

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

In re:	)	
	)	
	)	Case No. 12-22602
DICKINSON THEATRES, INC.,	)	
a Kansas corporation,	)	Chapter 11
	)	
Debtor.	)	

**MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO SECTION 366 OF THE BANKRUPTCY CODE (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICES ON ACCOUNT OF PRE-PETITION INVOICES; (II) DETERMINING THAT THE UTILITIES ARE ADEQUATELY ASSURED OF FUTURE PAYMENT; (III) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ASSURANCE OF FUTURE PAYMENT; (IV) GRANTING CERTAIN RELATED RELIEF; AND (V) SCHEDULING A FINAL HEARING DATE**

Dickinson Theatres, Inc. debtor and debtor-in-possession in the above-captioned case (the "Debtor"), by and through its undersigned counsel, hereby moves this Court for entry of interim and final orders (i) prohibiting utilities from altering, refusing or discontinuing services on account of pre-petition invoices; (ii) determining that the utilities are adequately assured of future payment; (iii) establishing procedures for determining requests for additional assurance of future payment; and (iv) granting certain related relief (the "Motion"). In support of this Motion, the Debtor respectfully represents as follows:

**JURISDICTION**

1. The Court has jurisdiction over the Motion under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 case in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is Section 366 of Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, as amended, the "Bankruptcy Code").

## BACKGROUND

3. On September 21, 2012 (the "Petition Date"), the Debtor filed its voluntary petition in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code, commencing the Debtor's chapter 11 case (the "Chapter 11 Case"). The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. With its voluntary petition, the Debtor contemporaneously filed this Motion and an Emergency Motion for Expedited Hearings on Certain Motions and Applications (the "Hearing Motion"), wherein the Debtor requests an expedited hearing on, *inter alia*, this Motion.

5. The Debtor operates 18 movie theatres with 210 screens in seven states (the "Business"). All theatres are operated from leased facilities with the Debtor not operating any theatres from owned locations. The Business employs approximately 36 full-time employees, and approximately 650 part-time employees (collectively, the "Employees"), at the various theatres. All of these Employees are on payroll of, and paid by, the Debtor.

6. Contemporaneously with the filing of its Chapter 11 petition, the Debtor filed a plan of reorganization (the "Plan") and disclosure statement ("Disclosure Statement") and requested the Court to schedule hearings on the adequacy of the Disclosure Statement and confirmation of the Plan. The proposed Plan provides for payment of all allowed claims in full with interest over five years.

7. Upon emergence and consummation of the Plan, Debtor will be significantly stronger and better able to compete and thrive in the highly competitive theatre/entertainment market.

**RELIEF REQUESTED**

8. Pursuant to Section 366(a) of the Bankruptcy Code, the Debtor hereby seeks entry of an interim order (the "Interim Order"): (a) prohibiting those utility companies (collectively, the "Utility Companies" and each, individually, a "Utility Company") currently providing services, or that will provide services, to the Debtor from altering, refusing or discontinuing services to, or discriminating against, the Debtor on account of pre-petition amounts due, pending entry of a final order granting the relief sought herein (the "Final Order"); (b) determining that the Utility Companies have received adequate assurance of payment for post-petition utility service; (c) establishing certain procedures for determining requests for additional assurance; (d) permitting Utility Companies to opt out of the procedures established herein; and (e) scheduling a final hearing on the Motion (the "Final Hearing") within 30 days of the Petition Date. The Debtor will seek entry of the Final Order granting the relief requested herein on a permanent basis at the Final Hearing.

9. Specifically, the Debtor seeks immediate entry of an Interim Order providing that:

- a. Utility Companies are prohibited from altering, refusing or discontinuing services on account of pre-petition invoices;
- b. if a Utility Company accepts payment of a pre-petition claim,<sup>1</sup> the Utility Company shall be deemed to be adequately assured of future payment and to have waived any right to seek additional adequate assurances in the form of a deposit or otherwise;

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<sup>1</sup> In its Motion for Authorization Pursuant to 11 U.S.C. § 105(a) to Pay Pre-petition Claims of Critical Trade Vendors filed contemporaneously herewith, the Debtor has separately sought authority to pay pre-petition claims of vendors including the Utilities.

c. if a Utility Company timely and properly requests from the Debtor additional adequate assurance that the Debtor believes is unreasonable, and the debtor is unable to resolve the request consensually with the Utility Company, then upon the request of the Utility Company, the Debtor shall file a motion for determination of adequate assurance of payment and set such motion for hearing at the next regularly-scheduled omnibus hearing occurring more than twenty (20) days after the date of such request, unless another hearing date is agreed to by the parties or ordered by the Court;

d. any Utility Company having made a request for additional adequate assurance of payment shall be deemed to have adequate assurance of payment until the Court enters a final order in connection with such a request finding that the Utility Company is not adequately assured of future payment; and

e. any Utility Company that does not timely and in writing request additional adequate assurance of payment shall be deemed to be adequately assured of payment under Section 366(b) of the Bankruptcy Code.

10. Additionally, the Debtor requests that Utility Companies be required to include with any request for additional adequate assurance of payment a summary of the Debtor's payment history relevant to the affected account(s) and a summary of any deposits received from or utility bonds posted by, the Debtor.

### **FACTS RELEVANT TO THIS MOTION**

#### **A. The Utility Companies**

11. The Debtor currently uses electric, natural gas, heat, water, sewer, waste removal, cable, phone and other similar services provided by the Thirty Four (34) Utility Companies identified on the attached Exhibit A which is incorporated by reference (the "Utility Service List").<sup>2</sup> The Debtor's Utility Companies provide traditional utility services related to the

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<sup>2</sup> The Debtor has made an extensive and good faith effort to identify all Utility Companies and include them on the Utility Service List. For each Utility Company, the Utility Service List presently identifies: the name and address of the Utility Company and the account numbers under which the Utility Company provides services to the Debtor. The inclusion of any entity on, or any omission of any entity from, the Utility Service List is not an admission by the Debtor that such entity is or is not a utility within the meaning of Section 366 of the Bankruptcy Code, and the Debtor reserves its rights with respect thereto. In addition, the Debtor is requesting that this Motion apply to all of the Debtor's Utility Companies, whether or not any given Utility Company is included on the Utility Service List. The Debtor has proposed a procedure for supplementing the Utility Service List. Additionally, it is possible that certain entities may have been mistakenly included on the Utility Service List and, therefore, the Debtor reserves the

day-to-day operation of the Debtor's various facilities and offices. The Debtor estimates that its aggregate average monthly obligations to the Utility Companies on account of services rendered total approximately \$80,000.00 based on the average monthly payments made to the various Utility Companies identified on the Utility Service List. The Debtor believes that it is generally current on all pre-petition obligations due the Utility Companies, other than the accrued, but unbilled, pre-petition obligations for utility services.

12. In certain instances, the Debtor makes payments for utility charges to the landlords from which it has leased real property, instead of being charged by, and making payments to, the Utility Companies. In these instances, the utility charges are separate and distinct from the lease payments made to these landlords. The landlords to whom the Debtor makes payments for utility charges also are identified in Exhibit B.

13. For purposes of this Motion, the landlords identified in Exhibit B with respect to their functions as providers of utility services shall also be referred to as the "Utility Companies."

14. The Utility Companies service the Debtor's corporate headquarters and theatre locations.

15. The Debtor's operations and record keeping are computerized, and its continued operation is dependent on uninterrupted utility service. Insuring that all systems throughout the Debtor are "up and running" is integral to the Debtor's operations. If it is unable to operate its systems, the Debtor's operations would grind to a halt.

16. Thus, in light of these and other obvious reasons, utility services are essential to the ability of the Debtor to sustain operations and maintain services while the Chapter 11 case is pending.

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right to assert that any such entities are not Utility Companies for the purposes of this Motion or Section 366 of the Bankruptcy Code.

17. In addition, the Debtor believes that a great number of Utility Companies have received deposits from the Debtors and/or received other forms of security such as utility bonds posted by the Debtor in their favor.

18. The Debtor intends to pay its post-petition obligations to the Utility Companies timely. The Debtor will make these payments from its cash reserves as of the Petition Date and cash generated through its continued operations.

**B. The Adequate Assurance Deposit**

19. Pursuant to Section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse or discontinue a Chapter 11 debtor's utility service if the utility does not receive from the debtor or the trustee adequate assurance of payment within 30 days of the commencement of the debtor's Chapter 11 case. Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase "assurance of payment" to mean, among other things, a cash deposit. Accordingly, the Debtor proposes to provide a deposit to any requesting Utility Company in an amount equal to the Debtor's calculation of the cost of two (2) weeks' worth of service, based on the historical average over the twelve (12) month period ending before the Petition Date. A request for, and acceptance of, an Adequate Assurance Deposit shall be deemed an acknowledgement and admission by the Utility Company that the Adequate Assurance Deposit is the form of adequate assurance that is satisfactory to it, within the meaning of Section 366 of the Bankruptcy Code. Likewise, any Utility Company that does not timely request an Adequate Assurance Deposit by the Request Deadline and does not file an Objection (as defined herein) and/or timely request to opt out of the Adequate Assurance Procedures (as defined herein) shall be deemed to have adequate assurance that is satisfactory to it, within the meaning of Section 366 of the Bankruptcy Code.

20. The Debtor submits that the availability of the Adequate Assurance Deposit (if timely requested), in conjunction with the Debtor's demonstrated ability to pay for future utility service in the ordinary course of business (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of Section 366 of the Bankruptcy Code. Nonetheless, if any Utility Company believes additional assurance is required, it may request such assurance pursuant to the procedures described below.

**C. The Proposed Adequate Assurance Procedures**

21. To address the right of any Utility Company under Section 366(c)(2) of the Bankruptcy Code to seek adequate assurance satisfactory to it, the Debtor proposes that the following procedures (the "Adequate Assurance Procedures") be adopted:

- a. Any Utility Company desiring assurance of future payment for utility services beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") so that it is received by the Debtor's counsel by the Request Deadline at Stinson Morrison Hecker LLP, 1201 Walnut Street, Suite 2900, Kansas City, Missouri 64106, Attn: Sharon L. Stolte, Esq.
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iii) describe any deposits, prepayments or other security currently held by the requesting Utility Company; (iv) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) set forth the form and amount (if applicable) of additional adequate assurance requested.
- c. Upon the Debtor's receipt of an Additional Assurance Request at the addresses set forth above, the Debtor shall have the greater of (i) 14 days from the receipt of such Additional Assurance Request; or (ii) 30 days from the Petition Date (collectively, the "Resolution Period") to negotiate with the requesting Utility Company to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtor and the applicable Utility Company.

- d. The Debtor, in its discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in its discretion, provide the requesting Utility Company with additional adequate assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtor believes such additional assurance is reasonable.
- e. If the Debtor determines that an Additional Assurance Request is not reasonable, and it is not able to resolve such request during the Resolution Period, the Debtor, during or immediately after the Resolution Period (as the same may be extended by agreement of the Debtor and the Utility Company in question), will request a hearing before this Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the "Determination Hearing"), pursuant to Section 366(c)(3)(A) of the Bankruptcy Code.
- f. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtor on account of unpaid charges for pre-petition services or on account of any objections to the Proposed Adequate Assurance.
- g. Other than through the Opt-Out Procedures (as defined herein), any Utility Company that does not comply with the Adequate Assurance Procedures set forth herein is deemed to have adequate assurance that is satisfactory to it, within the meaning of Section 366 of the Bankruptcy Code, and is forbidden from discontinuing, altering or refusing service on account of any unpaid pre-petition charges, or requiring additional assurance of payment (other than the Proposed Adequate Assurance). The Interim Order shall be deemed the Final Order with respect to all Utility Companies that do not timely file and serve an Objection (as defined herein).

#### **D. The Proposed Opt Out Procedures**

22. As noted above, Section 366(c) of the Bankruptcy Code requires the Debtor to provide utility companies, within 30 days of the Petition Date, with "adequate assurance of payment for utility service that is satisfactory to the utility." 11 U.S.C. § 366(c)(2). Thereafter, any such adequate assurance provided by the Debtor may be modified by the Court after notice and a hearing under Section 366(c)(3)(A) of the Bankruptcy Code. Under the Adequate



Assurance Procedures, however, the Debtor may seek a determination of appropriate adequate assurance at a Determination Hearing held after the first 30 days of these cases, without providing interim assurances deemed "satisfactory" to the Utility Company. Although the Adequate Assurance Procedures are reasonable, certain Utility Companies might assert that the procedures as implemented are not strictly in compliance with Section 366 of the Bankruptcy Code if an adequate assurance dispute is not resolved within the 30 days following the Petition Date. If, as a result, any Utility Company wishes to opt out of the Adequate Assurance Procedures, the Debtor submits that the Court should schedule a hearing and issue a ruling on the amount of adequate assurance to be provided to such Utility Companies within 30 days of the Petition Date.

23. In particular, to avoid any argument that the Debtor has not fully complied with Section 366 of the Bankruptcy Code, the Debtor proposes the following procedures (the "Opt-Out Procedures"):

- a. A Utility Company that desires to opt-out of the Adequate Assurance Procedures must file an objection (the "Objection") with the Bankruptcy Court and serve such Objection so that it is actually received within 15 days of entry of the Interim Order by (including any other parties who require notice pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and/or the local rules of this Court or District) the Debtor's counsel at Stinson Morrison Hecker LLP, 1201 Walnut Street, Suite 2900, Kansas City, Missouri 64106, Attn: Sharon L. Stolte, Esq.
- b. Any Objection must: (i) be made in writing; (ii) set forth the location(s) for which utility services are provided to the Debtor and the relevant account number(s); (iii) describe any deposits, prepayments or other security currently held by the objecting Utility Company; (iv) explain why the objecting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) identify, and explain the basis of, the proposed adequate assurance requirement under Section 366(c)(2) of the Bankruptcy Code.
- c. The Debtor, in its discretion, may resolve any Objection by mutual agreement with the objecting Utility Company and without further order

of the Court, and may, in connection with any such resolution, in its discretion, provide such objecting Utility Company with additional assurance of future payment, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtor believes such additional assurance is reasonable. In the event that the Debtor and any objecting Utility Company, pursuant to this paragraph, consensually resolve an Objection to the Adequate Assurance Procedures, such Utility Company shall withdraw its Objection prior to any hearing date set by the Court.

- d. If the Debtor determines that an Objection is not reasonable and/or the Debtor is not otherwise able to consensually resolve an Objection with a Utility Company, then such Objection will be heard at the Final Hearing.
- e. Any Utility Company that does not timely file an Objection as set forth above is deemed to consent to, and shall be bound by, the Adequate Assurance Procedures.

**E. The Proposed Final Hearing Date**

24. To resolve any Objections within thirty (30) days of the Petition Date, the Debtor requests that the Court schedule the Final Hearing on any unresolved Objections approximately twenty-five (25) days after the Petition Date.

**F. Modifications to the Utility Service List**

25. Debtor's Modifications. It is possible that, despite the Debtor's best efforts, certain Utility Companies have not yet been identified by the Debtor or included on the Utility Service List. To the extent that the Debtor identifies additional Utility Companies, the Debtor will file amendments to the Service List, and shall serve copies of the Interim Order and Final Order (when and if entered) on such newly-identified Utility Companies. The Debtor requests that any Interim Order and Final Order be binding on all Utility Companies, subject to their rights to the Proposed Adequate Assurance and to request additional adequate assurance, regardless of when any given Utility Company was added to the Service List.

## BASIS FOR RELIEF REQUESTED

26. Section 366 of the Code provides:

(a) Except as provided in subsection (b) 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 owned by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) 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. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

11 U.S.C. § 366.

27. Thus, Section 366 protects a debtor against termination of its utility service immediately upon the commencement of its Chapter 11 case, while simultaneously providing utility companies with adequate assurance of payment for post-petition utility service. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 350, *reprinted in* 1978 U.S. Code & Cong. Admin. News 6306. Section 366(c)(1) of the Bankruptcy Code, as recently modified in October 2005, defines "assurance of payment" to mean several enumerated forms of security (*e.g.*, cash deposits, letters of credit, prepayment for utility service) while excluding from the definition certain other forms of security (*e.g.*, administrative expense priority for a utility's claim). In addition, Section 366(c)(3)(B) of the Bankruptcy Code provides that a court may not consider certain facts (*e.g.*, a debtor's pre-petition history of making timely payments to a utility) in making a determination of adequate assurance of payment.

28. While the recently-amended Section 366(c) clarifies what does and does not constitute "assurance of payment" and what can be considered in determining whether such

assurance is adequate, Congress, in enacting that section, did not divest the Court of its power to determine what *amount*, if any, is necessary to provide adequate assurance of payment to a utility company. Indeed, Section 366(c) of the Bankruptcy Code not only fails to establish a minimum amount of adequate "assurance of payment," but explicitly empowers the court to determine the appropriate level of adequate assurance required in each case. *See* 11 U.S.C. § 366(c)(3)(A) ("On request of a party in interest and after notice and a hearing, the Court may order modification of an assurance of payment ....").

29. Thus, there is nothing within Section 366 of the Bankruptcy Code that prevents a court from ruling that, on the facts of the case before it, the amount required to adequately assure future payment to a utility company is nominal, or even zero. Prior to the enactment of Section 366(c) of the Bankruptcy Code, courts enjoyed precisely the same discretion to make such rulings pursuant to Section 366(b) of the Bankruptcy Code, and frequently did so. *See Virginia Elec. & Power Co. v. Caldor, Inc. – N.Y.*, 117 F.3d 646, 650 (2d Cir. 1997) ("Even assuming that 'other security' should be interpreted narrowly, we agree with the appellees that a bankruptcy court's authority to 'modify' the level of the 'deposit or other security,' provided for under § 366(b), includes the power to require no 'deposit or other security' where none is necessary to provide a utility supplier with "adequate assurance of payment.").

30. Moreover, Congress has not changed the requirement that the assurance of payment only be "adequate." Courts construing Section 366(b) of the Bankruptcy Code have long recognized that adequate assurance of payment does not constitute an absolute guarantee of the debtor's ability to pay. *See In re Penn Jersey Corp.*, 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (stating that Section 366(b) of Bankruptcy Code "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"), *abrogated on other grounds by In re Lease-a-Fleet, Inc.*, 131 B.R. 945, 950 n.1 (Bankr. E.D. Pa. 1991); *accord In re Caldor, Inc.-N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with 'adequate assurance' of payment. The statute does not require an 'absolute guarantee of payment.'") (citation omitted), *affd sub nom. Virginia Elec. & Power Co. v. Caldor, Inc.-N.Y.*, 117 F.3d 646 (2d Cir. 1997); *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (same); *Steinbach v. Tucson Elec. Power Co. (In re Steinebach)*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance.... all § 366(b) requires is that a utility be protected from an unreasonable risk of non-payment").<sup>3</sup> Therefore, despite its language allowing a utility to take adverse action against the debtor should the debtor fail to provide adequate assurance of future payment "satisfactory to the utility," Section 366 of the Bankruptcy Code does not require that the assurance provided be "satisfactory" once a party seeks to have the Court determine the appropriate amount of adequate assurances.

31. Whether a utility is subject to an unreasonable risk of nonpayment for post-petition services and whether, therefore, it is entitled to receive a new deposit must be determined from the facts and circumstances of each case. *See Massachusetts Electric Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156 (1st Cir. B.A.P. 1981); *see also In re Woodland Corp.*, 48 B.R. 623 (Bankr. D.N.M. 1985).

32. The Debtor submits that, given the foregoing, entry of the Interim Order is consistent with, and fully satisfies, the requirements of Section 366 of the Bankruptcy Code. Far

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<sup>3</sup> Courts have recognized that "[i]n deciding what constitutes 'adequate assurance' in a given case, a bankruptcy court must 'focus upon the need of the utility for assurance, and to require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.'" *Caldor*, 117 F.3d at 650 (emphasis in original) (quoting *Penn Jersey*, 72 B.R. at 985).

from offering the Utility Companies nominal (or even no) additional assurance of payment, the Debtor seeks authority to provide the Utility Companies, upon request, with significant prepayments for services and procedures pursuant to which the Utility Companies can seek greater or different security. When complemented by the Debtor's ability to pay through access to cash from continued operations, such assurance of payment significantly alleviates – if not eliminates – any honest concern of nonpayment on the part of the Utility Companies, and is thus clearly "adequate."

33. Relief similar to the relief requested herein has been granted by this and other courts in other Chapter 11 cases since the enactment of BAPCPA. *See, e.g., In re Crescent Oil Co., Inc.*, Case No. 09-20258 (RDB) (Bankr. D. Kan. February 18, 2009); *In re Enesco Group, Inc.*, Case No. 07-0565 (ABG) (Bankr. N.D. Ill. Feb. 7, 2007); *In re Werner Holding Co. (DE), Inc.*, Case No. 06-10578 (Carey, K.) (Bankr. D. Del. 2006); *In re Pliant Corporation*, Case No. 06-10001 (Walrath, M.) (Bankr. D. Del. 2006); *In re J.L. French Automotive Castings, Inc.*, Case No. 06-10119 (Walrath, M.) (Bankr. D. Del. 2006).

WHEREFORE, the Debtor respectfully requests immediate entry of an interim order, pending final hearing, (a) prohibiting utilities from altering, refusing or discontinuing service on account of pre-petition invoices and (b) establishing procedures for determining requests for additional adequate assurance, and such other and further relief as the Court deems necessary and proper.

Dated: September 21, 2012

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