

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

	§	
	§	
<b>In re</b>	§	<b>Chapter 11</b>
	§	
<b>EXPRESS ENERGY SERVICES</b>	§	
<b>OPERATING, LP, et al.,</b>	§	<b>Case No. 09-_____ (___)</b>
	§	
	§	
<b>Debtors.</b>	§	
	§	
	§	<b>Joint Administration Requested</b>

**DECLARATION OF DARRON ANDERSON IN SUPPORT OF  
THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Darron Anderson, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Executive Officer of Express Energy Services Operating, LP ("**EES Operating**") and I am familiar with the day-to-day operations, business, and financial affairs of EES Operating and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"). A list of the Debtors in these chapter 11 cases is attached hereto as **Exhibit A**.

2. I submit this declaration (the "**Declaration**") to assist the Court and other parties in interest in understanding the circumstances that compelled the commencement of these chapter 11 cases and in support of the first-day motions and applications filed contemporaneously herewith (collectively, the "**First Day Motions**"). Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with members of the Debtors' senior management and professionals, my review of

relevant documents, or my opinion based upon my experience and knowledge of the Debtors' operations and financial condition. If I were called to testify, I would testify competently to the facts set forth in this Declaration.

3. Parts I through III of this Declaration provide a description of the Debtors' organizational structure, businesses operations, capital structure, and the circumstances giving rise to the commencement of these chapter 11 cases. Part IV summarizes certain material terms of the proposed joint plan of reorganization the Debtors filed concurrently with this Declaration. Finally, Part V summarizes the First Day Motions and the relief they seek, which the Debtors believe is crucial to their successful reorganization.

## I.

### Overview of the Debtors

#### A. Organizational Structure

4. Express Energy Services (2008) LLC ("**EES 2008**") is the direct or indirect parent of each of the other Debtors in these chapter 11 cases. The equity interest in EES 2008 is presently owned by an equity consortium comprised of (i) Macquarie Energy Holdings, LLC; (ii) Wachovia Capital Partners 2006 LLC; and (iii) certain existing and former members of management and employees of EES Operating.

5. EES 2008 owns 100% of the equity interests in Express Energy Services GP, LLC ("**EES GP**"). EES 2008 also owns a 99.6% limited partnership interest in Express Energy Services Holding, LP ("**EES Holding**"), with EES GP owning a 0.4% general partnership interest. EES Holding owns a 99.5% limited partnership interest in EES Operating, with EES GP owning a 0.5% general partnership interest. EES Operating owns a 99.5% limited partnership interest in (i) Express Energy Services CT, LP; (ii) Express Energy Services, Ark LP; and (iii) Express Energy Services WL, LP, with EES GP owning a 0.5% general partnership

interest in each of these companies. EES Operating also owns a 99.4% limited partnership interest in Express Energy Services P&A, LP, with EES GP owning a 0.6% general partnership interest. Finally, EES Operating owns 100% of the equity interest in (i) Express-Byrd R&S GP, LLC; (ii) Express-MBCC GP, LLC; (iii) Express-Mike Byrd Casing Crews GP, LLC; (iv) Express R&S Tong Services GP, LLC; (v) D&D Tongs GP, LLC; (vi) Express-North Trail Oilfield Services, GP, LLC; (vii) Express-Rat Hole Service GP, LLC; and (viii) Express-BAH Leasing GP, LLC. A chart annexed hereto as **Exhibit B** illustrates the Debtors' corporate structure.

6. The Debtors currently maintain operations in 31 field locations and offices located in, *inter alia*, Texas, Oklahoma, Colorado, Arkansas, Louisiana, Pennsylvania, and the Gulf of Mexico. The Debtors' corporate headquarters are located in Houston, Texas. The Debtors currently employ approximately 1,200 people.

**B. Business Operations**

7. The Debtors are leading providers of services to the U.S. oil and gas exploration and production ("**E&P**") industry. The Debtors offer integrated "cradle to grave" services to a diversified base of over 200 customers, including many blue chip national and multi-national companies in the E&P industry. By utilizing their strong business relationships, maintaining exceptional customer service, and operating at the highest levels of safety, the Debtors have entered into master service agreements with over 200 of their key customers.

8. The Debtors' business is organized into three business segments: Drilling Support Services, Production Services, and Decommissioning Services. The Drilling Support Services segment provides services and equipment related to the drilling and completion of new wells to oil and gas operators and drilling contractors. Examples of Drilling Support Services

include casing services, laydown services, rathole services, and rental and construction services. Drilling Support Services comprise approximately 34% of the Debtors' gross revenue. The Production Services segment provides services and equipment to oil and gas operators from completion to workover activities and routine well maintenance and repair. Examples of Production Services include wireline, well testing, hydraulic chokes, downhole motors, water transfer, snubbing, pressure testing, coil tubing, fluid hauling, frac tanks, cranes, pit cleaning, pumping services, and H2S safety services. Production Services comprise approximately 51% of the Debtors' gross revenue. The Decommissioning Services primarily involve plugging and abandonment and well intervention services in the Gulf of Mexico, and comprise approximately 15% of the Debtors' gross revenue. In order to provide the range of Drilling Support Services and Production Services, the Debtors, in addition to other capital costs, operate and maintain a fleet of over 800 vehicles.

## II.

### **Prepetition Capital Structure**

#### **A. 2007 Credit Agreement**

9. On February 23, 2007, EES Operating, as borrower, EES Holding and EES GP, as parent parties, and certain Debtors, as guarantors, entered into a six-year credit agreement (the "**2007 Credit Agreement**") with a lending syndicate led by Credit Suisse, as agent. The 2007 Credit Agreement established a \$271 million credit facility consisting of a \$235 million senior secured first lien term loan and a \$36 million revolving credit facility.

10. The EES borrowing parties to the 2007 Credit Agreement used approximately \$188.9 million cash from the 2007 Credit Agreement to expand their scope of services by acquiring the following companies: (i) H2S Safety; (ii) Byrd R&S Oilfield Services Companies; (iii) Ace Rathole Services; (iv) Laydown, LTD; (v) Brazos Oilfield Services, LTD;

(vi) J&L Tank Services; and (vii) CST Drilling Fluids.

**B. 2008 Credit Agreement**

11. On July 11, 2008, EES 2008 acquired the equity interests in EES Holding and EES GP (the "**Acquisition**") pursuant to a certain Transaction Agreement dated as of June 8, 2008, as amended by the amendments thereto dated as of July 8, 2008 and November 18, 2008 (the "**Transaction Agreement**"). The Acquisition was financed primarily by (i) \$310.5 million of common equity, including (a) approximately \$200 million of new cash from Macquarie Energy Holdings LLC, ("**Macquarie**") and (b) the rollover of approximately \$110.5 million of the then-existing equity held by private equity investors and certain members of senior management and employees of EES Operating; and (ii) borrowings of \$325 million under the Credit Agreement (the "**2008 Credit Agreement**"), by and between EES Operating, EES Holding, EES GP, EES 2008, the lending parties thereto (the "**Senior Secured Lenders**"), and Credit Suisse, as administrative agent and collateral agent (the "**Agent**").

12. The 2008 Credit Agreement established a \$347.5 million credit facility consisting of (i) a \$325 million senior secured first lien term loan (the "**2008 Term Loan**"); and (ii) a \$22.5 million revolving credit facility (the "**2008 Revolver Loan**"). The 2008 Revolver Loan contained sublimits providing for (a) swingline loans in an aggregate principal amount not to exceed \$5 million (the "**Swingline Loans**") and (b) letters of credit in an aggregate face amount not to exceed \$10 million. The proceeds of the 2008 Term Loan were used to (i) repay the Debtors' outstanding existing debt under the 2007 Credit Agreement; (ii) pay fees and expenses incurred in connection with the Acquisition; and (iii) fund a portion of the purchase price for the Acquisition. Borrowings under the 2008 Revolver Loan and the Swingline Loans were to be used for general corporate purposes (including, without limitation, to fund capital expenditures and future acquisitions).

C. **Swap Agreement and Guarantee & Security Agreement**

13. To achieve a balance between fixed and variable rate debt, EES Operating and Credit Suisse International entered into a Swap Agreement, dated as of July 15, 2008 (the "**Swap Agreement**"). Each of the Debtors, as guarantors, and Credit Suisse, Cayman Islands Branch, as collateral agent (the "**Collateral Agent**"), also entered into a Guarantee & Security Agreement, dated as of July 11, 2008 (the "**Guarantee & Security Agreement**"). Pursuant to the Guarantee & Security Agreement, EES GP, EES Holding, and certain Debtor subsidiaries (a) guaranteed EES Operating's payment obligations under the 2008 Credit Agreement and the Swap Agreement and (b) along with EES Operating, granted the Collateral Agent first priority liens on all (i) accounts; (ii) chattel paper; (iii) deposit accounts; (iv) documents; (v) fixtures; (vi) general intangibles; (vii) goods; (viii) instruments; (ix) investment property; (x) letter-of-credit rights; (xi) money; (xii) books and records; and (xiii) proceeds.

14. In accordance with the Guarantee & Security Agreement, EES Operating and certain of its affiliates, the Collateral Agent, and Coastal Commerce Bank in Houma, Louisiana entered into a Deposit Account Control Agreement, dated as of July 11, 2008, pursuant to which EES Operating granted the Collateral Agent a security interest in certain bank accounts and all funds or deposits held therein or credited thereto. In addition, in December 2008, EES Operating opened two bank accounts (the "**JPMorgan Accounts**") with JPMorgan Chase Bank, N.A. in Houston, Texas ("**JPMorgan**") to handle its primary cash management operations, including collections from customers and disbursements to vendors and other payees. EES Operating continued to maintain day-to-day disbursement activities, including payroll and payments to vendors and other payees, with Coastal Commerce Bank. To comply with the terms of the Guarantee & Security Agreement, EES Operating, JPMorgan, and the Collateral Agent

entered into a certain Blocked Account Control Agreement dated as of May 19, 2009, pursuant to which EES Operating granted the Collateral Agent a security interest in the JPMorgan Accounts and all checks or other items deposited from time to time in the JPMorgan Accounts.

**D. Escrow Agreement**

15. In connection with the transactions contemplated in the Transaction Agreement, EES 2008 was required to deposit (i) approximately \$17.55 million into escrow (the “**Indemnity Escrow Account**”) to secure certain indemnification and other post-closing obligations of the sellers under the Transaction Agreement and (ii) approximately \$11.04 million into escrow (the “**Earnout Escrow Account**”) to be used exclusively for the satisfaction of certain earn-out payments described in the Transaction Agreement. EES 2008, Wachovia Capital Partners 2006 LLC, and certain existing managers entered into an Escrow Agreement dated as of July 11, 2008 (the “**Escrow Agreement**”), and appointed JPMorgan as escrow agent (the “**Escrow Agent**”) for the Indemnity Escrow Account and Earnout Escrow Account. As of the Commencement Date, the Escrow Agent holds approximately \$8.5 million in the Indemnity Escrow Account. Other than the \$8.5 million currently held in the Indemnity Escrow Account, all of the funds held in the Indemnity Escrow Account and the Earnout Escrow Account were distributed by the Escrow Agent in accordance with the terms of the Escrow Agreement.

**III.**

**Significant Events Leading to the Commencement of these Chapter 11 Cases**

16. The Debtors commenced these chapter 11 cases primarily because of the steady decline in the price of oil and natural gas beginning around the third quarter of 2008, which (i) impacted the level of demand for the Debtors’ services; (ii) reduced the Debtors’ overall profitability; (iii) impacted the Debtors’ overall liquidity; and (iv) as a result of the foregoing, caused events of default under the 2008 Credit Agreement and the Swap Agreement.

**A. Decline in Oil and Natural Gas Prices**

17. Since July 2008, the prices of oil and natural gas have declined precipitously. For example, the price of oil declined from a high of approximately \$145/barrel in July 2008 to approximately \$40/barrel in February 2009. Crude oil prices have since recovered to approximately \$70/barrel as of October 7, 2009. Likewise, natural gas prices declined from a high of approximately \$13/mcf in July 2008 to approximately \$3.40/mcf in July 2009. Natural gas prices have since partially recovered to \$4.80/mcf as of October 7, 2009. The decline in oil and gas prices has caused E&P companies to reduce overall levels of drilling activity and capital spending. A reduction in drilling activity triggered a proportional reduction in the utilization of drilling rigs. In the U.S., for example, the land drilling rig count declined from approximately 1,920 rigs in September 2008<sup>1</sup> to 983 rigs as of October 2, 2009. The number of drilling rigs utilized in the U.S. directly impacts the demand level for the Debtors' services. Therefore, as the number of drilling rigs used by E&P companies declined, the demand for the Debtors' services (and revenue) also dropped considerably. For example, the Debtors' EBITDA for the first quarter of 2009 was approximately 74% less than the EBITDA for the first quarter of 2008. In addition to a lower demand for services, the Debtors also experienced (i) increased pressure from E&P companies to reduce pricing and (ii) increased competition from third-party service providers, which also impacted the Debtors' ability to generate revenue and positive cash flow.

18. Beginning around October 2008 and continuing into the first quarter of 2009, in response to the increased competition and decreased demand for services, and to reduce the impact of the aforementioned market difficulties, the Debtors' senior management re-assessed their overall business operations and strategy and implemented a number of proactive

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<sup>1</sup> Data based on the Baker Hughes Rig Count (Monthly Averages).

steps to strengthen their competitive position and attempt to restore profitability including, but not limited to, the following:

- i. Company-wide compensation reduction of approximately 10%.
- ii. Reduction of employee headcount of approximately 850 from October 2008 to the present.
- iii. Elimination of drilling and production service lines in areas where activity has declined substantially.
- iv. Weekly monitoring of service lines.
- v. Consolidation of service locations and redeployment of assets.
- vi. Concentrated efforts to collect outstanding accounts receivables.
- vii. Reduction of capital expenditures.
- viii. Efforts to reduce maintenance and replacement costs.

**B. Defaults under the 2008 Credit Agreement and the Swap Agreement**

19. Despite the aforementioned efforts, in or around the second quarter of 2009, the Debtors' senior management determined that an event of default occurred under the 2008 Credit Agreement because the EES borrowing parties to the 2008 Credit Agreement exceeded the stated leverage ratio for the period ended December 31, 2008.

20. Prior to June 30, 2009, the Debtors' management and Board of Managers determined that, in order to preserve cash and financial flexibility, EES Operating should not make the scheduled quarterly principal and interest payments due on June 30, 2009 under the 2008 Credit Agreement. Such failure constituted a default under the terms of the 2008 Credit Agreement. For the same reasons, EES Operating did not make the regularly scheduled principal and interest payment due on September 30, 2009. The Debtors also failed to make required payments due to Credit Suisse under the Swap Agreement, which caused an additional default under the 2008 Credit Agreement and the Swap Agreement.

21. As of the Commencement Date, the aggregate amount outstanding under

the 2008 Credit Agreement is approximately \$326.2 million. In addition, the Debtors owe approximately \$3.9 million in prepetition damages, including interest, under the Swap Agreement.

#### IV.

##### **Joint Plan of Reorganization**

22. As a result of the aforementioned events of default under the 2008 Credit Agreement and the Swap Agreement, the Debtors' senior management engaged in a series of good-faith discussions with Credit Suisse and, eventually, an ad hoc committee of the Senior Secured Lenders. During this period, the Debtors engaged Alvarez & Marsal North America, LLC and Weil, Gotshal & Manges LLP to, among other things, provide restructuring advice to the Debtors' senior management, provide restructuring advice to the EES 2008 Board of Managers, participate in negotiations with Credit Suisse and the Senior Secured Lenders, and assist in the formulation of a comprehensive business plan.

23. Through these good-faith negotiations, the Debtors, the Agent, and certain Senior Secured Lenders (the "**Consenting Lenders**") entered into a Plan Support Agreement dated as of October 27, 2009 (the "**Plan Support Agreement**"). The Plan Support Agreement and the term sheet attached thereto (together with all agreements and exhibits attached thereto, the "**Term Sheet**") provide for the Debtors' financial restructuring to be effected through the pre-negotiated Joint Plan Under Chapter 11 of the Bankruptcy Code dated as of October 27, 2009 (the "**Plan**"). The Consenting Lenders hold over 66 2/3% in principal amount of the Secured Obligations (as defined in the 2008 Credit Agreement) under the 2008 Credit Agreement and constitute a majority of the holders of such secured obligations, and, along with the Agent, have agreed to support the Plan. In accordance with the Plan Support Agreement and

the Term Sheet, the Debtors filed the Plan and accompanying disclosure statement (the “**Disclosure Statement**”) on the Commencement Date.

24. The Plan provides, among other things, for the following treatment of Claims and Existing Equity Interests (each as defined in the Plan):

- (i) holders of Allowed Senior Secured Claims will receive their pro rata share of 100% of the New Equity Units;
- (ii) holders of Allowed General Unsecured Claims will receive their Distribution Pro Rata Share of either (a) \$400,000, if the General Unsecured Claims class votes to accept the Plan, or (b) \$100,000, if the General Unsecured Claims class votes to reject the Plan; and
- (iii) holders of Existing Equity Interests will have their equity cancelled upon the issuance of the New Equity Units. On the Effective Date, on account of and in consideration of its role in the restructuring, holders of Allowed Senior Secured Claims will gift 2% of the New Equity Units to the Macquarie Group.

In addition, the Plan provides for the payment in full of (i) allowed administrative expense claims; (ii) federal, state, and local tax claims; (iii) certain select priority non-tax claims; and (iv) certain miscellaneous secured claims.

25. The Debtors are reasonably confident that improved economic conditions in the E&P industry and an improved balance sheet will lead to a successful restructuring of the Debtors’ businesses pursuant to the Plan. Confirmation of the Plan and implementation of the contemplated restructuring would substantially reduce the Debtors’ financial indebtedness and enhance the Debtors’ long-term growth prospects and competitive position. Due to prepetition cost reduction efforts to “right size” their operations, the Debtors have generated positive cash

flow from operations, maintained strong relationships with their key constituents, and, at the same time, maintained an excellent safety loss record.

26. During the chapter 11 process, the Debtors intend to continue normal operations, including maintaining their high standards of customer service and safety for which they are known, as they restructure their operations and overall debt for the benefit of their creditors and all other parties in interest. The Debtors are cognizant, however, that bankruptcy filings negatively impact service companies like the Debtors disproportionately more than companies in other industries. Prolonged chapter 11 cases have the potential to severely impact the Debtors' overall profitability and relationships with employees, vendors, customers and suppliers. Every day the Debtors are in chapter 11, business competitors may use the negative stigma associated with bankruptcy to persuade or lure customers away. The Debtors believe, however, that filing the Plan, the Disclosure Statement, and an emergency motion to approve the Disclosure Statement on the Commencement Date, along with securing the support of the Consenting Lenders and the Agent through the Plan Support Agreement, will enable the Debtors to emerge from chapter 11 as expeditiously as possible without losing a significant number of customers and damaging relationships with employees, vendors, and suppliers. Although the Debtors currently have sufficient liquidity to maintain operations, they have obtained a debtor-in-possession financing facility up to an aggregate principal amount of \$20 million to insure liquidity during these chapter 11 cases.

V.

**Summary of First Day Motions**

27. Concurrently with the filing of their chapter 11 petitions, the Debtors have filed the following First Day Motions,<sup>2</sup> which the Debtors believe are necessary to enable them to operate with a minimal disruption and loss of productivity. It is my understanding that Bankruptcy Rule 6003 provides that to the extent “relief is necessary to avoid immediate and irreparable harm,” a court may approve a motion to “pay all or part of a claim that arose before the filing of the petition” prior to twenty days after the Commencement Date. Certain of the First Day Motions filed by the Debtors request that the Court authorize the Debtors to immediately pay all or part of a claim that arose prior to the Commencement Date. As set forth in more detail below, in such instances, the relief sought is necessary to avoid immediate and irreparable harm to the Debtors.

***Procedural First Day Motions***

**I. Joint Administration Motion**

**1. Relief Requested**

28. As noted above, EES Operating and twenty-three affiliates filed voluntary petitions under chapter 11 on or about the Commencement Date. The Debtors request that these chapter 11 cases be procedurally consolidated through joint administration.

**2. Basis for Relief Requested**

29. Many, if not most, of the motions, applications, and other pleadings filed in these chapter 11 cases will relate to relief sought jointly by all of the Debtors. Joint administration will ease the administrative burden on the Court by allowing the Debtors’ cases to

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<sup>2</sup> Capitalized terms used in this Section V but not defined herein shall have the meaning ascribed to them in the applicable First Day Motion.

be administered as a single joint proceeding instead of twenty-four independent chapter 11 cases. A single docket will also make it easier for all parties in each of the chapter 11 cases to stay apprised of all the various matters before the Court. The Debtors will also likely realize substantial cost savings and reduced administrative burdens by sending notices in the cases to a single matrix of creditors and Rule 2002 list, rather than maintaining separate notice lists. Separate administration of the chapter 11 cases would impose extraordinary burdens on counsel and the Debtors, requiring monitoring multiple dockets and necessitating filing separate motions in each of the chapter cases even though the relief requested might be identical as to each Debtor. This would result in substantial additional expenses of administration. Accordingly, I believe that the relief requested in the Joint Administration motion is necessary to avoid the immediate and irreparable harm that would result from the failure to consolidate through joint administration.

**II. Motion to Approve Procedures to Notify Creditors of Notice of Commencement of Chapter 11 Cases and Establish Master Service List**

**1. Relief Requested**

30. The Debtors request the entry of an order authorizing the Debtors to (i) establish certain procedures for notifying creditors of the commencement of the Debtors' chapter 11 cases and of the 341 Meeting of Creditors, including the form of such notice and (ii) authority to establish the master service list to be used in these chapter 11 cases.

**2. Basis for Relief Requested**

31. Potentially thousands of creditors and parties in interest may be entitled to receive notice in these chapter 11 cases. As such, notice of all documents filed in these cases to each creditor and party in interest would be extremely burdensome and costly to the Debtors' estates. The proposed notice and master service list will ensure that parties receive prompt

notice of the commencement of these cases, and the proposed procedures are beneficial to the Debtors' estates and creditors because they provide actual notice in an efficient and cost effective manner. Accordingly, the relief requesting approval of notice procedures should be approved.

**III. Motion to Extend the Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs**

**1. Relief Requested**

32. The Debtors seek an extension of the deadline to file their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the "Schedules") through and including November 25, 2009. The Debtors further request that, if the Debtors obtain written consent to an additional 14-day extension from the Office of the United States Trustee for the Southern District of Texas and attorneys for any committee appointed pursuant to section 1102 of the Bankruptcy Code prior to November 25, 2009, the period in which the Debtors must file their Schedules be extended for an additional 14 days through and including December 9, 2009 without additional notice required from the Debtors or further order from the Court. Finally, the Debtors request that the relief requested herein be without prejudice to the Debtors' right to seek a further extension of the time to file the Schedules.

**2. Basis for Relief Requested**

33. Due to the number of the Debtors' creditors and complexity of the Debtors' businesses, the diversity of their operations and assets, and the competing demands on the Debtors' employees during the early stage of the case to stabilize the business following the filing, the fifteen day period provided by Rule 1007(c) is insufficient to properly and accurately complete the Schedules. Accordingly, I believe the requested relief to extend the fifteen day

period is necessary to allow the Debtors additional time to collect the data needed to prepare and file the Schedules.

**IV. Motion to Pay for Goods and Services Received Postpetition**

**1. Relief Requested**

34. The Debtors request the entry of an order (i) granting administrative priority status to all undisputed obligations of the Debtors owing to vendors (the "**Vendors**") arising from the postpetition delivery or receipt of goods and services ordered prior to the Commencement Date and (ii) to pay such obligations in the ordinary course of business.

**2. Basis for Relief Requested**

35. As of the Commencement Date, the Debtors have certain prepetition purchase orders (the "**Prepetition Orders**") outstanding with Vendors for goods and services ordered by the Debtors. As a consequence of the commencement of these chapter 11 cases, the Vendors may be concerned that the obligations arising from goods shipped or services ordered prepetition and delivered or received by the Debtors postpetition, pursuant to the Prepetition Orders, will be treated as general unsecured claims against the Debtors' estates.

36. Absent such relief requested in this motion, the Debtors may be required to expend substantial time and effort reissuing the Prepetition Orders to provide the Vendors with assurance of such administrative priority. The attendant disruption to the continuous flow of goods and services to the Debtors could adversely affect the Debtors' ability to provide services to their customers. Such a disruption could lead to dissatisfied customers, potentially harming confidence in the Debtors' ability to conduct business at this critical juncture. I believe that authority to pay undisputed obligations arising from Postpetition Deliveries in the ordinary

course of business is in the best interest of the Debtors, their estates, creditors, and parties in interest and necessary to avoid immediate and irreparable harm.

**V. Application to Employ and Retain The Garden City Group, Inc. as Noticing, Claims, and Balloting Agent for the Debtors**

**1. Relief Requested**

37. The Debtors request, pursuant to 28 U.S.C. § 156(c), authorization to employ and retain The Garden City Group, Inc. (“**GCG**”) as noticing, claims, and balloting agent for the Debtors.

**2. Basis for Relief Requested**

38. I believe the retention and appointment of GCG in connection with the administration of these chapter 11 cases is in the best interests of the Debtors and their estates, especially since the Debtors filed their Plan and accompanying Disclosure Statement on the Commencement Date, and will enable the Debtors to continue to operate their business in chapter 11 without disruption.

*Substantive First Day Motions*

**I. Motion to Continue the Debtors’ Employee Compensation and Health and Welfare Benefit Programs and Satisfy Outstanding Obligations Relating Thereto**

**1. Relief Requested**

39. The Debtors seek interim and final authorization, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, to pay their current employees for work preformed prepetition, to honor certain other prepetition employee-related obligations and benefits, and to continue paying their employee obligations in the ordinary course of the Debtors’ businesses. In addition, the Debtors seek authorization for

applicable banks to receive, process, honor and pay any and all checks, electronic fund transfers, and automatic payroll transfers drawn on the Debtors' payroll and/or general disbursement accounts, to the extent that such checks or transfers relate to any of the prepetition employee obligations.

**2. Basis for Relief Requested**

40. The Debtors currently employ approximately 1,200 employees (each, an "Employee" and, collectively, the "Employees"). The continued operation of the Debtors' businesses and their successful reorganization depends largely upon the retention of the services of the Employees and the maintenance of employee morale and cooperation. Consequently, it is critical that the Debtors be authorized to satisfy their employee-related obligations and continue their ordinary course employee plans, policies, and programs in effect as of the Commencement Date.

41. The Debtors believe, and I agree, that it is inequitable for the Employees to bear the burden of these chapter 11 cases where the Debtors must rely upon them for the continued sustainability of their business. First, continued payment of the Debtors' Wage Obligations in the ordinary course is essential to ensure that the Employees do not suddenly find their lives interrupted by the filing of these chapter 11 cases. Failure to honor these obligations would result in immediate and irreparable harm to the Employees' personal financial health, including, among other things, personal credit ratings and standard of living. Second, continuation of the Debtors' Health and Welfare Programs is necessary to ensure the continued service, without distraction, of the Employees to the Debtors' reorganization efforts. Failure to continue the Debtors' Health and Welfare Programs in the ordinary course during these chapter 11 cases threatens the viability of the Debtors' business enterprise, as Employees could suddenly

find themselves without appropriate healthcare or insurance coverage. Finally, it would be inequitable to require the Debtors' Employees to bear personally the cost of any business expenses they incurred prepetition for the benefit of the Debtors with the understanding that they would be reimbursed.

42. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, employee claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Commencement Date are afforded priority unsecured status to the extent of \$10,950 per employee. Similarly, section 507(a)(5) of the Bankruptcy Code provides that employees' claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$10,950 per employee covered by such plan, less any amount paid pursuant to section 507(a)(4). As of the Commencement Date, no Employee had earned more than \$10,950 in unpaid Wage Obligations, including, but not limited to, commissions. Therefore, the Debtors believe that substantially all of the prepetition Employee Compensation Obligations constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any of the Debtors' general unsecured obligations may be satisfied. Accordingly, the relief requested herein largely will affect only the timing of the payment of these priority obligations, and should not prejudice the rights of general unsecured creditors or other parties in interest.

43. Accordingly, I believe that (i) the relief requested in the employee wage motion is necessary to avoid the immediate and irreparable harm to these estates that would result from the Debtors' failure to honor their immediate Employee Compensation Obligations, subject to the applicable provisions of the Bankruptcy Code, and (ii) the continued maintenance

of the Debtors' Health and Welfare Programs in the ordinary course during the administration of these chapter 11 cases is essential to the Debtors' reorganization efforts.

**II. Motion to Continue the Debtors' Insurance Programs and Satisfy Outstanding Obligations Relating Thereto**

**1. Relief Requested**

44. The Debtors seek the entry of an interim and final order authorizing the Debtors to: (i) continue their insurance programs and policies, including, but not limited to, renewing insurance policies, and (ii) pay their pre- and postpetition obligations with respect thereto. The Debtors seek interim authorization to pay insurance related obligations that become due and owing within the first thirty days of these chapter 11 cases, which the Debtors currently estimate to be approximately \$366,000. In addition to the relief sought on an interim basis, the Debtors request final authorization to pay all remaining insurance related prepetition obligations. Finally, the Debtors seek authority, pursuant to a final order, to modify the automatic stay solely with respect to employees and workers holding workers' compensation claims, to allow those employees to proceed with their claims.

**2. Basis for Relief Requested**

45. I am generally familiar with the Debtors' insurance programs. I believe that the nature of the Debtors' business and the extent of their operations make it essential for them to maintain their insurance programs on an ongoing and uninterrupted basis. If the Debtors fail to pay their insurance obligations, including all payments under the Debtors' three prepetition premium finance arrangements, then the insurance carriers may seek to terminate the existing insurance programs, or they may decline to renew the programs or refuse to insure the Debtors in the future. In addition, the Debtors' obligations under the premium finance

arrangements are secured by all unearned premiums or dividends payable to the Debtors under the insurance policies covered by the premium finance arrangements. Moreover, the failure to maintain certain insurance coverage will violate the terms of master service agreements with customers and real and personal property leases, which will prevent the Debtors from working and servicing their customers. It is also my understanding that the Debtors could be fined substantial amounts by various state workers' compensation boards if the workers' compensation programs are not maintained. Finally, it is my understanding that the guidelines established by the United States Trustee for the Southern District of Texas require the Debtors to maintain certain of the insurance programs, including workers' compensation, general liability and casualty insurance. Accordingly, I believe that the relief requested in the insurance motion is necessary to avoid immediate and irreparable harm that would result from the failure to authorize the Debtors to maintain their insurance programs.

### **III. Motion to Approve the Debtors' Use of Cash Collateral**

#### **1. Relief Requested**

46. The Debtors seek (i) interim authority to use cash collateral of the Senior Secured Lenders in accordance with the terms and conditions set forth in the motion and in accordance with the proposed interim budget ("**Interim Budget**") and interim order ("**Interim Order**"); (ii) authority to use cash collateral on a final basis in accordance with a proposed final budget and final order;<sup>3</sup> (iii) authorization to grant adequate protection to the Senior Secured Lenders in their Prepetition Collateral pursuant to sections 361 and 363(c) of the Bankruptcy Code; and (iv) a final hearing regarding the use of cash collateral.

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<sup>3</sup> The Debtors are continuing to finalize their proposed final budget and final order. The Debtors will file and serve their proposed final budget and final order no later than five (5) business days prior to the hearing scheduled by the Court on the final use of cash collateral.

**2. Basis for Relief Requested**

47. Currently, the Debtors lack sufficient unencumbered funds with which to operate their business on a going basis. Accordingly, the Debtors have an urgent and immediate need for cash to operate. The Debtors have determined, in the exercise of their business judgment, with the assistance of their advisors, that they require the use of cash collateral.

48. The Debtors propose to use cash collateral pursuant to the terms and condition outlined in the proposed Interim Order and Interim Budget and to provide adequate protection as set forth in the Interim Order and the motion. The Interim Budget itemizes the sources and uses of cash and provides a projection of cash receipts and expenditures. The Interim Budget includes a list of business expenses that are reasonable and necessary and that must be paid in order to continue the Debtors' businesses until such time as a final hearing on the motion can be held. The Debtors propose that any amounts listed in the Interim Budget that are unused in any week may be carried over and used by the Debtors in any subsequent week, on a line-item basis. The Debtors also request that there shall be a permitted 15% variance for any amounts listed in the Interim Budget for a particular line item.

49. The Debtors propose to adequately protect the Senior Secured Lenders' interest in the Prepetition Collateral on account of any diminution in value, including, but not limited to, arising out of the automatic stay or the Debtors' use, sale, lease, depreciation, depletion, or disposition of the Prepetition Collateral (each a "**Diminution in Value**"). As adequate protection to the Senior Secured Lenders for the aggregate Diminution in Value, the Debtors propose to grant the Senior Secured Lenders (effective upon the Commencement Date and without the necessity of the execution or filing by the Debtors or Senior Secured Lenders of

mortgages, security agreements, pledge agreements, financing statement, or otherwise), the following:

- a. **Adequate Protection Liens.** To the extent of any Diminution of Value, the Senior Secured Lenders shall have valid and perfected additional and replacement security interests in, and liens upon (the “**Adequate Protection Liens**”), all of the Debtors’ right, title and interest in, to, and under (a) all assets in which the respective Senior Secured Lenders held validly perfected liens as of the Commencement Date; (b) all of the Debtors’ now owned and after-acquired real and personal property, assets and rights, of any kind or nature, wherever located, including, without limitation, contracts, property, plant, equipment, general intangibles, documents, instruments, interests in leaseholds, patents, copyrights, trademarks, trade names, and all other intellectual property, capital stock of subsidiaries, cash, and cash collateral of the Debtors (whether maintained with the Senior Secured Lenders or other financial institutions), any investment of such cash and cash collateral, inventory, accounts receivable, any cause of action (excluding avoidance or other actions arising under chapter 5 of the Bankruptcy Code), and the proceeds thereof (whether recovered by judgment, settlement or otherwise), any right to payment whether arising before or after the Commencement Date, and the proceeds, products, rents and profits of all of the foregoing.
  
- b. **Superpriority Claims.** To the extent of any Diminution of Value, the Senior Secured Lenders shall have an allowed superpriority administrative expense claim as provided and to the full extent allowed by Bankruptcy Code sections 503(b) and 507(b) and otherwise (the “**Superpriority Claims**”).
  - The Superpriority Claims shall, subject to the Carve-Out (as defined in the Interim Order), be allowed claims against each Debtor (jointly and severally) with priority over any and all administrative expenses and all other claims against the Debtors, now existing or hereafter arising, of any kind, whatsoever, including without limitation, all other administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b), and over any and all other administrative expenses or other claims arising under any provision of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), or 1114, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment.
  
  - The Superpriority Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors. Other than the Carve-Out, no cost or expense of administration under Bankruptcy Code sections 105, 503, or 507 or otherwise, including any such costs or expense resulting from or arising after the conversion of any of these cases under Bankruptcy Code section 1112, shall be senior to, or *pari passu* with, the

Superpriority Claims granted hereunder.

- c. **Agent's Professional Fees and Expenses.** As additional adequate protection, the Debtors will be authorized and directed, within twenty (20) days of submission of invoices therefore (which invoices shall be delivered to the Debtors, the United States Trustee, and any statutory committee, which shall contain a summary description of services rendered and listing of hours and services by each professional for the time period covered thereby), to pay all reasonable fees and expenses for Akin Gump Strauss Hauer & Feld LLP, counsel for the Agent, and any other professionals retained by the Agent, in each case, in connection with matters relating to the subject of these chapter 11 cases. None of the fees or expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto. Nothing contained in the motion or the Interim Order shall be deemed to be a waiver by any party in interest of the right to object to the reasonableness of any such fees and expenses.
- d. **Filing Proof of Claim.** The Interim Order shall constitute evidence of the alleged amount and nature of each of the Senior Secured Lenders' claims in these cases, and the Senior Secured Lenders may, but shall not be obliged to, amend, or supplement this proof by filing a proof of claim in these cases.

50. The Debtors will also provide the Agent and the Senior Secured Lenders with ample information relating to projected revenues and expenses, actual revenue and expenses, and variances from the Interim Budget, as well as reasonable access to, among other things, the Debtors' management, books, and records. This information will enable the Senior Secured Lenders to monitor their interests in the Prepetition Collateral and cash collateral. The Debtors submit that, under the circumstances, the terms and conditions contained in the Interim Order are fair and reasonable and in the best interests of their estates and creditors. Accordingly, I believe that the relief requested in the emergency cash collateral motion is necessary to avoid immediate and irreparable harm.

#### IV. **Motion to Maintain the Debtors' Cash Management System**

##### 1. **Relief Requested**

51. The Debtors seek, pursuant to sections 105(a), 345(b), 363(b), 363(c), and 364(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authority to (i) continue to operate their Cash Management System, as modified, (ii) honor certain prepetition service charges and other fees related to the use of the Cash Management System, (iii) maintain existing business forms, and (iv) maintain existing Bank Accounts; and (b) an extension of time to comply with section 345(b) of the Bankruptcy Code.

**2. Basis for Relief Requested**

52. In the ordinary course of business, the Debtors use their Cash Management System to efficiently collect, transfer, and disburse funds generated by their business operations. The Debtors' Cash Management System constitutes an ordinary course, essential business practice providing significant benefits to the Debtors including, *inter alia*, the ability to (i) control corporate 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.

53. The Debtors' operations would be severely harmed by the disruption, confusion, delay, and cost that would most certainly result from rigid compliance with the U.S. Trustee's "Operating Guidelines and Reporting Requirements For Debtors in Possession and Trustees," which may require, as of the Commencement Date, the closure of many of the Debtors' prepetition bank accounts and the opening of new accounts. Accordingly, I believe that the relief in the cash management motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

54. Finally, in connection with their use of the Cash Management System, the Debtors incur periodic service charges and other fees to their banks for the maintenance of the Cash Management System (the “**Service Charges**”). The Debtors believe that as of the Commencement Date there are unpaid prepetition Service Charges in the approximate amount of \$3,600. The Debtors request authority to pay the prepetition Service Charges that remain unpaid as of the Commencement Date. Payment of the prepetition Service Charges is in the best interests of the Debtors, their estates and all parties in interest as it will prevent any disruption to the Cash Management System. Furthermore, since the Debtors’ banks have setoff rights with respect to the Service Charges, payment of any prepetition Service Charges would not affect unsecured creditors and the issue of paying any prepetition Service Charges would just be a matter of timing. I believe that the facts cited herein illustrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**V. Motion to (I) Prohibit Utility Companies from Altering, Refusing and Discontinuing Services on Account of Prepetition Invoices and (II) Establish Adequate Assurance Procedures**

**1. Relief Requested**

55. The Debtors request the entry of an order (i) prohibiting Utility Companies from altering, refusing and discontinuing services on account of prepetition invoices and (ii) establishing the following adequate assurance procedures pursuant to section 366 of the Bankruptcy Code (the “**Adequate Assurance Procedures**”):

Proposed Adequate Assurance

- The Debtors shall pay a postpetition security deposit of one-half of the average monthly bill, calculated based on the historical average over the past five (5) months, (the “**New Deposit**”) to any Utility Company that is not currently holding a prepetition security deposit.
- As a condition of accepting the New Deposit, any Utility Company agrees that at the conclusion of these chapter 11 cases, or on the effective date of any chapter 11

plan of reorganization, any unused portion of the New Deposit shall be promptly remitted to the Debtors.

- Any Utility Company that is currently holding a prepetition security deposit shall retain such deposit (the “**Existing Deposit**”) in lieu of receiving a New Deposit.
- The Debtors propose to mail a copy of any order approving the relief requested in the motion to all Utility Companies within ten (10) days of its entry.

#### Procedures for Requesting Additional Adequate Assurance

- Any Utility Company that is not satisfied with the Debtors’ proposed adequate assurance (in the form of either the New Deposit or the Existing Deposit) must (i) file a motion with the Court requesting additional adequate assurance and setting forth the basis for such request and (ii) set such motion for hearing no earlier than twenty-five (25) days after the filing of the motion.
- Absent further order of the Court, pursuant to a motion seeking additional adequate assurance or otherwise, all Utility Companies are prohibited from interfering with, disturbing, or discontinuing services to the Debtors on account of these chapter 11 cases and/or any unpaid invoice for prepetition services.

#### Additional Utility Companies

- Despite good-faith efforts by the Debtors to list every Utility Company from which the Debtors receive service, certain Utility Companies may not be listed on the exhibit to the emergency utilities motion. If the Debtors discover any additional Utility Companies after the Commencement Date, the Debtors will amend the exhibit to the emergency utilities motion and serve a copy of the motion and any order approving the relief requested in the motion on such Utility Companies.

56. For any Utility Company identified after the Commencement Date, the Debtors request that the prohibitions and procedures set forth in the utility motion be extended to such Utility Company absent any further order of the Court.

## **2. Basis for Relief Requested**

57. Uninterrupted utility services are essential to the Debtors’ ongoing operations and the success of the reorganization. Should any Utility Company refuse or discontinue service, even for a brief period, the Debtors’ business operations could be severely disrupted, and such disruption would jeopardize the Debtors’ reorganization efforts and ability to

service their customers. It is essential that the utility services continue uninterrupted during these chapter 11 cases. I believe that establishing the Adequate Assurance Procedures will avoid immediate and irreparable harm, is in the best interests of the Debtors and their estates, and will enable the Debtors to continue to operate their business in chapter 11 without disruption.

**VI. Motion to Pay Sales Taxes, Use Taxes, and License and Permit Fees**

**1. Relief Requested**

58. The Debtors request the entry of an order authorizing the Debtors to pay approximately (i) \$125,000 in Sales Taxes; (ii) \$80,000 in Use Taxes; and (iii) \$25,000 of License and Permit Fees relating to the prepetition period in the ordinary course of business. In addition, the Debtors request that the Debtors' banks and financial institutions be authorized and directed to honor any electronic transfers initiated or checks that relate to these prepetition obligations.

**2. Basis for Relief Requested**

59. I believe that the payment of Sales Taxes, Use Taxes, and License and Permit Fees is critical to the Debtors' continued and uninterrupted operations. Among other things, failure to pay these amounts could, in some instances, jeopardize the Debtors' ability to do business in a particular state, result in personal liability for the Debtors' officers or directors, and/or require the Debtors to incur excessive interest expenses. Furthermore, certain taxes, such as Sales Taxes and Use Taxes, are only being held by the Debtors in trust for the benefit of the taxing authorities and, thus, are not property of the Debtors' estates. Finally, based on my knowledge and conversations with the Debtors' counsel, it is my understanding that certain of the Debtors' taxes are entitled to priority status under the Bankruptcy Code and, therefore, must be paid in full before any general unsecured obligations may be satisfied. Accordingly, I believe

that the relief requested in this motion is necessary to avoid immediate and irreparable harm that would result from the failure to authorize the Debtors to pay their Sales Taxes, Use Taxes, and License and Permit Fees.

**VII. Motion to Approve the Disclosure Statement**

**1. Relief Requested**

60. The Debtors request the entry of an order (i) preliminarily approving the Disclosure Statement; (ii) approving the form and manner of service related to the Disclosure Statement, including but not limited to, the Solicitation Procedures; (iii) setting dates for the Objection Deadline, the Voting Deadline, and the Confirmation Hearing; and (iv) authorizing related relief.

**2. Basis for Relief Requested**

61. The most sensitive and complex task required to effectuate a successful reorganization – the negotiation of consensual agreements with critical creditor constituencies – has already been accomplished in advance of the Commencement Date. As set forth above, the Consenting Lenders have agreed to support the Plan. Therefore, it is in the best interests of the Debtors' estates and creditors to proceed with the confirmation process as expeditiously as possible.

62. Accordingly, the Debtors respectfully request that the Court consider the proposed timetable (provided below) as it is in the interests of all parties in interest in these chapter 11 cases. The relief sought in this motion is necessary to the efficient prosecution of these chapter 11 cases and will assist in the expeditious confirmation of the Plan while providing adequate notice to, and protection of the rights of, creditors. It is appropriate that a scheduling order be entered at this time so that creditors may be informed as promptly as possible of the

anticipated scheduling of events preceding the hearing on confirmation of the Plan (the “**Confirmation Hearing**”). The proposed schedule affords creditors and all other parties in interest ample notice of the proceedings.

63. Below is a table highlighting the dates relevant to the Debtors’ proposed procedures to solicit votes for the Plan (the “**Solicitation Procedures**”) and setting forth the Debtors’ proposed dates for the mailing of Non-Voting and Voting Solicitation Packages (as defined below), the deadline to object to the adequacy of the Disclosure Statement and/or confirmation of the Plan (the “**Objection Deadline**”), and the Confirmation Hearing.

<b>Proposed Timetable<sup>4</sup></b>	
Commencement Date	October 27, 2009
Commencement of Solicitation Date	7 days after the Court grants the Debtors’ Emergency Motion to Approve the Disclosure Statement
Voting Deadline	28 days after the Commencement of Solicitation Date
Objection Deadline	28 days after the Commencement of Solicitation Date
Confirmation Hearing	Week of December 7, 2009

64. The Debtors also request that an order be entered approving the Solicitation Procedures, including the ballots, tabulation procedures and related activities undertaken in connection with the Plan.

65. The Debtors further request that the Court direct any objections to the Disclosure Statement and/or the Plan be in writing, filed with the Clerk of the United States Bankruptcy for the Southern District of Texas, Houston Division, together with proof of service thereof, set forth the name of the objector, and the nature and amount of any claim or interest

<sup>4</sup> The dates and times proposed in this table as well as in the motion are subject to the Court’s availability.

asserted by the objector against the estate or property of the Debtors, state with particularity the legal and factual basis for such objection and be served upon the parties specified so as to be received no later than 4:00 p.m. prevailing Central time on the day that is twenty eight (28) days after the Commencement of Solicitation Date.

66. I am informed that pursuant to section 1125(c) of the Bankruptcy Code and Bankruptcy Rule 3017(d), a debtor's plan and disclosure statement need not be served on all creditors; rather, a court may authorize the debtor to serve on unimpaired creditors a notice in lieu of the disclosure statement and plan. There are several thousand unimpaired claimants in the Debtors' bankruptcy cases, a number of whom may have their prepetition claims paid during the pendency of these cases (such as employees and certain taxing authorities). Requiring the Debtors to serve the voluminous Plan and Disclosure Statement upon each unimpaired claimant would cause the Debtors to incur unnecessary and excessive costs.

67. Accordingly, the Debtors propose to distribute the following materials to each of the voting holders of claims (each class of holders a "**Voting Class**"). The Debtors shall send each member of a Voting Class: (i) the order preliminarily approving the Disclosure Statement; (ii) the Confirmation Hearing Notice; (iii) the Disclosure Statement, which shall include the Plan as an exhibit; and (iv) a ballot customized for such holder as described below with instructions and a return envelope (collectively, the "**Voting Solicitation Package**").

68. To each holder of a claim or interest not entitled to vote because such holder's claim is either unimpaired or fully impaired, the Debtors shall send: (i) the order preliminarily approving the Disclosure Statement; (ii) the Confirmation Hearing Notice; and (iii) a Notice of Non-Voting Status; provided, however, the Debtors shall provide such holder a

Disclosure Statement and/or Plan upon written request (collectively, the “**Non-Voting Solicitation Package**”).

69. The Debtors propose to distribute the following materials to (i) the U.S. Trustee, (ii) the attorneys for any statutorily appointed committee, and (iii) all other parties requesting service in these chapter 11 cases: (i) the order preliminarily approving the Disclosure Statement; (ii) the Confirmation Hearing Notice; and (iii) the Disclosure Statement, which shall include the Plan as an exhibit (collectively, the “**Notice Solicitation Package**” together with the Voting and Non-Voting Solicitation Packages, the “**Solicitation Packages**”).

70. I am further advised that Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the court shall fix a time within which the holders of claims or equity security interests may accept or reject a plan. The Debtors will mail the Solicitation Packages within seven (7) days after an order preliminarily approving the Disclosure Statement is entered (the “**Commencement of Solicitation Date**”). Based on such a schedule, the Debtors propose that, in order to be counted as a vote to accept or reject the Plan, each ballot must be properly executed, completed, and delivered no later than 4:00 pm (prevailing Central Time) (the “**Voting Deadline**”) on the day which is twenty eight (28) days after the Commencement of Solicitation Date. Because the Voting Deadline will be at least twenty-five (25) days after the date a holder of a claim or interest receives a Solicitation Package, the Debtors believe that such solicitation period is a sufficient time within which holders of claims and interests can make an informed decision whether to accept or reject the Plan.

71. In light of the pre-arranged nature of these cases and the fact that the Plan has the support of the Consenting Lenders, I believe the relief requested is in the best interests of the Debtors, their creditors, and all parties in interest.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: October 27, 2009  
Houston, Texas

/s/ Darron Anderson  
Darron Anderson

**EXHIBIT A****LIST OF DEBTORS**

<b>Debtor</b>	<b>Last Four Digits of Federal Tax I.D. No.</b>
Express Energy Services Operating, LP	7644
Express Energy Services (2008) LLC	3087
Express Energy Services Holding, LP	7122
Express Energy Services GP, LLC	7083
Express Energy Services CT, LP	8432
Express Energy Services Ark, LP	5287
Express Energy Services P&A, LP	8402
Express Energy Services WL, LP	2834
Express – Byrd R&S GP, LLC	7556
Express – Byrd R&S Oilfield Services, L.P.	7580
Express – MBCC GP, LLC	0760
Express – MBCC, Ltd.	0802
Express – Mike Byrd Casing Crews GP, LLC	0852
Express – Mike Byrd Casing Crews, Ltd.	0938
Express – R&S Tong Services GP, LLC	2230
Express – R&S Tong Services, Ltd.	7465
Express – BAH Leasing GP, LLC	0510
Express – BAH Leasing, Ltd.	0708
D&D Tongs GP, LLC	6566
D&D Tongs, L.P.	6586
Express – North Trail Oilfield Services, GP, LLC	7506
Express – North Trail Oilfield Services, Ltd.	7526
Express – Ace Rat Hole Service GP, LLC	6617
Express – Ace Rat Hole Service, Ltd.	6632

**EXHIBIT B**

**ORGANIZATIONAL CHART**

EES Entities Structure Chart

