

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

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-____ (____)
: (Joint Administration Requested)
Debtors. :

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
PURSUANT TO SECTIONS 105(a) AND 366 OF THE BANKRUPTCY CODE (I)
PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING UTILITY SERVICES, (II) DEEMING UTILITY PROVIDERS
ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Alset Owners, LLC, a Delaware limited liability company, and certain of its direct and indirect subsidiaries, the debtors and debtors in possession in the above cases (collectively, the “Debtors”), by and through their undersigned counsel, hereby move this Court (the “Motion”) for entry of (i) an interim order (the “Interim Order”) and (ii) a final order (the “Final Order”) pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”): (a) prohibiting utility providers (each a “Utility Provider” and collectively, the “Utility Providers”) from altering, refusing, or discontinuing services to the Debtors, except as set forth herein; (b) deeming the Utility Providers adequately assured of future performance; and (c) establishing procedures for resolving requests for additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Utility Providers. In support of the Motion, the Debtors respectfully represent:

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); , LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016).

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 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 is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are sections 105 and 366 of the Bankruptcy Code.

BACKGROUND

3. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, the Debtors jointly filed this Motion along with other motions or applications seeking certain typical “first day” relief, including a request to have these cases jointly administered.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. No trustee or examiner has been appointed in these chapter 11 cases, and no official committee of unsecured creditors has been established to date.

6. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief (the “Levitsky Declaration”)², filed contemporaneously herewith and incorporated herein by reference.

² Capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the Levitsky Declaration.

RELIEF REQUESTED

7. By this Motion, the Debtors seek entry of (i) an Interim Order and (ii) a Final Order (a) prohibiting the Utility Providers from altering, refusing, or discontinuing service to the Debtors on account of prepetition invoices, including the making of demands for security deposits or accelerated payment terms; (b) providing that the Utility Providers have “adequate assurance of payment” within the meaning of section 366 of the Bankruptcy Code based, *inter alia*, on the Debtors’ establishment of a segregated account containing an amount equal to fifty percent (50%) of the Debtors’ estimated average monthly cost of utility service, which may be adjusted by the Debtors for reasons specified herein following the final hearing on this Motion; and (c) establishing procedures for resolving requests for additional adequate assurance and authorizing the Debtors to provide adequate assurance of future payment to the Utility Providers.

8. Uninterrupted utility services are essential to the Debtors’ ongoing operations and the success of the Debtors’ reorganization efforts. A disruption of the utility services at any of the Debtors’ restaurants would be costly to the Debtors and harmful to their businesses, as the Debtors are unable to operate at each of its locations without utility service. The business disruption that would likely result from interruption of the utility services would damage customer relationships, revenues, and profits and would adversely affect the Debtors’ restructuring efforts, to the detriment of their estates, creditors, and employees. It is therefore critical that utility services to the Debtors continue uninterrupted.

The Utility Providers

9. In connection with the operation of their businesses and management of their properties, the Debtors incur utility expenses in the ordinary course of business for, among other things, water, sewer service, electricity, gas, local, cellular and long-distance telecom

service, data service, fiber transmission, waste disposal and other similar services (the “Utility Services”). On an aggregate monthly basis, the Debtors spend approximately \$210,000 for the various Utility Services. These Utility Services are provided by scores of Utility Providers nationwide, with which one or more of the Debtors may have multiple utility accounts. A non-exhaustive list of the Utility Providers is attached hereto as Exhibit A.³

The Proposed Adequate Assurance

10. Section 366(a) of the Bankruptcy Code prohibits utilities from altering, refusing, or discontinuing service to a debtor for the first twenty (20) days of a bankruptcy case. However, pursuant to section 366(c)(2) of the Bankruptcy Code, in a chapter 11 case, a utility provider may refuse or discontinue service to a debtor after the first thirty (30) days if the debtor has not furnished the utility provider with adequate assurance of future payment.

11. The Debtors intend to pay all postpetition obligations to the Utility Providers in a timely manner, consistent with the ordinary course of operating their businesses postpetition, and expect that they will have funds sufficient to pay all postpetition utility obligations.

12. As adequate assurance of payment for future services to the Utility Providers as set forth in section 366(c) of the Bankruptcy Code, the Debtors propose to deposit an initial sum equal to fifty percent (50%) of the Debtors’ estimated average monthly cost of Utility Services (the “Adequate Assurance Deposit”), into an interest-bearing, newly-created segregated account (the “Adequate Assurance Account”) within twenty (20) days after the date of entry of the Interim Order. Because the Debtors’ approximate monthly spending on Utility

³ The Debtors reserve the right to argue that any of the entities now or hereafter listed in Exhibit A are not “utilities” within the meaning of section 366(a) of the Bankruptcy Code.

Services is approximately \$210,000, the Adequate Assurance Deposit will be approximately \$105,000.

13. The Debtors further propose to maintain the Adequate Assurance Account with a minimum balance equal to fifty percent (50%) of the Debtors' estimated average monthly cost of Utility Services through at least the final hearing on the Motion. Thereafter, the Debtors propose to adjust the amount in the Adequate Assurance Account to reflect several factors: (i) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests (as defined below), (ii) agreements with Utility Providers, and (iii) to remove from the monthly spending figure cited in the preceding paragraph any amount spent on Utility Services from Utility Providers that already hold deposits or other security from the Debtors for such Utility Services. These adjustments will permit the Debtors to maintain the Adequate Assurance Account with an amount that consistently provides the Utility Providers that do not otherwise hold deposits or security for their Utility Services with a half-month deposit on account of such services.

14. The Debtors submit that maintenance of the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business (together, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility Providers.

15. These protections ensure that all Utility Providers will have adequate assurance of payment throughout these cases, and the Debtors believe that no other or further assurance is necessary. However, if any Utility Provider believes adequate assurance is required beyond the protections described herein, it must request such assurance pursuant to the procedures described below.

Proposed Adequate Assurance Procedures

16. In light of the severe consequences to the Debtors of any interruption in services by the Utility Providers, but recognizing the right of the Utility Providers to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors propose that the Court approve and adopt the following procedures (the “Adequate Assurance Procedures”):

- a. The Debtors will serve a copy of this Motion, together with the proposed final utility order, which includes the proposed procedures, on each Utility Provider within three (3) business days after entry of the Interim Order by the Court.⁴
- b. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtors, the Utility Provider must serve a request for additional adequate assurance (the “Additional Assurance Request”) so that it is received by the Debtors at the following addresses: (i) Atles-Setla, 1200 North Federal Highway, Boca Raton, Florida, 33432 Attn: Leonard Levitsky, and (ii) Blank Rome LLP, 1201 North Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell.
- c. Any Additional Assurance Request must (i) be in writing; (ii) set forth the location(s) for which Utility Services are provided; (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient additional adequate assurance of future payment.
- d. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request, if the Debtors, in their discretion, determine that the Additional Assurance Request is reasonable.
- e. If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution

⁴ In addition, the Debtors seek authority, without further order of this Court, to supplement the list of Utility Providers on Exhibit A if any Utility Provider has been inadvertently omitted and to increase the Adequate Assurance Deposit accordingly. If the Debtors supplement the list subsequent to the filing of this Motion, the Debtors will serve a copy of this Motion and the proposed final utility order on any Utility Provider (the “Supplemental Utility Provider”) that is added to the list by such supplement (the “Supplemental Service”).

with the Utility Provider within thirty (30) days of receipt of the Adequate Assurance Request (the “Resolution Period”), the Debtors will request a hearing before this Court within a reasonable time after the Resolution Period to determine the adequacy of assurance of payment with respect to the requesting Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code. Such hearing will be without prejudice to the right of any Utility Provider to seek relief separately under section 366(c)(3) of the Bankruptcy Code (any hearing requested by the Debtors or a Utility Provider, the “Determination Hearing”).

- f. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be restrained from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- g. The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility Provider that does not make an Additional Assurance Request.

17. The Debtors request a final hearing on this Motion to be held within thirty (30) days of the Petition Date to ensure that, if a Utility Provider argues that it can unilaterally refuse service to any of the Debtors on the thirty-first (31st) day after the Petition Date, the Debtors will have the opportunity, to the extent necessary, to request that the Court make such modifications to the Adequate Assurance Procedures in time to avoid any potential termination of Utility Services.

DISCUSSION

18. Section 366 of the Bankruptcy Code is the starting point for determining whether proposed adequate assurance for utilities is in fact adequate. While the form of adequate assurance of payment may be limited under section 366(c) to the types of security enumerated in section 366(c)(1)(A), the amount of the deposit or other form of security remains within the

reasonable discretion of the Court.⁵ It is well established that the requirement that a utility receive adequate assurance of payment does not require a guarantee of payment. *See, e.g., In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996); *In re Penn Jersey Corp.*, 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (stating that section 366(b) “contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor’s financial circumstances ...”). Instead, the protection granted to a utility is intended to avoid exposing the utility to an unreasonable risk of nonpayment. *See, e.g., Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (1st Cir. B.A.P. 1981). Further, courts have recognized that, in determining what constitutes “adequate” assurance, a bankruptcy court must “focus upon the need of the utility for assurance, and ... require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Virginia Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 650 (2d Cir. 1997) (quoting *Penn Jersey*, 72 B.R. at 985).

19. The Debtors submit that on the facts of the instant cases, the Proposed Adequate Assurance gives the Utility Providers ample assurance of payment. The facts and circumstances demonstrate that the Debtors operate a prominent and well-established business with ample liquidity to honor their postpetition obligations to the Utility Providers. To bolster the Utility Providers’ assurance of payment even further, the Debtors propose to make the Adequate Assurance Deposit, the initial amount of which will equal fifty percent (50%) of their average monthly expenditures for all Utility Services (subject to adjustment as described in paragraph 13, *supra*, after the date of the final hearing on the motion), into an interest-bearing,

⁵ Section 366(c)(1)(A) provides that “assurance of payment” may be in the form of cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or another form of security that is mutually agreed on between the utility and the debtor. 11 U.S.C. § 366(c)(1)(A).

newly-created, segregated account for the express purposes of providing adequate assurance to the Utility Providers. This segregated fund provides concrete assurance of the Debtors' payment of their future obligations to the Utility Providers. That assurance alone satisfies section 366's requirement for adequate assurance of payment.

20. The Debtors propose to protect the Utility Providers further by establishing the Adequate Assurance Procedures provided herein, under which any Utility Provider can request additional adequate assurance in the event that it can demonstrate facts and circumstances that it is deserving of greater protection. Establishing a single set of Adequate Assurance Procedures is necessary for the efficient administration of these estates. Although the Debtors do not believe that any Utility Provider should require assurance of payment beyond that afforded by the Adequate Assurance Deposit, the centralized Adequate Assurance Procedures ensure that any requests therefor can be addressed in a timely and organized fashion by the Debtors and their professionals.

21. The mechanisms proposed in this Motion strike a reasonable, common-sense balance between providing "adequate assurance of payment for utility service that is satisfactory" as set forth in section 366(c)(2) of the Bankruptcy Code, on the one hand, and the Debtors' well-recognized need to conserve cash for use in their business on the other. The need to strike this balance has been acknowledged by courts and commentators since the 2005 amendments to section 366. *See, e.g., In re Syroco, Inc.*, 374 B.R. 60, 61-62 (Bankr. D.P.R. 2007) (holding that a court may order assurance of payment to a utility provider to be adequate absent objection from the utility provider); *In re Beach House Property, LLC*, 2008 WL 961498 (Bankr. S.D. Fla. 2008) (holding that a court may determine the form of adequate assurance to be provided to a utility provider absent agreement of the parties on the issue). In light of the need to

strike that balance, section 366 should “be read to require a utility to bargain in good faith with the trustee or debtor in possession before electing to discontinue service thereafter.” *See Bertrand Pan & Jennifer Taylor, Sustaining Power: Applying 11 U.S.C. § 366 in Chapter 11 Post-BAPCPA*, 22 Bankr. Dev. J. 371, 382, 389 (2006) (stating that Congress’s intent could not have been to allow a utility unfettered discretion in determining what constitutes a satisfactory assurance of payment, because such an interpretation would be “completely inconsistent with the purpose of 366,” and that “reading 366(c) to require a utility to negotiate in good faith ... would enable courts to give utilities deference in the negotiating process, but also prevent utilities from refusing to negotiate or making unreasonable demands in the negotiation process”).

22. The Debtors propose the Adequate Assurance Procedures as a mechanism to facilitate good faith bargaining between the Debtors and the Utility Providers and as a means to ensure that the determination of whether adequate assurance is satisfactory to the Utility Providers is balanced and reasonable in the event that any of the Utility Providers believe they are entitled to protection beyond that afforded by the proposed Adequate Assurance Deposit. The Adequate Assurance Procedures also ensure that the Utility Providers are not prejudiced by the continuation of the Utility Services, given that they have a full and fair opportunity on notice to make any requests for additional assurance of payment to the Bankruptcy Court.

23. In addition to its powers to grant the relief sought in this Motion under section 366, this Court also has the authority to grant the relief requested herein pursuant to section 105(a) of the Bankruptcy Code, which provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) is “to assure the bankruptcy courts [sic] power to take whatever action is appropriate or necessary in aid of the exercise of their

jurisdiction.” *Collier on Bankruptcy*, ¶ 105.01 (15th rev. ed. 2008). For all of the reasons described herein, the proposed Adequate Assurance Procedures protect the Debtors without materially prejudicing the Utility Providers. Therefore, the proposed Adequate Assurance Procedures implement section 366 in a manner fully consistent therewith and are an appropriate exercise of this Court’s authority under section 105(a) of the Bankruptcy Code.

24. This Court has granted relief similar to that requested herein – *i.e.*, establishment of an adequate assurance deposit equal to 50% of monthly expenditures on utilities and comparable adequate assurance procedures – in other chapter 11 cases pursuant to its powers under sections 105(a) and 366 of the Bankruptcy Code. *See, e.g., In re Linens Holdings Co.*, Case No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008 (interim order), May 27, 2008 (final order)); *In re Hilex Poly Co. LLC*, Case No. 08-10890 (KJC) (Bankr. D. Del. May 7, 2008 (interim order), May 22, 2008 (final order)); *In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Jan. 23, 2008 (interim order), Feb. 28, 2008 (final order)). The relief sought in this Motion thus represents reasonable means of adequately assuring payment for the Utility Services while ensuring that the Debtors’ businesses are permitted to operate without the prospect of disruptions that would result from the interruption of those services.

NOTICE

25. Notice of this Motion has been provided to: (a) the Office of the United States Trustee; (b) the United States Securities and Exchange Commission; (c) the Office of the United States Attorney for the District of Delaware; (d) the Internal Revenue Service; (e) the Debtors’ thirty (30) largest unsecured creditors on a consolidated basis; (f) Textron Financial Corporation; and (g) counsel to Checkers Drive-In Restaurants, Inc. In light of the nature of the

relief requested herein, the Debtors submit that no other or further notice is necessary or required.

26. Notice of entry of the Interim Order and notice of the hearing on the final relief requested herein also will be provided to the Utility Providers, each other party that the Debtors believe could be affected by this Motion, and all other parties required to receive service under Rule 2002-1(b) of the Local Rules.

NO PRIOR REQUEST

27. The Debtors have not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an Interim Order, in substantially the form attached hereto, and a Final Order, in substantially the form attached hereto, (a) prohibiting Utility Providers from altering, refusing, or discontinuing services to the Debtors, except as set forth herein; (b) deeming the Utility Providers adequately assured of future performance; (c) establishing the Adequate Assurance Procedures and authorizing the Debtors to perform in accordance therewith; and (d) granting such other and further relief as the Court deems just and proper.

Dated: June 5, 2009

BLANK ROME LLP

By: /s/ Bonnie Glantz Fatell
Bonnie Glantz Fatell (No. 3809)
David W. Carickhoff (No. 3715)
1201 North Market Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464

-and-

Michael Z. Brownstein
Rocco A. Cavaliere
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
Telephone: (212) 885-5000
Facsimile: (212) 885-5001

PROPOSED ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION

EXHIBIT A

Exhibit A

Vendor Name	Vendor Address	Service Provided
AT&T	Attn: Bankruptcy Department 208 S. Akard Street Dallas, TX 75202	Telephone
AT&T	aka SBC Ameritech PO Box 8101 Aurora, IL 60507	Telephone
Century Tel	Attn: General Counsel, CenturyTel Service Group LLC 100 CenturyTel Drive Monroe, TX 71203	Telephone
Global Crossing Telecommunications Inc.	Attn: Bankruptcy Department 200 Park Avenue, Suite 300 Florham Park, NJ 07932	Telephone
Verizon	Attn: General Counsel 140 West Street New York, NY 10007	Telephone
Embarq	Attn: Bankruptcy Department 5454 W. 110th Street Overland Park, KS 66211	Telephone
Windstream	Attn: Bankruptcy Department 130 W New Circle Road Lexington, KY 40505	Telephone
Horizon	68 E Main St PO Box 480 Chillicothe, OH 45601	Telephone
TMobile	PO Box 790047 St. Louis, MO 63179	Cellular Service
Utility Bi	PO Box 8100 Little Rock, AR 72203	Water and Sewer
City of St. Louis Water Division	Dept of Public Utilities 1640 S. Kings Highway St. Louis, MO 63110	Water and Sewer

Metropolitan St. Louis Sewer District	2350 Market Street St. Louis, MO 63103	Water and Sewer
Missouri A.	PO Box 94551 Palatine, IL 60094	Water and Sewer
Illinois A	PO Box 94551 Palatine, IL 60094	Water and Sewer
City of Arnold	Tax Collector 2101 Jeffco Blvd Arnold, MO 63010	Water and Sewer
Public Water Supply District 1 of Jefferson County	2970 Schneider Drive Arnold, MO 63010	Water and Sewer
City of Crystal City	Water Department 130 Mississippi Ave Crystal City, MO 63019	Water and Sewer
City of O'Fallon	Department of Water, Sewer & Stormwater O'Fallon Municipal Centre 100 North Main Street O'Fallon, MO 63166	Water and Sewer
Alton City Treas.	Alton City Hall Dept of Water and Sewer 101 E 3rd St Alton, IL 62002	Water and Sewer
Caseyville Township Sewer	224 Forest Oaks Dr Caseyville, IL 62232	Water and Sewer
O'Fallon Water	255 S Lincoln Ave O'Fallon, IL 62269	Water and Sewer
Village of Cahokia	Sewer Dept 201 W 4th Ct Cahokia, IL 62206	Water and Sewer
Commonfield	Public Water District 2525 Mousette Ln Cahokia, IL 62206	Water and Sewer
American Bottoms Regional Treatment Plant	2001 Mississippi Avenue East Saint Louis, IL 62201	Water and Sewer

City of Granite City	2000 Edison Ave Granite City, IL 62040	Water and Sewer
Illinois-A	PO Box 94551 Palatine, IL 60094	Water and Sewer
City of Edwardsville	118 Hillsboro Ave PO BOX 407 Edwardsville, IL 62025	Water and Sewer
City of Belleville	101 South Illinois Street Belleville, IL 62220	Water and Sewer
Bethalto Water	PO Box 133, Bethalto, IL 62010	Water and Sewer
City of St. Louis	Ronald A Leggett Collector PO Box 66787 St Louis, MO 63166	Water and Sewer
United Water	Attn: Legal Dept 200 Old Hook Road Harrington Park, NJ 07640	Water and Sewer
Utility Bi	PO Box 8100 Little Rock, AR 72203	Water and Sewer
Jacksonville Water	1900 Marshall Road Jacksonville, AR 72076	Water and Sewer
Conway Co.	117 South Moose Street Morrilton, AR 72110	Water and Sewer
City Corporation	Water & Sewer 205 W 3rd Place Russellville, AR 72801	Water and Sewer
Akron Public Utilities Bureau	Attn: Karen 146 South High Street, Room 211 Akron, OH 44308	Water and Sewer
Canton Cit	626 30th St. NW Canton, OH 44709	Water and Sewer
City of Barberton	104 Third St NW Barberton, OH 44203	Water and Sewer

City of Chillicothe	Utilities Department 35 S Paint St Chillicothe, OH 45601	Water and Sewer
City of Columbus	City Treasurer Water And Sewer Department of Public Utilities 910 Dublin Road Columbus, OH 43215	Water and Sewer
City of Dayton	Water & Sewer 320 W Monument Ave Dayton, OH 45402	Water and Sewer
City of Delaware	Municipal Bldg Public Utilities Billing Dept, Attn: Deb Brenner One South Sandusky Street Delaware, OH 43015	Water and Sewer
City of Fairborn	44 W Hebble Ave Fairborn, OH,45324	Water and Sewer
City of Huber Heights	6569 Brandt Pike P.O. Box 24099 Huber Heights, OH, 45424	Water and Sewer
City of Lakewood	DIVISION OF WATER WWC Cleveland Division of Water 1201 Lakeside Avenue Cleveland, OH 44114	Water and Sewer
City of Lima Utilities	Lima Municipal Center 50 Town Square Lima, OH 45801	Water and Sewer
City of Marion	Utilities Department 233 West Center Street Marion, OH 43301	Water and Sewer
City of Niles	34 W State St. Nile, OH 44446	Water and Sewer
City of Piqua	UTILITIES DEPARTMENT 201 W Wate St, Piqua, OH, 45356	Water and Sewer
City of Springfield	76 East High Street	Water and Sewer

	Springfield, OH 45502	
City of Sidney	201 W Poplar St. Sidney, OH 45365	Water and Sewer
City of Xenia	101 N. Detroit Xenia, OH 45385	Water and Sewer
City of Zanesville	401 Market St. Zanesville, OH 43701	Water and Sewer
City of Cleveland Division of Water	4600 Harvard Avenue Cleveland, OH 44105	Water and Sewer
Division of Water	4600 Harvard Avenue Cleveland, OH 44105	Water and Sewer
East Cleveland Water	14441 Euclid Avenue Cleveland, OH 44112	Water and Sewer
Elyria Pub	131 Court Street, #102 Elyria, OH 44035	Water and Sewer
Lancaster Utilities	104 E Main Street Lancaster, OH 43130	Water and Sewer
MONTGOMERY CNTY SANITARY	1850 Spaulding Rd. P.O. Box 817601 Dayton, OH 45481	Water and Sewer
Northeast Ohio Regional Sewer District	3900 Euclid Avenue Cleveland, OH 44115	Water and Sewer
City of Newark Division of Water and Wastewater	34 S. Fifth Street Newark, OH 43055	Water and Sewer
Ohio-American Water	365 East Center Street Marion, OH 43302	Water and Sewer
Samco Inc.	11905 Lakeside Drive Fishers, IN 46038	Water and Sewer
Utility Department	135 N. Detroit St. Bellefontaine, OH 43311	Water and Sewer
City of Big Rapids	UTILITIES PAYMENT 226 N. Michigan Ave.	Water and Sewer

	Big Rapids, MI 49307	
City of Cadillac	UTILITIES DEPT 200 N Water St. Cadillac, MI 49601	Water and Sewer
Muskegon County	DEPT OF PUBLIC WORKS 131 E. Apple Muskegon, MI 49442	Water and Sewer
Muskegon Sewer & Water	1350 E Keating Avenue Muskegon, MI 49442	Water and Sewer
City of Southhaven	539 Phoenix St. South Haven, MI 49090	Water and Sewer
Ameren CIPS	Attn: Bankruptcy Department One Ameren Plaza 1901 Chouteau Avenue St. Louis, MO 63103	Electricity Expense
Amerenip	Attn: Bankruptcy Department One Ameren Plaza 1901 Chouteau Avenue St. Louis, MO 63103	Electricity Expense
Amerenue	Attn: Bankruptcy Department One Ameren Plaza 1901 Chouteau Avenue St. Louis, MO 63103	Electricity Expense
Conway Co.	117 South Moose Street Morrilton, AR 72110	Electricity Expense
Entergy	Attn: Bankruptcy Department 639 Loyola Avenue New Orleans, LA 70113	Electricity Expense
North Little Rock Electric	Attn: Bankruptcy Department 120 Main Street North Little Rock, AR 72114	Electricity Expense
American Electric Power	Attn: Bankruptcy Department 1 Riverside Plaza Columbus, OH 43215	Electricity Expense
City Treasury - Electric	90 W Broad Street City Hall, Room 111	Electricity Expense

	Columbus, OH 43215	
Cleveland Public Power	Attn: Bankruptcy Department 1300 Lakeside Avenue East Cleveland, OH 44114	Electricity Expense
Dayton Power & Light	Attn: Bankruptcy Department 1065 Woodman Drive Dayton, OH 45432	Electricity Expense
Ohio Edison Company	Attn: Bankruptcy Department 76 S. Main Street Akron, OH 44308	Electricity Expense
City of Piqua	Attn: Utilities Department 201 W Water Street Piqua, OH 45356	Electricity Expense
The Illuminating Company	Attn: Bankruptcy Department 76 S. Main Street Akron, OH 44308	Electricity Expense
Consumers	Attn: Bankruptcy Department 1 Energy Plaza Jackson, MI 49201	Electricity Expense
City of South Haven	539 Phoenix Street South Haven, MI 49090	Electricity Expense
Centerpoint Energy, Inc.	Attn: Bankruptcy Dept 1111 Louisiana Street Houston, TX 77002	Gas Expense
Laclede Gas Company	Attn: Bankruptcy Dept 720 Olive Street St. Louis, MO 63101	Gas Expense
Missouri Natural Gas	Attn: Bankruptcy Dept 720 Olive Street St. Louis, MO 63101	Gas Expense
Ameren CIPS	Attn: Bankruptcy Department One Ameren Plaza 1901 Chouteau Avenue St. Louis, MO 63103	Gas Expense
Amerenip	Attn: Bankruptcy Department One Ameren Plaza	Gas Expense

	1901 Chouteau Avenue St. Louis, MO 63103	
Columbia Gas	Attn: Bankruptcy Dept 200 Civic Center Drive Columbus, OH 43215	Gas Expense
Dominion	Attn: Bankruptcy Dept 120 Tredeger Street Richmond, VA 23219	Gas Expense
Lancaster Utilities	104 E. Main St. Lancaster, OH 43130	Gas Expense
The Energy Cooperative	1500 Granville Road Newark, OH 43058	Gas Expense
Tiger Inc.	1422 East 71st Street Suite J Tulsa, OK 74136	Gas Expense
Vectren Energy Delivery	One Vectren Square Evansville, IN 47708	Gas Expense
DTE Energy	Attn: Bankruptcy Dept 2000 2nd Avenue Detroit, MI 48226	Gas Expense
Michigan Gas Utilities Corporation	899 S Telegraph Road Monroe, MI 48161	Gas Expense

PROPOSED INTERIM ORDER

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

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-____ (____)
: (Joint Administration Requested)
Debtors. :

Re: Docket No. __

**INTERIM ORDER PURSUANT TO SECTIONS 105(a)
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(I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
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ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of (i) an Interim Order and (ii) a Final Order (a) prohibiting Utility Providers from altering, refusing, or discontinuing services to the Debtors, except as set forth herein; (b) deeming the Utility Providers adequately assured of future performance; and (c) establishing procedures for resolving requests for additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Utility Providers; and upon the Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances and that no other or further notice need be provided; and it appearing that the

¹ The Debtors and the last four digits of their respective tax identification numbers are: Alset Owners, LLC, a Delaware limited liability company (7520); , LLC, a Delaware limited liability company (6927); Setla, LLC, a Delaware limited liability company (6752); and Checkers Michigan, LLC, a Delaware limited liability company (8016).

² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

relief requested by the Motion is in the best interests of the Debtors' estates, the Debtors' creditors and other parties-in-interest in these cases; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis.
2. The Debtors are authorized, but not directed, to pay on a timely basis and in accordance with their prepetition practices, all undisputed invoices for postpetition Utility Services provided by the Utility Providers (listed on Exhibit A to the Motion).
3. The Debtors shall, on or before twenty (20) days after the Petition Date, deposit the sum of \$105,000 into an interest-bearing, newly-created, segregated account (the "Adequate Assurance Account"), which sum is equal to approximately fifty percent (50%) of the Debtors' estimated average monthly cost of Utility Services (the "Adequate Assurance Deposit"), pending further order of the Court, for the purpose of providing each Utility Provider adequate assurance of payment of its postpetition Utility Services to the Debtors. Through the date that the Final Order approving the Motion is entered, the Adequate Assurance Deposit shall remain in the Adequate Assurance Account.
4. Except in accordance with the procedures set forth herein and absent further order from this Court, all Utility Providers are (i) prohibited from altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or any unpaid prepetition charges; and (ii) deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

5. The Debtors shall serve a copy of the Motion, this Interim Order and the proposed Final Order on each Utility Provider within three (3) business days after entry of this Interim Order by the Court.

6. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtors, the Utility Provider shall serve a request for additional adequate assurance (the "Additional Assurance Request") so that it is received by the Debtors at the following addresses: (i)-Selta, 1200 North Federal Highway, Boca Raton, Florida, 33432, Attn: Leonard Levitsky, and (ii) Blank Rome LLP, 1201 North Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell.

7. Any Additional Assurance Request shall (i) be in writing; (ii) set forth the location(s) for which Utility Services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient assurance of future payment.

8. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request, if the Debtors, in their discretion, determine that the Additional Assurance Request is reasonable.

9. If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider within thirty (30) days of receipt of the Adequate Assurance Request (the "Resolution Period"), the Debtors will request a hearing before this Court within a reasonable time after the Resolution Period to determine the adequacy of assurances of payment with respect to a particular Utility

Provider pursuant to section 366(c)(3) of the Bankruptcy Code, without prejudice to the right of any Utility Provider to seek relief separately under section 366(c)(3) of the Bankruptcy Code (any hearing requested by the Debtors or a Utility Provider, the “Determination Hearing”).

10. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be restrained from altering, refusing, or discontinuing services to, or discriminating against, the Debtors solely on the basis of commencement of these chapter 11 cases or unpaid prepetition charges or alleged lack of adequate assurance of payment.

11. The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility Provider that does not make a timely Additional Assurance Request.

12. The Debtors may supplement the list of Utility Providers on Exhibit A to the Motion at any time, provided, however, that the Debtors shall increase the Adequate Assurance Deposit by an amount equal to the sum of 50% of the Debtors estimated monthly cost of utility service with respect to any such Utility Provider that is subsequently added to a supplement to Exhibit A of the Motion. Any subsequently identified Utility Provider set forth on a supplemental exhibit will fall within the scope of this Order from the date of the filing of the supplemental exhibit. Any Utility Provider included on a supplemental exhibit shall be served with notice and a copy of this Order within five (5) business days after the supplemental exhibit is filed with the Court. Any request made by such Utility Provider must comply with the requirements of this Order, except that time for such Utility Provider to make an Additional Assurance Request shall be thirty (30) days from the date this Order is served.

13. Nothing in this Interim Order or the Motion shall be deemed to constitute postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

14. A final hearing, if required, on the Motion will be held on _____ 2009, at _____ (EST), which hearing may also serve as a Determination Hearing. The deadline by which any objection to the Motion must be filed and served on counsel to the Debtors is _____, 2009, at _____ (EST). The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order. If no objections are filed to the Motion, this Court may enter a Final Order on the Motion without further notice or hearing.

15. The terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

16. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

17. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Interim Order.

Dated: June __, 2009

United States Bankruptcy Judge

PROPOSED FINAL ORDER

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

In re: : Chapter 11
: :
ALSET OWNERS, LLC, *et al.*,¹ : Case No. 09-____ (____)
: (Joint Administration Requested)
Debtors. :

Re: Docket Nos. ____ and ____

**FINAL ORDER PURSUANT TO SECTIONS 105(a)
AND 366(b) OF THE BANKRUPTCY CODE
(I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING UTILITY SERVICES, (II) DEEMING UTILITY PROVIDERS
ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of (i) an Interim Order and (ii) a Final Order (a) prohibiting Utility Providers from altering, refusing, or discontinuing services to the Debtors, except as set forth herein; (b) deeming the Utility Providers adequately assured of future performance; and (c) establishing procedures for resolving requests for additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Utility Providers; and upon the Declaration of Leonard Levitsky in Support of Chapter 11 Petitions and First Day Relief; and the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (c) notice of the Motion was due and proper under the circumstances and that no other or further notice need be provided; and an Interim Order on this

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² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

matter having been entered on June ____, 2009; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates, the Debtors' creditors and other parties-in-interest in these cases; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis.
2. The Debtors are authorized to pay on a timely basis and in accordance with their prepetition practices, all undisputed invoices for postpetition Utility Services provided by the Utility Providers to the Debtors.
3. The Debtors shall maintain the Adequate Assurance Account, as provided in the Interim Order, for the purpose of providing each Utility Provider adequate assurance of payment of postpetition Utility Services provided to the Debtors. The Adequate Assurance Account shall be maintained with a minimum balance equal to fifty percent (50%) of the Debtors' estimated average monthly cost of Utility Services, which may be adjusted by the Debtors to account for: (i) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests, (ii) agreements with Utility Providers, and (iii) to remove from the Adequate Assurance Account any amount for Utility Services provided by Utility Providers that already hold deposits from the Debtors for such Utility Services.
4. Except in accordance with the procedures set herein and absent further order from this Court, all Utility Providers are (i) prohibited from altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or any unpaid prepetition charges or any alleged lack of adequate assurance of payment; and (ii) deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

5. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtors, the Utility Provider shall serve a request for additional adequate assurance (the “Additional Assurance Request”) so that it is received by the Debtors at the following addresses: (i) Atles-Setla, 1200 North Federal Highway, Boca Raton, Florida, 33432, Attn: Leonard Levitsky, and (ii) Blank Rome LLP, 1201 North Market Street, Suite 800, Wilmington, DE 19801, Attn: Bonnie Glantz Fatell, Esq.

6. Any Additional Assurance Request shall (i) be in writing; (ii) set forth the location(s) for which Utility Services are provided; (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient assurance of future payment.

7. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request, if the Debtors, in their discretion, determine that the Additional Assurance Request is reasonable.

8. If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider within thirty (30) days of receipt of the Adequate Assurance Request (the “Resolution Period”), the Debtors will request a hearing before this Court within a reasonable time after the Resolution Period to determine the adequacy of assurances of payment with respect to a particular Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code, without prejudice to the right of any Utility Provider to seek relief separately under section 366(c)(3) of the Bankruptcy Code (any hearing requested by the Debtors or a Utility Provider, the “Determination Hearing”).

9. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be restrained from altering, refusing, or discontinuing services to, or discriminating against, the Debtors solely on the basis of commencement of these chapter 11 cases or unpaid prepetition charges or alleged lack of adequate assurance of payment.

10. The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility Provider that does not make a timely Additional Assurance Request or otherwise does not reach a separate agreement with the Debtors.

11. The Debtors may supplement the list of Utility Providers on Exhibit A to the Motion at any time, provided, however, that the Debtors shall increase the Adequate Assurance Deposit by an amount equal to the sum of 50% of the Debtors estimated monthly cost of utility service with respect to any such Utility Provider that is subsequently added to a supplement to Exhibit A of the Motion. Any subsequently identified Utility Provider set forth on a supplemental exhibit will fall within the scope of this Final Order from the date of the filing of the supplemental exhibit. Any Utility Provider included on a supplemental exhibit shall be served with notice and a copy of this Final Order within five (5) business days after the supplemental exhibit is filed with the Court. Any request made by such Utility Provider must comply with the requirements of this Order, except that time for such Utility Provider to make an Additional Assurance Request shall be thirty (30) days from the date this Final Order is served.

12. Nothing in this Final Order or the Motion shall be deemed to constitute postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

13. The Debtors shall serve a copy of this Final Order on each Utility Provider within three (3) business days after entry of this Final Order.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

15. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Final Order.

Dated: June ___, 2009

United States Bankruptcy Judge