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*Attorneys for The Official Committee of Unsecured Creditors  
 of LandAmerica 1031 Exchange Services, Inc.*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
LandAmerica Financial Group, Inc., <u>et al.</u> ,	:	Case No. 08-35994
	:	
Debtors.	:	Jointly Administered
	X	

**MOTION FOR ORDER MODIFYING ORDER AUTHORIZING:  
 (A) MAINTENANCE AND CONTINUED USE OF THE DEBTOR’S EXISTING  
 BANK ACCOUNTS AND CONTINUED BUSINESS FORMS; (B) A WAIVER  
 OF CERTAIN OPERATING GUIDELINES RELATING TO BANK ACCOUNTS;  
 AND (C) A LIMITED WAIVER OF AND AN EXTENSION OF TIME FOR  
THE DEBTOR TO COMPLY WITH SECTION 345 OF THE BANKRUPTCY CODE**

COMES NOW the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the “LES Committee”) by and through its undersigned counsel, and moves the Court to enter an order modifying the Order Authorizing: (A) Maintenance and Continued Use of the Debtor’s Existing Bank Accounts and Continued Business Forms; (B) A Waiver of Certain Operating Guidelines Relating to Bank Accounts; and (C) A Limited Waiver of and an Extension of Time for the Debtor to Comply With Section 345 of the Bankruptcy Code (the “Original Cash Management Order”) that was entered by the Court on November 28, 2008.<sup>1</sup> Authority for the relief sought in the Motion is Federal Rule of Civil Procedure 60(b), Bankruptcy Rule 9024, and the Original Cash Management Order itself at paragraph 15.<sup>2</sup> In support of the Motion, the LES Committee respectfully states as follows:

**I. PRELIMINARY STATEMENT**

1. LES is holding approximately \$138 million in segregated accounts at Citibank, N.A. (“Citibank”).<sup>3</sup> Such amounts are well-above the standard FDIC insurance limits. It is well-publicized that Citibank is in serious financial distress. Citibank is not on the list of depositories approved by the Richmond Office of the United States Trustee (the “UST”), and the Original Cash Management Order prevents LES from transferring the funds to an approved bank in a safer type of account. For these reasons, the LES Committee requests that the Court modify the Original Cash Management Order to require LES to transfer, subject to written instructions by the LES Committee, the funds at Citibank into separate substitute accounts that are: (i) at a

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<sup>1</sup> Pursuant to Local Rule 9013-1(g) the memorandum of authority is combined with this Motion.

<sup>2</sup> The Court entered a similar order, the Order Modifying Order: Authorizing: (A) Maintenance and Continued Use of the Debtor’s Existing Bank Accounts and Continued Business Forms; (B) A Waiver of Certain Operating Guidelines Relating to Bank Accounts; and (C) A Limited Waiver of and an Extension of Time for the Debtor to Comply With Section 345 of the Bankruptcy Code [docket no. 39] on January 28, 2009.

<sup>3</sup> See Hr’g. Tr. 6, January 27, 2009 (“[c]oncerning the other accounts that are in Citibank, to the best of our research right now, accounts related to LES and various exchanges total around \$138 million . . .”).

financial institution selected by LES from the list of depositories authorized by the Office of the United States Trustee for this District; (ii) at all times segregated and not commingled with any other funds or other property of the Debtor; and (iii) (a) insured for the full amount of the funds by the Federal Deposit Insurance Corporation (“FDIC”) under its Transaction Account Guarantee Program, and (b) secured in the manner and to the extent required by the Depository Agreement between the bank and the Office of the U.S. Trustee. The substitute account will remain in the name of LES as qualified intermediary. The proposed form of order on this Motion is attached hereto as **Exhibit A**.<sup>4</sup>

## **II. JURISDICTION**

2. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has authority to grant the relief requested pursuant to Rule 60(b) of the Federal Rules of Civil Procedure made applicable by Federal Rule of Bankruptcy Procedure 9024.

## **III. BACKGROUND**

3. On November 26, 2008, LandAmerica Financial Group, Inc. (“LFG,” and collectively with LES, the “Debtors”) and LES filed their respective petitions for relief in the Bankruptcy Court for the Eastern District of Virginia.<sup>5</sup>

4. On December 3, 2008, pursuant to section 1102 of the Bankruptcy Code, the United States Trustee appointed: (i) the Official Committee of Unsecured Creditors of LandAmerica Financial Group, Inc.; and (ii) the LES Committee.

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<sup>4</sup> The proposed order attached as Exhibit A uses the caption of the LES chapter 11 case given that the Original Cash Management Order did the same. This Motion is filed in the main LFG case because the two cases are being jointly administered using the LFG caption.

<sup>5</sup> On November 26, 2008, the Court entered an order administratively consolidating the Debtors’ cases.

5. On the Petition Date, LES filed its Motion for Order Authorizing: (A) Maintenance and Continued Use of the Debtor's Existing Bank Accounts and Business Forms; (B) a Waiver of Certain Operating Guidelines Relating to Bank Accounts; and (C) a Limited Waiver of, and an Extension of Time for the Debtor to Comply with, Section 345 of the Bankruptcy Code (Docket No. 5) ("Cash Management Motion"). By the Cash Management Motion, LES requested authority to maintain and continue using its existing bank accounts. LES's bank accounts at Citibank were included in the request. As noted above, the Cash Management Motion was granted and the Original Cash Management Order was entered on November 28, 2008.

6. On January 27, 2009 the Court considered the motion of Millard Refrigerated Services, Inc. for modification of the Original Cash Management Order (the "Millard Motion") that was based on the same concerns about Citibank's financial strength. The Court granted the Millard Motion and encouraged the LES Committee to work with the U. S. Trustee to make sure that the monies not subject to the Millard Motion were safe given these uncertain times.

7. Accordingly, the LES Committee is requesting that the remainder of the cash held at Citibank be transferred to an institution that is on the U.S. Trustee's list of approved financial institutions and where such funds will be insured by the federal government.

8. Since the entry of the Original Cash Management, the national banking crisis has worsened. It has been well-publicized that Citibank in particular is experiencing severe financial distress. Citibank is not on the current list of depositories approved by the Richmond Virginia Office of the United States Trustee.<sup>6</sup> The LES Committee has serious concerns about the

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<sup>6</sup> See Hr'g. Tr. 7, January 27, 2009 ("All right, so it's correct then that Citi is no on your – the U.S. Trustee's approved list." "It is not, Your Honor.").

security of the funds being held at Citibank, and therefore, seeks a modification of the Original Cash Management Order to require LES to transfer the funds into safer accounts.

#### **IV. ARGUMENT AND AUTHORITIES**

9. The Original Cash Management Order, at paragraph 15, states as follows:

This order shall be without prejudice to the rights of the Debtor or any party in interest, including without limitation, the U.S. Trustee and the institutions where the Bank Accounts are maintained, to apply to the Court for authority to modify the terms hereof on appropriate notice and motion.

10. Further, Rule 60(b) of the Federal Rules of Civil Procedure, made applicable to this chapter 11 case by Bankruptcy Rule 9024, states in relevant part as follows: Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (a) mistake, inadvertence, surprise, or excusable neglect;
- (b) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (c) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (d) the judgment is void;
- (e) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (f) any other reason that justifies relief.

11. There is ample justification to modify the Original Cash Management Order as was expressly contemplated by paragraph 15 of the order as quoted above. There is simply no cost or risk to LES, the LES Committee, the LFG Committee or any other party-in-interest because all litigation positions will be preserved as of the Petition Date and the substitute accounts will continue to be in LES's name as qualified intermediary. The relief will further

reduce the risk that the funds at Citibank either will be lost or tied up in a potential insolvency of Citibank and claims that would arise if that happened. In essence, the relief comes at virtually no cost to the estate, mitigates substantial risk of loss and additional claims, puts LES in closer compliance with section 345 of the Bankruptcy Code and the U.S. Trustee's depository requirements, and permits LES to more appropriately exercise its duties as a trustee under the Bankruptcy Code and as a trustee under state law under the exchange agreements.

## V. CONCLUSION

Wherefore, for the reasons set forth herein, the LES Committee respectfully requests that this Court enter an order modifying the Original Cash Management Order substantially in the form of the order attached hereto as **Exhibit A**, and for such other and further relief as the Court may deem just and proper.

Dated: Richmond, Virginia  
February 10, 2009

/s/ Lynn L. Tavenner

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*Attorneys for The Official Committee of Unsecured  
Creditor of LandAmerica 1031 Exchange Services,  
Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Motion for Order Modifying Order Authorizing: (A) Maintenance and Continue Use of the Debtor's Existing Bank Accounts and Continued Business Forms; (B) A Waiver of Certain Operating Guidelines Relating to Bank Accounts; and (C) A Limited Waiver of and an Extension of Time for the Debtor to Comply With Section 345 of the Bankruptcy Code has been served on the following and on all parties required by the Case Management Order by via email and/or first class mail, postage pre-paid on this the 10 day of February, 2009.

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/s/ Sarah Link Schultz  
Sarah Link Schultz

EXHIBIT A  
PROPOSED ORDER

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
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In re:	:	Chapter 11
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LandAmerica Financial Group, Inc., <u>et al.</u> ,	:	Case No. 08-35994
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Debtors.	:	Jointly Administered
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**ORDER MODIFYING ORDER: AUTHORIZING: (A) MAINTENANCE  
AND CONTINUED USE OF THE DEBTOR’S EXISTING BANK ACCOUNTS  
AND BUSINESS FORMS; (B) A WAIVER OF CERTAIN OPERATING  
GUIDELINES RELATING TO BANK ACCOUNTS; AND (C) A LIMITED WAIVER OF,  
AND AN EXTENSION OF TIME FOR THE DEBTOR TO COMPLY WITH  
SECTION 345 OF THE BANKRUPTCY CODE**

Upon the motion (the “Motion”) of the Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the “LES Committee”) for entry of an order modifying the Order: Authorizing: (A) Maintenance and Continued Use Of The Debtor’s Existing Bank Accounts And Business Forms; (B) A Waiver Of Certain Operating Guidelines Relating To Bank Accounts; And (C) A Limited Waiver Of And An Extension Of Time For The Debtor To Comply With, Section 345 Of The Bankruptcy Code (the “Original Cash Management Order”), and it appearing that notice was proper and that no other or further notice is required; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED, that:

1. The Motion is GRANTED.
2. No later than two (2) business days after receipt by counsel for LandAmerica 1031 Exchange Services, Inc. (the “Debtor”) of a written direction from the LES Committee, the Debtor shall cause the transfer of the funds being held by the Debtor at Citibank, N.A. into a corresponding substitute account (the “Substitute Account”). The Substitute Account shall be: (i) at a financial institution selected by LES from the list of depositories authorized by the Office of the United States Trustee for this District; (ii) at all times segregated and not commingled with any other funds or other property of the Debtor or any person or entity; and (iii) (a) insured for the full amount of the Funds by the Federal Deposit Insurance Corporation under its Transaction Account Guarantee Program, and (b) secured in the manner and to the extent required by the Depository Agreement between the bank and the Office of the U.S. Trustee.
3. Bank charges by Citibank, N.A. and the bank (if different) where the Substitute Account will be opened arising from the transfer of the Funds and opening of the Substitute Account shall be debited from the Funds.

4. Nothing in this Order shall modify in any way the respective rights, claims, defenses and positions of the Debtor, the LES Committee, or any other party in interest in this chapter 11 case with respect to whether the Funds are property of the Debtor's estate, whether the Funds should be merged with the commingled funds being held by the Debtor, or any other issue that has been, should have been or will be raised in litigation before this Court or other tribunal. Such rights, claims, defenses and positions shall be preserved as of the filing of the Debtor's chapter 11 petition.

Dated: Richmond, Virginia  
\_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE

Entered:

WE ASK FOR THIS:

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**LOCAL BANKRUPTCY RULE 9022-1(C) CERTIFICATION**

Pursuant to Local Rule 9022-1(C), I hereby certified that the foregoing proposed order has been endorsed by or served upon all necessary parties.

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Charles R. Gibbs  
Sarah Link Schultz