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7 Proposed General Bankruptcy Counsel for
Debtor and Debtor in Possession

8
9 UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 LOS ANGELES DIVISION

12 In re:
13 B&B Liquidating, LLC
14
15 Debtor and Debtor in Possession.

Case No. 2:18-bk-11744-BR
Chapter 11

**NOTICE OF MOTION AND EMERGENCY
MOTION FOR ORDER:**

**(1) PROHIBITING UTILITIES FROM
ALTERING, REFUSING OR
DISCONTINUING SERVICE;**

**(2) DEEMING UTILITIES ADEQUATELY
ASSURED OF FUTURE PERFORMANCE;
AND**

**(3) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE
ASSURANCE OF PAYMENT**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Declaration of Brian Lipman in support of first
day motions, filed concurrently herewith]*

Emergency Hearing

Date: February 22, 2018

Time: 2:00 p.m.

Place: Courtroom 1545

255 E. Temple Street

Los Angeles, CA 90012

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

1 TO THE HONORABLE NEAL W. BASON, UNITED STATES BANKRUPTCY
2 JUDGE, THE UNITED STATES TRUSTEE, ALL PARTIES-IN-INTEREST HEREIN, AND
3 THEIR RESPECTIVE COUNSEL:

4 **PLEASE TAKE NOTICE** that Debtor and Debtor in Possession B&B Liquidating, LLC,
5 f/k/a B&B Bachrach, LLC, (the “Company” or the “Debtor”) hereby submits this motion (the
6 “Motion”), on an emergency basis, for entry of an order: (1) determining that the public and/or
7 private entities that provide utility services, such as telephone, power, water and internet services
8 to the Debtor, that are identified on Exhibit 1 hereto (each, a “Utility Company,” and collectively,
9 the “Utility Companies”), have been provided with adequate assurance of future payment within
10 the meaning of section 366 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the
11 “Bankruptcy Code”); (2) approving the Debtor’s proposed offer of adequate assurance and
12 procedures governing the Utility Companies’ requests for any additional or different adequate
13 assurance; and (3) prohibiting the Utility Companies from altering, refusing, or discontinuing
14 post-petition service to the Debtor because of either the Debtor’s bankruptcy, pre-petition
15 arrearages, or any other reason without further order of the Court¹.

16 As set forth in the accompanying Memorandum of Points and Authorities, there are good
17 and sufficient grounds for granting this Motion. The Utility Companies provide various essential
18 utility services to the Debtor. Section 366(c) of the Bankruptcy Code permits utilities to alter,
19 refuse, or discontinue service if, within 30 days after the commencement of a chapter
20 11 bankruptcy case, the utility does not receive adequate assurance in a form that is satisfactory to
21 the utility. By this Motion, the Debtor proposes to provide as adequate assurance of future
22 payment as set forth in Exhibit 1 hereto, which may include a cash deposit of an average one
23 month payment or the maintaining of deposits already lodged with the Utility Company. Further,
24 the Debtor seeks to establish fair and orderly procedures to resolve any disputes regarding the
25 adequacy of the proposed or existing deposits. This procedure, in short, provides that any Utility
26 Company that is not satisfied with the proposed assurance of future payment may serve a written

27 _____
28 ¹ This motion is substantially similar to the motion filed by the Debtor B&B Bachrach, LLC in case no. 2:17-bk-
15292-NB, which was previously approved by the Court.

1 request on the Debtor, which will then be resolved by mutual agreement or by motion filed by the
2 Debtor, with the proposed assurance deemed satisfactory until the matter is resolved. A Utility
3 Company's failure to make a request of the Debtor under this procedure is deemed to have
4 received adequate assurance of payment. Because uninterrupted utility services are essential to
5 the Debtor's ongoing liquidation efforts, the Debtor requests that this Motion be heard on an
6 emergency basis.

7 This Motion is based upon these moving papers, the accompanying Memorandum of
8 Points and Authorities, the concurrently filed *Omnibus Declaration of Brian Lipman in Support*
9 *of First Day Motions* (the "Lipman Declaration"), the records and pleadings in this case, the
10 arguments and representations of counsel, and any oral or documentary evidence presented at or
11 prior to the time of the hearing.

12 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 2081-1
13 this Motion may be heard pursuant to Local Bankruptcy Rule 9075-1 as an emergency motion.
14 Further, pursuant to Local Bankruptcy Rule 9075-1(a)(2), counsel for the Debtor has contacted
15 the chambers for the Honorable Neal W. Bason and has obtained approval for an emergency
16 hearing on the Motion to be held on **February 22, 2018 at 2:00 p.m.** in Courtroom 1545, located
17 at 255 E. Temple Street, Los Angeles, California 90012. Pursuant to Local Bankruptcy Rule
18 9075-1, any response, written or oral, to the moving papers may be presented before or at the time
19 of the hearing on the Motion.

20 **PLEASE TAKE FURTHER NOTICE** that, as instructed by the Court, the Debtor will
21 serve this Notice and Motion, the attached Memorandum of Points and Authorities, and the
22 Lipman Declaration via overnight mail on the following parties or, in lieu thereof, to their
23 counsel, if known: (a) the Office of the United States Trustee; (b) the largest twenty unsecured
24 creditors appearing on the list filed in accordance with Fed. R. Bankr. P. 1007(d) by the Debtor
25 unless and until an official committee of unsecured creditors (the "Committee") is appointed, then
26 in that event, to counsel for the Committee; (c) the Utility Companies as reflected in Exhibit 1
27 attached hereto; (d) Siena Lending Group LLC; (e) any other known secured creditors; and (f)
28 parties that file with the Court and serve upon the Debtor requests for notice of all matters in

1 accordance with Fed. R. Bankr. P. 2002. The Debtor also requests that the Court waive
2 compliance with Local Bankruptcy Rule 9075-1(a)(5) requiring telephonic notice of the hearing
3 set hereon and substance thereof, and approve in lieu thereof service by overnight delivery or
4 email. In the event that the Court grants the relief requested by the Motion, the Debtor shall
5 provide notice of the entry of the order granting such relief upon each of the foregoing parties and
6 any other parties in interest as the Court directs. The Debtor submits that such notice is sufficient
7 and that no other or further notice need be given.

8 **WHEREFORE**, the Debtor respectfully requests that the Court enter an Order, on an
9 emergency basis: (1) determining that the Utility Companies have been provided with adequate
10 assurance of payment within the meaning of section 366 of the Bankruptcy Code; (2) approving
11 the Debtor's proposed offer of adequate assurance and procedures governing the Utility
12 Companies' requests for any additional or different adequate assurance; (3) prohibiting the Utility
13 Companies from altering, refusing, or discontinuing service without further order of the Court;
14 and (4) granting any other and further relief as is necessary and appropriate.

15
16 DATED: February 19, 2018

GREENBERG GLUSKER FIELDS
CLAMAN & MACTINGER LLP

17 By: /s/ Brian L. Davidoff

18 BRIAN L. DAVIDOFF
19 KEITH PATRICK BANNER
20 Proposed General Bankruptcy Counsel for
21 Debtor and Debtor in Possession
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Debtor and Debtor in Possession B&B Liquidating, LLC, f/k/a B&B Bachrach, LLC, (the
3 “Company” or the “Debtor”), having commenced this chapter 11 bankruptcy case on February
4 16, 2018 (the “Petition Date”) hereby submits this motion (the “Motion”), on an emergency basis
5 for an order determining that utility companies are provided adequate assurance of payment,
6 approving adequate assurance procedures, and related relief.

7 **I. JURISDICTION AND VENUE**

8 The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This
9 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the case is proper pursuant
10 to 28 U.S.C. §§ 1408 and 1409. The Debtor consents to the entry of a final judgment or order
11 with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot
12 enter a final order or judgment consistent with Article III of the United States Constitution. The
13 statutory predicates for the relief requested herein is section 366 of title 11 of the United States
14 Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”); and Rules 6003 and 6004 of the Federal
15 Rules of Bankruptcy Procedure (the “Bankruptcy Rules” and each a “Bankruptcy Rule”).

16 **II. SUMMARY OF BACKGROUND FACTS**

17 The Company is a specialty men's clothing merchandiser with a 140-year history in the
18 retail industry. The Company has traditionally relied on the “brick and mortar” retail model with
19 stores in malls and other marketplaces that fundamentally rely on a consistent flow of customer
20 foot traffic. Like many mall retailers in the current environment, the Company has come to learn
21 that this retail model, in many malls, is rapidly becoming obsolete.

22 A decline across the board in sales in mid-2016 precipitated the Company’s filing of a
23 voluntary chapter 11 petition on April 28, 2017, commencing case no. 2:17-bk-15292-NB
24 (“*Bachrach*”). During the course of *Bachrach*, the Company’s goals were four-fold: (a) shed the
25 poorest performing stores; (b) liquidate excess inventory; (c) free up liquidity by resolving the
26 over-advance with the Company’s then lender, Israel Discount Bank of New York (“IDB”)
27 through restructure of the debt or buyout of the obligation; and (d) restructure leases regarding
28 stores that showed a potential for profitability if the lease was renegotiated.

1 The Company successfully addressed each of these issues in a brisk chapter 11
2 reorganization process, and on August 14, 2017 the Court in *Bachrach* confirmed the Debtor’s
3 plan of reorganization. *See Bachrach* Docket No. 258 (including all exhibits attached thereto, the
4 “*Bachrach* Plan”). The *Bachrach* Plan went effective on August 31, 2017.

5 Though *Bachrach* involved complications with the Company’s liquidator, difficult
6 negotiations with IDB, and sales that often missed their target, the Company, among other things,
7 (i) successfully liquidated and closed seven underperforming stores; (ii) renegotiated four leases
8 resulting in substantial concessions; and (iii) negotiated a significant discount of approximately
9 \$2.45 million from IDB’s secured claim of approximately \$10.5 million (*See Bachrach*, Claim
10 No. 49).

11 Despite the relative success of the *Bachrach* reorganization, the decline in sales that the
12 Company had faced pre-petition continued unabated after the Company’s exit from the chapter 11
13 and starved the Company of vital cash.

14 With restricted use of cash and prolonged negotiations for a new debt facility, the Debtor
15 required a financing arrangement to bridge the gap between the September 27, 2017 maturity date
16 on the IDB loan and the closing of the new financing. The Company obtained a short term
17 arrangement from Emerald Capital Funding, LLC (“Emerald”), which purchased the IDB loan for
18 \$5,800,000. Emerald expected to be paid off in any subsequent refinancing. As part Emerald’s
19 buyout of the IDB obligation, the Company executed a deficiency note in favor of IDB with a
20 face value of \$1,200,000.00, which can be paid off within six months at 50% of face value. On or
21 about September 19, 2017, the Emerald transaction closed.

22 Following the closing of the Emerald transaction, the Company completed negotiations
23 with Siena Lending Group, LLC (“Siena”) regarding a new asset-based revolving credit facility in
24 an amount not exceeding \$7,000,000.00 (the “Siena Loan”). Under the borrowing base
25 calculation of the Siena Loan, the Company was only able to pay Emerald \$5.3 million at closing.
26 Therefore, the Company issued a note payable to Emerald in the amount of \$500,000, secured by
27 international goods in transit. Siena and Emerald also separately entered into an intercreditor
28 agreement.

1 With the limiting of cash flow by IDB early in the process, the Company quickly began to
2 fall behind on rent and plan payments. This running deficit was only worsened by the fact that
3 the required two refinance transactions did not close until October 31, 2017, as opposed to the
4 end of September as contemplated under the *Bachrach* Plan. This delay occurred during a critical
5 time for the Company, as the Company’s overseas vendors refused to ship inventory for the
6 holiday season until closing of the refinance. Ultimately, the Company did not actually receive
7 the holiday inventory, which is normally delivered during mid-November, until mid-December,
8 which negatively affected the Company’s holiday sales.

9 This cascade of issues ultimately affected the Company’s availability under the Siena
10 loan, as Siena has indicated that Company is in default for, among other things, failure to make
11 timely payments under the *Bachrach* Plan and for post-confirmation rent. Siena applied the
12 default interest rate to the loan and further restricted the Company’s borrowing base.

13 Ultimately, the Company was left with no alternative other than an orderly liquidation.
14 The Company engaged Clear Thinking Group LLC (“CTG”) as financial adviser. Working with
15 CTG and Siena the Company sought to reach agreement with its landlords to accomplish a
16 liquidation outside of the chapter 11 process. While some landlords were amenable to this, others
17 were not. The end result is the current chapter 11 case.

18 Drawing from the extensive experience of CTG, the Company performed liquidation
19 analyses and solicited bids with various liquidators to conduct the inventory liquidation sales (the
20 “Store Closing Sales”) at the 13 locations leased by the Company (the “Closing Stores”). The
21 Store Closing Sales will span an 16-week period, with the Closing Stores closed upon completion
22 of each Store Closing Sale. Prior to the Petition Date, the Debtor retained liquidation consultants,
23 Great American Group, LLC and Tiger Capital Group, LLC (collectively, the “Liquidation
24 Consultant”) to conduct the Store Closing Sales. At the conclusion of the sale period, the Debtor
25 intends to reject all of its leases and terminate operations. The Debtor will also seek to sell its
26 intellectual property and other assets. For a further discussion on the events leading up to the
27 bankruptcy filing and the business structure of the Company, please refer to the *Omnibus*
28 *Declaration of Brian Lipman* (“Lipman Declaration”) filed concurrently herewith.

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1 **III. UNINTERRUPTED UTILITY SERVICES ARE ESSENTIAL TO THE**
2 **COMPANY'S OPERATIONS**

3 In connection with its operations the Debtor obtains electricity, internet, telephone, water,
4 trash, and gas services from the various utility companies (the "Utility Companies" and each a
5 Utility Company") for services provided to the Debtor's corporate office and distribution center
6 located in Los Angeles, California, and the 14 retail stores operated by the Company (each, a
7 "Location" and collectively, the "Locations")². Exhibit 1 attached hereto provides, among other
8 things, the following pertinent information regarding the Utility Companies³: (i) each Utility
9 Company, separated by Location, its address and the Debtor's account number(s) with such
10 Utility Company; (ii) the type of utility service provided by each Utility Company (iii) the
11 average monthly payment made to each Utility Company by the Debtor, calculated as an
12 historical average during the three months prior to the Petition Date (where applicable); and (iv)
13 the amount of existing deposits with each Utility Company, if any.⁴ Uninterrupted utility services
14 to the Locations are essential to the Debtor's orderly liquidation of the Company. Should any of
15 the Utility Companies refuse or discontinue services, especially electricity, internet and
16 telephone, even for a brief period, the Company's ability to conduct store closing sales and
17 liquidate its inventory will be severely disrupted. It is therefore essential that utility services from
18 the Utility Companies continue uninterrupted through completion of the Company's liquidation.
19 The Debtor expects that it will be able to pay its post-petition obligations to the Utility
20 Companies for the duration of its liquidation which is expected to last approximately 16 weeks,
21 with some Locations being vacated, as necessary, prior to the expiration of this period.

22 ///

23 ///

24 _____
25 ² Of the 14 stores, one store, Store No. 20 located at the Chicago Fashion Outlet Center, is operated by the Debtor but
leased by an affiliated party.

26 ³ Some Locations involve rent provisions that provide for certain utility services to be paid for by the landlord, and
such landlord-paid services are not included as Utility Companies for the purposes of this Motion.

27 ⁴ Although the Debtor believes that the list of Utility Companies set forth in Exhibit 1 hereto is complete, the Debtor
reserves the right to supplement such list if it determines that any Utility Company has been omitted. The Debtor
28 further reserves all rights to challenge the status of any entity listed therein as a "utility" falling within the scope of
section 366 of the Bankruptcy Code.

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1 **A. The Proposed Deposits or Existing Deposits Provide Adequate Assurance of**
2 **Payment and the Procedures to Resolve Disputes Will Facilitate the Orderly**
3 **Administration of This Case.**

4 For all Utility Companies that currently hold a cash deposit previously supplied by the
5 Debtor in the prior case of *Bachrach* (the “Existing Deposits”), as detailed in Exhibit 1, the
6 Debtor proposes that no further deposit is required to provide an adequate assurance of future
7 payment, provided that any such Utility Company may request further assurances according to
8 the adequate assurance procedures set forth below. As to all remaining Utility Companies, the
9 Debtor proposes to provide each of the Utility Companies a cash deposit (each, a “Utility
10 Deposit,” and collectively, the “Utility Deposits”) equal to the average monthly payment made by
11 the Debtor to each respective Utility Company, calculated as an historical average during the
12 three months prior to the Petition Date (where applicable). The amount of the average monthly
13 payments made to each Utility Company is specified on Exhibit 1 attached hereto. The Debtor
14 proposes to pay the Utility Deposits, as applicable, within 30 days after the Court’s entry of an
15 order granting this Motion. The Debtor submits that the Existing Deposits, the Utility Deposits
16 and the adequate assurance procedures set forth below, together with the Debtor’s ability to pay
17 for future utility services in the ordinary course of business, constitute sufficient adequate
18 assurance to the Utility Companies during the course of the Debtor’s liquidation. If any of the
19 Utility Companies believe additional adequate assurance is required, they may request such
20 assurance pursuant to the following procedures, which the Debtor requests that the Court approve.

21 **B. Procedures for Requesting Further Adequate Assurance.**

22 By this Motion, the Debtor seeks an order providing that, absent compliance with the
23 following procedures (the “Adequate Assurance Procedures”), the Utility Companies are
24 forbidden to alter, refuse, or discontinue services on account of any pre-petition charges, or to
25 require additional adequate assurance of payment:

- 26 a. If any Utility Company is not satisfied with the assurance of future
27 payment provided by the Debtor, such Utility Company must serve a
28 written request (the “Request”) upon the Debtor setting forth the

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- 1 location(s) for which utility services are provided, the account number(s)
2 for such location(s), the outstanding balance for each account, a summary
3 of the Debtor’s payment history on each account, and an explanation of
4 why the deposit is inadequate assurance of payment;
- 5 b. The Request must be sent to the Debtor’s counsel, Greenberg Glusker
6 Fields Claman & Machtinger LLP, Attention: Brian L. Davidoff, Esq. and
7 Keith Patrick Banner, Esq., 1900 Avenue of the Stars, 21st Floor, Los
8 Angeles, California 90067, within 21 days after notice of the entry of the
9 order (the “Order”) granting this Motion (the “Request Deadline”);
- 10 c. Without further order of this Court, the Debtor may enter into agreements
11 granting additional adequate assurance to any of the Utility Companies that
12 serve a timely Request upon the Debtor, if the Debtor, in its business
13 judgment, determines that the Request is reasonable;
- 14 d. If the Debtor believes that a Request is unreasonable, then it may, within
15 30 days after the Request Deadline, file a motion pursuant to section
16 366(c)(3) of the Bankruptcy Code seeking an order that any Existing
17 Deposit or Utility Deposit, as the case may be, plus any additional
18 consideration offered by the Debtor, constitutes adequate assurance of
19 payment (an “Adequate Assurance Motion”). Pending notice and a hearing
20 on the Adequate Assurance Motion, the Utility Company that is the subject
21 of the unresolved Request may not alter, refuse, or discontinue services to
22 the Debtor or recover or setoff against a pre-petition deposit, if any; and
- 23 e. Any Existing Deposit or Utility Deposit, as the case may be, shall be
24 deemed adequate assurance of payment for all of the Utility Companies
25 that fail to make a timely Request.

26 Additionally, the Debtor proposes that if it defaults on an obligation to pay a Utility
27 Company for post-petition services, and such default is not cured within 21 days after receipt of
28 written notice of such default from the applicable Utility Company, then such Utility Company

1 may file a motion requesting the Debtor furnish further adequate assurance of future payment,
2 and such motion may be heard on an expedited basis.

3 **IV. DISCUSSION**

4 As discussed above, any disruption of utility services from the Utility Companies, even
5 for a brief period, could irreparably harm the Debtor’s orderly liquidation efforts. The relief
6 requested herein will ensure that the Debtor’s wind down operations will not endure such
7 disruption. The Debtor submits that any Existing Deposit or Utility Deposit, as the case may be,
8 constitute adequate assurance of payment in accordance with the requirements of section 366(b)
9 of the Bankruptcy Code. Moreover, the relief requested provides the Utility Companies with a
10 fair and orderly procedure for resolving requests for additional or different adequate assurance by
11 way of the Adequate Assurance Procedures.

12 **A. The Proposed Adequate Assurance Satisfies the Requirements of Section 366**
13 **of the Bankruptcy Code**

14 Section 366 Bankruptcy Code protects a debtor against the immediate termination of
15 utility services after commencing its case. Prior to the enactment of the Bankruptcy Abuse
16 Prevention and Consumer Protection Act of 2005 (“BAPCPA”), it was well established that
17 section 366 of the Bankruptcy Code did not require, as a matter of course, that the debtor provide
18 a deposit or other security to its utilities as adequate assurance of payment. *See* 11 U.S.C. §
19 366(c)(2); *see also Virginia Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 651 (2d Cir. 1997).

20 As amended, however, section 366(c) of the Bankruptcy Code now permits utilities to
21 alter, refuse, or discontinue service if, within 30 days after the commencement of the chapter 11
22 case, the utility does not receive adequate assurance in a form that is satisfactory to the utility. 11
23 U.S.C. § 366(c)(2). While section 366(c) clarifies what does and does not constitute “assurance
24 of payment” (i.e. cash deposit or letter of credit) and what cannot be considered in determining
25 whether such assurance is adequate (addressed below), Congress, in enacting that section, did not
26 divest the Court of its power to determine what amount, if any, is necessary to provide adequate
27 assurance of payment. *See* 11 U.S.C. §§ 366(b) and (c)(3)(A) (specifying that the court “may”
28 order modification of an adequate assurance payments); *see also Puget Sound Energy Inc. v. Pac.*

1 *Gas & Elec. Co. (In re Pac. Gas & Elec. Co)*, 271 B.R. 626, 644 (N.D. Cal. 2002) (“The use of
2 the word ‘may’ in the second sentence [of section 366(b)] clearly contemplates that the decision
3 whether to order security lies within the discretion of the Bankruptcy Court.”) (citation omitted);
4 *Steinebach v. Tucson Elec. Power. Co. (In re Steinebach)*, 303 B.R. 634, 641 (Bankr. D. Ariz.
5 2004) (“Bankruptcy courts are afforded reasonable discretion in determining what constitutes
6 adequate assurance. . .”).

7 In determining whether an assurance of payment is adequate, the court may not consider:
8 (1) the absence of security before the petition date; (2) the debtor’s history of timely payments; or
9 (3) the availability of an administrative expense priority. 11 U.S.C. § 366(c)(3)(B). However,
10 nothing in section 366(c) precludes the Bankruptcy Court from considering other factors that
11 could minimize the amount of the deposit as courts did before the enactment of BAPCPA. *See In*
12 *re Pac-West Telecomm., Inc.*, 377 B.R. 119 (Bankr. D. Del. 2007) (approving adequate protection
13 that was a one-time supplemental prepayment equal to one week’s charges); *see also In re Agrifos*
14 *Fertilizer, L.P.*, No. 01-35220, 2002 WL 32054779, at *5 (Bankr. S.D. Tex. Nov. 25, 2002) (“If a
15 debtor demonstrates . . . evidence of post-petition liquidity, a deposit may not be necessary.”)
16 (citation omitted); *In re Best Products Co.*, 203 B.R. 51, 54 (Bankr. E.D. Va. 1996) (“[T]he court
17 should consider the debtor’s payment history, the debtor’s net worth, and the debtor’s present and
18 future ability to pay post-petition obligations.”).

19 Furthermore, Congress has not changed the requirement that the assurance of payment
20 only be “adequate.” Prior to BAPCPA, Courts construing the meaning of “adequate assurance”
21 of payment under section 366(b) held that an absolute guarantee of the debtor’s ability to pay is
22 not required. *In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996). The Debtor submits that the
23 significant cash deposits, combined with the Adequate Assurance Procedures set forth above is
24 more than adequate under the totality of the facts and circumstances. *See In re Adelpia Bus.*
25 *Solutions, Inc.*, 280 B.R. 82, 83, 86 n.127 (Bankr. S.D. N.Y. 2002) (noting that adequate
26 assurance of payment is a fact-driven analysis based on the totality of the facts and circumstances
27 of the case).

28 ///

1 **B. The Adequate Assurance Procedures Properly Balance the Interests of the**
2 **Utility Companies and Those of the Debtor.**

3 Conceivably, pursuant to section 366(c) of the Bankruptcy Code, the Debtor could
4 receive a demand from one or more Utility Company at the end of the statutory 30 days and be
5 compelled to accede to the demand immediately or face termination of the utility service.
6 Therefore, to avoid such a drastic result, the proposed Adequate Assurance Procedures require the
7 Utility Companies to provide notice of their demands for any additional adequate assurance
8 within the Request Deadline and further establish an orderly process for resolving any disputes
9 between the Debtor and the Utility Companies with respect to these issues.

10 The relief requested herein does not undermine the rights of the Utility Companies under
11 the Bankruptcy Code. Deposits are a statutorily acceptable form of adequate assurance of
12 payment provided under sections 366(b) and (c)(1) of the Bankruptcy Code—and likely the most
13 practical form. Furthermore, even if this Court determines that the adequate assurance proposed
14 by the Debtor constitutes sufficient adequate assurance under section 366(b), the Utility
15 Companies may still request modification of the same pursuant to the Adequate Assurance
16 Procedures.

17 **V. CONCLUSION**

18 Based on the foregoing, the Debtor respectfully requests that this Court enter an order: (1)
19 determining that the Utility Companies have been provided with adequate assurance of payment
20 within the meaning of section 366 of the Bankruptcy Code; (2) approving the Debtor’s proposed
21 Adequate Assurance Procedures; (3) prohibiting the Utility Companies from altering, refusing, or
22 discontinuing service without further order of the Court; and (4) granting any other and further
23 relief as necessary and appropriate.

24 DATED: February 19, 2018

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

By: */s/ Brian L. Davidoff*

BRIAN L. DAVIDOFF
KEITH PATRICK BANNER
Proposed General Bankruptcy Counsel for
Debtor and Debtor in Possession

EXHIBIT 1

STORE #	Provider	Service Type	Account No.	Address of Utility Co.	Average Mo. Pymt	Add'l Stores
008	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949	\$ 1,500.00	8, 12, 16, 18, 25, 28, 31, 64, 76, 79,
008	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058	\$ 1,400.00	8, 16, 18, 25, 28, 31, 64, 76,
012	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
012	Granite Communications	Internet	3813585	P.O. Box 983119, Boston, MA 02298-3119	\$ 1,900.00	12, 20, 21, 82
016	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
016	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
018	Reliant Energy	Electricity	77446508	P.O. Box 650475, Dallas, TX 75265	\$ 550.00	
018	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
018	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
020	Granite Communications	Phone	3813585	P.O. Box 983119, Boston, MA 02298-3119		
020	Granite Communications	Internet	3813585	P.O. Box 983119, Boston, MA 02298-3119		
020	ComEd	Electricity	165095214	P.O. Box 6111 Carol Stream, IL 60197	\$ 1,200.00	
021	Granite Communications	Phone	3813585	P.O. Box 983119, Boston, MA 02298-3119		
021	Granite Communications	Internet	3813585	P.O. Box 983119, Boston, MA 02298-3119		
025	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
025	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
028	ComEd	Electricity	4245052031	P.O. Box 6111, Carol Stream, IL 60197	\$ 950.00	
028	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
028	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
031	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
031	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
037	Midwest Telecom of America, VOIP	Phone / Internet	6087	1567 E. 93rd Ave. Merrillville, IN 46410	\$ 185.00	
064	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
064	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
070	AT&T	Phone / Internet	9134929900598	P.O. Box 5001, Carol Stream, IL 60197	\$ 191.00	
076	Reliant Energy	Electricity	91233791	P.O. Box 650475, Dallas, TX 75265	\$ 243.00	
076	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
076	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
079	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
079	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
082	PSE & G	Electricity	7095761205	P.O. Box 14444, New Brunswick, NJ 08906	\$ 385.00	
082	Granite Communications	Phone	3813585	P.O. Box 983119, Boston, MA 02298-3119		
082	Granite Communications	Internet	3813585	P.O. Box 983119, Boston, MA 02298-3119		
089	Spectrotel	Phone	371870	P.O. Box 1949, Newark, NJ 07101-1949		
089	Earthlink	Internet	13210091	P.O. Box 2252 Birmingham, AL 35246-1058		
098	LADWP	Electricity	9882559163	P.O. Box 30808, Los Angeles, CA 90030-0808	\$ 745.00	
098	Ring Central, VOIP	Phone		20 Davis Drive, Belmont, CA 94002	\$ 143.00	
098	Time Warner Cable	Internet	8448300400658784	P.O. Box 60074, City of Industry, CA 91716-0074	\$ 285.00	

EXISTING DEPOSITS

Utility Copmay	Deposit
EARTHLINK BUSINESS	\$ 2,200.00
GLOBAL CAPACITY 012	\$ 296.00
Reliant Energy-#18-PP	\$ 510.00
I Cloud Communications -Closed PP	\$ 154.00
Memphis Light Gas 023 Closed-PP	\$ 324.00
AT&T - 023 (IT & Phone) Closed-PP	\$ 65.00
ComEd 028	\$ 384.00
GEORGIA POWER 036 Closed -PP	\$ 520.00
Reliant Energy-#76 - PP	\$ 243.00
PSE&G CO (082)-PP	\$ 385.00
Washington Gas 093 Closed-PP	\$ 210.00
LADWP 098-PP	\$ 745.00
Time Warner Cable-PP	\$ 285.00
ComEd 020	\$ 1,075.00
	\$ 7,396.00