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CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

This form may be used in chapter 11 cases. Unless a trustee is appointed, the debtor is automatically continued in possession pursuant to section 1101(1) of the Bankruptcy Code, (11 U.S.C. § 1101(1)).

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When evidence of debtor in possession status is required, this certificate may be used in accordance with Fed. R. Bankr. P. 2011.

Applicable Law and Rules

1. Section 1101(1) of the Code states:

“debtor in possession” means debtor, except when a person that has qualified under section 322 of [the Bankruptcy Code] is serving as trustee in this case.

2. Fed. R. Bankr. P. 2011(a) provides:

The Clerk’s Certification. Whenever evidence is required to prove that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify. The certification constitutes conclusive evidence of that fact.

Deleted: Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact

Fee

There is a charge of \$12 for certification.¹ Bankruptcy Court Miscellaneous Fee Schedule, Item 2. This amount must be paid in cash or by check or money order made payable to “Clerk, U.S. Bankruptcy Court.” PLEASE DO NOT SEND CASH THROUGH THE MAIL. In addition, many bankruptcy courts accept credit cards for payment of court fees by attorneys and law firms.

General Information for the Clerk

This form is to be used when the chapter 11 debtor requests that it be certified as a debtor in possession. Section 1101 of the Bankruptcy Code and Fed. R. Bankr. P. 2011 permit the clerk to make the certification ONLY if no trustee has been appointed and ONLY in a chapter 11 case.

¹ The \$12 fee is current as of December 1, 2023. Check uscourts.gov or the Miscellaneous Fee Schedule, which is published as an appendix after section 1930 of the Judicial Code (28 U.S.C. § 1930), for the current fee.