

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

TRIAD GUARANTY INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 13-11452

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND  
FINAL ORDERS (A) AUTHORIZING THE DEBTOR TO CONTINUE  
USING ITS BANK ACCOUNTS AND BUSINESS FORMS AND (B)  
GRANTING RELATED RELIEF**

Triad Guaranty, Inc., the debtor and debtor-in-possession (the "Debtor") in the above-captioned case, by and through its proposed undersigned counsel, file this motion (this "Motion") for the entry of an interim order, substantially in the form attached hereto as Exhibit A (the "Interim Order"), and a final order, substantially in the form attached hereto as Exhibit B (the "Final Order"), authorizing the Debtor to continue using its existing bank accounts and business forms, and granting related relief. In support of this Motion, the Debtor respectfully state as follows:<sup>2</sup>

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C.

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<sup>1</sup> The last four digits of the Debtor's federal taxpayer identification number are 8519. The location of the Debtor's headquarters and the Debtor's service address is 1900 Crestwood Blvd., Birmingham, AL 35210

<sup>2</sup> The facts and circumstances supporting this Motion are set forth in the Declaration of William T. Ratliff, III in Support of Debtor's Chapter 11 Petition and First Day Motion (the "First Day Declaration"), filed contemporaneously herewith.

§§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 345, 363, 364, 503, 507, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”).

### **INTRODUCTION<sup>3</sup>**

4. On the date hereof (the “Petition Date”), the Debtor filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtor is operating its businesses and managing its property as debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no committee has been appointed or designated.

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<sup>3</sup> A description of the Debtor’s businesses, the reasons for commencing these chapter 11 cases and the relief sought from this Court to allow for a smooth transition into chapter 11 are set forth in the First Day Declaration.

**RELIEF REQUESTED**

5. By this Motion, the Debtor seeks entry of an order authorizing it to:

(a) continue to (i) use, with the same account numbers, its Bank Accounts (as defined herein), (ii) treat the Bank Accounts for all purposes as accounts of the Debtor as debtor-in-possession, (iii) open new debtor-in-possession accounts, if needed; (iv) use, in their present form, all correspondence and business forms (including, without limitation, letterhead and invoices), and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to its status as debtor-in-possession.

6. The Debtor further requests that the Court authorize the Bank to

(a) continue to maintain, service, and administer the Bank Accounts and (b) debit the Bank Accounts in the ordinary course of business on account of (i) checks drawn on the Bank Accounts that are presented for payment at the Bank or exchanged for cashiers' checks prior to the Petition Date; (ii) checks or other items deposited in the Bank Accounts prior to the Petition Date that have been dishonored or returned unpaid for any reason (including associated fees and costs), to the same extent the Debtor was responsible for such items prior to the Petition Date; and (iii) undisputed, outstanding service charges owed to the Bank as of the Petition Date.

**The Bank Account, Business Forms, and Investment Practices**

**A. Description of the Debtor's Bank Accounts.**

7. The Debtor maintains one (1) checking account and one (1) money

market account (together, the “Bank Accounts”) at the National Bank of Commerce (the “Bank”) in Birmingham, Alabama. The Bank is designated as an authorized depository by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), pursuant to the U.S. Trustee’s Operating Guidelines and Financial Reporting Requirements for Debtor in Possession and Trustees (the “U.S. Trustee Guidelines”).

**B. The Debtor’s Existing Business Forms and Checks.**

8. In the ordinary course of business, the Debtor uses a multitude of check types. Additionally, the Debtor uses a variety of correspondence and business forms, including, but not limited to, letterhead and invoices. To minimize the expense to the Debtor’s estates associated with developing and/or purchasing entirely new forms, the delay in conducting business prior to obtaining such forms, and the confusion of parties receiving payments from the Debtor, the Debtor seeks authority to continue to use all correspondence and business forms as such forms existed immediately prior to the Petition Date, without reference to the Debtor’s status as debtor-in-possession. Once existing forms are depleted, the Debtor shall commence printing “debtor-in-possession” on checks the Debtor prints itself, and the Debtor will replace its existing stock of business forms with new forms identifying its status as debtor-in-possession.

9. The Debtor has prepared communications materials to distribute to the various parties with whom it conducts business which will, among other things, inform such parties of the commencement of this chapter 11 case. The Debtor

believes that these direct communications will provide adequate notice to these parties of the Debtor's status as a debtor-in-possession.

**Basis for Relief**

**I. The Court Should Approve the Debtor's Continued Use of the Bank Accounts.**

**A. The Continued Use of the Bank Accounts is Essential to the Debtor's Ongoing Operations and Restructuring Efforts.**

10. Pursuant to 28 U.S.C. § 586(a)(3) and the U.S. Trustee Guidelines, debtor-in-possession may be required to, among other things, (a) establish a debtor-in-possession account for all estate funds required for the payment of taxes, (b) close the Bank Accounts and open new debtor-in-possession accounts, and (c) obtain checks that bear the designation "debtor-in-possession" and reference the bankruptcy case number and type of account. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, and help protect debtors against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before commencement of chapter 11 cases. Strict enforcement of the U.S. Trustee Guidelines in this chapter 11 case, however, would severely disrupt the ordinary financial operations of the Debtor, reducing efficiencies and causing unnecessary expense.

11. The Debtor maintains two (2) Bank Accounts. To comply with the U.S. Trustee Guidelines, the Debtor would be required to complete a series of tasks whose completion would be time consuming, inconvenient, and expensive relative to

the benefits to accrue from the completion of those tasks. For instance, the Debtor would need to execute new signatory cards and depository agreements and create a new system for manually issuing checks and paying postpetition obligations.<sup>4</sup> The delays that would result from opening these accounts, revising cash management procedures, and instructing parties to redirect payments, would be disruptive.

12. The Court may authorize the Debtor to continue to use the Bank Accounts, pursuant to Bankruptcy Code section 105(a). Bankruptcy Code section 105(a) empowers the Court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). As set forth herein, the Debtor submits that approval of the Bank Accounts is appropriate and justified.

13. This Court routinely has waived the U.S. Trustee Guidelines and allowed corporate debtors to continue to use their cash management systems and prepetition bank accounts employed in the ordinary course of a debtor’s prepetition business. See, e.g., See, e.g., In re School Specialty, Inc., Case No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013); In re Overseas Shipping Group., Inc., Case No. 12-20000 (PJW) (Bankr. D. Del. Jan. 24, 2012); In re Monitor Group Co. Ltd. P’ship, Case No. 12-13042 (CSS) (Bankr. D. Del. Dec. 4, 2012); In re Southfield Office Bldg. 14, LP, Case No. 12-12415 (BLS) (Bankr. D. Del. Nov. 28, 2012); In re

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<sup>4</sup> Notwithstanding anything herein to the contrary, the Debtor reserve the right to close the prepetition Bank Account and open new accounts as may be necessary in the Debtor’s business judgment. The Debtor, however, will give prompt notice to the U.S. Trustee and any official committees that may be appointed in these chapter 11 cases through the monthly operating reports.

Pemco Worldwide Air Servs., Inc., Case No. 12-10799 (MFW) (Bankr. D. Del. March 6, 2012); In re Neb. Book Co., Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); In re L.A. Dodgers LLC, Case No. 11-12010 (KG) (Bankr. D. Del. June 28, 2011).<sup>5</sup>

**B. The Court Should Authorize the Bank to Continue to Maintain, Service, and Administer the Debtor's Bank Accounts in the Ordinary Course of Business.**

14. The Debtor submits that parties in interest will not be prejudiced or injured by the Debtor's maintenance of the Bank Accounts in the ordinary course of business. The Debtor strongly believes that replacing its existing Bank Accounts with new accounts as of the Petition Date pursuant to the U.S. Trustee Guidelines would needlessly interrupt its operations and impair its efforts to preserve the value of its estates and reorganize in an efficient manner.

15. Thus, the Debtor respectfully request that the Court authorize the Bank to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtor as debtor-in-possession, without interruption and in the ordinary course of business. In this regard, the Bank should be authorized to receive, process, honor, and pay any and all checks, ACH Payments, and other instructions, and drafts payable through, drawn, or directed on such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto; provided that any check, advice, draft, or other notification that the Debtor advised

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<sup>5</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this Motion. Copies of these orders are available upon request of the Debtor's proposed counsel.

the Banks to have been drawn, issued, or otherwise presented prior to the Petition Date may be honored only to the extent authorized by order of the Court.

16. The Debtor further requests that the Court authorize the Bank to accept and honor all representations from the Debtor as to which checks, drafts, wires, or ACH Payments should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, wires, or ACH Payments are dated prior to or subsequent to the Petition Date.

17. Moreover, in the ordinary course, the Bank charges, and the Debtor will pay, honor, or allow the deduction from the Bank Accounts, certain service charges and other fees, costs, and expenses (collectively, the "Bank Fees"). The Debtor respectfully requests that the Court authorize the Bank to (a) continue to charge the Debtor the Bank Fees and (b) charge-back returned items to the Bank Accounts, whether such items are dated prior to, on, or subsequent to the Petition Date, in the ordinary course of business. The Debtor further requests that the Court order that liens on either of the Bank Accounts granted to creditors will not have priority over the Bank Fees, as applicable, at which the Bank Accounts are located.

18. In other chapter 11 cases, this court has regularly waived the U.S. Trustee Guidelines and allowed corporate debtors to maintain ordinary course banking activities, including deduction of ordinary course banking fees, on the grounds that they are impractical and potentially detrimental to a debtor's postpetition business operations and restructuring efforts. See, e.g., In re School Specialty, Inc., Case No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013); In re

Overseas Shipping Group, Inc., Case No. 12-20000 (PJW) (Bankr. D. Del. Jan. 24, 2012); In re Monitor Group Co. Ltd. P'ship, Case No. 12-13042 (CSS) (Bankr. D. Del. Dec. 4, 2012); In re Southfield Office Bldg. 14, LP, Case No. 12-12415 (BLS) (Bankr. D. Del. Nov. 28, 2012); In re Pemco Worldwide Air Servs., Inc., Case No. 12-10799 (MFW) (Bankr. D. Del. March 6, 2012); In re Neb. Book Co., Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); In re L.A. Dodgers LLC, Case No. 11-12010 (KG) (Bankr. D. Del. June 28, 2011).

**II. The Debtor Should Be Granted Authority to Use Existing Business Forms and Checks Until They Are Depleted.**

19. To minimize expenses to its chapter 11 estate, the Debtor requests authority to continue to use all correspondence and business forms including, without limitation, letterhead, purchase orders, and invoices, as such forms were in existence immediately before the Petition Date, without reference to the Debtor's status as debtor-in-possession. Upon depletion of the Debtor's check stock and/or business forms stock, the Debtor will obtain new check stock and/or business forms stock reflecting its status as debtor-in-possession.

20. By virtue of the nature and scope of the Debtor's business operations and the number of vendors with whom the Debtor transacts on a regular basis, it is important that the Debtor be permitted to continue to use its existing checks and other business forms without alteration or change, except as requested herein. Indeed, because parties doing business with the Debtor undoubtedly will be aware of the Debtor's status as debtor-in-possession as a result of the publicized nature of this

chapter 11 case and the communications and notice of commencement the Debtor's are distributing to such parties, changing business forms is unnecessary and unduly burdensome.

21. This Court has allowed debtors to use their prepetition check forms without the "debtor-in-possession" label in other corporate cases until the debtor's existing check stock was depleted. See, e.g., In re School Specialty, Inc., Case No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013); In re Overseas Shipping Group, Inc., Case No. 12-20000 (PJW) (Bankr. D. Del. Jan. 24, 2012); In re Monitor Group Co. Ltd. P'ship, Case No. 12-13042 (CSS) (Bankr. D. Del. Dec. 4, 2012); In re Southfield Office Bldg. 14, LP, Case No. 12-12415 (BLS) (Bankr. D. Del. Nov. 28, 2012); In re Pemco Worldwide Air Servs., Inc., Case No. 12-10799 (MFW) (Bankr. D. Del. March 6, 2012); In re Neb. Book Co., Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); In re L.A. Dodgers LLC, Case No. 11-12010 (KG) (Bankr. D. Del. June 28, 2011).

**III. The Debtor Should Be Authorized to Continue Using Debit, Wire, and ACH Payments.**

22. The Debtor requests further relief from the U.S. Trustee Guidelines to the extent they require all of the Debtor's receipts and disbursements be made by check with a notation representing the reason for the disbursement. It is necessary for the Debtor conduct transactions by debit, wire, ACH payments, or other similar methods in the ordinary course of business. In addition, occasional payments are received through ACH and wire transfer payments. To deny the Debtor the

opportunity to conduct transactions by debit, wire, or ACH Payments or other similar methods unnecessarily would disrupt the Debtor's business operations and create additional costs to be borne by the Debtor and its estate.

**IV. Cause Exists for Waiving the Investment and Deposit Guidelines of Bankruptcy Code Section 345.**

23. Bankruptcy Code section 345(a) authorizes deposit or investment of money of estates, such as cash, as "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). While Bankruptcy Code section 345(b) generally requires that, with respect to investments other than investments "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," the estate must require a bond in favor of the United States secured by the undertaking of a U.S. Trustee-approved corporate surety, it allows the court to dispense with this limitation "for cause." 11 U.S.C. § 345(b).

24. The Debtor respectfully submits that the Bank Accounts provide sufficient protection for its cash and that it would be in the best interest of its estate for the Debtor to continue to follow this practice for the deposit of cash. Moreover, a bond secured by undertaking a corporate surety would likely be unduly expensive, assuming such a bond were available.

25. The Court's ability to excuse strict performance of the deposit requirements of Bankruptcy Code section 345(b) "for cause" arises from the 1994

amendments to the Bankruptcy Code. The legislative history of that amendment provides:

Section 345 of the Code governs investments of funds of bankruptcy estates. The purpose is to make sure that funds of a bankrupt that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankruptcy estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. While this requirement is wise in the case of smaller debtors with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors. This section would amend the Code to allow the courts to approve investments other than those permitted by section 345(b) for just cause, thereby overruling In re Columbia Gas Systems, Inc., 33 F.3d 294 (3d Cir. 1994).

In re Serv. Merch. Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (quoting H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994)).

26. In determining whether the “for cause” standard has been met, the Court should consider a “totality of the circumstances,” utilizing the following factors:

- a) the sophistication of the debtor’s business;
- b) the size of the debtor’s business operations;
- c) the amount of the investments involved;
- d) the bank ratings (Moody’s and Standard & Poor) of the financial institutions where the debtor-in-possession funds are held;

- e) the complexity of the case;
- f) the safeguards in place within the debtor's own business of insuring the safety of the funds;
- g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- h) the benefit to the debtor;
- i) the harm, if any, to the estate; and
- j) the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

Serv. Merch., 240 B.R. at 896.

27. Here, the Debtor submits that any risk to the funds does not require strict adherence to the requirements of Bankruptcy Code section 345(b). Moreover, if granted a waiver, the Debtor will not be burdened with the significant administrative difficulties and expenses relating to opening new accounts in a manner that ensures all of its funds are fully insured or invested strictly in accordance with the restrictions established by Bankruptcy Code section 345.

28. In other chapter 11 cases, this Court has liberally construed the requirement of Bankruptcy Code section 345(b) that the debtor-in-possession obtain a bond from any entity with which its money is deposited or invested. In those instances, this Court has waived the requirements of Bankruptcy Code section 345(b) and replaced them with alternative procedures. See, e.g., In re School Specialty, Inc., Case No. 13-10125 (KJC) (Bankr. D. Del. Jan. 30, 2013); In re Overseas Shipping Group, Inc., Case No. 12-20000 (PJW) (Bankr. D. Del. Jan. 24, 2012); In re Monitor

Group Co. Ltd. P'ship, Case No. 12-13042 (CSS) (Bankr. D. Del. Dec. 4, 2012); In re Southfield Office Bldg. 14, LP, Case No. 12-12415 (BLS) (Bankr. D. Del. Nov. 28, 2012); In re Pemco Worldwide Air Servs., Inc., Case No. 12-10799 (MFW) (Bankr. D. Del. March 6, 2012); In re Neb. Book Co., Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); In re L.A. Dodgers LLC, Case No. 11-12010 (KG) (Bankr. D. Del. June 28, 2011). Cause exists for a similar waiver in these cases.

**The Requirements of Bankruptcy Rule 6003 Have Been Satisfied**

29. Under Bankruptcy Rule 6003, this Court may authorize the Debtor to continue using the Bank Accounts and its business forms. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001(c)(2)); see also Fed. R. Bankr. P. 6003, Committee Notes (noting that cases applying Bankruptcy Rule 4001(b)(2) and (c)(2) may "provide guidance" for relief under Bankruptcy Rule 6003).

30. Continued use of the Bank Accounts is crucial to the Debtor's continued operations. If the relief requested herein, the Debtor, which has no employees, would be required to open new account and obtain new forms at an expense and inconvenience disproportionate to the de minimis benefits that would derive. This could cause a diminution in the value of the Debtor's estate to the

detriment of all parties in interest. As a result, immediate and irreparable harm would result without the relief requested herein being granted.

**WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)**

31. To implement the foregoing successfully, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**NOTICE**

32. The Debtor have provided notice of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the Largest Twenty (20) Unsecured Claims; (c) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; and (h) the Bank. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

**NO PRIOR REQUEST**

33. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtor respectfully request that the Court (a) enter the Interim Order, substantially in the form attached hereto as Exhibit A, and the Final Order,

substantially in the form attached hereto as Exhibit B, granting the relief requested herein and (b) grant such other and further relief as is just and proper.

Dated: June 3, 2013

**WOMBLE CARLYLE SANDRIDGE  
& RICE, LLP**

/s/ Thomas M. Horan

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*Proposed Counsel to the Debtor and Debtor-in-Possession*

**Exhibit A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

TRIAD GUARANTY INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 13-11452 (\_\_\_\_)

**Related Docket No.** \_\_\_\_\_

**INTERIM ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF  
ORDER (A) AUTHORIZING THE DEBTOR TO CONTINUE USING ITS  
BANK ACCOUNTS AND BUSINESS FORMS AND (B) GRANTING  
RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of Triad Guaranty Inc., as debtor and debtor-in-possession (the "Debtor"), for entry of an interim order (this "Interim Order") authorizing the Debtor to continue using its existing cash management system, bank accounts, and business forms, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the

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<sup>1</sup> The last four digits of the Debtor's federal taxpayer identification number are 8519. The location of the Debtor's headquarters and the Debtor's service address is 1900 Crestwood Blvd., Birmingham, AL 35210

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

relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and the Court having found that the Debtor provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Final Hearing shall be held on \_\_\_\_\_, 2013 at \_\_\_\_:\_\_\_\_ a.m./p.m. prevailing Eastern Time. Any objections or responses to the Motion shall be filed on or before \_\_\_\_\_, 2013 at 4:00 p.m. prevailing Eastern Time and served on parties in interest as required by the Local Bankruptcy Rules. Any objections to the relief requested in the Motion on a final basis must be filed no later than \_\_\_\_\_, 2013 at 4:00 p.m. prevailing Eastern Time (the "Objection Deadline") and served on the following parties: (a) proposed counsel for the Debtor; (b) the Office of the United States Trustee for the District of Delaware; (c) the entities listed on the Consolidated List of Creditors Holding the Largest Twenty (20) Unsecured Claims; (d) any official committee appointed in these cases; and (f) the

Bank. If an objection is timely filed and served so as to be received on or before the Objection Deadline, such objection shall be set for hearing on \_\_\_\_\_, 2013 at \_\_:\_\_ a/p.m. prevailing Eastern Time. This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

3. The Debtor is authorized to (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date; (b) use, in its present form, all correspondence and business forms (including, but not limited to, letterhead, purchase orders, and invoices), as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to its status as debtor-in-possession; provided, however, that upon depletion of the Debtor's correspondence and business forms, the Debtor will obtain new business forms reflecting its status as debtor-in-possession; and provided, further, however, that as soon as practicable after the Petition Date, the Debtor will note its status as "debtor-in-possession" on checks that are electronically printed; and (c) treat the Bank Accounts for all purposes as accounts of the Debtor as debtor-in-possession.

4. Except as otherwise expressly provided in this Order, the Bank is authorized to continue to service and administer the Bank Accounts as accounts of the Debtor as debtor-in-possession, without interruption and in the ordinary course, and to receive, process, honor, and pay any and all checks, drafts, wires, and automated clearing house transfers issued and drawn on the Bank Accounts after the

Petition Date by the holders or makers thereof, as the case may be; provided that the Bank shall be authorized and directed to honor all disbursements from the Bank Accounts without regard to whether such disbursements are made in consideration of payment for obligations accrued before or after the Petition Date; provided, further, however, that the Bank shall not be liable to any party on account of (a) following the Debtor's instructions or presentations as to any order of this Court, (b) the honoring of any prepetition checks, drafts, wires, or automatic clearing house transfers in a good faith belief that this Court has authorized such prepetition check, draft, wire, or automatic clearing house transfer, or (c) an innocent mistake made despite implementation of reasonable handling procedures.

5. The Bank is authorized to charge and the Debtor is authorized to pay or honor, both prepetition and postpetition service and other fees, costs, charges, and expenses to which the Bank may be entitled under the terms of and in accordance with its contractual arrangements with Debtor. The Debtor shall reimburse the Bank for any claim arising prior to or after the Petition Date in connection with any returned items to the Bank Accounts in the normal course of business.

6. The Debtor is authorized to open any new bank accounts or close the existing Bank Accounts as the Debtor may deem necessary and appropriate in its sole discretion; provided, however, that the Debtor will provide notice to the U.S. Trustee and counsel to any official committee appointed in these cases within fifteen (15) days of the opening and closing of any bank accounts; provided, further that the Debtor may only open a new bank account with a bank designated as an Authorized

Depository under the U.S. Trustee Guidelines, unless first obtaining the consent of the U.S. Trustee. Subject to the foregoing, the Bank is authorized and directed to honor the Debtor's requests to open or close, as the case may be, such bank accounts or additional bank accounts effective as of the Petition Date.

7. Within fifteen (15) days of the date of entry of a Final Order the Debtor shall (a) contact the Bank, (b) provide the Bank with the Debtor's employer identification numbers and (c) identify the Bank Accounts as being held by a debtor-in-possession in a bankruptcy case.

8. If the Debtor opens an account at any bank that is not party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware at which the Debtor hold an account, the Debtor shall use good-faith efforts to cause such bank to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of the Final Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

9. The Debtor is authorized to direct the Bank, and the Bank is authorized and directed, to pay obligations in accordance with this or any separate order of this Court.

10. Except as otherwise provided in this Order or in a separate order of this Court, the Bank shall not honor or pay any bank payments drawn on the Bank Accounts or otherwise issued prior to the Petition Date.

11. As soon as practicable after the entry of this Order, the Debtor shall serve a copy of this Order on the Bank.

12. The Debtor is granted a 60 day extension of time to comply with the deposit requirements of Bankruptcy Code section 345, which extension is without prejudice to the Debtor's ability to seek a final waiver of those requirements.

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

14. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied by the contents of the Motion.

15. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: \_\_\_\_\_, 2013

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United States Bankruptcy Judge

**Exhibit B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

TRIAD GUARANTY INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 13-11452 (\_\_\_\_)

**Related Docket No.** \_\_\_\_\_

**FINAL ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF  
ORDER (A) AUTHORIZING THE DEBTOR TO CONTINUE USING ITS  
BANK ACCOUNTS AND BUSINESS FORMS AND (B) GRANTING  
RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of Triad Guaranty Inc., as debtor and debtor-in-possession (the "Debtor") for entry of a final order (this "Order") authorizing the debtors to continue using its bank accounts and business forms, and granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; and the Court having found that the relief requested in the Motion is

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<sup>1</sup> The last four digits of the Debtor's federal taxpayer identification number are 8519. The location of the Debtor's headquarters and the Debtor's service address is 1900 Crestwood Blvd., Birmingham, AL 35210

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

in the best interests of the Debtor's estate, its creditors and other parties in interest; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice need be provided; and the Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having found that relief requested in the Motion is necessary to prevent immediate and irreparable harm; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is granted on a final basis to the extent set forth herein.
2. The Debtor are authorized to (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date; (b) use, in its present form, all correspondence and business forms including, but not limited to, letterhead, purchase orders, and invoices, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtor's status as debtor-in-possession; provided, however, that upon depletion of the Debtor's correspondence and business forms, the Debtor will obtain new business forms reflecting its status as debtor-in-possession; and provided, further, however, that as soon as practicable after the Petition Date, the Debtor will note its status as "debtor-in-possession" on checks that are electronically printed; and

(c) treat the Bank Accounts for all purposes as an account of the Debtor as debtor-in-possession.

3. Except as otherwise expressly provided in the Interim Order, the Bank is authorized to continue to service and administer the Bank Accounts as accounts of the Debtor as debtor-in-possession, without interruption and in the ordinary course, and to receive, process, honor, and pay any and all checks, drafts, wires, and automated clearing house transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; provided that the Bank shall be authorized and directed to honor all disbursements from the Disbursement Account without regard to whether such disbursements are made in consideration of payment for obligations accrued before or after the Petition Date; provided, further, however, that the Bank shall not be liable to any party on account of (a) following the Debtor instructions or presentations as to any order of this Court, (b) the honoring of any prepetition checks, drafts, wires, or automatic clearing house transfers in a good faith belief that this Court has authorized such prepetition check, draft, wire, or automatic clearing house transfer, or (c) an innocent mistake made despite implementation of reasonable handling procedures.

4. The Debtor is authorized to open any new bank accounts or close the existing Bank Accounts as it may deem necessary and appropriate in its sole discretion; provided, however, that the Debtor will provide notice to the U.S. Trustee and any official committee appointed in these cases within fifteen (15) days of the opening and closing of any bank accounts; provided, further that the Debtor may

only open a new bank account with a bank designated as an Authorized Depository under the U.S. Trustee Guidelines, unless first obtaining the consent of the U.S. Trustee. Subject to the foregoing, the Bank is authorized and directed to honor the Debtor's requests to open or close, as the case may be, such bank accounts or additional bank accounts effective as of the Petition Date.

5. Within fifteen (15) days of the date of entry of this Order the Debtor shall (a) contact the Bank, (b) provide the Bank with each of the Debtor's employer identification numbers and (c) identify the Bank Accounts as being held by a debtor-in-possession in a bankruptcy case.

6. If the Debtor opens an account at any bank that is not party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware at which the Debtor hold an account, the Debtor shall use good-faith efforts to cause such bank to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

7. The Debtor is authorized to direct the Bank, and the Bank is authorized and directed, to pay obligations in accordance with this or any separate order of this Court.

8. Except as otherwise provided in this Order or in a separate order of this Court, any Bank provided with notice of this Order maintaining the Bank Accounts shall not honor or pay any bank payments drawn on the Bank Accounts or otherwise issued prior to the Petition Date.

9. The Debtor is granted a 60 day extension of time to comply with the investment and deposit requirements of section 345 of the Bankruptcy Code, which extension is without prejudice to the Debtor's ability to seek a final waiver of those requirements.

10. Except as otherwise provided in this Order or in a separate order of this Court, any Bank provided with notice of this Order maintaining the Bank Accounts shall not honor or pay any bank payments drawn on the Bank Accounts or otherwise issued prior to the Petition Date.

11. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied by the contents of the Motion.

12. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

Dated: \_\_\_\_\_, 2013

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United States Bankruptcy Judge