petition transactions and operations, which would, in theory, prevent the inadvertent post-petition payment of a pre-petition claim. As explained in further detail below, the Debtors seek a waiver of certain of these requirements in this Motion.

38. The Debtors seek a waiver of the U.S. Trustee Guidelines to the extent that the requirements of such Guidelines otherwise conflict with (a) the Debtors’ existing practices under the Cash Management System, or (b) any action taken by the Debtors in accordance with any order granting this Motion or other order entered in the Chapter 11 Cases. The use of the Debtors’ Cash Management System is an ordinary course, customary, essential business practice. Requiring that the Debtors alter their current practices to comply with the Guidelines would risk disruption to the Debtors’ business and be inefficient.

39. While the Debtors believe that their cash management practices comply with Bankruptcy Code § 345(b), to the extent that the requirements of § 345(b) are inconsistent, or otherwise conflict, with (a) the cash management practices under the Cash Management System

or (b) any action taken by the Debtors in accordance with an order of this Court, the Debtors seek a waiver of the requirements of Bankruptcy Code § 345(b) to allow the Debtors to continue their existing cash management practices. The Debtors will not place funds in accounts that are not insured by the FDIC.

### **Basis for Relief Requested**

40. Bankruptcy Code § 105 provides in pertinent part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Courts have long recognized that the power granted by Bankruptcy Code § 105(a) was expressly meant to be exercised to effectuate the rehabilitation of the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 16 (1977)). The relief requested in this Motion is critical to the Debtors’ successful reorganization and is justified under Bankruptcy Code § 105(a).

41. Extensive authority supports the relief sought in this Motion. In other chapter 11 cases, courts have recognized that strict enforcement of the U.S. Trustee Guidelines does not always serve the purposes of chapter 11. Accordingly, courts have often waived such requirements and replaced them with alternative procedures. *See, e.g., In re Rooster Energy, L.L.C., et al.*, 17-50705 (Bankr. W.D. La. June 6, 2017); *In re Acadiana Management Group, L.L.C., et al.*, (Bankr W.D. La. June 23, 2017); *In re A&B Valve and Piping Systems, L.L.C.*, Case No. 15-51336 (Bankr. W.D. La. Oct. 16, 2015); *In re Harvest Oil & Gas, LLC*, Case No. 15-50748 (Bankr. W.D. La. Aug. 3, 2015); *In re Port Aggregates, Inc.*, 14-50580 (Bankr. W.D. La. January 7, 2015); *In re Bass, Ltd.*, 11-51393 (Bankr. W.D. La.); *In re T & M Aviation, Inc.*, 10-51520 (Bankr. W.D. La.); *In re TXCO Resources, Inc.*, 09-51807 (Bankr. W.D. Tex. May 21, 2009) (docket no. 61); *In re Hill Country Galleria*, 09-11175 (Bankr. W.D. Tex. 5/18/09)

(docket no. 30); *In re Spectrum Jungle Labs Corp.*, 09-50455 (Bankr. W.D. Tex. Feb. 5, 2009) (docket no. 60); *In re Landsource Comtys. Dev., L.L.C.*, 08-11111 (Bankr. D. Del. June 10, 2008) (docket no. 29); *In re Lexington Precision Corp.*, 08-11153 (Bankr. S.D.N.Y. Apr. 2, 2008) (docket no. 25); *In re Sharper Image Corp.*, 08-10322 (Bankr. D. Del. Feb. 20, 2008) (docket no. 43); *In re Manchester, Inc.*, 08-30703 (Bankr. N.D. Tex. Feb. 17, 2008) (docket no. 75); *In re Mirant Corp.*, 03-46590 (Bankr. N.D. Tex. July 16, 2003) (docket no. 47). This is particularly true where, as here, the case involves a debtor with complex financial affairs. *See, e.g., In re The Charter Co.*, 778 F.2d 617 (11th Cir. 1985). In large chapter 11 cases, such as these, courts in other circuits have recognized that allowing a debtor to maintain existing cash management system is often appropriate. *See In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (maintaining existing cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”); *see also, e.g., In re Genesis Health Ventures, Inc.*, 402 F.3d 416, 424 (3d Cir. 2005); *In re Kindred Healthcare, Inc.*, 2003 WL 22327933, \*1 (Bankr. D. Del. Oct. 9, 2003).

42. Further, allowing the Debtors to utilize their pre-petition cash management systems is entirely consistent with applicable provisions of the Bankruptcy Code. Bankruptcy courts have recognized that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom, Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 510 U.S. 1110 (1994). At least one circuit has emphasized the “huge administrative burden” and

economic inefficiency of requiring the debtors to maintain all accounts separately. *Columbia Gas*, 997 F.2d at 1061.

43. The Debtors also request that no bank participating in the Cash Management System (collectively, the “Cash Management Banks”) that honors a pre-petition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such pre-petition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such pre-petition check or other item being honored post-petition. The Debtors believe that such flexibility accorded the Cash Management Banks is necessary in order to induce the Cash Management Banks to continue providing cash management services without additional credit exposure.

44. Bankruptcy Code § 363(c)(1) authorizes the debtor-in-possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of Bankruptcy Code § 363(c)(1) is to provide a debtor-in-possession with the flexibility to engage in the ordinary course transactions required to operate its business without unneeded oversight by its creditors or the Court. *Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *In re Git-N-Go, Inc.*, 322 B.R. 164, 171 (Bankr. N.D. Okla 2004); *In re Enron Corp.*, No. 01-16034 (ALG), 2003 WL 1562202, at \*15 (Bankr. S.D.N.Y. Mar. 21, 2003); *In re Atlanta Retail, Inc.*, 287 B.R. 849, 856 (Bankr. N.D. Ga. 2002); *Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997). Included within the purview of Bankruptcy Code § 363(c) is a debtor’s ability to continue the “routine transactions” necessitated by a

debtor's cash management system. *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtors seek authority under Bankruptcy Code § 363(c)(1) to continue the collection, concentration, and disbursement, including intercompany transfers, of cash pursuant to their Cash Management System described above.

45. The Debtors also request that this Court waive the strict enforcement of the requirement that the Debtors open new bank accounts, that the Bank Accounts be deemed debtor-in-possession accounts and that the Debtors be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as those employed during the pre-petition period.

46. In other large cases, bankruptcy courts has waived the strict enforcement of bank account closing requirements and replaced them with an alternative procedure that provides the same protection. *See, e.g., In re Hill Country Galleria*, 09-11175 (Bankr. W.D. Tex. May 18, 2009); *In re Spectrum Jungle Labs Corp.*, 09-50455 (Bankr. W.D. Tex. Feb. 5, 2009); *In re Lexington Precision Corp.*, 08-11153 (Bankr. S.D.N.Y. Apr. 2, 2008); *In re Manchester, Inc.*, 08-30703 (Bankr. N.D. Tex. Feb. 17, 2008); *In re PRC, LLC*, 08-10239 (Bankr. S.D.N.Y. 1/25/08); *In re Mirant Corp.*, 03-46590 (Bankr. N.D. Tex. July 16, 2003); *In re Delta Fin. Corp.*, 07-11880 (Bankr. D. Del. Dec. 19, 2007); *In re Prorythm, Inc.*, 07-11861 (Bankr. D. Del. Dec. 13, 2007); *In re Quaker Fabric Corp.*, 07-1146 (Bankr. D. Del. Aug. 20, 2007); *In re HomeBanc Mortgage Corp.*, 07-11079 (Bankr. D. Del. Aug. 14, 2007); *In re New Century TRS Holdings, Inc.*, 07-10416 (Bankr. D. Del. Apr. 3, 2007); *In re ResMae Mortgage Corp.*, 07-10177 (Bankr. D. Del. Feb. 13, 2007).

47. The Debtors represent that if the relief requested herein is granted, they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by them prior to the Petition Date, other than those authorized by this Court. To prevent the possible inadvertent payment of pre-petition claims, except those otherwise authorized by the Court, the Debtors will work closely with the Cash Management Banks to ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent this Court's approval.

48. The Debtors additionally use certain pre-printed letterhead, purchase orders, invoices and other such related forms. The Debtors, therefore, request that they be authorized to continue to use all such correspondence and business forms existing immediately before the Petition Date without reference to the Debtors' status as debtor-in-possession.

49. Parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors-in-possession as a result of those involved with and affected by this Case. If the Debtors are required to change their preprinted correspondence and business forms, they will be forced to choose standard forms rather than the current forms with which the Debtors' employees, customers, and vendors are familiar. Such a change in operations would create a sense of disruption and potential confusion within the Debtors' organizations and confusion for the Debtors' employees, customers, and vendors. The Debtors believe that it would be costly and disruptive to cease using all existing forms and to purchase and begin using new stationery and business forms. The Debtors respectfully submit that to do so would be unnecessary and that appropriate care can be taken to assure the proper use of the existing forms.

50. In other large cases, bankruptcy courts have allowed debtors to use their pre-petition business forms without the "debtor-in-possession" label, at least until the debtors'

existing supply of business forms and checks were depleted. *See, e.g., In re Delta Fin. Corp.*, 07-11880 (Bankr. D. Del. Dec. 19, 2007); *In re Prorythm, Inc.*, 07-11861 (Bankr. D. Del. Dec. 13, 2007); *In re Quaker Fabric Corp.*, 07-1146 (Bankr. D. Del. Aug. 20, 07); *In re HomeBanc Mortgage Corp.*, 07-11079 (Bankr. D. Del. Aug. 14, 2007). Further, courts have recognized that strict enforcement of the guidelines does not serve the rehabilitative process of chapter 11. *See, e.g., Hill Country Galleria*, 09-11175 (Bankr. W.D. Tex. May 18, 2009) (docket no. 30); *Spectrum Jungle Labs*, 09-50455 (Bankr. W.D. Tex. Feb. 5, 2009) (docket no. 60); *Lexington Precision*, 08-11153 (Bankr. S.D.N.Y. Apr. 2, 2008) (docket no. 25); *Manchester*, 08-30703 (Bankr. N.D. Tex. Feb 17, 2008) (docket no. 75); *In re PRC, L.L.C.*, 08-10239 (Bankr. S.D.N.Y. Jan. 25, 2008) (docket no. 36); *In re Silicon Graphics, Inc.*, 06-10977 (Bankr. S.D.N.Y. May 10, 2006) (docket no. 47); *Mirant*, 03-46590 (Bankr. N.D. Tex. July 16, 2003) (docket no. 47). Accordingly, similar authorization is appropriate in these chapter 11 cases.

51. Prior to the hearing on this Motion, proposed counsel for the Debtors intends to confer with the UST regarding the relief requested herein.

52. Lastly, Bankruptcy Code § 345(a) authorizes deposits or investments of money of a bankruptcy estate, such as cash, in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department agent or instrumentality of the United States or backed by the full faith and credit of the United States,” Bankruptcy Code § 345(b) provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety. 11 U.S.C. § 345(b).

53. A bankruptcy court may, however, relieve a debtor-in-possession of the restrictions imposed by Bankruptcy Code § 345(b) for “cause.” Given the structure of the Debtors’ Cash Management System and the relative security of the Cash Management System, the Debtors submit that cause exists to grant a waiver of the requirements of Bankruptcy Code § 345(b).

54. Several Bank Accounts are maintained at Regions which is approved by the United States Trustee for Region 5 as an authorized depository (“Authorized Depository”). Accordingly, the Debtors believe that any funds that are deposited in those Bank Accounts held at Regions are secure and, thus, the Debtors are in compliance with Bankruptcy Code § 345.

55. Strict compliance with the requirements of Bankruptcy Code § 345(b) would, in cases such as these, be inconsistent with Bankruptcy Code § 345(a), which permits a debtor-in-possession to make such investments of money of the estate “as will yield the maximum reasonable net return on such money.” Thus, in 1994, to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” Congress amended Bankruptcy Code § 345(b) to provide that its strict investment requirements may be waived or modified if the Court so orders “for cause.” 140 Cong. Rec. H. 10,767 (Oct. 4, 1994), 1994 WL 545773.

56. The Debtors believe that funds to be held in the Bank Accounts, even in the unlikely event that there is an amount in excess of the amounts insured by the FDIC, are secure and that obtaining bonds to secure those funds, as required by Bankruptcy Code § 345(b), is unnecessary and detrimental to the Debtors’ estates and creditors. The Debtors submit that “cause” exists pursuant to Bankruptcy Code § 345(b) to waive such requirement because, among other considerations, (i) the Debtors’ Banks are highly rated and are federally chartered banks subject to supervision by federal banking regulators, (ii) the Debtors retain the right to remove

funds held at the Banks and establish new bank accounts as needed, (iii) the cost associated with satisfying the requirements of Bankruptcy Code § 345(b) is burdensome, and (iv) the process of satisfying those requirements would lead to needless inefficiencies in the management of the Debtors' businesses. Moreover, strict compliance with the requirements of Bankruptcy Code § 345(b) would not be practical in these Chapter 11 Cases. A bond secured by the undertaking of a corporate surety would be prohibitively expensive, if such bond is available at all.

57. Bankruptcy courts have granted relief similar to that requested herein. *See, e.g., In re Pilgrim's Pride Corp.*, 08-45664 (Bankr. N.D. Tex. Dec. 3, 2008) (docket no. 69); *TXCO Resource*, 09-51807 (Bankr. W.D. Tex. May 20, 2009) (docket no. 61); *In re Steve & Barry's Manhattan, L.L.C.*, 08-12579 (Bankr. S.D.N.Y. June 30, 2008) (docket no. 285); *Lexington Precision*, 08-11153 (Bankr. S.D.N.Y. Apr. 22, 2008) (docket no. 26); *Manchester*, 08-30703 (Bankr. N.D. Tex. Feb. 17, 2008) (docket no. 75); *In re HomeBanc Mortgage Corp.*, 07-11079 (Bankr. D. Del. Aug. 14, 2007); *In re Am. Home Mortgage Holdings, Inc.*, 07-11047 (Bankr. D. Del. Aug. 7, 2007).

58. Alternatively, the Debtors request a 60-day extension to make other arrangements that would be acceptable to the U.S. Trustee.

59. Based on the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of the estate and all other interested parties, and should be granted in all respects.

#### **Request for Waiver of Stay**

60. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, 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 businesses and preserve the value of the estates.

**Subject to DIP Orders**

61. Notwithstanding any provision herein to the contrary, this Motion and all relief sought hereby shall be subject in all respects to the DIP Orders, the Budget, and any other cash collateral order financing orders granted in the Cases.

**Notice**

62. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtors and their counsel; (iii) Clearlake Capital Group, L.P. and/or its counsel; (iv) Cantor Fitzgerald Securities and/or its counsel; (v) Whitney National Bank and/or its counsel; (vi) JP Morgan Chase Bank and/or its counsel; (vii) Iberia Bank and/or its counsel; (viii) all other secured creditors; (ix) any party whose interests are directly affected by this specific pleading; (x) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (xi) counsel for and the members of any official committees appointed by this Court; (xii) the consolidated 30 largest unsecured creditors of the Debtors; (xiii) all governmental agencies having a regulatory or statutory interest in these cases; and (xiv) the Cash Management Banks. No other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

Dated: August 8, 2017.

Respectfully submitted,

/s/ William H. Patrick, III

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