

**PROCEDURES FOR CHAPTER 11 CASES
IN THE EASTERN DISTRICT OF VIRGINIA
(Effective _____)**

Pursuant to section 105(d)(2) of Title 11 of the United States Code (the “Bankruptcy Code”), unless otherwise ordered by the Court, these procedures (the “Chapter 11 Procedures”) shall apply to the administration of chapter 11 cases other than cases involving single asset real estate in which the total debt owed by the debtors¹ exceeds \$7.5 million (“Chapter 11 Cases”). These Chapter 11 Procedures shall also apply to Chapter 11 Cases that meet the foregoing criteria and are initiated by the filing of an involuntary petition under section 303 of the Bankruptcy Code.

The Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”) shall govern all matters in Chapter 11 Cases, except as to the extent the Local Bankruptcy Rules conflict with or are inconsistent with the procedures set forth herein.

I. FIRST DAY HEARINGS AND CASE DESIGNATION

A. The following persons (for each division, the “**Designated Contact**”) are designated as the initial point of contact for all pre-filing matters for anticipated Chapter 11 Cases. Proposed counsel for the debtor in a Chapter 11 Case should contact the Designated Contact for the division in which the Chapter 11 Case will be filed as early as possible prior to filing a Chapter 11 Case to obtain a date and time for first day hearings.

1. ***For Cases to Be Filed in the Alexandria Division.*** Please contact either Tawanna Lawson, Courtroom Deputy for the Honorable Brian F. Kenney, or Regina Williams, Courtroom Deputy for the Honorable Klinette H. Kindred. Ms. Lawson may be contacted at (703) 258-1219 or by electronic mail to Tawanna.Lawson@vaeb.uscourts.gov. Ms. Williams may be contacted at (703) 258-1262 or by electronic mail to Regina.Williams@vaeb.uscourts.gov.

2. ***For Cases to Be Filed in the Norfolk / Newport News Divisions.*** Please contact either LaTanya Gibbs, Courtroom Deputy for the Honorable Frank J. Santoro, Chief Judge; Diana Morehead, Courtroom Deputy for the Honorable Stephen C. St. John; or Jennifer Hinkle, Courtroom Deputy. Ms. Gibbs may be contacted at (757) 222-7513 or by electronic mail to LaTanya.Gibbs@vaeb.uscourts.gov. Ms. Morehead may be contacted at (757) 222-7573 or by electronic mail to Diana.Morehead@vaeb.uscourts.gov. Ms. Hinkle may be contacted at (757) 222-7515 or by electronic mail to Jennifer.Hinkle@vaeb.uscourts.gov.

3. ***For Cases to Be Filed in the Richmond Division.*** Please contact either Lisa Gary, Courtroom Deputy for the Honorable Kevin R. Huennekens, or Peggy Rintye,

¹ The term “debtors” is used herein for convenience and includes a single debtor as well as a group of affiliated debtors whose cases are jointly administered or substantively consolidated.

Courtroom Deputy for the Honorable Keith L. Phillips. Ms. Gary may be contacted at (804) 916-2441 or by electronic mail to lisa_gary@vaeb.uscourts.gov. Ms. Rintye may be contacted at (804) 916-2442 or by electronic mail to peggy_rintye@vaeb.uscourts.gov.

B. Drafts of First Day Motions (as defined herein) should not be delivered to the Clerk's office or chambers. First Day Motions are to be delivered in final form upon request only after the motions have been filed.

C. Nothing herein shall be construed to modify applicable law concerning impermissible *ex parte* communications.

D. These Chapter 11 Procedures shall apply to any case that is filed which meets the definition of a "Chapter 11 Case" as defined herein. However, nothing herein shall prohibit the debtor from (i) requesting a determination that any or all of these Chapter 11 Procedures not apply to the Chapter 11 Case; (ii) requesting alternative or additional procedures apply; or (iii) seeking such other or further relief as may be just and proper under the circumstances.

II. SERVICE

A. ***Procedures Established for Notices.*** All (a) notices, motions, applications, and other requests for relief, (b) brief, memoranda, affidavits, declarations, replies, and other documents filed in support of such papers seeking relief (collectively, "Requests for Relief"), and (c) all objections and responses to such Requests for Relief (collectively, the "Objections," and, together with the Requests for Relief and all other filed documents, the "Rule 2002 Court Filings") shall be filed and served in accordance with the notice procedures set forth herein (the "Notice Procedures").

B. ***Definitions of Entities Entitled to Service.*** All Rule 2002 Court Filings shall be served on the Core Group, the 2002 List, and Affected Entities (each as defined herein and collectively, the "Service List") according to the Notice Procedures. A Rule 2002 Court Filing is deemed not to have been properly served until served, at a minimum, on all of the parties in the Core Group.

1. ***Core Group.*** The following entities shall comprise the core group of entities in a Chapter 11 Case (collectively, the "Core Group"): (a) the Assistant United States Trustee for the Eastern District of Virginia (the "U.S. Trustee") for the division in which the Chapter 11 Case is filed; (b) the debtors; (c) counsel for the debtors; (d) counsel for any committee appointed pursuant to section 1102² of the Bankruptcy Code; (e) counsel to the debtors' prepetition lenders; (f) counsel to the debtor's postpetition lenders, if any; (g) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Bankruptcy Rules; (h) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (i) any other party and/or counsel

² Before the appointment of an official committee of unsecured creditors and its counsel, pursuant to Bankruptcy Rule 1007(d), service shall be made upon either (i) the holders of the debtors' twenty (20) largest unsecured claims or (ii) in a jointly administered Chapter 11 Case, the consolidated list of the debtors' thirty (30) largest creditors.

designated by the debtors. Updated Core Group lists shall be provided on the Case Website (as defined herein) from time to time.

2. **2002 List.** This group shall be comprised of all entities that have filed a request for service of filings pursuant to Bankruptcy Rule 2002. The debtors or the claims or noticing agent (the “Claims Agent”) shall be responsible for maintaining an updated list of those that have submitted a proper 2002 Notice Request (the “2002 List”). It is the responsibility of each entity submitting a 2002 Notice Request to file with the Court an updated 2002 Notice Request as necessary to reflect changes to any information, including email address and contact person, and serve a copy of such request upon the debtors.

a. **Filing Requests for Documents Requires Email Address.** A request for service of papers pursuant to Bankruptcy Rules 2002 (each, a “2002 Notice Request”) filed with the Court shall be deemed proper if and only if it includes the following information with respect to the party filing such request: (A) name; (B) street address; (C) name of client(s), if applicable; (D) telephone number; (E) facsimile number, if applicable; and (F) either (i) electronic mail (or email) address or (ii) a certification in compliance with **Part II.B.2.b** *infra*.

b. **Certification Opting Out of Email Service.** Any individual or entity filing a 2002 Notice Request who does not maintain (and cannot practicably obtain) an email address and thereafter cannot receive service by email must include in the 2002 Notice Request a certification to that effect (the “Certification”). The Certification shall include a statement certifying that the individual or entity does not maintain an email address and (B) cannot practicably obtain an email address at which the individual or entity could receive service by email.

c. **Failure to Include Email Address or Certification.** If a 2002 Notice Request fails to include an email address or a Certification, the Debtors shall forward a copy of these Chapter 11 Procedures to such party within five (5) business days specifically requesting an email address. If no email address or no Certification is provided in response to such request, such party shall not be added to the 2002 List and shall not be served with copies of pleadings and documents filed in the Chapter 11 Case unless such pleadings and/or documents directly affect such party.

3. **Affected Entities.** This group shall be comprised of all entities with a particularized interest in the subject matter of the particular court filing (each, an “Affected Entity”).

C. **Maintaining the 2002 List.** The 2002 List must be filed within three (3) days after the petition date. A revised list must be filed seven (7) days after the initial 2002 List. At least every 15 days during the first 60 days of the Chapter 11 Case, and thereafter at least every 30 days, until confirmation of a proposed chapter 11 plan or conversion of the Chapter 11 Case to another chapter, the debtors or the Claims Agent shall maintain and update the 2002 List by:

(a) making any additions and deletions; (b) filing an updated 2002 List with the Court; (c) serving the updated 2002 List on the parties listed thereon; (d) filing a proof of service; and (e) simultaneously with the filing of the 2002 List, posting an updated version of the 2002 List on the Case Website (as defined herein).

D. ***Service of Motions.*** With respect to filings for which particular notices are required to be served on all creditors and parties in interest, including Bankruptcy Rules 2002(a)(2)-(6), 4001, 6004, 6007, or 9019, parties shall serve all such filings only on the appropriate Service List by email, or by paper copy if an exemption is granted, and in accordance with the following procedures, unless otherwise ordered by the Court:

- in the case of the use, sale, or lease of property pursuant to section 363 of the Bankruptcy Code, on all creditors, parties in interest and, where applicable, equity security holders;
- in the case of abandonment of property, on each entity asserting an interest in that property;
- in the case of a motion for relief or modification of the automatic stay, on each entity asserting a lien or encumbrance on the affected property;
- in the case of a motion relating to the use of cash collateral or obtaining credit, on each party asserting an interest in the cash collateral or a lien or other interest in property upon which a lien or encumbrance is proposed to be granted;
- in the case of a motion under Bankruptcy Rule 9019, on all parties that are parties to the relevant compromise and settlement or that may be directly affected by such compromise or settlement;
- in the case of assumption, assignment, or rejection of an executory contract or an unexpired lease, on each party to the executory contract or the unexpired lease;
- any objection, opposition, response, reply, or further document filed directly in response to a document shall be served on the entity that filed such document; and
- all matters for which the Bankruptcy Rules specifically require notice to all parties in interest shall be served on all parties in interest unless otherwise directed by the Court.

E. ***Service of Adversary Proceedings.*** All pleadings and other Court filings in any adversary proceeding commenced in the chapter 11 cases shall be served upon the Core Group, each Affected Entity, and any other entities required to be served under any applicable Bankruptcy Rule or Local Bankruptcy Rule.

F. ***Proceedings Not Governed by the Notice Procedures.*** Except as set forth herein or otherwise provided by order of the Court, the Notice Procedures shall not apply to notices of the matters or proceedings described in the following Bankruptcy Rules:

- Bankruptcy Rule 2002(a)(1) (meeting of creditors pursuant to section 341 of the Bankruptcy Code);
- Bankruptcy Rule 2002(a)(7) (time fixed for filing a proof of claim pursuant to Bankruptcy Rule 3003(c));
- Bankruptcy Rule 2002(b)(1) (time fixed for filing objections and any hearing to consider approval of a disclosure statement);
- Bankruptcy Rule 2002(b)(2) (time fixed for filing objections and any hearing to consider confirmation of a chapter 11 plan);
- Bankruptcy Rule 2002(d) (certain matters for which notice is to be provided to equity security holders);
- Bankruptcy Rule 2002(f)(1) (entry of an order for relief);
- Bankruptcy Rule 2002(f)(2) (dismissal or conversion of a case to another chapter of the Bankruptcy Code);
- Bankruptcy Rule 2002(f)(3) (time allowed for filing claims pursuant to Bankruptcy Rule 3002);
- Bankruptcy Rule 2002(f)(6) (waiver, denial, or revocation of a discharge as provided in Bankruptcy Rule 4006);
- Bankruptcy Rule 2002(f)(7) (entry of an order confirming a chapter 11 plan); and
- Bankruptcy Rule 2002(f)(8) (summary of the trustee's final report and account should a case be converted to chapter 7 of the Bankruptcy Code).

G. ***Certificates of Service.*** Notwithstanding Local Bankruptcy Rule 5005-1(C)(8), certificates of service of all Rule 2002 Court Filings, including a Service List, shall be filed by the party seeking relief with the Court within seven (7) days of the completion of noticing any particular matter; provided, however, that parties shall not be required to include the Service List when serving the certificate of service to such recipients.

H. ***Service by Electronic Mail.*** All Rule 2002 Court Filings, other than a summons and complaint in an adversary proceeding or documents filed under seal, shall be electronically served on the Court's electronic filing system, which shall be deemed to constitute proper service for all parties who are sent such email service. Subject to the limited exclusions set forth herein, each party that has filed a notice of appearance and a request for service of papers shall be deemed to have consented to electronic service of papers, in accordance with CM/ECF Policy 9 -

Service of Documents of the *Case Management/Electronic Case Files Policy* (the “CM/ECF Policy”) available on the Court’s website [here](#).

I. ***Waiver of Rule 6(d) of the Federal Rules of Civil Procedure.*** The filing deadlines do not require three (3) additional days’ notice as set forth in Rule 6(d) of the Federal Rules of Civil Procedure and Bankruptcy Rule 9006(f) when a document is served by electronic or overnight mail, including service, via the Court’s electronic filing system.

III. **HEARING DATES**

A. Unless otherwise directed by the Court, omnibus hearing dates and non-omnibus hearing dates may be obtained by contacting the assigned judge’s courtroom deputy.

B. ***Omnibus Hearing Dates.*** Periodic omnibus hearings will occur as may be scheduled by the Court (the “Omnibus Hearings”). Throughout the Chapter 11 Case, the debtors shall periodically request that Omnibus Hearings be scheduled as necessary. The debtors, in consultation with the U.S. Trustee, shall send notices of the Omnibus Hearings to the Core Group and 2002 List when the Omnibus Hearings are scheduled, post the schedule of Omnibus Hearings on the Case Website (as defined herein), and file notices of additional Omnibus Hearing dates on a periodic basis with the Court.

C. ***Procedures Regarding the Omnibus Hearings.*** The following procedures will apply unless the Court orders otherwise:

1. Any notice of an Omnibus Hearing shall conspicuously contain the date and time that the hearing will be held in the event that an Objection is filed in accordance with the applicable rules.

2. Except as specifically set forth herein, all notice periods for Requests for Relief shall be computed in accordance with the Bankruptcy Rules and Local Bankruptcy Rules and nothing in these Chapter 11 Procedures shall be deemed to change such requirements.

3. Deadlines for responding to a Request for Relief shall be governed by these Chapter 11 Procedures and the Local Bankruptcy Rules, except to the extent the Local Bankruptcy Rules conflict with these Chapter 11 Procedures, in which case the Chapter 11 Procedures shall govern.

4. Nothing contained herein shall prejudice the rights of any party in interest to move the Court to further limit or expand notice of matters and proceedings upon a showing of good cause, including, but not limited to, the right to file a Request for Relief upon shortened notice or to seek an enlargement or reduction of time pursuant to Bankruptcy Rule 9006.

5. If a party intends to present an order at the Omnibus Hearing that differs from the proposed order attached to the motion, the debtors’ counsel, to the extent known, shall state on the hearing agenda above that a different order will be presented for entry or file such proposed order with Court in advance of the Omnibus Hearing.

6. Notwithstanding Local Bankruptcy Rule 9013-1(J), the debtors' counsel may, without leave of the Court and, unless upon the objection of another non-debtor party, the Court orders otherwise, adjourn any matter to a subsequent fixed Omnibus Hearing. If a matter is adjourned, the debtors' counsel shall update the hearing agenda accordingly.

7. For the avoidance of doubt, the debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the debtors in good faith believe that the hearing on the particular matter could exceed one (1) hour.

8. With the consent of the Court, the debtors may delay the start time of any previously scheduled Omnibus Hearing to accommodate potential resolution of any matters scheduled for such Omnibus Hearing.

D. *Proposed Agenda for Omnibus Hearings.* The Debtors shall prepare Omnibus Hearing agendas in accordance with the following:

1. Debtors' counsel shall file a proposed agenda with regard to matters scheduled to be heard at an Omnibus Hearing (the "Proposed Hearing Agenda") no later than the date that is two (2) calendar days prior to each such Omnibus Hearing using the CM/ECF "Agenda" code. The Proposed Hearing Agenda is for the convenience of the Court and counsel and is not determinative of the matters to be heard on that day or whether there will be a settlement or a continuance.

2. The Proposed Hearing Agenda will include, to the extent known by the debtors' counsel: (i) the docket number and title of each matter to be scheduled for hearing on such Omnibus Hearing, including the initial filing and any responses, replies, or documents related thereto; (ii) whether the matters are contested or uncontested; (iii) whether the matters have settled or are proposed to be continued; (iv) other comments that will assist the Court; and (v) a suggestion for the order in which the matters should be addressed.

E. *Scheduling Requests for Relief and Objections thereto for Hearing.* All Requests for Relief, Objections, and all other matters requiring a hearing in the Chapter 11 Case shall be set forth and be heard at an Omnibus Hearing, unless otherwise ordered by the Court for good cause shown, in accordance with the following:

1. In the event that a party files a Request for Relief at least twenty-one (21) calendar days prior to the next scheduled Omnibus Hearing, the matter shall be set for hearing on such scheduled Omnibus Hearing, and the deadline to file an Objection to such Request for Relief shall be seven (7) calendar days prior to the Omnibus Hearing; *provided, however*, the debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the Debtors in good faith believe that the hearing on the particular matter could exceed one (1) hour.

2. In the event that a party files a Request for Relief less than twenty-one (21) calendar days but at least fourteen (14) calendar days prior to the next scheduled

Omnibus Hearing, the matter shall be set for hearing on such scheduled Omnibus Hearing, and the deadline to file an Objection to such Request for Relief shall be three (3) calendar days prior to the Omnibus Hearing; *provided, however*, the Debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the debtors in good faith believe that the hearing on the particular matter could exceed one (1) hour.

3. In the event that a party files a Request for Relief less than fourteen (14) calendar days prior to the next scheduled Omnibus Hearing, unless the Court orders otherwise, the matter shall be set for a date other than the next Omnibus Hearing date in accordance with paragraphs (a) and (b) herein.

4. Notwithstanding any procedure herein, nothing herein shall restrict any entity from requesting an emergency hearing pursuant to the Local Bankruptcy Rules. The Court will determine as an initial matter at the scheduled emergency hearing on the underlying motion whether to allow emergency consideration.

F. *Evidentiary Hearings.*

1. Pursuant to Bankruptcy Rule 9014 and in compliance with Local Bankruptcy Rule 9014-1, in the event that a timely Objection is made to a Request for Relief (each, a "Contested Matter"), the hearing on such Contested Matter shall be an evidentiary hearing at which witnesses may testify, unless the parties otherwise agree that any such hearing shall not be an evidentiary hearing, in which case, to the extent known by the debtors' counsel, the Proposed Hearing Agenda shall state as such; provided, however, that the debtors' counsel may propose to schedule matters filed by another party on a date other than the next Omnibus Hearing date if the debtors in good faith believe that the hearing on the particular matter could exceed one (1) hour.

2. With respect to a timely filed Objection to a Request for Relief and unless otherwise agreed to by the parties, such opposing party must contemporaneously notify the adverse party that it intends to introduce evidence or witnesses at the hearing on the Request for Relief that is the subject of the Objection. In addition to specifying whether such party intends to introduce evidence or witnesses at the hearing on the Objection, the party must also submit to the adverse party, contemporaneously with the filing of the Objection, proposed deadlines for the parties to identify, with reasonable particularity, and serve on the adverse party, proposed evidentiary exhibits and witnesses in a written disclosure (each, a "Disclosure"), which Disclosures shall be served only on the adverse party. Such notices must be received by the adverse party, in writing, immediately upon the filing of such Objection and in any event, no later than three (3) calendar days prior to the scheduled hearing (unless such matter is scheduled on an expedited basis, in which case the parties shall cooperate to exchange the appropriate information as quickly as is feasible). Failure to provide timely notices as set forth in this paragraph, in the discretion of the debtors, may result in the exclusion of such evidence. In the event the parties cannot reach an agreement regarding deadlines for disclosure, either party may seek appropriate relief from the Court.

3. Upon reasonable request, the parties subject to a Contested Matter shall provide copies of all proposed evidentiary exhibits and make all witnesses available for deposition at the expense of the requesting party and within a time period to reasonably facilitate conducting the evidentiary hearing as scheduled.

4. Parties shall comply with the Court's *Instructions for Preparing Exhibit List and Pre-Marking Exhibits*, available on the Court's website [here](#).

5. Any party subject to a Contested Matter that fails to identify its evidentiary exhibits or witnesses as provided herein may be precluded, at the Court's discretion, from presenting such evidentiary exhibits or witnesses at the hearing on the matter or, alternatively, the hearing shall be adjourned.

6. Unless the Court orders otherwise, nothing contained herein shall preclude any party from presenting proffers in connection with uncontested matters or agreeing with an opposing party to present proffers in any Contested Matter or otherwise stipulating certain facts or documents into evidence.

IV. PROCEDURES FOR REMOTE HEARING PARTICIPATION

A. The Court may allow counsel to participate in any hearing by telephone. No motion is required to authorize telephonic participation. Unless otherwise provided in the notice of hearing, for hearings that will not be conducted by video conference, parties may participate telephonically using CourtSolutions. Instructions for telephonic appearances are available [here](#). **Note**, while a party may appear telephonically for argument at an evidentiary hearing, parties appearing telephonically are not permitted to examine witnesses or submit evidence.

B. In the Court's discretion, hearings may be conducted by remote video conference. While no motion is required to authorize participation via remote video conference, participants must pre-register. More information for appearances by remote video conference are available [here](#).

C. Under no circumstances may any participant or listener record or broadcast the proceedings.

V. MOTIONS PRACTICE

A. ***Waiver of Memorandum of Points and Authorities.*** Notwithstanding Local Bankruptcy Rule 9013-1(G), motions filed without a separate memorandum of points and authorities shall be deemed to include a request for a waiver of a separate memorandum or deemed a single memorandum and motion as allowed by Local Bankruptcy Rule 9013-1(G).

B. ***Notice of Motion/Notice Hearing.*** Parties should consult Local Bankruptcy Rule 9013-1(M) regarding the form and content of notices.³

³ Parties are referred to the Court's website at https://www.vaeb.uscourts.gov/wordpress/?page_id=690 for sample forms.

C. **Identification of Attorney.** As set forth in Local Bankruptcy Rule 5005-1(C)(5), on the first page of every Rule 2002 Court Filing, the attorney filing the same shall be identified by name, state bar number, complete mailing address, telephone number, and the name of the party whom the attorney represents.

D. **Objections and Replies.** Unless otherwise ordered by the Court, Objections to Requests for Relief scheduled to be heard at an Omnibus Hearing shall be filed no later than seven (7) calendar days before the applicable hearing date if the Request for Relief is served at least twenty-one (21) calendar days prior to the applicable hearing date, or three (3) calendar days before the applicable hearing date if the filing is served less than twenty-one (21) calendar days but at least fourteen (14) calendar days prior to the applicable hearing date. A reply to any Objection must be received no later than 12:00 p.m. (prevailing Eastern Time) on the date that is one (1) business day before the applicable hearing date.

E. **Granting the Request for Relief Without a Hearing Where No Objection(s) Filed.** Provided that the notice filed with the Request for Relief includes a statement that the Request for Relief may be granted and an order entered without a hearing unless a timely Objection is made, after the Objection deadline has passed, and no Objection has been filed or served in accordance with the procedures set forth herein, counsel to the entity that has filed the Request for Relief may file a certification indicating that no Objection has been filed or served on the entity who has filed the Request for Relief and submit an order granting the relief requested (a "CNO"). Any CNO that includes a proposed form of order that varies from the original proposed order must include (a) a redline of the revised form of order against the order filed with the subject motion and (b) a clean copy of the form of order. Once the order is entered, the hearing scheduled on the motion is cancelled.

F. **Granting the Request for Relief Without a Hearing Where Objection(s) Filed.** Provided that the notice filed with the Request for Relief includes a statement that the Request for Relief may be granted and an order entered without a hearing unless a timely Objection is made, after the Objection deadline has passed, timely filed and served Objection(s) to a Request for Relief may be resolved by filing an agreed form of order filed with a Certificate of Counsel ("COC"). The COC must be signed by counsel with a certification that all known objections have been resolved by the agreed form of order. A COC should not be filed if it resolves less than all filed objections. Any COC that includes a proposed form of order that varies from the original proposed order must include (a) a redline of the revised form of order against the order filed with the subject motion and (b) a clean copy of the form of order. Once the order is entered, the hearing scheduled on the motion is cancelled.

G. **Settlement.** For matters to which the procedures set forth in **Part V.F** *supra* do not apply or otherwise in the debtors' discretion, if a matter is properly noticed for hearing and the parties reach agreement on a settlement of the dispute prior to the final hearing, the parties may announce the settlement at the scheduled hearing. If the Court determines that the notice of the dispute and the hearing is adequate notice of the effects of the settlement (i.e., that the terms of the settlement are not materially different from what parties in interest could have expected if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement.

H. ***Service of Entered Order.*** Notwithstanding Local Bankruptcy Rule 9022-1(B), a proponent of a Request for Relief shall serve an order granting such relief on the Core Group and 2002 List no later than five (5) business days after such order was entered and no service list need be submitted with the proposed order.

VI. **FIRST DAY MOTIONS.**

A. ***First Day Orders.*** “First Day Orders” are orders which the debtors seek to have entered by the Court, either on an interim or final basis, on or shortly after the filing of the petition. The request for a First Day Order should be made by motion (a “First Day Motion”), and a copy of the proposed First Day Order should be filed with and attached as an exhibit to the First Day Motion.

B. ***Request for Related Relief Need Not Be Filed in Separate Motions.*** Motions for related relief under First Day Orders referred to above need not be filed as separate motions. For example, in a given case it may be appropriate to combine cash collateral and financing motions, or address all employee-related matters in a single motion.

C. ***Typical First Day Motions and Orders.*** First Day Orders typically heard by the Court on or within one (1) day of the later of the petition date or the date of filing of the First Day Motions include (but are not limited to) the following:

1. *Motion for an Expedited Hearing on “First Day Motions.”*
2. *Motion for Entry of an Order Directing Joint Administration of Chapter 11 Cases, if more than one case is commenced.*
3. To the extent that the debtors seek to deviate from the procedures contained herein, a *Motion for Entry of an Order Establishing Alternative Notice, Case Management, and Administrative Procedures.*
4. *Application for Entry of an Order Authorizing the Retention and Appointment of a Claims and Noticing [or Claims, Noticing, and Balloting] Agent.*
 - a. If a Claims Agent is retained in a Chapter 11 Case, the Claims Agent shall maintain a case-specific website (the “Case Website”), where, among other things, electronic copies of all pleadings filed in the Chapter 11 Case shall be posted as soon as practicable, but not later than three business days after filing, and may be viewed free of charge.⁴
5. *Motion for Entry of an Order Dispensing with the Requirement of Filing Any or All Schedules and Statement of Financial Affairs* (in the event the debtors are not seeking to bar and subsequently discharge all or certain categories of debt) or a *Motion*

⁴ Electronic copies of all pleadings and documents are available for a fee via PACER on the Court’s website at <http://www.vaeb.uscourts.gov/>. Paper copies of all pleadings in filed in the Chapter 11 Case may be available from the Court.

for Entry of an Order Extending the Time to File the Schedules and Statement of Financial Affairs (to a specified date).

a. This motion may be combined with a request to (a) file a consolidated list of creditors in lieu of a separate mailing matrix for each debtor; (b) file a consolidated list of the debtors' thirty (30) largest creditors; (c) authorize the debtors to redact certain personally identifiable information; and (d) waive the requirement to file a list of equity security holders and/or provide notice of commencement to equity security holders.

6. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, (D) Perform Intercompany Transactions, and (E) Waive/Extend Time to Comply with the Requirements of 11 U.S.C. § 345.*

a. Any motion should describe the proposed cash management system and, in cases where money will be transferred between debtors or from a debtor to a non-debtor affiliate, represent why such transfers are desirable from the debtor's(s') perspective, state that the debtor(s) will maintain records of all postpetition intercompany transfers of funds, and describe what repayment terms exist. For a request to waive section 345, the motion should disclose the amount of funds which the debtors propose to invest outside the statute's enumerated permitted investments and the proposed types of investments to be made. If the debtors propose to invest or deposit money in or with an entity that has not satisfied the requirement of section 345(b) (a "Non-Qualified Entity"), the motion should demonstrate and explain why such an investment or deposit is necessary and, to the extent known, why the Non-Qualified Entity cannot satisfy or has not satisfied the requirements of section 345(b).

7. *Motion for Entry of [Interim and Final] Order[s] Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs.*

a. Any request to pay prepetition claims should be in an amount not to exceed specified per employee and aggregate amounts, which amounts shall be set forth in the motion. If the motion requests authority to pay amounts in excess of the amount set forth in section 507(a)(4) and (5) of the Bankruptcy Code per employee, then a list of the names and position/job titles of all employees as to whom those payments will be made shall be attached.⁵ The propriety of those requests shall be considered on a case by case basis. The motion also shall state whether, and the extent to which, the claims proposed to be paid constitute priority claims under section 507 of the Bankruptcy Code ("Priority Claims") and,

⁵ Nothing herein shall prevent the movant from seeking court authority to file such list under seal with unredacted copies to be furnished to the U.S. Trustee and any committee appointed or to be appointed in the chapter 11 cases.

if such claims are not Priority Claims, the motion should explain why those claims should be afforded the treatment requested in the motion. The motion may also ask the Court to direct banks to honor prepetition checks for such amounts and authorize the debtors to replace prepetition checks that have been dishonored.

8. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Maintain and Administer their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto*

a. For payment of any prepetition obligations, such relief shall not exceed specified aggregate and per claimant amounts, which amounts shall be set forth in the motion. The motion also shall state whether, and the extent to which, the claims proposed to be paid constitute Priority Claims and, if such claims are not Priority Claims, the motion should explain why those claims should be afforded the treatment requested in the motion.

9. *Motion for Entry of [Interim and Final] Order[s] (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services; and (III) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests.*

10. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Claims of (A) Critical Vendors, (B) 503(b)(9) Claimants, and (C) Lien Claimants.*

11. *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Maintain, Renew, or Supplement Their Insurance Policies and Surety Bond Program[s] and Honor All Obligations in Respect Thereof.*

12. *Motion for Entry of Interim and Final Orders Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees.*

13. *Motion for Entry of Interim and Final Orders Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock.*

14. *Motion for Entry of Interim and Final Orders (I) Authorizing Use of Cash Collateral; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; and (IV) Scheduling a Final Hearing and/or the Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. § 364; (II) Granting Liens and Providing Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; and (V) Scheduling a Final Hearing.*

a. *Interim Relief.* On motion by the debtors, a hearing (the “Interim Financing Hearing”) will routinely be conducted within three (3) business days to consider either cash collateral use and/or interim debtor in possession financing.

At the Interim Financing Hearing, the debtors must introduce a cash-flow projection showing its sources and uses of cash necessary for ongoing operations on a weekly basis for not less than the first three (3) weeks of the case (an “Interim Budget”). The Interim Budget must be filed with the Court and be served no later than noon on the first (1) business day after the filing, or on the date of the filing if the Interim Financing Hearing is to occur before the second (2) business day after the petition date. The debtors must provide a copy of the Interim Budget in native file format upon request.

b. *Final Financing Hearing.* The Court will set a hearing to consider financing through use of cash collateral and/or debtor in possession financing on a final basis in accordance with sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001 (a “Final Financing Hearing”). At the Final Financing Hearing, the debtors must introduce a cash-flow projection for sources and uses of cash for the period of cash collateral use or debtor in possession financing that is proposed (a “Final Financing Budget”). The Court will consider at the Final Financing Hearing whether it is appropriate to order either long-term use of cash collateral or long-term debtor-in- possession financing pursuant to the Final Financing Budget in accordance with sections 363 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001. The Final Financing Budget must be filed two (2) calendar days prior to the Final Financing Hearing. The debtors must provide a copy of the Final Financing Budget in native file format upon request.

c. Debtors’ counsel should highlight provisions of proposed interim and final orders issued under section 363 or 364 of the Bankruptcy Code that contain the following:

- Sale or plan confirmation milestones;
- Cross-collateralization;
- Roll ups (including (i) provisions deeming prepetition debt to be postpetition debt; and (ii) provisions requiring the proceeds of postpetition loans to be used to repay prepetition debt);
- Liens on avoidance actions or proceeds of avoidance actions;
- Default provisions and remedies (including (i) provisions terminating the automatic stay without further order, (ii) provisions waiving rights to challenge lenders’ ability to exercise post-default remedies; and (iii) provisions limiting required proof or altering the burden of proof at post-default hearings);
- Releases of claim against lender or others;

- Limitations on the use of cash collateral other than general “carve-outs” to pay approved fees and expenses of advisors to official committees or future trustees;
- Priming liens; and
- Any provision that limits the ability of estate fiduciaries to fulfill their duties under the Bankruptcy Code and applicable law.

d. If a motion to approve financing under sections 363 or 364 of the Bankruptcy Code seeks to include any of the terms listed in subparagraph c above, the motion should list all such provisions in a separate section or chart and provide specific reasons why each such provision should be approved.

e. Cash collateral and financing orders that contain a release of claims against lenders and other third parties by the debtors should provide that an official committee of unsecured creditors has at least sixty (60) days from the date of the committee’s formation to investigate claims against the lenders and challenge the extent and validity of any liens or the appropriateness of such release.

D. ***Final Orders at First Day Hearings.*** Final orders, rather than interim orders, may be sought for the following types of relief:

- Motions to pay employee wages and benefits that do not include relief of the nature specified in section 503(c) of the Bankruptcy Code or that do not otherwise contain a request outside the ordinary course of the debtors’ business;
- Motions to pay prepetition and postpetition taxes that are (i) secured by property of the estate; (ii) held in trust by the debtors pursuant to state or federal law; or (iii) are Priority Claims pursuant to section 507(a)(8) of the Bankruptcy Code.
- Motions to pay mechanic and material liens that meet the criteria of section 546(b) of the Bankruptcy Code;
- Applications to retain a Claims Agent;
- Motions to limit or modify the notice requirements of Bankruptcy Rule 2002;
- Motions to approve adequate assurance procedures under section 366 of the Bankruptcy Code that (i) do not prejudice the right of a utility to propose alternative procedures after notice and hearing; and (ii) provide for a hearing not later than thirty (30) days after the petition date on any timely filed objection to the adequate assurance.

E. ***Guidelines for Typical Non-First Day Motions.*** The following matters are typically not entertained by the Court as First Day Motions; **provided, however,** nothing herein should be construed to prevent a party from seeking such relief as a First Day Motion under appropriate circumstances.

1. **Motions for Relief from the Automatic Stay.** The initial hearing on any motion for relief from the automatic stay shall be a preliminary hearing unless otherwise agreed to by the debtors. Notwithstanding section 362(e) of the Bankruptcy Code, by setting a hearing on a motion for relief from the automatic stay on an Omnibus Hearing, a party shall be deemed to have consented to the automatic stay remaining in full force and effect until the conclusion of the preliminary hearing. The Court may continue the effectiveness of the automatic stay until a final hearing on the matter. Nothing in this section shall prevent a party from seeking expedited consideration of a motion for relief from the automatic stay.

2. **Bid Procedures Motion.** Bid procedures motions should provide for input from or consultation with any official committees and secured lenders with liens on the property being sold. Notwithstanding the foregoing, secured lenders or committee members who are potential bidders may not participate in the adoption or implementation of bidding procedures and may not receive information that may affect the sale that is not generally available to all potential bidders.

3. **Conditional Approval of Disclosure Statements.**

a. A plan proponent may propose to combine the disclosure statement and plan into a single document.

b. Contemporaneously with the filing of a disclosure statement and proposed plan, a plan proponent may file a motion requesting (1) conditional approval of the disclosure statement; (2) approval of solicitation procedures; (3) the scheduling of a hearing on shortened notice to consider conditional approval of the proposed disclosure statement; and (4) the scheduling of a joint hearing to consider final approval of the adequacy of the disclosure statement and confirmation of the proposed plan. All such motions must: (i) identify the proposed balloting agent, if any; (ii) identify any voting procedures in addition to those required in these procedures; and (iii) identify the proposed hearing date for final approval of the disclosure statement and confirmation of the proposed plan (the “Combined Hearing”). Unless the plan proponent requests additional or alternate relief, if the motion is granted at the Combined Hearing, the Court will enter its form order, *Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined with Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan.*

4. **Employment of Professionals.** With the exception of an application to employ a Claims Agent, no retention applications will be considered on the first day.

Employment applications should be filed no later than thirty (30) days after the later of (i) the date the order for relief is entered or (ii) the commencement of work by the professional.

F. ***Disfavored Provisions in Motions and Proposed Orders.*** These provisions are disfavored:

1. Except for relief sought under section 362(d) of the Bankruptcy Code, the inclusion of a provision in any order that (i) provides for the termination of the automatic stay without notice and hearing; or (ii) alters the evidentiary burden with respect to the termination of the automatic stay.

2. Unless the Court finds based on a properly supported motion filed in accordance with Local Rule 9013-1(N) that exigent circumstances so require, providing less than twenty-four (24) hours' notice of any hearing to consider First Day Motions.

G. ***Automatic Bridge Order for Extension of Time.*** Unless otherwise provided in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or Court order, if a motion to extend time to take any action is filed before the expiration of the period prescribed by the Bankruptcy Code, the Bankruptcy Rules, or the Local Bankruptcy Rules, the time for taking the action is automatically extended until the Court rules on the motion. An automatic extension under this rule does not require the issuance or entry of an order extending the time.

VII. PROOFS OF CLAIM AND OMNIBUS CLAIM OBJECTION PROCEDURES

A. Unless a different date is subsequently ordered by the Court, the bar date for the filing of proofs of claim and proofs of interest is (i) 180 days after the petition date for governmental units; and (ii) 90 days after the first date set for the meeting of creditors under section 341(a) of the Bankruptcy Code for all other entities. The debtors must provide notice of the bar date to all creditors on or before the first date set for the meeting of creditors.

B. Parties may file a motion to approve procedures for handling omnibus claim objections. Such procedures may not shift the burden of proof, discovery rights or burdens, or pleading requirements.

VIII. FOREIGN ATTORNEYS.

A. All attorneys shall carefully review the Local Bankruptcy Rules and, in particular, Local Bankruptcy Rule 2090-1 regarding the procedure for appearing and practicing before the Court, which is available on the Court's website [here](#).

B. Pursuant to Local Bankruptcy Rule 2090-1(E)(3), attorneys from other states and the District of Columbia (each, a "Foreign Attorney") may appear and practice in the Chapter 11 Case upon the motion of a member of the bar of the Court, which authorization shall extend to any adversary proceedings filed in connection with the Chapter 11 Case; provided that in all appearances, a Foreign Attorney must be accompanied by a member of the bar of the Court. Further, the Eastern District of Virginia does not allow Foreign Attorneys to electronically file pleadings on CM/ECF, but does allow Foreign Attorneys to register to become limited

participants on its system by following the procedures set forth in the CM/ECF Policy. Any government attorney shall appear and practice in the Chapter 11 Case pursuant to Local Bankruptcy Rule 2090-1(E)(4).

IX. MEDIATION

A. Unless ordered otherwise, Local Bankruptcy Rule 9019-1 shall govern mediation of any dispute arising in an adversary proceeding, contested matter or otherwise; **provided, however,** notwithstanding Local Bankruptcy Rule 9019-1(B)(1), parties may agree to mediate any dispute using a non-judicial mediator or neutral without Court approval.

X. REVISION

A. These Chapter 11 Procedures may be revised periodically.

DRAFT