

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

IN RE:)
)
XXXXX XXXX XXXXXXXX,) CASE NO. XX-XXXXX
)
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. A petition under chapter 11 of 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) was filed on _____ (“Petition Date”). Debtor continues in possession of its assets and operates its business as a debtor-in-possession.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and has statutory and constitutional authority to hear and determine and to issue final rulings in this constitutionally 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

Utility Provider Chart

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