

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE:)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXX
)
Debtor.)
)

**MEMORANDUM TO DEBTOR IN POSSESSION REGARDING GENERAL
PROCEDURES FOR INDIVIDUAL CHAPTER 11 CASES FILED IN
THE MIDDLE DISTRICT OF NORTH CAROLINA**

This memorandum contains important information regarding general procedures for individual chapter 11 cases filed in the Bankruptcy Court for the Middle District of North Carolina. To the extent any information in this memorandum conflicts with an order entered by the Court, the applicable sections of 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), or the Local Rules for the United States Bankruptcy Court for the Middle District of North Carolina (the “Local Rules”), the order of the Court, Bankruptcy Code, Bankruptcy Rules, or Local Rules, as applicable, control.

A. SUMMARY OF IMPORTANT DEADLINES AND DATES.

The following is a list of important deadlines and dates mentioned in the remaining sections of this memorandum and related materials. Many deadlines in the case are determined based on the date debtor’s voluntary petition was filed with the Court, which was _____, **20__** (the “Petition Date”). This list is not exhaustive, so please take the time to review and become familiar with applicable sections of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

- Application to Employ Counsel for Debtor- Shall be filed substantially contemporaneous with the petition, and in no event more than 5 days thereafter.
- Motion for Interim Order re Utilities- Shall be filed substantially contemporaneous with the petition, and in no event more than 5 days thereafter.
- Designation of Depository- Shall be filed within 7 days of the Petition Date.
- Notice to Creditors with Claims Scheduled as Disputed, Contingent, or Unliquidated- Shall be timely sent to each creditor listed as disputed, contingent, or unliquidated as provided under Local Rule 3003-1.
- Quarterly Fee Statements- Shall be filed on or before the last day of the month that follows each calendar quarter during which debtor has a duty to pay fees under 28 U.S.C. § 1930(a)(7).
- Monthly Reports- Monthly reports shall be filed within 21 days following the end of each calendar month.

- Initial Interim Application for Compensation- Shall not be filed before the creditors meeting or within 120 days after the Petition Date.
- Plan and Disclosure Statement- Shall be filed within 120 days after the order for relief.
- Summary of Voting on Plan- Shall be filed at least 3 business days prior to a hearing on confirmation of the plan.
- Consummation Status Report- Initial consummation status report is due within 60 days from entry of the order confirming the plan. Subsequent consummation reports shall be filed on a quarterly basis.
- Final Report- Shall be filed within 14 days from the finalization of all matters in the case.

B. DUTIES OF DEBTOR REGARDING DOMESTIC SUPPORT OBLIGATIONS.

If there is a claim for a domestic support obligation with respect to debtor, debtor shall perform the duties set forth in § 1106(c)(1) of the Bankruptcy Code.

C. AUTOMATIC STAY.

In most chapter 11 cases, there is an automatic restraining order in effect as of the time of the filing of the petition for chapter 11 pursuant to § 362 of the Bankruptcy Code. Please refer to that section for a description of actions that are stayed and actions that are not stayed.

D. DISPOSITION OF ASSETS.

Debtor shall not sell, mortgage, pledge, or otherwise transfer or encumber any property of the estate, other than in the ordinary course of business, without an order of the Court.

E. EMPLOYMENT OF COUNSEL FOR DEBTOR IN POSSESSION AND OTHER PROFESSIONALS.

a. Applications To Employ Bankruptcy Counsel and Other Professionals.

Debtor must file: (i) an application to employ counsel, (ii) an affidavit of proposed counsel, (iii) a disclosure of compensation pursuant to Bankruptcy Rule 2016(b), and (iv) a proposed order authorizing debtor to employ counsel with the Court (See **Exhibit 1**)¹ substantially contemporaneous with the petition and in no event more than 5 days thereafter. If debtor wants to employ any other professionals (e.g., accountants, auctioneers, realtors, special counsel, etc.), debtor must file: (i) an application to employ professional, (ii) an affidavit of proposed professional, (iii) a disclosure of compensation pursuant to Bankruptcy Rule 2016(b), if applicable, and (iv) a proposed order authorizing debtor to employ professional before the professional commences work on behalf of debtor. Absent extraordinary circumstances, employment of debtor's counsel and other professionals will not be approved *nunc pro tunc*. Pursuant to Bankruptcy

¹ All forms referenced in this memorandum are available in editable format on the Court's website at www.ncmb.uscourts.gov.

Rule 6003, final approval of applications to employ debtor's counsel or other professionals will not occur prior to 21 days after the Petition Date.

b. Compensation.

No postpetition fees shall be paid, from a retainer or otherwise, without prior application and approval of the Court. All fee applications must conform to the attached Chapter 11 Fee Application Guidelines (See **Exhibit 2**). After conclusion of the creditors meeting, and at least 120 days after the Petition Date, counsel for debtor may want to file an application with the Court for an initial interim fee allowance for services rendered to debtor and request to establish a procedure for interim compensation for future services. The approval of interim compensation procedures for future services will depend upon several factors, including, but not limited to: (i) whether debtor has sufficient income to justify such a request, (ii) the size of debtor's estate, (iii) the amount of time being devoted to the case, and (iv) the anticipated duration of debtor's case under chapter 11.

F. DESIGNATION OF DEPOSITORY.

Debtor must contact the case manager in the Clerk's Office assigned to the case with the name and address of the financial institution that will be the official depository for debtor in the case ("Designated Depository") no more than 5 days after the Petition Date. Following receipt of this information, the Clerk's Office will issue a memorandum to debtor from the Clerk of Court ("Designated Depository Memo"). A copy of the Designated Depository Memo must be provided to the Designated Depository prior to opening the debtor in possession account(s). The Designated Depository Memo contains important instructions for both debtor and the Designated Depository, including the required name for the new debtor in possession account(s) opened at the Designated Depository. *Please ensure prior to contacting the case manager that the financial institution you select is able to comply with the requirements of a depository under § 345 of the Bankruptcy Code.*

As stated in the Designated Depository Memo, debtor must provide the Bankruptcy Administrator with information on each new debtor in possession account and the name and phone number of a contact person at the Designated Depository.

In certain limited situations, the Court may, upon motion by debtor, authorize debtor to maintain existing prepetition bank accounts. Any motion by debtor requesting authority to maintain existing prepetition bank accounts (i) must be filed no more than 5 days after the Petition Date; (ii) shall include a representation that debtor has notified all financial institution(s) at which prepetition accounts remain open that: (a) debtor has filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, and (b) the financial institution(s) must not honor any payments made prior to the Petition Date; and (iii) shall include a representation that debtor will not pay, and will direct the financial institution(s) at which prepetition accounts remain open not to pay, any debts incurred prior to the Petition Date other than as specifically authorized by the Court.

G. DEBTOR'S BOOKS AND RECORDS.

Debtor shall close its prepetition books and records as of the Petition Date. Debtor's prepetition books and records shall be reconciled as of the day preceding the Petition Date. If debtor has not closed its prepetition books and records and opened new, postpetition books and records as of the Petition Date, debtor shall take such actions within 7 days of the Chapter 11 Operating Order, which has been or will be entered in the case (the "Operating Order"). Debtor shall keep postpetition books and records, which must include a proper record of all transactions, earnings, expenses, receipts, disbursements, and all obligations incurred in the operation of debtor's business and in the management, preservation, and protection of property of the estate.

In certain limited situations, the Court may, upon motion by debtor, authorize debtor to continue to use its existing books and records. However, any motion by debtor requesting authority to continue the use of prepetition books and records shall be filed no more than 7 days after the Petition Date.

H. TAXES.

Debtor shall pay all postpetition taxes when due.

a. Withholding Taxes.

Debtor shall segregate and hold separate and apart from all other funds all monies withheld from employees or collected from others for taxes under the laws of the United States, or any state or subdivision thereof. Debtor shall deposit the money so withheld or collected in a separate bank account simultaneously with such collecting or withholding. If necessary and appropriate, debtor shall open a separate payroll account. The Designated Depository Memo provides additional information regarding opening separate accounts for these purposes. Debtor is authorized to pay, and must pay from said separate account(s) to the appropriate authorities, the amounts due at the times and in the manner prescribed by law.

b. Tax Returns.

Debtor shall timely file all postpetition tax returns as required by law. If an extension of time to file a tax return is sought, that information must be disclosed in the monthly report.

I. INSURANCE.

Debtor shall sufficiently insure all property of the estate for loss caused by fire, theft, liability, collision, and casualty, with loss payable clauses in favor of the appropriate secured creditor(s) in the case of pledged or mortgaged property. If required by law, debtor shall maintain workers' compensation coverage. Debtor shall provide the Bankruptcy Administrator with proof of appropriate insurance coverage on or before the date first set for the creditors meeting.

J. GENERAL GUIDANCE FOR FIRST DAY MOTIONS AND EXPEDITED MOTIONS.

Debtor must provide no less than 48 hours notice of the motion and any expedited hearing thereon to the Bankruptcy Administrator, debtor's twenty largest unsecured creditors, the attorneys for any committee that may be appointed by the Court, any creditor asserting a secured claim or other interest in cash collateral against debtor (and such creditors' attorneys, if known), the Internal Revenue Service, the Attorney General for the United States, the U.S. Attorney for the Middle District of North Carolina, any potentially affected taxing authorities, and any other creditor or party in interest directly affected by the relief sought on an emergency or first day basis, including, without limitation, any affected utility providers. At a minimum, such notice shall be provided: (i) by electronic mail or facsimile, overnight courier when a street address is available, or next day United States mail when a street address is not available, and (ii) in the manner provided under Bankruptcy Rule 7004.

Even if parties have agreed and consented to the relief requested, approval of such relief remains subject to the discretion of the Court.

K. UTILITIES.

If debtor seeks continued use of utility services postpetition, debtor shall file a motion for entry of an interim order pursuant to § 366 of the Bankruptcy Code which: (i) prohibits utility providers from altering, refusing, or discontinuing service to debtor, (ii) deems utility providers adequately assured of future performance, and (iii) establishes procedures for determining additional adequate assurance of future payment. Debtor shall file such motion substantially contemporaneous with the petition, and in no event more than 5 days thereafter. A form motion is attached hereto as **Exhibit 3**.

Please refer to section J of this memorandum for general information regarding first day motions.

L. FIRST DAY MOTIONS TO PAY PREPETITION WAGES.

Motions for authority to pay prepetition amounts due to employees which would be entitled to priority under § 507(a)(4) of the Bankruptcy Code (collectively referred to herein as "Prepetition Wages") shall identify the number of employees debtor intends to pay and the total amount of Prepetition Wages debtor seeks authority to pay. Interim authority to pay Prepetition Wages may be granted for no more than the amount of Prepetition Wages entitled to priority under § 507(a)(4), and final authority to pay Prepetition Wages may be granted for no more than the amount of Prepetition Wages entitled to priority under § 507(a)(4), absent extraordinary circumstances. First day motions seeking authority to pay Prepetition Wages must be filed substantially contemporaneous with the petition, and in no event more than 5 days thereafter.

Please refer to section J of this memorandum for general information regarding first day motions.

M. CASH COLLATERAL MOTIONS.

The Court has developed guidelines for approval of first day and emergency debtor in possession financing requests with the consent of the secured creditor. These guidelines are attached hereto as **Exhibit 4**.

N. DISPUTED, CONTINGENT, OR UNLIQUIDATED CLAIMS.

Pursuant to Local Rule 3003-1(b), debtor shall notify each creditor whose claim is listed on the schedules as disputed, contingent, or unliquidated of that fact on or before: (i) 14 days after filing the schedules; (ii) 14 days after the addition of such creditor to the schedules; or (iii) 14 days after an amendment to the schedules, which designates the affected creditor's claim as disputed, contingent, or unliquidated for the first time. Within 3 business days after service has been made, debtor shall file a certificate of service with the Clerk's Office. Failure to timely notify a creditor that its claim is listed as disputed, contingent, or unliquidated shall result in the creditor's claim being deemed filed in the amount listed as disputed, contingent, or unliquidated, as though a proof of claim had been filed by the creditor. A form notice is attached hereto as **Exhibit 5**.

O. PAYMENTS BY DEBTOR IN POSSESSION.

There are certain obligations and debts debtor needs to pay and should pay. Subject to obtaining authority or consent to use cash collateral as provided under § 363 of the Bankruptcy Code, and unless ordered otherwise by the Court, debtor should continue to make the following types of payments:

- All taxes and similar charges lawfully incurred in the operation of debtor's business and in preservation and maintenance of property of the estate from and after the Petition Date;
- Proper expenses and obligations incurred by debtor on or after the Petition Date in the ordinary course of debtor's business and preserving and maintaining property of the estate;
- The expenses of printing/copying and mailing notices to creditors and all other parties as may be directed by the Court or applicable rule;
- Quarterly fees payable during the pendency of the case pursuant to 28 U.S.C. § 1930(a)(7); and
- If debtor is required by a judicial or administrative order or by statute to pay a domestic support obligation, all amounts payable under such order or statute for such obligation that first became payable after the date of the Petition Date.

P. MONTHLY REPORTS.

Debtor is required to file monthly reports with the Court on the progress and status of the case pursuant to §§ 1106 and 1107 of the Bankruptcy Code and Bankruptcy Rule 2015. Monthly

reports filed by debtor shall conform to the form attached hereto as **Exhibit 6**. The first monthly report shall include the period from the Petition Date through the last day of the calendar month in which the petition was filed. Monthly reports shall be filed within 21 days following the end of each calendar month. All monthly reports must be served on the Bankruptcy Administrator. The Bankruptcy Administrator may reasonably adjust, as deemed necessary, the form and required content of the debtor's monthly reports.

Q. STATUS HEARINGS.

If a status hearing is set in the case, debtor is required to appear at the status hearing, in addition to counsel for debtor, unless otherwise directed by the Court.

R. QUARTERLY FEES.

All debtors in cases under chapter 11 are assessed quarterly fees. The amount of quarterly fees assessed is calculated based on the total sum of disbursements made by debtor during the calendar quarter. Even if debtor makes no disbursements during a calendar quarter, there is still a minimum fee that debtor is required to pay. Debtor must file a Quarterly Fee Statement with the Court on or before the last day of the month that follows each calendar quarter during which debtor has a duty to pay fees under 28 U.S.C. § 1930(a)(7). Additional information on the assessment and payment of quarterly fees, as well as a form Quarterly Fee Statement, are attached hereto as **Exhibit 7**.

S. PLAN AND DISCLOSURE STATEMENT.

a. Filing Deadlines.

Debtor must file a plan and disclosure statement within 120 days from the order for relief in the case. Failure to timely file a plan may subject debtor to a motion to convert or dismiss the case. Debtor may file a motion to extend the time for filing the plan and disclosure statement and to extend the exclusivity period, but such motion must be filed before the expiration of the period initially fixed under § 1121(c) of the Bankruptcy Code. The exclusivity deadline for filing a plan may not be extended beyond a date that is 18 months after the date of the order for relief in the case, and the exclusivity period for obtaining acceptances of the plan may not be extended beyond a date that is 20 months after the date of the order for relief. If debtor files a motion to extend the time to file a plan and disclosure statement, debtor shall file a Status Report on Activities and Financial Condition of the Debtor in Possession at the time of the filing of the motion in the form attached hereto as **Exhibit 8**.

b. Disclosure Statement Requirements.

Section 1125 of the Bankruptcy Code requires a disclosure statement to include adequate information to enable a hypothetical investor to make an informed judgment about the plan. At a minimum, a disclosure statement shall include: (i) information on the present

financial status of debtor, (ii) historical cash flow information, (iii) financial projections, (iv) a schedule of proposed payments to creditors, and (v) a liquidation analysis.

T. VOTING ON PLAN.

a. Solicitation of Acceptances

Acceptances may not be solicited until after the disclosure statement is approved or conditionally approved. The date for filing the ballots of acceptance or rejection will be set by the Court. Acceptances must be in writing, identify the plan being accepted, and be signed by the creditor.

b. Ballot Form

A ballot form is to be mailed along with the documents set forth in the Order Approving Disclosure Statement to the creditors and other parties in this case pursuant to Bankruptcy Rule 3017(d). If debtor's ballot deviates from Official Form 314, the ballot form must be approved by the Court.

c. Summary of Voting.

Pursuant to Local Rule 3018-1, debtor shall complete and file a Summary of Voting on the Plan not later than 3 business days before the plan confirmation hearing, unless otherwise directed by the Court. The summary must include (for each class) the class description, the number of ballots accepting the plan, the number of ballots rejecting the plan, the dollar value of the ballots accepting the plan, the dollar value of the ballots rejecting the plan, whether the class has accepted the plan, and whether the class is impaired. If a class is not impaired and voting is not necessary, such class must still be included in the Summary of Voting. A form Summary of Voting on the Plan is attached as **Exhibit 9**.

U. POST CONFIRMATION.

a. Consummation Status Reports.

Following confirmation of a plan, debtor must file an initial consummation status report within 60 days after entry of the order confirming the plan ("Confirmation Order"). Subsequent consummation reports shall be filed on a quarterly basis. At a minimum, each consummation report shall reflect debtor's progress toward substantial consummation during the period reflected and must include the following information: (i) the amount due to each creditor as provided in the plan, (ii) the amount of each claim due but not paid and the reason such claim has not been paid, (iii) a statement of whether the plan has been substantially consummated, and if not, an explanation of why it has not been substantially consummated and the expected date of substantial consummation, (iv) a description of the steps remaining in the case before a final report can be filed and the

expected completion dates of such steps, and (v) the projected date for filing the final report.

b. Objections to Claims.

Debtor must file objections to claims within 60 days after entry of the Confirmation Order, unless otherwise provided in the confirmed plan or in an order extending the time to file objections to claims. Debtor will receive a Post Confirmation Procedures Memorandum from the Clerk's Office after the Confirmation Order is entered. Such memorandum will explain the requirements for filing and noticing objections to claims. Bankruptcy Rule 3007(b) governs the manner of service on objections to claims.

c. Applications for Final Compensation.

Applications for final compensation for services rendered by debtor's counsel and other professionals must be filed within 60 days after entry of the Confirmation Order.

d. Final Report.

Debtor is required to file a final report within 14 days from the finalization of all matters in the chapter 11 case. The final report must, at a minimum, contain the following information: (i) a breakdown of all fees and expenses paid to all professionals in the case, (ii) the percentage dividend and total amount to be paid to unsecured creditors under the confirmed plan, (iii) total amount of all court costs, (iv) a list of the creditor classes in the confirmed plan, including a description of each class, and how that class has been or will be paid, and (v) a request for entry of a final decree in the case.

If you have any questions concerning the contents of this memorandum, please do not hesitate to contact the Clerk's Office or the United States Bankruptcy Administrator.

OFFICE OF THE CLERK

By: _____
Deputy Clerk

EXHIBIT 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE:)	
)	
XXXXXX XXXX XXXXXXXX,)	CASE NO. XX-XXXXXX
)	
Debtor.)	
)	

APPLICATION TO EMPLOY BANKRUPTCY COUNSEL

The above captioned debtor (“Debtor”) submits this application (“Application”) and requests an order pursuant to 11 U.S.C. § 327 and Federal Rule of Bankruptcy Procedure 2014 authorizing Debtor to employ the law firm of _____ (“Proposed Bankruptcy Counsel”) to advise and represent Debtor effective as of the filing date of this Application. In support of this Application, Debtor refers to and relies upon the Affidavit of _____ (name of attorney) _____ (“Affidavit”), attached hereto as **Exhibit A**, and respectfully represents as follows:

1. Debtor filed a voluntary petition under chapter 11 of 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) on _____ (“Petition Date”). Debtor continues in possession of its assets as a debtor-in-possession.
2. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. Debtor seeks approval of the Court for the employment of Proposed Bankruptcy Counsel to provide the following professional services to Debtor:

(List all services to be provided by Proposed Bankruptcy Counsel.)

4. Debtor has selected Proposed Bankruptcy Counsel because _____ (*describe qualifications and experience of Proposed Bankruptcy Counsel*) _____. Debtor believes that Proposed Bankruptcy Counsel possesses the requisite expertise to serve as bankruptcy counsel for Debtor.
5. As set forth in the attached Affidavit, Proposed Bankruptcy Counsel represents no other entity in connection with this case, represents and holds no interest adverse to the interests of the bankruptcy estate, and is disinterested as that term is defined in § 101(14) of the Bankruptcy Code as modified by § 1107(b) of the Bankruptcy Code.
6. Proposed Bankruptcy Counsel has agreed to represent Debtor for compensation based upon the customary hourly rates charged by Proposed Bankruptcy Counsel at the time

such services are rendered, plus reimbursement of actual and necessary expenses and other charges Proposed Bankruptcy Counsel incurs, in such amounts as may be subsequently allowed and approved by the Court in accordance with the Chapter 11 Fee Application Guidelines for the Middle District of North Carolina.

7. Proposed Bankruptcy Counsel has received no compensation from Debtor or anyone else on account of Debtor, except as follows:

(Describe all compensation received by Proposed Bankruptcy Counsel from, or on account of, Debtor, including, but not limited to, any retainer provided to Proposed Bankruptcy Counsel. A copy of any employment agreement must be attached.)

8. Debtor believes that the services to be provided by Proposed Bankruptcy Counsel will enhance the administration of the bankruptcy estate and that Proposed Bankruptcy Counsel can manage and apportion the legal services required so as to minimize any duplication or unnecessary expenses.

WHEREFORE, Debtor respectfully requests that the Court enter an order authorizing Debtor to employ and retain Proposed Bankruptcy Counsel to advise and represent Debtor effective as of the filing date of this Application.

This ____ day of _____, _____.

Debtor

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE: _____)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)
)

**AFFIDAVIT OF _____ IN SUPPORT OF APPLICATION TO EMPLOY
BANKRUPTCY COUNSEL FOR DEBTOR**

I, _____, do solemnly depose and declare as follows:

1. I am an attorney duly admitted to practice in ____ (list state(s) admitted to practice) _____, and I am admitted to practice before the Court.
2. I am a/the _____ (*title within law firm, e.g. partner, member etc.*) _____ of _____ (“Proposed Bankruptcy Counsel” or the “Firm”), a law firm that maintains an office at _____.
3. I will assume primary responsibility within the Firm for its engagement in the above referenced chapter 11 Case, if the Firm is approved as bankruptcy counsel for _____ (“Debtor”).
4. I am fully familiar with the facts stated herein and submit this affidavit (the “Affidavit”) in support of Debtor’s Application to Employ Bankruptcy Counsel (the “Application”).
5. I, along with the Firm, have been retained to serve as bankruptcy counsel for Debtor as set forth in the engagement letter attached hereto as **Exhibit A-1**.
6. To the best of my knowledge, neither I nor any member of the Firm: (i) is a creditor, equity security holder, or insider of Debtor, (ii) is or was, within the preceding two years, a director, officer, or employee of Debtor, or (iii) has an interest materially adverse to the interests of Debtor’s bankruptcy estate or of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in Debtor, or for any other reason. Based upon the foregoing, to the best of my knowledge, the Firm and I are “disinterested persons” as that term is

defined in § 101(14) of the Bankruptcy Code as modified by § 1107(b) of the Bankruptcy Code.

7. If approved as bankruptcy counsel for Debtor, the Firm intends to apply for compensation for professional services rendered in connection with the above-captioned chapter 11 case and any related adversary proceeding on an hourly basis, plus reimbursement of actual and necessary expenses and other charges the Firm incurs, subject to the approval of the Court and in compliance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Local Rules of the Court, and the Chapter 11 Fee Application Guidelines for the Middle District of North Carolina.
8. The primary attorneys and paralegals expected to provide services to Debtor and their respective hourly rates are as follows:

(List names of attorneys and paralegals along with their hourly rates)

The hourly rates set forth above are subject to periodic adjustment to reflect economic and other conditions. Other attorneys and paralegals within the Firm may render services to Debtor as needed.

9. The Firm has received no compensation from Debtor or anyone else on account of Debtor, except as follows:

(Describe all compensation received by the Firm from, or on account of, Debtor, including, but not limited to any retainer provided to the Firm.)

10. No understanding or agreement exists for a division of fees or compensation with any other person or entity outside of the Firm for services to be rendered to Debtor in connection with this case.
11. I will promptly file a supplemental affidavit pursuant to Federal Rule of Bankruptcy Procedure 2014(a) if any additional, material, relevant facts or relationships are discovered or arise after execution of this affidavit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This ____ day of _____, _____.

(Name of Affiant)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE:)	
)	
XXXXXX XXXX XXXXXXXX,)	CASE NO. XX-XXXXXX
)	
Debtor.)	
)	

**ORDER GRANTING APPLICATION
TO EMPLOY BANKRUPTCY COUNSEL**

This matter came before the Court for consideration of the Application to Employ Bankruptcy Counsel (“Application”) filed by _____ (“Debtor”) pursuant to 11 U.S.C. § 327, and for good and sufficient reasons appearing, it is hereby

ORDERED that Debtor is authorized to employ _____ (“Bankruptcy Counsel”) as bankruptcy counsel for Debtor effective as of the filing date of the Application.

IT IS FURTHER ORDERED that all compensation of Bankruptcy Counsel is subject to the approval of the Court, and no fees for services provided to Debtor shall be paid to Bankruptcy Counsel, from a retainer or otherwise, without prior application and approval of the Court.

END OF DOCUMENT

EXHIBIT 2

***United States Bankruptcy Administrator
Middle District of North Carolina
101 South Edgeworth Street,
Greensboro, North Carolina 27401***

***William P. Miller
Bankruptcy Administrator***

***Telephone (336) 358-4170
Facsimile (336) 358-4185***

TO: Counsel for Debtors, Creditors' Committees, and Trustees; Accountants; and
Other Professionals Participating in Chapter 11 Cases

FROM: William P. Miller

SUBJECT: Amended Chapter 11 Fee Application Guidelines

EFFECTIVE DATE: May 13, 2019

These chapter 11 fee application guidelines apply to all fee applications filed in chapter 11 cases on or after May 1, 2019. Fee applications for attorney for debtor, attorney for the unsecured creditors' committee, trustee, examiner, attorney for trustee, attorney for examiner, accountant, financial advisor, and certain other professionals are subject to all provisions of these fee application guidelines unless otherwise ordered by the court. In particular cases, the BA or the court may request submission of the fee application in a different format or require additional information be included in the fee application.

I. General Procedures

In a chapter 11 case, attorney for debtor, attorney for the unsecured creditors' committee, trustee, examiner, attorney for trustee, attorney for examiner, accountant, financial advisor, as well as certain other professionals, may request an interim allowance of compensation on an initial and quarterly basis. The procedures to be followed are set forth below.

A. Initial Application.

An initial interim application for compensation shall not be filed before the later of the conclusion of the creditors meeting or within 120 days after the petition date. The attorney for the debtor, the attorney for the creditors' committee, and other professionals whose employment has been approved by the court or who are otherwise seeking compensation from the bankruptcy estate may file an application for compensation for services rendered and for reimbursement of expenses through the date of the creditors' meeting or a later date. As discussed more fully below, an application must include a detailed itemization of services rendered, the dates the services were rendered, and the amount of time the services entailed. If the debtor's attorney (or other professional) received a retainer from the debtor at the time the petition was filed, a fee application must still be filed just as if no retainer had been received. The fee approved by the court will then be drawn against the prepetition retainer; no fees will be paid from bankruptcy estate funds until the retainer has been depleted.

The initial fee application should include a request that the applicant be allowed to apply for and receive interim compensation on a quarterly basis for future services to be rendered to the estate at the rates as set by the court. In *exceptional* circumstances and for cause shown, the applicant may request to receive compensation on a monthly basis. Such exceptional circumstances would be limited to large and complex cases, or those in which the applicants are small firms that could not economically survive such a drain on financial resources.

When a retainer is drawn down prior to filing the petition, there must be a full disclosure and documentation of the total amount of prepetition retainer paid and the time charged against the retainer. This disclosure and documentation of the prepetition time charged against the retainer is to be set forth in accordance with the usual itemizations that are required for postpetition fee applications. The disclosure and documentation of the retainer and the prepetition time charged against the retainer should be made as part of the Rule 2016(b) Disclosure of Compensation Statement and in the initial application for compensation. When the prepetition time charged against retainer is to be included in the applicant's initial application for compensation, this time should be clearly labeled as "prepetition time charged against retainer." The application must also state that the information on prepetition time was included in the Rule 2016(b) Disclosure of Compensation Statement.

The court will set a hearing on the initial application for compensation and on the applicant's request for permission to file future requests for interim compensation. The hearing will be set with at least twenty-one days' notice to all creditors and other interested parties. After a hearing is held on a fee application, the applicant requesting the fee must prepare an appropriate order approving the fees and expenses, setting forth the hourly rates approved by the court, and approving the arrangement for future interim compensation.

B. Interim Applications.

Following the initial application, interim fee applications may be filed on a quarterly basis and will be considered for approval in accordance with the following schedule:

For Calendar Quarter Ending:	<u>File With Court and Serve Bankruptcy Administrator on or Before:</u>
March 31	April 21
June 30	July 21
September 30	October 21
December 31	January 21

Failure to timely file the application will delay consideration of the fee request until the next quarter.

Typically, interim applications will be set on a tentative hearing basis, with 14 days notice to parties in interest to file an objection if desired. The court will set a hearing if an objection to a

quarterly fee application is filed or if the court determines that it should be set for hearing. If the application is approved in whole or in part without a hearing, an approval memorandum will be mailed by the Clerk's Office to the applicant and to the debtor upon approval of the application.

C. Service of Fee Applications.

Each fee application must be filed with the court and served on the trustee, if any, and any party requesting service. Additionally, applicant must serve a copy of the fee application by electronic mail (service through CM/ECF is insufficient) to the staff attorneys for the Bankruptcy Administrator. The attorney for the debtor is to serve a copy of each application on the attorney for the creditors' committee (if there is one). The attorney for the creditors' committee is to serve a copy of any application on the attorney for the debtor and chairperson of the creditors' committee.

D. Hourly Rates of Compensation.

Fee applicants may submit fee applications based on reasonable hourly rates consistent with 11 U.S.C. §§ 330, 506(b) or 506(c), as applicable; there are no set hourly rates. The court may consider at least the following criteria in determining the hourly rate to be awarded to each applicant: (i) the time expended; (ii) the nature and extent of the services rendered; (iii) the value of the services to the estate; and (iv) the cost of comparable services other than in a case under Title 11.

Each fee application must clearly set forth whether there has been a change in any hourly rates that are being requested, as compared to what the court has allowed to the applicant in the most recent order awarding fees to the applicant (i.e., is the applicant requesting a higher rate in this fee application than the court allowed in the last fee application in the case). See Summary of Services Rendered/Application for Compensation and Reimbursement of Expenses (copy of form attached).

E. Holdback Provisions.

The judge may decide to implement a holdback procedure in a particular case. Provided a case is moving at a satisfactory pace, usually no holdback procedure would be warranted. If a holdback procedure is implemented, the portion of fees that is held back would be available to be paid upon completion of the case and submission of a final fee application. There may be some instances in which a fee enhancement or bonus would be appropriate; however, this would occur only in the rare and exceptional case, inasmuch as the court will have already made a determination that the professionals are receiving reasonable hourly rates for their services.

F. Final Fee Applications.

Following plan confirmation, conversion, or as ordered by the Court, applicants should file a final fee application for all services rendered in the case and all expenses incurred. Applicants should include in the application for final compensation, and in the proposed order to be entered thereon, a provision for the applicant to submit "supplemental" fee applications, for the period subsequent to entry of the order allowing final compensation and until entry of the final decree closing the case.

G. Procedures for Filing “Supplemental” Final Fee Applications.

Any supplemental final fee applications should be filed and otherwise processed in accordance with the usual chapter 11 interim fee application practices.

II. Form/Content of Fee Applications.

All fee applications must include the following:

1. Narrative Introduction;
2. Biographical Information;
3. Summary of Services Rendered during the previous quarter (see attached form);
4. Categorized Summary of Services Rendered during the previous quarter (see attached form);
5. Summary of Accumulated Services Rendered and Expenses Incurred (see attached form);
6. Estimate of Total Fees to be Incurred (see attached form);
7. Detailed itemization of services rendered, the date rendered, and the amount of time spent;
8. Detailed itemization of actual, necessary expenses;
9. Copies of the application for and order approving the employment of the professional. (initial and final applications only)

Detailed information on each of these requirements is set forth in the sections below and a checklist of required information for initial, interim, and final fee applications is attached.

A. Narrative Introduction.

Fee applications should include a narrative introduction with the following information:

1. Identity of the applicant;
2. Date the petition was filed;
3. Whether compensation is sought under a section other than 11 U.S.C. § 330;
4. Terms and conditions of employment, including any retention document, source of compensation, and budget and limitations on representation, if any;
5. Whether the client has reviewed and approved the application; and
6. Whether a voluntary reduction or enhancement in fees from the total is being sought.

Retention documentation must be filed with the initial fee application, however, retention documentation does not need to be filed with subsequent fee applications unless there is a change in the terms and conditions of employment, source of compensation, or budget and limitations on representation.

B. Biographical Information.

Each fee application (initial, interim, and final) must include a brief biographical description of each of the individuals for whom compensation is sought, including paraprofessionals. However, if biographical information has been provided for an individual in a prior fee application filed by applicant in the case, that individual's biographical information does not need to be included in future fee applications unless the individual's information has changed. This biographical information is necessary to help evaluate the applicant and to aid in the determination of an appropriate rate of compensation. An application received without this information cannot be properly evaluated, which may delay the court's consideration of the application for compensation. The biographical information should include at least the following:

1. Name of professional/paraprofessional;
2. Position in the firm/company;
3. Educational background;
4. Professional (or paraprofessional) background, including, at a minimum: (i) number of years of general experience, (ii) number of years of bankruptcy experience, (iii) specialization or certification, and (iv) percentage of practice/work devoted to bankruptcy; and
5. Usual billing rate.

C. Summary of Services Rendered.

A summary of services rendered for the previous quarter must be provided using the attached form. The summary of services rendered must include a statement that the fee application complies with the applicable chapter 11 fee application guidelines.

The summary of services rendered must contain a summary chart showing the name of each individual, their position in the firm (partner, associate, paralegal, etc.), the total hours billed by that individual, the individual's hourly rate for services, and the extended amount billed by that individual. Time itemizations should be totaled by individual and should provide a "grand total" for the period for which compensation is sought. The following is an example Summary of Services Rendered:

Name	Position	Hours	Rate	Total
Susan Jones	Partner	12.0	130.	1,560.00
Susan Jones	Travel	2.5	65	162.50
Tom Smith	Associate	26.0	90.0	2,340.00
Anne Foster	Paralegal	11.0	50.0	550.00
Total		51.5		4,612.50
Total Expenses*				122.00
Total Fees and				4,734.50

* The expenses must also be itemized elsewhere in the application.

D. Categorized Summary of Services Rendered.

Fee applications must include a categorized summary of all services rendered in the attached form. The categorized summary chart must show each category, the total hours billed in each category, the rate per hour in each category, and the extended amount. Time itemizations should be totaled by number of hours and the dollar amount. Categories may vary based on the circumstances of each particular case. Applicants may add categories as appropriate to each case, however, the following categories should be used, at a minimum:

1. Categories for Attorneys

- (i) General case administration;
- (ii) Employee benefits;
- (iii) Preparing for and defending relief from stay motions;
- (iv) Negotiation and drafting of plan and disclosure statement;
- (v) Executory contracts and lease issues;
- (vi) Claims administration and objections;
- (vii) Adversary proceedings (each AP should be a separate category);
- (viii) Fee applications;
- (ix) Postconfirmation issues;
- (x) Intra-office conferences/multi-person activities;
- (xi) Travel; and
- (xii) Other.

2. Categories for Accountants/Financial Consultants

- (i) Accounting/SEC information- Activities related to maintaining books of account, preparation of financial statements and account analysis;
- (ii) Auditing;
- (iii) Business analysis- Preparation and review of company business plan, development and review of business strategies, preparation and review of cash flow forecasts and feasibility studies;
- (iv) Liquidation analysis;
- (v) Valuation- Appraisals of assets or review of appraisals;
- (vi) Conferring among other professionals;
- (vii) Reviewing the work of other professionals;
- (viii) Plan and disclosure statement- Formulation, presentation and confirmation;
- (ix) Tax issues;
- (x) Litigation consulting- Services related to bankruptcy matters such as insolvency, feasibility, avoidance actions, forensic accounting, etc.;
- (xi) Management of the debtor;
- (xii) Fee application preparation;
- (xiii) Travel; and
- (xiv) Other.

Example Categorized Summary of Services Rendered:

Category	Hours	Rate	Total
Case Administration	8.5	165.00	1,402.50
	2.0	130.00	260.00
Employee Benefits	1.2	165.00	198.00
Relief from Stay Motions	2.3	130.00	299.00
Total	14.0		2,159.50

E. Summary of Accumulated Services Rendered and Expenses Incurred.

A summary of accumulated services rendered and expenses incurred from approval of employment through the prior calendar quarter must be included on the attached form.

F. Estimate of Total Fees To Be Incurred.

If an applicant will be filing more than a single fee application in any case, the fee application must include a projection, by category (see section II.D. above), of the amount of fees that they expect will be incurred in the case from beginning to end. This projection should be revised if the projection changes materially. The estimate should be provided on the attached form.

G. Detailed Itemization of Services Rendered.

Professionals must file *detailed* itemizations of services rendered and expenses incurred. Services rendered and expenses incurred will be the subject of substantial scrutiny by other parties in the case, as well as subject to independent review by the court regardless of whether an objection is filed, to determine the reasonableness of the fees and expense reimbursement requested.

1. *Format of Detailed Itemization.* Detailed time entries should be grouped by category (see section II.D. above), with time entries appearing in chronological order within the category.
2. *Detail Required.* Fee applications must provide detailed descriptions of the services. Each discrete activity must be fully described, and the time expended on *each* activity must be disclosed. All time detail should be in hours and in decimal notation. Billing increments of one-tenth of an hour are required; quarter-hour increments are not acceptable. Apparent “minimum” billing times, such as .20 hours for a phone call or .30 hours for a letter (regardless of the length of the call or letter), are not acceptable and may result in a reduction in allowed hours.
3. *No Combination Entries.* Entries in applications must not be combined. The practice of “lumping” several different tasks together is unacceptable, as it makes it difficult to separate compensable items from those that may be noncompensable. Fees may be reduced for entries that are lumped together. Accordingly, each discrete activity must

be itemized and described in sufficient detail to allow a determination of whether the time spent on the activity was reasonable and necessary.

4. *Adversary Proceedings.* Each adversary proceeding should be separately designated such that the results obtained from each adversary proceeding can be evaluated in relation to the cost of the litigation.
5. *Intraoffice Conferences/Multi-Attorney Activities.* Each time entry for a multi-timekeeper activity must reflect the name of each of the other timekeepers in attendance and whether time has been billed by the timekeeper for his or her participation in the activity. If more than one person has billed for the activity, the need for billing by more than one timekeeper must be clearly explained. Absent such an explanation, multiple billing is unacceptable, and the time expended by one of the timekeepers may be disallowed. When the nature of the case involved is such that more than one professional will be needed to work on the matter, the need should also be described in the narrative body of the initial and final applications.
6. *Travel Time.* Travel time will be compensated at no more than one-half of the professional's allowed rate. Local (in county) travel is considered to be an overhead expense built into the professional's hourly rate and is not separately compensable. If the applicant contends that they were working while traveling, so that full compensation is appropriate, that contention must be clearly set out and explained.
7. *Court Time.* Court time should include only time *actually spent in court hearings* and should not include travel time to or from court or any time spent in any conferences held in conjunction with the court appearance. Court time also includes the creditors meeting held pursuant to 11 U.S.C. § 341.
8. *Ministerial and Clerical Tasks.* Ministerial and clerical tasks performed by a professional or a paraprofessional person are not compensable. Nonprofessional duties are considered to be overhead and assumed to be part of the professional's billing rate. Therefore, such tasks as typing, transcription, opening the mail, copying, organizing files, filing, filing a document with the court through CM/ECF and the like will be considered to be noncompensable unless the description clearly justifies a need for these tasks to be performed by a professional or paraprofessional. Fees may also be reduced for attorneys' failure to use paralegals to perform tasks that do not need to be performed by an attorney or for the failure to properly staff the engagement.

III. Detailed Itemization of Actual, Necessary Expenses.

Detailed expense information must be furnished in each fee application; it is important that each expense be set forth in detail and justified as to its benefit to the estate. General overhead expenses, including supplies, are not allowed. The application must contain a statement to the effect that the expenses are being billed *at cost* (that is, there is no added profit or other multiplier added to the applicant's cost). The expense items that appear in applications most frequently are discussed below.

1. *Telephone.* Under no circumstances are applicants permitted to “guesstimate” long distance or cellular phone charges and simply charge a flat fee for each call. The expenses requested must reflect the actual expenses incurred.
2. *Facsimile Charges.* Charges for faxes are limited to the actual cost of incoming and outgoing faxes. For outgoing faxes, expenses are limited to the cost of any long-distance telephone charges incurred. For incoming facsimiles, reimbursable expenses are limited to the actual cost of the faxes received, and the applicant must disclose the number of pages received, the charge per page, and the total charge for incoming faxes.
3. *Copy Charges.* The nature of the copying, the number of copies, the charge per copy, and the total charge should be disclosed. The description should also state whether the copying was produced “in house” or was done by an outside service.
4. *Mileage.* The date, the destination and purpose of each trip, the number of miles, the charge per mile, and the total charge should be stated.
5. *Other Travel.* Where a trip requires expenses such as meals or lodging, the details of each expense (meals, lodging, transportation, etc.) should be clearly stated, along with the total cost. A single entry for the total expense of a trip is not adequate. The description should also explain why the trip was necessary.
6. *Legal Research.* Charges for legal research (Westlaw, Lexis) and library charges are considered to be nonreimbursable overhead expenses.

CHECKLIST FOR FEE APPLICATIONS

Initial Application

- Narrative, pleading-type application
- Biographical Information
- Summary of Services Rendered, including attestation
- Categorized Summary of Services Rendered
- Estimate of Total Fees to be Incurred
- Application for and Order Approving Employment
- Detailed itemization of services and expenses

Interim Application

- Narrative, pleading-type application
- Biographical Information not included in a previous application
- Summary of Services Rendered, including attestation
- Categorized Summary of Services Rendered
- Summary of Accumulated Services Rendered
- Estimate of Total Fees to be Incurred (include a copy of each previously-filed estimate)
- Detailed itemization of services and expenses not included in a previous application

Final Application

- Narrative, pleading-type application
- Biographical information not included in a previous application
- Summary of Services Rendered, including attestation
- Categorized Summary of Services Rendered
- Summary of Accumulated Services Rendered
- Estimate of Total Fees to be Incurred (include a copy of each previously-filed estimate)
- Application for and Order Approving Employment
- Detailed itemization of services and expenses not included in a previous application

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

**SUMMARY OF SERVICES RENDERED/
APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES**

By: _____

During the period from____, 20____through____, 20____, the undersigned person/firm performed professional services for the above-named bankruptcy estate in the capacity of _____. Attached to the summary is a detailed itemization of time expended and expenses incurred in the performance of these professional services.

Name	Title	Hourly Rate	Total	Hourly Rate previously allowed by the Court
Total				
Expenses (as shown on attachment)				
Total Amount Requested				

I certify that the information contained in this application is true and accurate and that the application complies with the court's chapter 11 fee guidelines currently in effect.

This ____ day of _____, 20_____.

(Attorney)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

CATEGORIZED SUMMARY OF SERVICES RENDERED

By: _____

During the period from _____, 20____ through _____, 20____, the undersigned person/firm performed professional services for the above-named bankruptcy estate in the capacity of _____.

The following summarizes by category the time expended by the applicant:

Category	Hours	Hourly Rate	Total
Total			

This ____ day of _____, 20____.

(Attorney)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

SUMMARY OF ACCUMULATED SERVICES RENDERED AND EXPENSES INCURRED

Applicant: _____

Total fees previously:

Requested: \$ _____

Court-approved: \$ _____

Paid to applicant: \$ _____

Total expenses previously:

Requested: \$ _____

Court-approved: \$ _____

Paid to applicant: \$ _____

Fees requested in this application: \$ _____

Expenses requested in this application: \$ _____

Balance in retainer: \$ _____

This form must be completed and attached to each and every application for compensation filed in bankruptcy cases pending in the Middle District of North Carolina regardless of the reason it is submitted and regardless of the chapter of the Bankruptcy Code under which the debtor is proceeding.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor

Case No. _____

ESTIMATE OF TOTAL FEES TO BE INCURRED

By: _____

The undersigned person/firm estimates that the following reflects the fees, by category, which are expected to be incurred during the course of this chapter 11 case:

Category	Hours	Rate	Total
Case administration			
Employee benefits			
Relief from stay motions			
Plan and disclosure statement			
Executory contracts/lease issues			
Claims administration and objections			
Adversary proceedings			
Fee applications			
Post-confirmation issues			
Intra-office conferences/multi-person activities			
Travel			
Other			
Total			

This ____ day of _____, 20____.

(Attorney)

This form is to be completed by counsel for the debtor, counsel for the unsecured creditors' committee, and all other professionals who will be filing more than one fee application, and the form must be filed with the initial fee application. (Accountants must revise the form to include the categories to be used by accountants.)

EXHIBIT 3

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE:)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)
)

**MOTION FOR INTERIM AND FINAL ORDERS FINDING UTILITIES ADEQUATELY
ASSURED OF PAYMENT AND ESTABLISHING FURTHER PROCEDURES
PURSUANT TO 11 U.S.C. § 366**

The above captioned debtor (“Debtor”) moves for interim and final orders pursuant to 11 U.S.C. §§ 105(a) and 366: (i) prohibiting utility providers from altering, refusing, or discontinuing service to Debtor, (ii) providing that utility providers have adequate assurance of payment as set forth herein, and (iii) establishing procedures for resolving requests for additional assurance of future payment (the “Motion”). In support of this Motion, Debtor respectfully represents as follows:

1. Debtor filed a voluntary petition under chapter 11 of 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) on _____ (“Petition Date”). Debtor continues in possession of its assets and operates its business as a debtor-in-possession.

2. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested are §§ 105(a) and 366 of the Bankruptcy Code.

BACKGROUND

4. *(This motion should include background information on Debtor. Debtor should include as many paragraphs in this section as necessary to set forth this information and re-number the following paragraphs accordingly.)*

RELIEF REQUESTED

5. As of the Petition Date, Debtor was obtaining utility services from the utility providers (each a “Utility Provider” and collectively, the “Utility Providers”) listed in the Adequate Assurance Chart (“Utility Provider Chart”) attached as **Exhibit A** to this Motion. The names, services, amounts owed as of the Petition Date, and average monthly bill for the six months prior to the Petition Date for each Utility Provider are set forth in the Utility Provider Chart.

6. By this Motion, Debtor seeks entry of an interim order (“Interim Order”), attached as **Exhibit B**, and a final order, attached as **Exhibit C**, which: (i) prohibits Utility Providers from altering, refusing, or discontinuing service to Debtor, (ii) provides that Utility Providers have adequate assurance of payment as set forth herein, and (iii) establishes procedures for determining additional assurance of future payment.

7. Uninterrupted utility services from Utility Providers are essential to Debtor’s ongoing operations. (*State reasons why uninterrupted services are essential/critical.*)

PROPOSED ADEQUATE ASSURANCE

8. Debtor proposes to provide the following to Utility Providers as adequate assurance of payment (the “Proposed Adequate Assurance”):

(Describe the proposed adequate assurance of payment for each Utility Provider shown on Exhibit A in as many paragraphs as necessary and re-number the following paragraphs accordingly.)

9. Debtor contends that the foregoing Proposed Adequate Assurance constitutes adequate assurance of future payment to Utility Providers pursuant to § 366 of the Bankruptcy Code.

PROCEDURES FOR ADDITIONAL ASSURANCE REQUESTS

10. In the event a Utility Provider contends that the Proposed Adequate Assurance for that Utility Provider is not satisfactory, Debtor proposes that any disputes regarding the need for additional assurance of future payment be resolved pursuant to the following procedures (the “Additional Assurance Request Procedures”):

- a. If a Utility Provider contends the Proposed Adequate Assurance for that Utility Provider is insufficient, Utility Provider must submit a written request, which may be by electronic mail (“Additional Assurance Request”), to counsel for Debtor within 20 days after entry of an Interim Order approving these Additional Assurance Request Procedures, which includes the following information: (i) Debtor’s account number with Utility Provider; (ii) the category of utility service provided to Debtor; (iii) the location(s) to which Utility Provider provides utility service to Debtor; (iv) the outstanding balance on Debtor’s account with Utility Provider; (v) a list of any deposits or security held by Utility Provider immediately prior to the Petition Date on account of Debtor; (vi) a list of any deposits or security currently held by Utility Provider on account of Debtor; (vii) a summary of Debtor’s usage history with Utility Provider for the six months prior to the Petition Date; (viii) an explanation of why Utility Provider believes the Proposed Adequate Assurance is not adequate assurance of future payment; and (ix) a description of an arrangement Utility Provider would accept as satisfactory adequate assurance of future payment.

- b. Any Utility Provider submitting an Additional Assurance Request shall be deemed to have adequate assurance of payment until such time as the Court enters a final order in connection with such Additional Assurance Request.
- c. Subject to the terms of any orders entered by the Court, including without limitation any orders governing the use of cash collateral, Debtor is authorized to provide any additional assurance of payment as provided under 11 U.S.C. § 366(c)(1)(A) to which Debtor and any Utility Provider may agree to in writing (including electronic mail) in lieu of the objection and final hearing procedure below, which additional assurance shall constitute adequate assurance of payment under 11 U.S.C. § 366(c)(2) on a final basis, provided that the total of the Proposed Adequate Assurance and the Additional Assurance is an amount no more than two times the historical average monthly amount payable by Debtor to that Utility Provider for the six-month period prior to the Petition Date.
- d. Should Debtor and any Utility Provider reach an agreement that Debtor shall provide additional assurance of payment, but the total of the Proposed Adequate Assurance and the Additional Assurance is an amount more than two times the historical average monthly amount payable by Debtor to that Utility Provider for the six-month period prior to the Petition Date, Debtor shall file a Request to Approve Additional Assurance to Utility Provider (“Request to Approve Additional Assurance”) within 30 days from the entry of the Interim Order and such Request to Approve Additional Assurance will be considered at the final hearing on the Motion.
- e. If Debtor and Utility Provider are unable to reach an agreement regarding Utility Provider’s Additional Assurance Request, Utility Provider must file an objection to the Motion within 30 days from the entry of the Interim Order, and the objection will be considered at the final hearing on the Motion. Utility Provider may not alter, refuse, or discontinue services to Debtor prior to entry of a final order on the Motion.

11. Although Debtor believes the list of Utility Providers is complete, upon the discovery of any additional utility providers (each an “Additional Utility Provider”, and collectively “Additional Utility Providers”) following the entry of the Interim Order:

- a. Debtor shall: (i) file a supplement (“Supplement”) to the Utility Provider Chart attached as Exhibit A to the Motion (“Utility Provider Chart”), which includes the name, service, amount owed as of the Petition Date, average monthly bill for the six months prior to the Petition Date, and the Proposed Adequate Assurance for each Additional Utility Provider, (ii) contemporaneously serve a copy of the Motion, Interim Order, and Supplement to each Additional Utility Provider, and (iii) provide the adequate assurance set forth in the Supplement to each Additional Utility Provider within 10 days of filing the Supplement.

- b. Subject to any hearing and final ruling by the Court as provided below, Additional Utility Providers listed in the Supplement shall be adequately assured of payment under 11 U.S.C. § 366(c)(2) upon Debtor's provision of the adequate assurance set forth in the Supplement within 10 days of filing the Supplement. Additional Utility Providers shall have 20 days from service of the Motion, Interim Order, and Supplement to request additional assurance of payment from Debtor by submitting an Additional Assurance Request to counsel for Debtor.
- c. Debtor is authorized to provide any additional assurance of payment as provided under 11 U.S.C. § 366(c)(1)(A) to which Debtor and any Utility Provider may agree to in writing (including electronic mail), which additional assurance shall constitute adequate assurance of payment under 11 U.S.C. § 366(c)(2) on a final basis, provided that the total of the Proposed Adequate Assurance and the Additional Assurance is an amount no more than two times the historical average monthly amount payable by Debtor to that Utility Provider for the six-month period prior to the Petition Date.
- d. If Debtor and any Additional Utility Provider reach a written agreement that Debtor shall provide additional assurance of payment, but the total of the Proposed Adequate Assurance and the Additional Assurance is an amount more than two times the historical average monthly amount payable by Debtor to that Utility Provider for the six-month period prior to the Petition Date or if Debtor and any Additional Utility Provider are unable to reach an agreement, the Court, upon request of either party, shall schedule a hearing to determine the appropriate amount, if any, of additional adequate assurance of future payment to which that Additional Utility Provider is entitled. An Additional Utility Provider shall be deemed to be adequately assured of payment until entry of an order determining that Additional Utility Provider is entitled to additional assurance of future payment.

12. Debtor believes the Proposed Adequate Assurance described herein and the Additional Assurance Request Procedures outlined above balance the protections afforded Utility Providers under § 366 of the Bankruptcy Code with Debtor's need for continuous and uninterrupted postpetition utility services.

WHEREFORE, Debtor respectfully requests the Court enter an interim order and a final order: (i) prohibiting Utility Providers from altering, refusing, or discontinuing service to Debtor, (ii) providing that Utility Providers have adequate assurance of payment as set forth herein, and (iii) establishing procedures for determining additional assurance of future payment.

This ____ day of _____, _____.

Attorney for Debtor

EXHIBIT A (UTILITIES MOTION)

Name of Utility Provider	Category of Utility	Amount Owed as of the Petition Date	Average of Monthly Bill for Six Months Prior to Petition Date	Proposed Adequate Assurance

EXHIBIT B (UTILITIES MOTION)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE: _____)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)
)

**INTERIM ORDER FINDING UTILITIES ADEQUATELY ASSURED OF
PAYMENT AND ESTABLISHING FURTHER PROCEDURES
PURSUANT TO 11 U.S.C. § 366**

This matter came before the Court on _____ to consider the above captioned debtor's ("Debtor's") Motion for Interim and Final Orders Finding Utilities Adequately Assured of Payment and Establishing Further Procedures Pursuant to 11 U.S.C. § 366 (the "Motion"). Appearing at the hearing were _____.

The Court finds that: (i) it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) it has statutory authority under 28 U.S.C. § 157(b)(2) and constitutional authority to hear and determine and to issue final rulings in this constitutionally core proceeding; (iii) venue of this case and the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) notice of the Motion was sufficient under the circumstances and for purposes of the relief granted herein; and (v) upon the record herein, and after due deliberation, good and sufficient cause exists for the relief granted herein. Accordingly, it is hereby,

ORDERED that the Motion is GRANTED to the extent provided herein on an INTERIM BASIS;

IT IS FURTHER ORDERED THAT, subject to any timely objection and a final ruling by the Court as provided below, the utility providers ("Utility Providers") included in the chart attached hereto as **Exhibit A** ("Adequate Assurance Chart") shall be adequately assured of

payment under 11 U.S.C. § 366(c)(2) upon Debtor's provision of the proposed adequate assurance of future payment ("Proposed Adequate Assurance") set forth in the Adequate Assurance Chart within 10 days following entry of this Interim Order;

IT IS FURTHER ORDERED THAT, if a Utility Provider contends the Proposed Adequate Assurance for that Utility Provider is insufficient, Utility Provider must submit a written request, which may be by electronic mail ("Additional Assurance Request"), to counsel for Debtor within 20 days after entry of this Interim Order, which includes the following information: (i) Debtor's account number with Utility Provider, (ii) the category of utility service provided to Debtor, (iii) the location(s) to which Utility Provider provides utility service to Debtor, (iv) the outstanding balance, if any, on Debtor's account with Utility Provider, (v) a list of any deposits or security held by Utility Provider immediately prior to the Petition Date on account of Debtor, (vi) a list of any deposits or security currently held by Utility Provider on account of Debtor, (vii) a summary of Debtor's usage history with Utility Provider for the six months prior to the Petition Date, (viii) an explanation of why Utility Provider believes the Proposed Adequate Assurance is not adequate assurance of future payment, and (ix) a description of an arrangement Utility Provider would accept as satisfactory adequate assurance of future payment;

IT IS FURTHER ORDERED THAT, subject to the terms of any other orders entered by this Court, including without limitation any orders governing the use of cash collateral, Debtor is authorized to provide any additional assurance of payment as provided under 11 U.S.C. § 366(c)(1)(A) to which Debtor and any Utility Provider may agree to in writing (including electronic mail) in lieu of the objection and final hearing procedure below, which additional assurance shall constitute adequate assurance of payment under 11 U.S.C. § 366(c)(2) on a final basis, provided that the total of the Proposed Adequate Assurance and the Additional Assurance is an amount no more than two times the historical average monthly amount payable by Debtor to that Utility Provider for the six-month period prior to the Petition Date. Should Debtor and any Utility Provider reach an agreement that Debtor shall provide additional assurance of payment, but the total of the Proposed Adequate Assurance and the Additional Assurance is an amount more than two times the historical average monthly amount payable by Debtor to that Utility Provider for the six-month period prior to the Petition Date, Debtor shall file a Request to Approve Additional Assurance to Utility Provider ("Request to Approve Additional Assurance") within 30 days from the entry of this Interim Order and such Request to Approve Additional Assurance will be considered at the final hearing on the Motion;

IT IS FURTHER ORDERED THAT Utility Providers are prohibited from altering, refusing, discontinuing, or terminating services for lack of adequate assurance of postpetition payment;

IT IS FURTHER ORDERED THAT, upon the discovery of any additional utility providers (each an "Additional Utility Provider", and collectively "Additional Utility Providers") who are not listed in the Adequate Assurance Chart, Debtor shall: (i) file a supplemental Utility Provider Chart ("Supplement") which includes the name, service, amount owed as of the Petition Date, average monthly bill for the six months prior to the Petition Date, and the Proposed Adequate Assurance for each Additional Utility Provider, (ii) contemporaneously serve a copy of the Motion, this Interim Order, and the Supplement to Additional Utility Provider, and (iii)

provide the Proposed Adequate Assurance to Additional Utility Provider within 10 days of filing the Supplement;

IT IS FURTHER ORDERED THAT, subject to any timely objection and a final ruling by the Court as provided below, Additional Utility Providers listed in a Supplement shall be adequately assured of payment under 11 U.S.C. § 366(c)(2) upon Debtor's provision of the Proposed Adequate Assurance within 10 days of filing the Supplement. Additional Utility Providers shall have 20 days from service of this Interim Order and the Supplement to request additional assurance of payment from Debtor by submitting an Additional Assurance Request to counsel for Debtor. Debtor is authorized to provide any additional assurance of payment as provided under 11 U.S.C. § 366(c)(1)(A) to which Debtor and any Additional Utility Provider may agree to in writing (including electronic mail), which additional assurance shall constitute adequate assurance of payment under 11 U.S.C. § 366(c)(2) on a final basis, provided that the total of the Proposed Adequate Assurance and the Additional Assurance is an amount no more than two times the historical average monthly amount payable by Debtor to that Additional Utility Provider for the six-month period prior to the Petition Date. If Debtor and any Additional Utility Provider reach a written agreement that Debtor shall provide additional assurance of payment, but the total of the Proposed Adequate Assurance and the Additional Assurance is an amount more than two times the historical average monthly amount payable by Debtor to that Additional Utility Provider for the six-month period prior to the Petition Date or if Debtor and any Additional Utility Provider are unable to reach an agreement, the Court, upon request of either party, shall schedule a hearing to determine the appropriate amount, if any, of additional assurance of future payment to which that Additional Utility Provider is entitled. An Additional Utility Provider shall be deemed to be adequately assured of payment until entry of an order determining that Additional Utility Provider is entitled to additional assurance of future payment.

IT IS FURTHER ORDERED THAT Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order;

IT IS FURTHER ORDERED THAT the relief granted in this Interim Order shall not authorize Debtor to take any act or make any payment that is inconsistent with any other orders of the Court, including any orders regarding cash collateral;

IT IS FURTHER ORDERED THAT the deadline by which objections to the Motion must be filed is 30 days from the entry of this Interim Order. If an objection to the Motion is timely filed, or if a Request to Approve Additional Assurance is timely filed, a final hearing will be held on _____ at _____. In the absence of a timely filed objection to the Motion or a timely Request to Approve Additional Assurance, the amounts provided or authorized herein as adequate assurance of payment shall constitute adequate assurance of payment as contemplated by 11 U.S.C. § 366(c)(2), and the Court may enter a final order without further notice or a hearing; and

IT IS FURTHER ORDERED THAT the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

END OF DOCUMENT

EXHIBIT A (INTERIM UTILITIES ORDER)

Name of Utility Provider	Category of Utility	Proposed Adequate Assurance

EXHIBIT C (UTILITIES MOTION)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE: _____)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)
)

**FINAL ORDER FINDING UTILITIES ADEQUATELY ASSURED OF PAYMENT AND
ESTABLISHING FURTHER PROCEDURES PURSUANT TO 11 U.S.C. § 366**

This matter came before the Court on _____ to consider the above captioned debtor's ("Debtor's") Motion for Interim and Final Orders Finding Utilities Adequately Assured of Payment and Establishing Further Procedures Pursuant to 11 U.S.C. § 366 (the "Motion").
Appearing at the hearing were _____.

The Court finds that: (i) it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) it has statutory authority under 28 U.S.C. § 157(b)(2) and constitutional authority to hear and determine and to issue final rulings in this constitutionally core proceeding; (iii) venue of this case and the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) notice of the Motion was sufficient under the circumstances and for purposes of the relief granted herein; and (v) upon the record herein, and after due deliberation, good and sufficient cause exists for the relief granted herein. Accordingly, it is hereby,

ORDERED that the Motion is **GRANTED** on a **FINAL BASIS**;

IT IS FURTHER ORDERED THAT the utility providers ("Utility Providers") included in the chart attached hereto as **Exhibit A** ("Adequate Assurance Chart") shall be adequately assured of payment under 11 U.S.C. § 366(c)(2) upon Debtor's provision of the adequate assurance ("Adequate Assurance") set forth in the Adequate Assurance Chart, to the extent not already provided, within 10 days of the entry of this Order.

IT IS FURTHER ORDERED THAT Utility Providers are prohibited from altering, refusing, discontinuing, or terminating services for lack of adequate assurance of postpetition payment;

IT IS FURTHER ORDERED THAT, upon the discovery of any additional utility providers (each an “Additional Utility Provider”, and collectively “Additional Utility Providers”) who are not listed in the Adequate Assurance Chart, Debtor shall: (i) file a supplemental Utility Provider Chart (“Supplement”) which includes the name, service, amount owed as of the Petition Date, average monthly bill for the six months prior to the Petition Date, and the proposed adequate assurance (“Proposed Adequate Assurance”) for each Additional Utility Provider, (ii) contemporaneously serve a copy of this Order and the Supplement to each Additional Utility Provider, and (iii) provide the Proposed Adequate Assurance to each Additional Utility Provider within 10 days of filing the Supplement;

IT IS FURTHER ORDERED THAT Additional Utility Providers listed in a Supplement shall be adequately assured of payment under 11 U.S.C. § 366(c)(2) upon Debtor’s provision of the Proposed Adequate Assurance within 10 days of filing the Supplement. Additional Utility Providers shall have 20 days from service of this Order and the Supplement to request additional assurance of payment from Debtor by submitting a written request, which may be by electronic mail (“Additional Assurance Request”), to counsel for Debtor which includes the following information: (i) Debtor’s account number with Additional Utility Provider, (ii) the category of utility service provided to Debtor, (iii) the location(s) to which Additional Utility Provider provides utility service to Debtor, (iv) the outstanding balance, if any, on Debtor’s account with Additional Utility Provider, (v) a list of any deposits or security held by Additional Utility Provider immediately prior to the Petition Date on account of Debtor, (vi) a list of any deposits or security currently held by Additional Utility Provider on account of Debtor, (vii) a summary of Debtor’s usage history with Additional Utility Provider for the six months prior to the Petition Date, (viii) an explanation of why Additional Utility Provider believes the Proposed Adequate Assurance is not adequate assurance of future payment, and (ix) a description of an arrangement Additional Utility Provider would accept as satisfactory adequate assurance of future payment;

IT IS FURTHER ORDERED THAT Debtor is authorized to provide any additional assurance of payment as provided under 11 U.S.C. § 366(c)(1)(A) to which Debtor and any Additional Utility Provider may agree to in writing (including electronic mail), which additional assurance shall constitute adequate assurance of payment under 11 U.S.C. § 366(c)(2) on a final basis, provided that the total of the Proposed Adequate Assurance and the Additional Assurance is an amount no more than two times the historical average monthly amount payable by Debtor to that Additional Utility Provider for the six-month period prior to the Petition Date. If Debtor and any Additional Utility Provider reach a written agreement that Debtor shall provide additional assurance of payment, but the total of the Proposed Adequate Assurance and the Additional Assurance is an amount more than two times the historical average monthly amount payable by Debtor to that Additional Utility Provider for the six-month period prior to the Petition Date or if Debtor and any Additional Utility Provider are unable to reach an agreement, the Court, upon request of either party, shall schedule a hearing to determine the appropriate amount, if any, of additional assurance of future payment to which that Additional Utility Provider is entitled. An Additional Utility Provider shall be deemed to be adequately assured of

payment until entry of an order determining that Additional Utility Provider is entitled to additional assurance of future payment.

IT IS FURTHER ORDERED THAT Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order;

IT IS FURTHER ORDERED THAT the relief granted in this Order shall not authorize Debtor to take any act or make any payment that is inconsistent with any other orders of the Court, including any orders regarding cash collateral;

IT IS FURTHER ORDERED THAT, notwithstanding Federal Rule of Bankruptcy Procedure 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and

IT IS FURTHER ORDERED THAT the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

END OF DOCUMENT

EXHIBIT A (FINAL UTILITIES ORDER)

[illegible]

EXHIBIT 4

GUIDELINES FOR CHAPTER 11 CASH COLLATERAL ORDERS AND DEBTOR IN POSSESSION FINANCING ORDERS

The following guidelines are provided to assist chapter 11 debtors with the submission of proposed consent orders approving motions for emergency use of cash collateral and requests for debtor in possession financing (“Emergency Cash Collateral and DIP Financing Orders”). These guidelines are not intended to limit requests for relief in motions requesting final approval of the use of cash collateral and/or debtor in possession financing where all creditors and parties in interest have been provided appropriate notice and an opportunity for hearing.

These guidelines provide: (i) general reminders and requirements for Emergency Cash Collateral and DIP Financing Orders, (ii) a general description of factual findings that should be included in a motion for emergency use of cash collateral, (iii) examples of decretal provisions the Court will ordinarily approve in connection with Emergency Cash Collateral and DIP Financing Orders, and (iv) examples of provisions the Court generally will not approve in connection with Emergency Cash Collateral and DIP Financing Orders without providing notice and opportunity for hearing to all creditors and parties in interest.

A. GENERAL GUIDELINES

1. Debtor must provide no less than 48 hours notice of the motion and any expedited hearing thereon to the Bankruptcy Administrator, debtor’s twenty largest unsecured creditors, the attorneys for any committee that may be appointed by the Court, any creditor asserting a secured claim or other interest in cash collateral against debtor (and its attorneys if known), the Internal Revenue Service, the Attorney General for the United States, the U.S. Attorney for the Middle District of North Carolina, any potentially affected taxing authorities, and any other creditor or party in interest directly affected by the relief sought on an emergency or first day basis. At a minimum, such notice should be provided by: (i) electronic mail or facsimile, overnight courier when a street address is available, or next day United States mail when a street address is not available, (ii) in the manner provided under Bankruptcy Rule 7004.
2. Even if parties have agreed and consented to the relief requested, approval of such relief remains subject to the discretion of the Court.

B. FACTUAL FINDINGS THAT MAY BE INCLUDED IN EMERGENCY CASH COLLATERAL AND DIP FINANCING ORDERS

1. That debtor has complied with all applicable service requirements, as stated in paragraph A.1. of these guidelines.
2. That the secured creditor asserts a lien or interest in cash collateral, the priority of any such lien or the nature of any such interest, and the amount of indebtedness allegedly secured by the cash collateral or the extent of such interest.
3. Identification of the assets that are generating or will generate cash collateral.

4. That debtor has an immediate need for the use of cash collateral or debtor in possession financing, as applicable, including the reason for that immediate need (e.g. to preserve assets of the estate, to fund business operations, to purchase inventory, etc.).
5. That debtor reaffirms the existing terms and conditions of financing documents with secured creditor or other applicable documents establishing an interest in cash collateral.

C. DECRETAL PROVISIONS THAT ARE ORDINARILY APPROVED IN
EMERGENCY CASH COLLATERAL AND DIP FINANCING ORDERS

1. Granting and defining adequate protection to the secured creditor, and its successors and assigns, pursuant to §§ 361 and 363 of the Bankruptcy Code.
2. Granting the secured creditor replacement liens in postpetition assets to the same extent and priority as existed prepetition to the extent of diminution in value.
3. Granting the secured creditor a super-priority administrative claim to the extent that adequate protection proves inadequate.
4. Providing for creation of a segregated debtor in possession account into which cash collateral shall be deposited.
5. Restricting use of cash collateral to pay specific categories of operating expenses, per budgets to be attached to the order or subsequently filed with the Court.
6. Requiring debtor to maintain insurance.
7. Requiring the submission of periodic reports regarding use of cash, aging of accounts receivable, etc.
8. Providing equality of treatment for carve-outs as between professionals for the debtor and professionals for any committee of unsecured creditors, and limiting the use of carve-outs to exclude the pursuit, but not investigation, of claims against the secured creditor providing financing.
9. Providing that the order is sufficient and conclusive evidence of priority and validity of the security interest in and liens, including replacement liens, on the assets of the estate granted to the secured creditor, without the necessity of filing, recording, or serving any financing statements or other documents which may be otherwise required under federal or state law in any jurisdiction, or the taking of any action to validate or perfect the security interests and liens granted to secured creditor. Providing however, that the secured creditor may, in its discretion, file such financing statements or other documents with respect to such security interest and liens, and that debtor is authorized and directed to execute, or cause to be executed, all such financing statements or other documents upon the secured creditor's reasonable request.

10. Providing a time period for which an order authorizing the use of cash collateral is applicable.
11. Providing that even if authorization to use cash collateral expires, adequate protection/liens will continue to be effective unless or until modified by the Court.
12. Providing that upon a material default under an order authorizing the use of cash collateral, the secured creditor is entitled to an expedited hearing.
13. Setting a deadline for the secured creditor to file documents evidencing a perfected security interest with the Court.
14. Setting a further hearing date.

D. DECRETAL PROVISIONS THAT WILL GENERALLY NOT BE APPROVED ON AN EMERGENCY BASIS

1. Stipulations reducing the time period for parties in interest to challenge the perfection, validity, priority, or amount of secured claims to less than 60 days from the engagement of counsel for the committee of unsecured creditors or to less than 90 days from the commencement of the case if there is no committee of unsecured creditors in the case.
2. Stipulations as to the perfection, validity, or priority of secured claims that are binding on any party other than the debtor.
3. Including a provision in cases where the secured creditor asserts liens on accounts receivable pursuant to asset based revolving credit facilities that recharacterizes the “use of cash collateral” as a “postpetition advance” without regard to whether the “postpetition advance” is a new loan or the use of a prepetition receivable.
4. Provisions which release potential claims or causes of action by the estate against the secured creditor without providing parties in interest the opportunity to challenge any such releases.
5. Provisions which grant automatic relief from stay upon a material default under an order authorizing the use of cash collateral.
6. Provisions which grant cross-collateralization on unencumbered assets, absent extraordinary circumstances.
7. Provisions which authorize a purportedly postpetition credit facility, the proceeds of which satisfy any or all of the secured creditor’s prepetition debt.
8. Provisions that grant a lien on avoidance actions.
9. Provisions which purport to dictate the terms of any proposed or confirmed plan.

EXHIBIT 5

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE: _____)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)
)

**NOTICE TO CREDITORS REGARDING DISPUTED, CONTINGENT, OR
UNLIQUIDATED CLAIMS**

The above captioned debtor (“Debtor”) hereby provides notice that the following creditors have been listed in Debtor’s schedules as disputed, contingent, or unliquidated in the amounts set forth below:

NAME OF CREDITOR	SCHEDULED AMOUNT	DISPUTED, CONTINGENT, OR UNLIQUIDATED

Pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(2), the above listed creditors must file a proof of claim in this case in order to participate in voting and distributions in this case. The proof of claim deadline is set forth in the Notice of Chapter 11 Case (Docket No. ____).

This ____ day of _____, _____.

Attorney for Debtor

EXHIBIT 6

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE: _____)
_____)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXX
_____)
Debtor.)
_____)

MONTHLY OPERATING REPORT

Month: _____ **Date Filed:** _____

Line of Business: _____ **NAICS Code:** _____

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Original signature of responsible party: _____

Printed name of responsible party: _____

Questionnaire: (All questions to be answered on behalf of the debtor.)	Yes	No
1. Is the business still operating?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you paid all of your bills on time this month?	<input type="checkbox"/>	<input type="checkbox"/>
3. Did you pay your employees on time?	<input type="checkbox"/>	<input type="checkbox"/>
4. Have you deposited all of the receipts for your business into the DIP account this month?	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you filed all of your tax returns and paid all of your taxes this month?	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you timely filed all other required government filings?	<input type="checkbox"/>	<input type="checkbox"/>
7. Have you paid all of your insurance premiums this month?	<input type="checkbox"/>	<input type="checkbox"/>
8. Do you plan to continue to operate the business next month?	<input type="checkbox"/>	<input type="checkbox"/>
9. Are you current on your chapter 11 quarterly fee payment?	<input type="checkbox"/>	<input type="checkbox"/>
10. Have you paid anything to your attorney or other professional this month?	<input type="checkbox"/>	<input type="checkbox"/>
11. Did you have any unusual or significant unanticipated expenses this month?	<input type="checkbox"/>	<input type="checkbox"/>
12. Has the business sold any goods or provided services or transferred any assets to any business related to the DIP in any way?	<input type="checkbox"/>	<input type="checkbox"/>
13. Do you have any bank accounts open other than the DIP account?	<input type="checkbox"/>	<input type="checkbox"/>
14. Have you sold any assets other than inventory this month?	<input type="checkbox"/>	<input type="checkbox"/>
15. Did any insurance company cancel your policy this month?	<input type="checkbox"/>	<input type="checkbox"/>
16. Have you borrowed money from anyone this month?	<input type="checkbox"/>	<input type="checkbox"/>

17. Have you paid any bills you owed before you filed bankruptcy?

☐ ☐

Taxes

Do you have any past due tax returns or past due post-petition tax obligations?

☐ ☐

If yes, please provide a written explanation including when such returns will be filed, or when such payments will be made and the source of the funds for the payment. Label it *Exhibit A*.

Income

Please separately list all of the income you received for the month. Label it *Exhibit B*. The list should include all income from cash and credit transactions.

[A summary statement of income and expenses may be submitted with prior approval of the Bankruptcy Administrator.]

Total Income \$ _____

Summary of Cash on Hand

Cash on hand at start of month \$ _____

Cash on hand at end of month \$ _____

Please provide the total amount of cash currently available to you **Total \$** _____

Expenses

Please separately list all expenses paid by cash or by check from your bank accounts this month. Label it *Exhibit C*. Include the date paid, who was paid, the purpose, and the amount.

[A summary statement of income and expenses may be submitted with the prior approval of the Bankruptcy Administrator.]

Total Expenses \$ _____

Cash Profit

Income for the month (total from Exhibit B) \$ _____

Expenses for the month (total from Exhibit C)

\$ _____

(Subtract Line C from Line B)

Cash profit for the month \$

Unpaid Bills

Please attach a list of all debts (including taxes), which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit D*. The list must include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due.

[A summary statement of accounts payable, with aging information, may be submitted with prior approval of the Bankruptcy Administrator. All unpaid non-trade payables must be listed separately, in detail.]

Total Payables \$

Money Owed to You

Please attach a list of all amounts owed to you by your customers for work you have done or the merchandise you have sold. Label it *Exhibit E*. You should include who owes money, how much is owed, and when payment is due.

[A summary statement of accounts receivable with aging information may be submitted with the prior approval of the Bankruptcy Administrator. All unpaid non-trade receivables must be listed separately, in detail.]

Total Receivables \$

Banking Information

Please attach a copy of your latest bank statement for every account you have as of the date of this financial report or had during the period covered by this report. Label it *Exhibit F*.

Employees

Number of employees when the case was filed?

Number of employees as of the date of this monthly report?

Professional Fees

Bankruptcy Related:

Professional fees relating to the bankruptcy case paid during this reporting period?

Total professional fees relating to the bankruptcy case paid since the filing of the case?

Non-Bankruptcy Related:

Professional fees not relating to the bankruptcy case paid during this reporting period?

Total professional fees not relating to the bankruptcy case paid during this reporting period?

Additional Information

- (1) Please attach all financial reports including any income statement, balance sheet, statement of cash flows, and statement of shareholders/partner's equity, which you prepare internally.**
- (2) Please add any information, such as a report of activities, which would assist a reasonably informed reviewer to fully understand the status of this bankruptcy case.**

EXHIBIT 7

CHAPTER 11 QUARTERLY FEE INSTRUCTIONS

All debtors in chapter 11 cases are assessed quarterly fees pursuant to 28 U.S.C. § 1930(a). Chapter 11 quarterly fees are due and payable for every calendar quarter in which debtor's case is pending (including any fraction thereof), from the time debtor's petition is filed until the date of entry of an order dismissing, converting, or closing the case. Chapter 11 quarterly fees are due for a calendar quarter even if the case was pending only one day in the quarter. This fee is due from each debtor in a chapter 11 case, even if debtor's case has been administratively consolidated with another chapter 11 case.

Calculation of Chapter 11 Quarterly Fees:

Pursuant to the authority granted in 28 U.S.C. § 1930(a)(7), the Executive Committee of the Judicial Conference of the United States requires uniform quarterly fees in chapter 11 cases filed in Bankruptcy Administrator Districts, such as the Middle District of North Carolina, that are consistent with the fees charged in districts under the United States Trustee Program pursuant to 28 U.S.C. § 1930(a)(6).

The amount of quarterly fees assessed is calculated based on the total sum of disbursements made by debtor during the calendar quarter. Even if debtor makes no disbursements during a calendar quarter, there is still a minimum quarterly fee that debtor is required to pay. Please note that following confirmation, the total disbursements for purposes of calculating quarterly fees include payments made pursuant to the confirmed plan in addition to any other distributions.

The following fee schedule should be used to calculate the applicable quarterly fees due for a quarter:

Total Disbursements by Debtor During Quarter	Quarterly Fee Due
\$0.00-\$15,000.00	\$325.00
\$15,000.00-\$74,999.99	\$650.00
\$75,000.00-\$149,999.99	\$975.00
\$150,000.00-\$224,999.99	\$1,625.00
\$225,000.00-\$299,999.99	\$1,950.00
\$300,000.00-\$999,999.99	\$4,875.00
\$1,000,000.00 or more	The lesser of \$250,000.00 or 1% of Total Quarterly Disbursements.

If there is a change to this fee schedule during the pendency of a chapter 11 case, the Bankruptcy Administrator will communicate such change to debtor's counsel, or to debtor if debtor is unrepresented.

Chapter 11 Quarterly Fee Due Dates:

The following chart shows the due dates for quarterly fee payments. **Please note that debtor will NOT receive a bill or reminder of the payment due date. It is debtor's independent duty to ensure all quarterly fees are paid on or before the due date.**

Calendar Quarter	Chapter 11 Quarterly Fee Payment Due
January 1-March 31	April 30
April 1-June 30	July 31
July 1-September 30	October 31
October 1-December 31	January 31

Payment Instructions:

Please make all checks payable to "Clerk, U.S. Bankruptcy Court" and make sure debtor's case number is noted on the face of the check. Payments should be either mailed to or made in person at the Court's Greensboro office (regardless of the division in which the case is pending), at the following address:

United States Bankruptcy Court
Attn: Clerk's Office
101 S. Edgeworth St.
Greensboro, NC 27401

If any check is returned for insufficient funds, all future quarterly fee payments must be made by cashier's check, certified funds, or postal money order.

Required Quarterly Fee Statements:

Federal Rule of Bankruptcy Procedure 2015(a)(5) requires each chapter 11 debtor to file a Chapter 11 Quarterly Fee Statement with the Court on or before the last day of the month that follows each calendar quarter during which debtor has a duty to pay quarterly fees. Chapter 11 Quarterly Fee Statements should be in the format attached hereto. Since chapter 11 debtors have a duty to pay quarterly fees until the date of the entry of an order dismissing, converting, or closing the case, a chapter 11 debtor must continue to file Chapter 11 Quarterly Fee Statements

following confirmation of a plan. The quarterly fee statement shall be filed on the docket at the time the fee is paid.

Consequences of Non-Payment of Chapter 11 Quarterly Fees:

Please take note that a chapter 11 debtor's failure to pay quarterly fees pursuant to 28 U.S.C. § 1930 has significant legal consequences.

The United States Bankruptcy Administrator may move for dismissal or conversion of debtor's case for failure to pay quarterly fees as required.

Failure to pay required quarterly fees may also prevent debtor from voluntarily dismissing debtor's case. If debtor desires to voluntarily dismiss the chapter 11 case, debtor must pay all outstanding quarterly fees, along with filing a Chapter 11 Quarterly Fee Statement, prior to the hearing on dismissal. Failure to do so may result in the Bankruptcy Administrator opposing dismissal of the case and requesting conversion of the case to a chapter 7 liquidation case.

Failure to pay required quarterly fees may further impact debtor's ability to confirm a plan. Pursuant to 11 U.S.C. § 1129(a)(12), the Court cannot confirm a plan unless "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of such fees on the effective date of the plan."

Pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, §31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the United States Bankruptcy Administrator may use debtor's Taxpayer Identification Number ("TIN") as reported by debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceeding for the purpose of collecting and reporting on any delinquent debt, including delinquent quarterly fees. The United States Bankruptcy Administrator may provide the debtor's TIN to the U.S. Department of the Treasury ("Treasury Department") for its use in attempting to collect overdue debts. The Treasury Department may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to debtor; (4) engage private collection agencies to collect the debt; and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE: _____)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)
)

**CHAPTER 11 QUARTERLY FEE STATEMENT
PURSUANT TO FED. R. BANKR. P. 2015(a)(5)**

FOR CALENDAR QUARTER ENDING _____, 20__:

1. Disbursements Made During Quarter:

MONTH	DISBURSEMENTS ¹
	\$
	\$
	\$
TOTAL:	\$

2. Quarterly Fee Due Pursuant To 28 U.S.C. § 1930(a)(7): \$ _____
3. Quarterly Fee Paid (proof of payment is attached): \$ _____
4. Amount of Unpaid Fees, if any: \$ _____

I, _____, acting as the duly authorized agent for the ____ (*Debtor in Possession/Trustee/Plan Administrator*) ____, declare under penalty of perjury under the laws of the United States that I have read and certify that the figures, statements, disbursement itemizations, and account balances as listed in this Chapter 11 Quarterly Fee Statement are true and correct as of the date of this report to the best of my knowledge, information, and belief.

Dated _____
For the (*Debtor in Possession/Trustee/Plan Administrator*)
(*Print or Type Name and Capacity of Declarant*)

¹ For periods subsequent to plan confirmation, disbursements include any payments made pursuant to the confirmed plan in addition to any other disbursements.

EXHIBIT 8

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
_____ DIVISION**

IN RE: _____)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)
)

**STATUS REPORT ON ACTIVITIES
AND FINANCIAL CONDITION OF DEBTOR IN POSSESSION**

The following status report on the activities and financial condition of _____ (“Debtor”), the debtor in possession, as of _____, 20____, is as follows:

1. Date petition filed:
2. Attorney for Debtor:
3. Attorney for committee of unsecured creditors:
4. Brief statement regarding cause of filing chapter 11:
5. Brief statement regarding Debtor’s major activities since filing chapter 11:
6. Prospect for Debtor’s future operations and reorganization:
7. Monthly reports have been filed as follows:

<i>Period</i>	<i>Date Filed</i>	<i>Receipts</i>	<i>Disbursements</i>	<i>Gain (Loss)</i>

8. Cash on hand as of _____, 20____, is \$_____.

9. Prepetition accounts receivable:

<i>Period</i>	<i>Prepetition A/R Collected</i>	<i>Uncollected Prepetition A/R</i>

10. Postpetition accounts receivable:

<i>Period</i>	<i>Accounts Receivable</i>

Total postpetition uncollected accounts receivable:

11. Postpetition accounts payable:

<i>Period</i>	<i>Accounts Payable</i>

Total postpetition accounts payable unpaid:

12. Status of postpetition tax payments (withholding, FICA, sales):

<i>Period</i>	<i>Taxes Accrued</i>			<i>Deposited in Escrow Account</i>	<i>Paid to Tax Authority</i>
	<i>Withholding</i>	<i>FICA</i>	<i>Sales</i>		

13. Postpetition disposition of assets (sales outside the ordinary course of business):

<i>Date</i>	<i>Type</i>	<i>Amount</i>

14. Postpetition payment of secured debt (including leases):

<i>Paid</i>	<i>Creditor</i>	<i>Monthly Secured Debt</i>	<i>Amount Paid</i>

15. Accrued but unpaid postpetition installments on secured debt or leases:

<i>Creditor</i>	<i>Monthly Installment</i>	<i>No. Installments Not Paid</i>	<i>Amount Accrued (unpaid)</i>

16. Additional information/comments:

This ____ day of _____, _____.

Attorney for Debtor

EXHIBIT 9

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

IN RE:)
)
XXXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXXX
)
Debtor.)

**SUMMARY OF VOTING ON THE PLAN
(List Each Class in Plan)**

Class Number	Class Description	Number of Votes	Amount of Votes (Dollar Value)	Class Vote and Impairment
		___Acceptances ___Rejections ___Acceptances(%)	_____Acceptances _____Rejections _____Acceptances(%)	_____Accepted _____Rejected _____Impaired _____Unimpaired
		___Acceptances ___Rejections ___Acceptances(%)	_____Acceptances _____Rejections _____Acceptances(%)	_____Accepted _____Rejected _____Impaired _____Unimpaired
		___Acceptances ___Rejections ___Acceptances(%)	_____Acceptances _____Rejections _____Acceptances(%)	_____Accepted _____Rejected _____Impaired _____Unimpaired
		___Acceptances ___Rejections ___Acceptances(%)	_____Acceptances _____Rejections _____Acceptances(%)	_____Accepted _____Rejected _____Impaired _____Unimpaired
		___Acceptances ___Rejections ___Acceptances(%)	_____Acceptances _____Rejections _____Acceptances(%)	_____Accepted _____Rejected _____Impaired _____Unimpaired

(THIS SUMMARY IS REQUIRED TO BE FILED AT LEAST THREE (3) BUSINESS DAYS PRIOR TO THE CONFIRMATION HEARING UNLESS OTHERWISE DIRECTED BY THE COURT)

This ____ day of _____, ____.

Attorney for Debtor