

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

In re:

RESTAURANTS ACQUISITION I, LLC,<sup>1</sup>  
  
Debtor.

Chapter 11

Case No. 15-12406 (KG)

Related to Docket Nos. 9 and 37

**FINAL ORDER (I) DETERMINING THAT UTILITY PROVIDERS HAVE BEEN PROVIDED WITH ADEQUATE ASSURANCE OF PAYMENT, (II) APPROVING PROPOSED ADEQUATE ASSURANCE PROCEDURES, (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (IV) DETERMINING THAT DEBTOR IS NOT REQUIRED TO PROVIDE ANY ADDITIONAL ASSURANCE, (V) SCHEDULING A HEARING TO CONSIDER ENTRY OF A FINAL ORDER, AND (VI) GRANTING RELATED RELIEF**

Upon the Motion (the "Motion")<sup>2</sup> of Restaurants Acquisition I, LLC (the "Debtor"), debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Chapter 11 Case"), for entry of an Interim Order and a Final Order, pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rule 6004 (i) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (ii) approving the Adequate Assurance Procedures as proposed herein, (iii) prohibiting the Utility Providers from altering, refusing, or discontinuing Utility Services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate Assurance Procedures, (iv) determining that the Debtor is not required to provide any additional assurance beyond what is proposed in this Motion, (v) scheduling a final hearing to consider entry of the Final Order, and (vi) granting

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<sup>1</sup> The Debtor's mailing address is 313 East Main Street, Suite 2, Hendersonville, TN and the last four digits of its tax identification number are 8761.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings set forth in the Motion or the First Day Declaration, as applicable.

such other and further relief as requested in the Motion or as the Court may otherwise deem necessary or appropriate; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and the Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having heard the statements in support of the relief requested in the Motion at a hearing before the Court on December 4, 2015 (the "First Day Hearing"); and the Court having entered an order approving the Motion on an interim basis following the First Day Hearing; and the Court having held a hearing to consider entry of an order on the Motion on a final basis (the "Final Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the First Day and Final Hearings establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted on a final basis as set forth herein.
2. Absent compliance with the procedures set forth herein, the Debtor's Utility Providers are prohibited from altering, refusing, or discontinuing Utility Service on account of any unpaid prepetition charges or the commencement of the Chapter 11 Case.

3. The Adequate Assurance Deposit, if any, in conjunction with the Debtor's cash position, (a) demonstrates the Debtor's ability to pay for future Utility Services in the ordinary course of business and (b) constitutes adequate assurance to the Utility Providers (the "Proposed Adequate Assurance").

4. The Debtor's Utility Providers are prohibited from requiring additional adequate assurance of payment other than in accordance with the following procedures (the "Adequate Assurance Procedures"):

- a. With respect to each Utility Provider, the Debtor will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within five (5) business days of the Debtor's identification of such Utility Provider; provided, however, that to the extent any Utility Provider ultimately receives any value from the Debtor beyond the Proposed Adequate Assurance as additional assurance of payment, the Debtor may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.
- b. Any Utility Provider requesting additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") so that it is received by the following parties: (i) the Debtor, 313 East Main Street, Suite 2, Hendersonville, TN, Attn: Phillip Purcell, General Counsel; (ii) proposed counsel to the Debtor, Duane Morris, LLP, 222 Delaware Avenue, Suite 1600, Wilmington, DE 19801-1659, Attn: Sean J. Bellew, Esq. and Sommer L. Ross, Esq.; and (iii) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Mark Kenney (collectively, the "Notice Parties").
- c. Any Additional 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, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment in accordance with section 366 of the Bankruptcy Code.
- d. Upon the Debtor's receipt of any Additional Assurance Request in accordance with the notice procedures described above, the Debtor shall have the greater of (i) twenty (20) calendar days from the receipt of such Additional Assurance Request or (ii) thirty (30) calendar days from the

Petition Date (collectively, the “Resolution Period”) to negotiate with the Utility Provider to resolve such Utility Provider’s Additional Assurance Request.

- e. The Debtor may, in its sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in its sole discretion, provide a Utility Provider with additional assurance of future payment, including, but not limited to, cash deposits, prepayments, or other forms of security, without further order of the Court if the Debtor believes that such additional assurance is reasonable.
- f. If the Debtor determines that the Additional Assurance Request is not reasonable and is not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtor, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to such Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- g. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited 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.
- h. The Debtor will either fax, e-mail, serve by first class mail, or otherwise expeditiously send a copy of this Motion and the Orders, which include the proposed Adequate Assurance Procedures, to each Utility Provider within five business days after entry of the Orders by the Court.
- i. The Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtor, net of any unpaid charges for post-petition service provided by such Utility Provider, on the earlier of (a) the Debtor’s termination of such services from such provider; (b) the confirmation of a plan of reorganization; and (c) the conclusion of the Chapter 11 Case, if not applied earlier.

5. The Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, the Adequate Assurance Procedures as proposed are hereby approved, the Utility Providers are prohibited from altering, refusing or discontinuing Utility Services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate

Assurance Procedures, and the Debtor is not required to provide any additional adequate assurance beyond what is stated in this Final Order.

6. A Utility Provider shall be deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code unless and until (a) the Debtor, in its sole discretion, agrees to an alternative assurance of payment with the Utility Provider or (b) the Court enters an order requiring that additional adequate assurance of payment be provided.

7. Nothing in this Final Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

8. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim. Nothing in this Final Order nor the Debtor's payment of claims pursuant to this Final Order shall be construed as (w) an agreement or admission by the Debtor as to the validity of any claim on any grounds, (x) a waiver or impairment of Debtor's rights to dispute any claims on any grounds, (y) a promise by the Debtor to pay any claim, or (z) an implication or admission by the Debtor that such claim is payable pursuant to this Final Order.

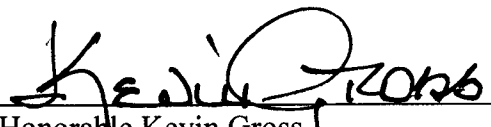
9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are hereby waived.

11. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

12. The Court retains jurisdiction with respect to all matters arising from relating to the implementation, interpretation, and enforcement of this Final Order.

Dated: January 4, 2016  
Wilmington, Delaware

  
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Honorable Kevin Gross  
United States Bankruptcy Judge