

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

PUMPKIN PATCH LLC,<sup>1</sup>

Debtor.

)  
) Chapter 11

)  
) Case No. 09-12200 (BLS)

**DEBTOR’S MOTION FOR ORDER DETERMINING ADEQUATE ASSURANCE OF  
PAYMENT FOR FUTURE UTILITY SERVICES**

Pumpkin Patch LLC, the debtor and debtor in possession in the above-captioned case (the “Debtor”) files this motion (the “Motion”) seeking entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), substantially in the forms attached hereto, under section 366 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), determining adequate assurance of payment for future utility services. In support of the Motion, the Debtor relies upon and incorporates by reference the declaration filed in support of the Debtor’s chapter 11 petition and various first day applications and motions (the “Declaration”). In further support of the Motion, the Debtor, by and through its proposed undersigned counsel, respectfully represents:

**JURISDICTION**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is Bankruptcy Code section 366.

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<sup>1</sup> The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 951 Mariners Island Boulevard, Suite 650, San Mateo, CA 94404.

## **BACKGROUND**

3. On the date of this Motion (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in detail in the Declaration, filed concurrently herewith and fully incorporated herein by reference.<sup>2</sup>

4. The Debtor continues to operate its business and manages its properties as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108.

## **RELIEF REQUESTED**

5. By this Motion, the Debtor seeks the entry of the Interim Order (i) determining that the Utility Companies (as defined herein) have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, pending the entry of the Final Order; (ii) approving the Debtor’s proposed adequate assurance and procedures whereby the Utility Companies may request additional or different adequate assurance and finding that it provides utilities with “adequate assurance of payment” under Bankruptcy Code sections 366(b) and 366(c)(1)(A) and deeming all utilities entitled to such assurance of payment under Bankruptcy Code section 366 (the “Utility Companies”)<sup>3</sup> to have received adequate assurance of payment under section 366(b); (iii) approving the Adequate Assurance Procedures

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Declaration.

<sup>3</sup> The Utility Companies known and identified by the Debtor to date are listed on attached Exhibit A. While the Debtor has used its best efforts to list all of its Utility Companies in Exhibit A, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtor reserves the right, under the terms and conditions of this Motion and without further order of the Court, to amend Exhibit A to add any Utility Companies that were omitted therefrom and to request that the relief requested herein apply to all such entities as well. In addition, the Debtor reserves the right to argue that any of the entities now or hereafter listed in Exhibit A are not “utilities” within the meaning of Bankruptcy Code section 366(a) and to argue that any such entity is compelled by contractual obligation, state or local law, or otherwise, to continue to furnish services to the Debtor notwithstanding the Debtor filing for relief under Chapter 11 of the Bankruptcy Code.

(as defined herein) set forth below as the method for resolving disputes regarding adequate assurance of payment; (iv) prohibiting the Utility Companies from altering, refusing or discontinuing services on account of any unpaid prepetition amounts or on account of any perceived inadequacy of the Debtor's proposed adequate assurance, pending entry of the Final Order; (v) determining that the Debtor is not required to provide any additional adequate assurance, beyond what is proposed by this Motion, pending entry of a Final Order, and (vi) scheduling a final hearing (the "Final Hearing"), to be held on or before the day that is thirty (30) days after the Petition Date, on the Debtor's proposed adequate assurance.

#### **BASIS FOR RELIEF**

6. In connection with the operation of its business and the management of its properties, the Debtor obtains water, natural gas, electricity, telephone, and similar utility products and services (collectively, the "Utility Services") from the Utility Companies covering a number of utility accounts. Prior to the Petition Date, the Utility Companies provided Utility Services to the Debtor at various locations. The services provided by the Utility Companies are critical to the continued operations of the Debtor. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtor's business operations would be severely disrupted.

7. By this Motion, the Debtor preserves the protections that Utility Companies have under the Bankruptcy Code, while affording the Debtor an opportunity to provide and negotiate adequate protection without facing the threat of imminent termination of Utility Services. In particular, the Debtor requests approval of certain procedures that balance the protections afforded the Utility Companies under Bankruptcy Code section 366 and the Debtor's need for continuous and uninterrupted Utility Services.

**B. The Proposed Adequate Assurance**

8. The Debtor fully intends to pay all postpetition obligations owed to the Utility Companies in a timely manner.

9. Additionally, the Debtor proposes to provide a deposit equal to two (2) weeks of utility service, calculated as a historical average over the past twelve (12) months, to any Utility Company that requests such a deposit in writing (the “Adequate Assurance Deposit”), provided that such requesting Utility Company does not already hold a deposit equal to or greater than two (2) weeks of utility services, and provided further that such Utility Company is not currently paid in advance for its services. As a condition of requesting and accepting an Adequate Assurance Deposit, the requesting Utility Company shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Company within the meaning of section 366 of the Bankruptcy Code, and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtor’s chapter 11 case except upon a showing of changed circumstances and further order of the Court.

**C. The Adequate Assurance Request Procedures**

10. The Debtor submits that the Adequate Assurance Deposit, in conjunction with the Debtor’s ability to pay for future utility services in the ordinary course of business (collectively, the “Proposed Adequate Assurance”), constitutes sufficient “adequate assurance of payment.” Nonetheless, the Debtor anticipates that certain Utility Companies may not find the Proposed Adequate Assurance “satisfactory” and, thus, may request additional adequate assurance of payment under Bankruptcy Code section 366(c)(2). Accordingly, the Debtor proposes that such requests be addressed as follows:

- (a) Except as provided by these adequate assurance procedures (the “Adequate Assurance Procedures”), the Utility Companies are forbidden to discontinue, alter or refuse service on account of any unpaid prepetition charges, or require additional adequate assurance of payment other than the Proposed Adequate Assurance, pending entry of a Final Order.
- (b) Any Utility Company desiring an Adequate Assurance Deposit must serve a request (an “Adequate Assurance Request”) so that it is received by the Debtor at the following addresses: (1) Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022 (Attn: Joseph M. Gitto); and (2) proposed local counsel to the Debtor, Womble Carlyle Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Thomas M. Horan).
- (c) The Debtor will serve this Motion and a copy of the Interim Order on the Utility Companies within three (3) business days after entry of the Interim Order granting the relief requested herein.
- (d) In the event that a Utility Company maintains that the Proposed Adequate Assurance is not satisfactory adequate assurance of payment as contemplated by Bankruptcy Code section 366(c)(2), the Utility Company must serve a request (an “Adequate Assurance Request”) so that it is received by counsel to the Debtor no later than five (5) business days before the Final Hearing (the “Adequate Assurance Request Deadline”).
- (e) Any Adequate Assurance Request must: (i) be made in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtor’s payment history relevant to the affected account(s), including any security deposits, (iv) set forth why the Utility Company believes the Proposed Adequate Assurance is not sufficient, (v) set forth what the Utility Company would accept as satisfactory adequate assurance of payment, and (vi) set forth a fax and electronic mail address to which the Debtor may respond to the Adequate Assurance Request.
- (f) Upon the Debtor’s receipt of an Adequate Assurance Request, the Debtor will either (a) advise the Utility Company in writing on or before a day that is no less than three (3) business days before the Final Hearing that the Adequate Assurance Request is acceptable<sup>4</sup> or (b) contest the Utility Company’s request under Bankruptcy Code section 366(c)(3) at the Final Hearing to be held on or before the day that is thirty (30) days after the

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<sup>4</sup> The Debtor may, in its discretion, resolve any Adequate Assurance Request by mutual agreement with the Utility Company and without further order of the Court, and may, in connection with any such agreement, in its discretion, provide a Utility Company with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtor believes such additional assurance is reasonable in its business judgment.

Petition Date, or such other date as the Debtor and the Utility Company may agree.

- (g) The Final Hearing will be an evidentiary hearing at which the Court will determine whether the Proposed Adequate Assurance and the additional adequate assurance of payment requested by the Utility Company should be modified under Bankruptcy Code section 366(c)(3)(A).
- (h) Pending resolution of any such Final Hearing, such particular Utility Company shall be restrained from discontinuing, altering, or refusing service to the Debtor on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

11. The Debtor further requests that any Utility Company that does not serve an Adequate Assurance Request by the Adequate Assurance Request Deadline shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of Bankruptcy Code section 366(c)(2), and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtor's chapter 11 case, except as provided in Bankruptcy Code sections 366(b)(2) or 366(c)(3), as applicable. The Debtor also requests that the Interim Order be deemed the Final Order with respect to all Utility Companies that do not serve either (i) an Adequate Assurance Request by the Adequate Assurance Request Deadline or (ii) a timely objection to this Motion.

12. To the extent that the Debtor subsequently identifies additional providers of Utility Services, the Debtor seeks authority, in its sole discretion, to amend Exhibit A to add or delete any Utility Company. The Debtor proposes to have the terms of the Final Order apply to any such subsequently identified Utility Company. Moreover, for those Utility Companies that are subsequently added to Exhibit A, the Debtor will serve a copy of this Motion and the Order entered with respect to the Motion on such Utility Company, along with an amended Exhibit A. Such subsequently added entities would then have twenty (20) days from service of this Order to make an Adequate Assurance Request.

13. In the event that any Utility Company, including a subsequently added Utility Company, files and/or serves an Adequate Assurance Request after the Adequate Assurance Request Deadline, such request shall be treated as a request under Bankruptcy Code section 366(b) and shall be granted, if at all, only after the Utility Company making such request schedules such request for hearing, on notice, in accordance with the provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, including Bankruptcy Code section 366(b).

14. All Utility Companies, including subsequently added Utility Companies, shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtor pending a Final Order of this Court, in accordance with Bankruptcy Code section 366(a). See 11 U.S.C. § 366(a).

15. The Debtor maintains that the relief requested herein strikes a fair balance between the rights of Utility Companies and the rights of the Debtor under the Bankruptcy Code and the need, for the benefit of the Debtor and its estate, for the Debtor to continue to receive the Utility Services upon which its business depends. The Debtor does not believe that the Utility Companies will be prejudiced by the Proposed Adequate Assurance, the uninterrupted continuation of the Utility Services, and the approval of the Adequate Assurance Procedures.

#### **APPLICABLE AUTHORITY**

#### **D. The Proposed Adequate Assurance Provides Utilities With Adequate Assurance Of Payment.**

16. Bankruptcy Code section 366(a) provides:

Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

11 U.S.C. § 366(a). Bankruptcy Code Section 366(b) goes on to provide, however, that:

Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date.

Id. at § 366(b).

17. The policy underlying Bankruptcy Code section 366 is to protect debtors from utility service cutoffs upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate assurance that the debtor will pay for postpetition services. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. As set forth herein, this policy is furthered by the relief requested through the Motion.

18. Specifically, under Bankruptcy Code section 366(b), a debtor must furnish what it considers to be adequate assurance of payment within twenty (20) days after the entry of the order for relief in the form of a deposit or other security for postpetition service. Here, the Debtor will provide the Utility Companies with the Proposed Adequate Assurance, which the Debtor believes provides all Utility Companies with adequate assurance of payment. See 11 U.S.C. § 361(c)(1)(A) (defining “assurance of payment” to include a cash deposit, a letter of credit, or “another form of security that is mutually agreed on between the utility and the debtor”).

**E. The Adequate Assurance Procedures Properly Balance The Interests Of the Utility Companies And Those Of The Debtor And Its Estate.**

19. As part of the Bankruptcy Abuse and Consumer Protection Act of 2005, Congress enacted Bankruptcy Code section 366(c). Under Bankruptcy Code section 366(c)(2), a utility is permitted to alter, refuse, or discontinue utility service, if the utility does not receive “during the 30-day period beginning on the date of the filing of the petition . . . adequate assurance of payment for utility service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2)

(emphasis added). Conceivably, under Bankruptcy Code section 366(c)(2), the Debtor could receive a demand from a Utility Company at the end of such thirty day period and be compelled to accede to the demand immediately or face termination of critical Utility Services. Therefore, as set forth below, in order to avoid such a drastic result, the Debtor has sought to require the Utility Companies to provide notice of their demands for assurance on or before the date that is five (5) business days before the Final Hearing on disputed requests, before expiration of the thirty (30) day period in which they must provide adequate assurance of payment or force termination of utility services.

20. Specifically, under the Adequate Assurance Procedures, a Utility Company may make an Adequate Assurance Request on or before the Adequate Assurance Request Deadline. In the event that such a request is made, the Debtor will advise the Utility Company on or before the day that is no less than three (3) business days prior to the Final Hearing that the Adequate Assurance Request is acceptable or that the Debtor intends to contest such Adequate Assurance Request under Bankruptcy Code section 366(c)(3) at the Final Hearing. Under these procedures, the Debtor will have the opportunity to seek an order from the Court modifying any Adequate Assurance Request without having to first satisfy the demands of the Utility Company and without facing the prospect of termination of Utility Services before a hearing on the Adequate Assurance Request.

21. By establishing the Adequate Assurance Procedures, the Debtor seeks to implement an orderly process to determine the amount of assurance of payment that is adequate. Without the Adequate Assurance Procedures, the Debtor could be forced to address numerous requests by Utility Companies in an unorganized manner at a critical period in its effort to

reorganize. The orderly process contemplated by the Adequate Assurance Procedures, therefore, is necessary for a smooth transition by the Debtor into chapter 11.

22. Moreover, the Adequate Assurance Procedures will ensure that all parties act in good faith by establishing a fair process. This will protect the Debtor and its stakeholders from an attempt by a Utility Company to delay a request until the last minute in an attempt to force the Debtor to agree to its request or face cessation of essential services.

23. Based on the foregoing facts, the Debtor submits that granting the relief requested is both necessary and appropriate. The Debtor submits that, based on the facts of this case, no deposits should be required in addition to the Proposed Adequate Assurance. Such relief will help the Debtor to successfully restructure and thus fulfill the purposes of section 105 of the Bankruptcy Code and will not prejudice the rights of the Utility Companies under section 366 of the Bankruptcy Code.

24. Courts have routinely granted to large business debtors the same or substantially similar relief to that requested in this Motion. See, e.g., In re Tweeter Home Entm't. Group, Inc., et al. Case No. 07-10787 (PJW) (Bankr. D. Del. Jun. 12, 2007); In re Radnor Holdings Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Aug. 23, 2006); see also In re Plastech Engineered Produces, Inc., Case No. 08-42417 (PJS) (Bankr. E.D. Mich. Feb. 15, 2008).

25. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” As described above, the relief that the Debtor seeks in this Motion is immediately necessary in order for the Debtor to be able to continue to operate its

business and preserve value for its estate. The Debtor respectfully requests that the Court waive the ten-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**NOTICE**

26. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to: (i) the United States Trustee for the District of Delaware; (ii) the parties included on Debtor's list of twenty (20) largest unsecured creditors; and (iii) the Utility Companies identified in Exhibit A. The Debtor submits that no other or further notice is necessary.

**NO PRIOR REQUEST**

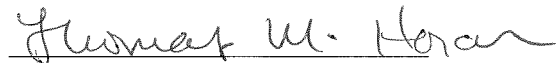
27. No prior request for the relief requested herein has been made to this or any other Court.

**CONCLUSION**

WHEREFORE, the Debtor respectfully requests this Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: June 29, 2009

**WOMBLE CARLYLE SANDRIDGE  
& RICE, PLLC**



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*Proposed Counsel for the Debtor and  
Debtor-in-Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
PUMPKIN PATCH LLC, <sup>1</sup>	)	Case No. 09-12200 (BLS)
	)	
Debtor.	)	<b>Re: D.I. _____</b>
	)	

**INTERIM AND PROPOSED FINAL ORDER DETERMINING ADEQUATE  
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES**

Upon the motion (the “Motion”)<sup>2</sup> of the Debtor for interim and final orders under Bankruptcy Code section 366 determining adequate assurance of payment for future utility services; and upon the Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is GRANTED as set forth in this Order.
2. The Debtor shall be and hereby is authorized to take all actions necessary to effectuate the relief granted under this Order in accordance with the Motion.
3. A Utility Company who requests and accepts an Adequate Assurance Deposit shall be and hereby is deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility Company within the meaning of

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<sup>1</sup> The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 951 Mariners Island Boulevard, Suite 650, San Mateo, CA 94404.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

section 366 of the Bankruptcy Code, and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtor's chapter 11 case except upon a showing of changed circumstances and further order of this Court.

4. The Adequate Assurance Procedures are hereby approved as follows:
  - (a) Except as provided by the Adequate Assurance Procedures, the Utility Companies are forbidden to discontinue, alter or refuse service on account of any unpaid prepetition charges, or require additional adequate assurance of payment other than the Proposed Adequate Assurance, pending the entry of a Final Order or this order becoming a Final Order as set forth in paragraph 12 below.
  - (b) Any Utility Company desiring an Adequate Assurance Deposit must serve a request (an "Adequate Assurance Request") so that it is received by the Debtor at the following addresses: (1) Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022, (Attn: Joseph M. Gitto); and (2) proposed local counsel to the Debtor, Womble Carlyle Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Thomas M. Horan).
  - (c) The Debtor will serve this Motion and a copy of this order on the Utility Companies within three (3) business days after entry of this order.
  - (d) In the event that a Utility Company maintains that the Proposed Adequate Assurance is not satisfactory adequate assurance of payment as contemplated by Bankruptcy Code section 366(c)(2), the Utility Company must serve a request (an "Adequate Assurance Request") so that it is received by the Debtor and its counsel no later than five (5) business days before the Final Hearing (the "Adequate Assurance Request Deadline").
  - (e) Any Adequate Assurance Request must: (i) be made in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtor's payment history relevant to the affected account(s), including any security deposits, (iv) set forth why the Utility Company believes the Proposed Adequate Assurance is not sufficient, (v) set forth what the Utility Company would accept as satisfactory adequate assurance of payment, and (vi) set forth a fax and electronic mail address to which the Debtor may respond to the Adequate Assurance Request.
  - (f) Upon the Debtor's receipt of an Adequate Assurance Request, the Debtor will either (a) advise the Utility Company in writing on or before a day that is no less than three (3) business days before the Final Hearing that the Adequate Assurance Request is acceptable or (b) contest the Utility Company's request under Bankruptcy Code section 366(c)(3) at the Final

Hearing to be held on before the day that is thirty (30) days after the Petition Date, or such other date as the Debtor and the Utility Company may agree.

- (g) The Final Hearing will be an evidentiary hearing at which the Court will determine whether the Proposed Adequate Assurance and the additional adequate assurance of payment requested by the Utility Company should be modified under Bankruptcy Code section 366(c)(3)(A).
- (h) Pending resolution of any such Final Hearing, such particular Utility Company shall be restrained from discontinuing, altering, or refusing service to the Debtor on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

5. Pending a Final Order of this Court or this order becoming a Final Order as set forth in paragraph 12 below, the Utility Companies, including any subsequently added Utility Companies, are prohibited from altering, refusing, or discontinuing service to or discriminating against the Debtor on account of unpaid prepetition invoices or due to the commencement of these cases, or requiring the Debtor to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than in accordance with the Adequate Assurance Procedures contained herein.

6. Any Utility Company that does not serve an Adequate Assurance Request by the Adequate Assurance Request Deadline shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of Bankruptcy Code section 366(c)(2), and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtor's chapter 11 case, except as provided in Bankruptcy Code section 366(c)(3).

7. The Debtor is authorized, in its sole discretion, to amend attached Exhibit A to add or delete any Utility Company, and this order shall apply to any such Utility Company that is subsequently added to Exhibit A to the Motion. For those Utility Companies that are subsequently added to Exhibit A, the Debtor shall serve a copy of this order on such Utility

Company, along with an amended Exhibit A, and such subsequently added entities shall have twenty (20) days from service of this order to make an Adequate Assurance Request.

8. In the event that any Utility Company, including a subsequently added Utility Company, files and/or serves an Adequate Assurance Request after the Adequate Assurance Request Deadline, such request shall be treated as a request under Bankruptcy Code sections 366(b) and shall be granted, if at all, only after the Utility Company making such request schedules such request for hearing, on notice, in accordance with the provisions of the Bankruptcy Code, including section 366(b), and the Federal Rules of Bankruptcy Procedure.

9. The Debtor may, in its discretion, resolve any Adequate Assurance Request by mutual agreement with the Utility Company and without further order of the Court, and may, in connection with any such agreement, in its discretion, provide a Utility Company with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtor believes such additional assurance is reasonable.

10. A Final Hearing shall be conducted on [\_\_\_\_\_, 2009] at [\_\_\_\_\_.m.], Eastern Time.

11. A Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code and not entitled to any additional adequate assurance unless and until (i) the Debtor, in its discretion, agrees to an Adequate Assurance Request or (ii) this Court enters an order at the Final Hearing requiring that additional adequate assurance of payment be provided.

12. Nothing herein constitutes a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Exhibit A attached to the Motion.

13. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof. This order shall be deemed the Final Order with respect to any Utility Company that does not serve either (i) an Adequate Assurance Request by the Adequate Assurance Request Deadline or (ii) file a timely objection.

14. The Debtor is authorized to pay on a timely basis in accordance with its prepetition practices all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtor.

15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this order.

Dated: Wilmington, Delaware

\_\_\_\_\_, 2009

\_\_\_\_\_  
The Honorable Brendan Linehan Shannon  
United States Bankruptcy Judge

**EXHIBIT A**

**List of Utility Providers**

Name and Address of Utility	Account Numbers	Type of Service
Verizon P O Box 660720 Dallas, TX 75266-0720	000 736910970 23 000 899146127 000 838317730	Phone Phone Phone
Verizon Northwest P O Box 9688 Mission Hills, CA 91346-9688	03 242 100 6451090 04 01 2803 1129378641 01 01 1871 1184441945 04	Phone Phone Phone
Verizon Wireless P O Box 9622 Mission Hills, CA 91346-9622	671084039-00001	Wireless cards
Qwest, Business Services P O Box 856169 Louisville, KY 40285-6169	70195656 74873706 74536920	Phone Phone Phone
Qwest P O Box 29040 Phoenix, AZ 85038-9040	623-878-6620 995b 480-917-0487 595b 720-641-6600 457b 303-465-1545 769b 303-469-3328 616b 602-971-1574 998b	Phone Phone Phone Phone Phone Phone

	480-857-0337 579b	Phone
Qwest P O Box 91155 Seattle, WA98111-9255	503-786-0143 489 206-246-5135 181b 253-474-0707 990b	Phone Phone Phone
Qwest, Customer Services Dept Coor. 6000 Parkwood Place Dublin, OH43016	74873705	Phone
AT&T P O Box 5001 Carol Stream, IL60197-5001	972-661-3989 530 5 713-622-7315 143 9 210-348-8721 716 8 281-894-1011-739	Phone Phone Phone Phone
AT&T, Payment Center Sacramento CA95887-0001	818-241-2032-641 818-243-0197-041 714-569-360-472 760-489-0740-685 619-479-4850-195 626-574-9070-252 818-386-0204 435 925-520-0091-0501 415-566-8065-188 818-884-5601 637 951-688-2696-220 650-525-9202-369 661-228-0357 500 0 408-244-9888-573	Phone Phone Phone Phone Phone Phone Phone Phone Phone Phone Phone Phone Phone Phone Phone

AT&T P O Box 78225 Phoenix, AZ85062-8225	055 263 0299 001	Phone
	057 339 7273 001	Phone
	057 339 7189 001	Phone
	051 331 3729 001	Phone
	030 599 1407 001	Phone
AT&T P O Box 16740 Mesa, AZ85201	171-791-4893 530	Internet
	831-000-0735 293	Internet
AT&T P O Box 79112 Phoenix, AZ85062-9112	831-000-0063 998	Internet
AT&T Mobility P O Box 6463 Carol Stream, IL60197-6463	875892067	Mobiles
Covad Communications 110 Rio Robles San Jose, CA95134-1813	589362	Internet
	554878	Internet
	604257	Internet
Surewest P O Box 30697 Los Angeles, CA90030-0697	679149-0001	Phone
Sprint P O Box 66075 Dallas, TX75266-0075	0628164577-9	Wireless cards

Snohomish County PUD P O Box 1100 Everett, WA98206-1100	6530002127	Power
BGE P O Box 13070 Philadelphia, PA19101-3070	9213 901162	Power
TXU P O Box 662888 Dallas, TX75266-2888	421-5669-93-0	Power
Dominion Virginia Power P O Box 26543 Richmond, VA23290-0001	8748291021	Power
Reliant Energy P O Box 650475 Dallas, TX75265-0475	6453 086-8 5-975-113-1	Power Power
Southern California Edison P O Box 300 Rosemead, CA91772-0001	2-28-206-4716 2-29-100-3358	Power Power
San Diego Gas & Electric P O Box 25111 Santa Ana, CA92799-5111	1283-900-140-2 5522-782-800-1	Power Power
LA Dept of Water & Power	3-59-73065-14006-00-0111-6-01	Power

P O Box 30808 Los Angeles, CA90030-0808	3-62-84834-06600-00-1006-3-01	Power
Tacoma Public Utilities City Treasurer, P O Box 11010 Tacoma, WA98411-1010	100423590	Power
Pacific Gas & Electric Box 997300 Sacramento, CA95899-7300	4450198622 431058214-8 5269717741-9	Power Power Power
Xcel Energy P O Box 9477 MPLS, MN55484-9477	53-8421652-8	Power