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9 Debtors and Debtors-in-Possession

10  
11 **UNITED STATES BANKRUPTCY COURT**  
12  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14  
15 **SANTA ANA DIVISION**

16 In re:  
17 RUBY’S SOCAL DINERS, LLC,  
18 a Delaware limited liability company, *et al.*,<sup>1</sup>

19 Debtors and Debtors-in-  
20 Possession,

21 Affects:

- 22  All Debtors
- 23  RUBY’S SOCAL DINERS, LLC, ONLY
- 24  RUBY’S QUALITY DINERS, LLC,  
25 ONLY
- 26  RUBY’S HUNTINGTON BEACH, LTD.,  
27 ONLY
- 28  RUBY’S LAGUNA HILLS, LTD. ONLY
- RUBY’S OCEANSIDE, LTD., ONLY
- RUBY’S PALM SPRINGS, LTD., ONLY

Case Nos.: 8:18-bk-13197-CB; 8:18-bk-13198-CB;  
8:18-bk-13199-CB; 8:18-bk-13200-CB; 8:18-bk-  
13201-CB; 8:18-bk-13202-CB;

Chapter 11

**NOTICE OF EMERGENCY MOTION AND  
EMERGENCY MOTION FOR ORDER  
PURSUANT TO 11 U.S.C. §§ 105(a) AND 366:  
(I) PROHIBITING UTILITY COMPANIES  
FROM ALTERING, REFUSING, OR  
DISCONTINUING SERVICE, (II)  
DETERMINING ADEQUATE ASSURANCE  
OF PAYMENT FOR FUTURE UTILITY  
SERVICES, AND (III) ESTABLISHING  
PROCEDURES FOR DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT;  
AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Douglas S. Cavanaugh in Support  
of First Day Motions filed concurrently herewith]

Date: August 31, 2018  
Time: 10:00 a.m.  
Place: Courtroom 5D  
411 West Fourth Street  
Santa Ana, CA 92701

<sup>1</sup> The last four digits of the Debtors’ federal tax identification numbers are as follows: Ruby’s SoCal Diners, LLC (9782); Ruby’s Quality Diners, LLC (1539); Ruby’s Huntington Beach, Ltd. (1331); Ruby’s Laguna Hills, Ltd. (6603); Ruby’s Oceanside, Ltd. (9104); and Ruby Palm Springs, Ltd. (9627).

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PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
COSTA MESA, CALIFORNIA

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**Cases**

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1 **TO THE HONORABLE CATHERINE E. BAUER, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE 20 LARGEST**  
3 **UNSECURED CREDITORS, SECURED CREDITORS AND OTHER PARTIES IN**  
4 **INTEREST:**

5 **PLEASE TAKE NOTICE** that Ruby’s SoCal Diners, LLC, a Delaware limited liability  
6 company (“SoCal Diners”); Ruby’s Quality Diners, LLC, a Delaware limited liability company  
7 (“Quality”); Ruby’s Huntington Beach, Ltd., a California limited partnership (“Ruby’s Huntington  
8 Beach”); Ruby’s Laguna Hills, Ltd., a California limited partnership (“Ruby’s Laguna Hills”);  
9 Ruby’s Oceanside, Ltd., a California limited partnership (“Ruby’s Oceanside”); and Ruby’s Palm  
10 Springs, Ltd., a California limited partnership (“Ruby’s Palm Springs”) (collectively, the  
11 “Debtors”) hereby move pursuant to sections 105(a) and 366 of title 11 of the United States Code  
12 (the “Bankruptcy Code”), providing the following relief: (i) prohibiting the utility providers utilized  
13 by the Debtors (collectively, the “Utility Companies” and each individually a “Utility Company”)  
14 from altering, refusing, or discontinuing service to the Debtors without further order of the Court,  
15 (ii) determining adequate assurance of payment for future utility services, and (iii) establishing  
16 procedures for determining adequate assurance of payment (the “Motion”).

17 Pursuant to section 366 of the Bankruptcy Code, the Debtors seek a determination that (a) a  
18 deposit in a segregated account of an amount equal to approximately one month of the estimated  
19 average monthly cost<sup>2</sup> for services provided to the Debtors by each Utility Company (the “Utility  
20 Deposit”), (b) the ability of any Utility Company to obtain an initial hearing on the adequacy of the  
21 Utility Deposit, and (c) the ability of any Utility Company to obtain an expedited hearing regarding  
22 further adequate assurance if there is a failure to cure a postpetition payment default within  
23 twenty-one (21) days after written notice of such default (collectively, the “Proposed Adequate  
24 Assurance”), constitute adequate assurance of payment for future utility services. For expediency,  
25 the Debtors proposes to limit the Utility Deposits required to only those Utility Companies whose  
26 Utility Deposit would exceed \$250.

27  
28 <sup>2</sup> The average monthly cost amount was determined by averaging the most recent monthly bills received from each  
Utility Company over the past 12 months.

1 The Debtors receive essential utility services from a number of utility companies. A list of  
2 the Utility Companies, the type of utility service received and the Debtors' utility accounts is  
3 attached hereto as **Exhibit A**.<sup>3</sup>

4 At this critical time, uninterrupted water, electricity, gas, trash, sewer, local and long distance  
5 telephone services, cable, and internet services are essential to the ongoing operations of the  
6 Debtors' business and to the preservation of the value thereof. Any interruption, however brief, in  
7 utility services to the Debtors' facilities or to the Debtors' employees will irreparably disrupt the  
8 Debtors' business operations. It is therefore critical that the Court prohibit the Utility Companies  
9 from altering, refusing, or discontinuing service to the Debtors without further order of this Court.  
10 The Deposit for each of the Utility Companies coupled with the streamlined mechanism for  
11 requesting further adequate assurance described in the attached Memorandum of Points and  
12 Authorities provides adequate assurance of payment to the Utility Companies and safeguards the  
13 Debtors' continuing business operations. The Court should therefore grant the relief requested in the  
14 Motion in its entirety.

15 The Debtors request that the relief sought herein be granted on an emergency basis because  
16 uninterrupted utilities are essential to the Debtors' continuing business operations, certainty as to the  
17 amount of the deposits provides the Debtors' business stability at this critical time, and section 366  
18 of the Bankruptcy Code sets forth a short time frame for resolving disputes with utility companies.  
19 Further, because the Debtors are concurrently with this Motion filing other motions seeking relief in  
20 connection with other matters and will in all likelihood file various other motions during the first  
21 days of these Cases (as defined below), the Debtors, pursuant to Rule 2081-1(a)(3) of the Local  
22 Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California,  
23 effective February 1, 2017 (the "Local Bankruptcy Rules"),<sup>4</sup> request that this Motion be heard on an  
24 emergency basis. Granting the relief requested in this Motion on an emergency basis will benefit the  
25

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26 <sup>3</sup> Although the Debtors believe that the list of Utility Companies set forth in **Exhibit A** hereto is complete, the Debtors  
27 reserve the right to supplement such list if it determines that any utility company has been omitted. The Debtors further  
28 reserve all rights to challenge the status of any entity listed therein as "utility" falling within the scope of section 366 of  
the Bankruptcy Code.

<sup>4</sup> Pursuant to Local Bankruptcy Rule 9075-1(a)(3), no separate motion for an expedited hearing is required.

1 estates immediately as set forth above.

2 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on the attached  
3 Memorandum of Points and Authorities, the *Declaration of Douglas S. Cavanaugh in Support of*  
4 *First Day Motions* (the "Cavanaugh Declaration"), the arguments of counsel, and other admissible  
5 evidence properly brought before the Court at or before the hearing on this Motion. In addition, the  
6 Debtors request that the Court take judicial notice of all documents filed with the Court in these  
7 Cases.

8 **PLEASE TAKE FURTHER NOTICE** that any opposition or objection to the Motion must  
9 be filed with the Court and served on proposed counsel for the Debtors at the above address any time  
10 before the hearing or may be presented at the hearing on the Motion. Failure to timely object may be  
11 deemed by the Court to constitute consent to the relief requested herein.

12 **PLEASE TAKE FURTHER NOTICE** that the Debtors will serve this Notice and Motion  
13 and the attached Memorandum of Points and Authorities, and the Cavanaugh Declaration, on:  
14 (1) the Office of the United States Trustee; (2) the creditors appearing on the lists filed in accordance  
15 with Fed. R. Bankr. P. 1007(d) by the Debtors unless and until an official committee of unsecured  
16 creditors (the "Committee") is appointed, then in that event, to counsel to the Committee; (3) parties  
17 that file with the Court and serve upon the Debtors request for notice of all matters in accordance  
18 with Bankruptcy Rule 2002(i); (4) the United States of America; (5) the State of California, and  
19 (6) the Debtors' secured creditors or their counsel of record.

20 **PLEASE TAKE FURTHER NOTICE** that, to the extent necessary, the Debtors request  
21 that the Court waive compliance with Local Bankruptcy Rule 9075-1(a)(1) and approve service (in  
22 addition to the means of service set forth in such Local Bankruptcy Rule) by overnight delivery or  
23 email. In the event that the Court grants the relief requested by the Motion, the Debtors shall  
24 provide notice of the entry of the order granting such relief upon each of the foregoing parties and  
25 any other parties in interest as the Court directs. The Debtors submit that such notice is sufficient  
26 and that no other or further notice be given.

27 **WHEREFORE**, for all the foregoing reasons, and such additional reasons as may be  
28 advanced at or prior to the hearing on this Motion, the Debtors respectfully request that the Court

1 enter an order providing the following interim relief: (a) a determination that the Proposed Adequate  
2 Assurance constitutes adequate assurance of payment for future utility services as contemplated by  
3 sections 366(b) and (c)(3)(A) of the Bankruptcy Code; (b) a prohibition barring the Utility  
4 Companies from altering, refusing, or discontinuing services to the Debtors without further order of  
5 this Court; and (c) such other and further relief as the Court deems just and proper.

6  
7 Dated: August 30, 2018

PACHULSKI STANG ZIEHL & JONES LLP

8  
9 By /s/ William N. Lobel  
10 William N. Lobel  
11 [Proposed] Attorneys for Ruby's SoCal  
12 Diners, LLC, *et al.*, Debtors and Debtors-  
13 in-Possession  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 **A. Jurisdiction and Venue**

4 This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is  
5 a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408  
6 and 1409.

7 **B. Background**

8 On August 29, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief  
9 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors  
10 continue to operate their business and manage their affairs as debtors-in-possession pursuant to  
11 sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been  
12 appointed in these chapter 11 cases (the "Cases").

13 **C. General Description of the Debtor**

14 A detailed description of the Debtors' background, structure, operations and recent financial  
15 history is detailed in the concurrently filed Cavanaugh Declaration.

16 **D. Overview of the Debtors and Its Affiliates' Business Operations**

17 The Debtors and their affiliates (referred to from time to time herein as the "Company") own,  
18 operate and manage restaurants under the trade names "Ruby's<sup>®</sup>," "Ruby's<sup>®</sup> Diner," "The Ruby  
19 Restaurant Group," "Ruby's<sup>®</sup> Dinette" and "Ruby's<sup>®</sup> Shake Shop." The Company has operated  
20 Ruby's<sup>®</sup> Diner restaurants since 1985 and is known as a purveyor of very popular burgers, fries and  
21 shakes.

22 **II. THE UTILITY COMPANIES AND PROPOSED UTILITY PROCEDURES**

23 **A. The Utility Companies**

24 The Debtors receive essential utility services from certain utility companies. A list of the  
25 utility companies (each, a "Utility Company" and collectively, the "Utility Companies") and the  
26 Debtors' utility accounts is attached hereto as **Exhibit A**.<sup>1</sup>

27  
28 <sup>1</sup> Although the Debtors believe that the list of Utility Companies set forth in **Exhibit A** hereto is complete, the Debtors reserve the right to supplement such list if they determine that any utility company has been omitted. The Debtors



1 At this critical time, uninterrupted water, electricity, gas, trash, sewer, local and long distance  
2 telephone services, cable, and internet services are essential to the ongoing operations of the  
3 Debtors' business and to the preservation of the value thereof. Any interruption, however brief, in  
4 utility services to the Debtors will irreparably disrupt the Debtors' operations.

5 The Debtors routinely pays their regular monthly utility obligations when due. In addition,  
6 the Debtors' chapter 11 filings occurred during the middle of the billing cycles for many, if not all,  
7 of the Utility Companies. As a result, there are likely outstanding prepetition amounts owed to the  
8 Utility Companies.

9 The Debtors have and will have adequate cash to meet all of its necessary postpetition  
10 operating expenses on a current basis, including payments to the Utility Companies. The Debtors  
11 have specifically included in their budget amounts for payments to Utility Companies, including the  
12 payment of the Utility Deposits (as defined below).

13 **B. Proposed Utility Procedures**

14 The Debtors propose to allocate to each Utility Company adequate assurance of payment for  
15 its post-petition services in the form of segregated cash deposits (the "Utility Deposits" and each, a  
16 "Utility Deposit") as listed on **Exhibit A**. The Utility Deposit will equal approximately one month  
17 of the Debtors' estimated average postpetition monthly cost of prepetition services provided to the  
18 Debtors by such Utility Company. The average monthly invoice amount was determined by  
19 averaging the amounts of the twelve most recently received monthly bills from each Utility  
20 Company. The Debtors proposes to limit the Utility Deposits required to only those Utility  
21 Companies whose Utility Deposit would exceed \$250. The Utility Deposits will be deposited in a  
22 segregated account allocated to the Utility Deposits within twenty-one (21) days after the Court's  
23 entry of an order granting this Motion.

24 In addition, the Debtors seek to establish reasonable procedures (the "Procedures") by which  
25 a Utility Company may request further adequate assurance of future payment, in the event that such  
26 Utility Company believes that their Utility Deposit does not provide it with satisfactory adequate  
27

28 \_\_\_\_\_  
further reserve 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.

1 assurance. Such Procedures would provide that:

2 (a) If a Utility Company is not satisfied with the assurance of future payment  
3 provided by the Debtors, such Utility Company must serve a written request (the “Request”) upon  
4 the Debtors setting forth the location(s) for which Utility Services are provided, the account  
5 number(s) for such location(s), the outstanding balance for each account, a summary of the Debtors’  
6 payment history on each account, and an explanation as to why the Utility Company believes it is  
7 receiving inadequate assurance of payment.

8 (b) The Request must be actually received by the Debtor’s counsel, William N.  
9 Lobel, Pachulski Stang Ziehl & Jones LLP, 650 Town Center Drive, Suite 1500, Costa Mesa,  
10 California 92626 within twenty one (21) days of the entry date of the order (the “Order”) granting  
11 this Motion (the “Request Deadline”);

12 (c) Without further order of this Court, the Debtors may enter into agreements  
13 granting additional adequate assurance to a Utility Company serving a timely Request, if the  
14 Debtors, in their discretion, determine that the Request is reasonable;

15 (d) If the Debtors believe that a Request is unreasonable, then it shall, within 30  
16 days after the Request Deadline, file a motion (a “Determination Motion”) pursuant to 11 U.S.C.  
17 § 366(c)(3) seeking an order that the Utility Deposit, plus any additional consideration offered by the  
18 Debtors, constitute adequate assurance of payment. Pending notice and a hearing on this Motion, the  
19 Utility Company that is the subject of the unresolved Request may not alter, refuse, or discontinue  
20 services to the Debtors or recover or setoff against a prepetition deposit, if any; and

21 (e) The Utility Deposit shall be deemed adequate assurance of payment for any  
22 Utility Company that fails to make a timely Request.

23 The Debtors reserve the right, without further order of the Court, to supplement the list of  
24 Utility Companies attached as **Exhibit A** if any Utility Company has been omitted. If the Debtors  
25 add a Utility Company to the list after the Court enters the proposed Order, the Debtors will serve a  
26 copy of this Motion and the Order on any Utility Company that is added to the list (the  
27 “Supplemental Service”). Concurrently with the Supplemental Service, the Debtors will file with  
28 the Court a supplement to **Exhibit A** showing the name of the Utility Company that is being added

1 to the list. In addition, the Utility Company subject to the Supplemental Service will have  
2 twenty-one (21) days from the date of the Supplemental Service to request a Utility Deposit. If such  
3 Request is made, the Procedures outlined above shall apply to their consideration and resolution.

4 Additionally, the Debtors propose that if the Debtors default on an obligation to pay a Utility  
5 Company for postpetition services and such default is not cured within twenty-one (21) days of the  
6 Debtors' receipt of written notice of default, then the applicable Utility Company may file a motion  
7 requesting that the Debtors furnish further adequate assurance of future payment, and such motion  
8 shall be heard on an expedited basis.

9 To the extent that any deposits are required to be segregated or delivered to any Utility  
10 Company, the Debtors request that the Order provide that such Utility Companies must immediately  
11 refund any Utility Deposit, or the Debtors may desegregate the respective Utility Deposit, in the  
12 event that the Debtors terminate the services of any Utility Company and after all postpetition  
13 invoices owed to that Utility Company have been paid. The Debtors believe that the immediate  
14 refund or desegregation of a Utility Deposit in the case where services have been terminated and  
15 where postpetition bills have been paid is fair and appropriate under the circumstances because the  
16 Utility Company would no longer require adequate assurance of the Debtor's future performance.

17 Under the circumstances of these Cases in which the Debtors have no significant outstanding  
18 prepetition utility obligations and have already arranged to maintain current payment for postpetition  
19 services, the Debtors believe that the proposed Utility Deposits constitute adequate assurance of  
20 payment under § 366(c). The Debtors also propose to further protect the Utility Companies by  
21 establishing the Procedures provided for herein, pursuant to which any Utility Company can request  
22 additional adequate assurance by demonstrating facts and circumstances with respect to their  
23 postpetition services to the Debtors that merit greater protection.

24 Continued and uninterrupted utility service is critical to the Debtors' reorganization because  
25 the Debtors' restaurants and facilities require utility services to operate the business and generate  
26 income. If any of the Utility Companies alters, refuses or disconnects service, even for a brief  
27 period, the Debtors' business operations would be shut down and its revenues would be cut off,  
28 severely disrupting the Debtors' cash flow, to the detriment of all parties.

1                   **III. THE PROCEDURES OUTLINED IN THIS MOTION ARE**  
2   **NECESSARY AND APPROPRIATE TO PREVENT**  
3   **INTERRUPTION OF UTILITY SERVICES TO THE DEBTORS**

4                   Under section 366(b) of the Bankruptcy Code, utilities may alter, refuse, or discontinue  
5 service if the Debtors have not furnished adequate assurance of payment within 20 days of the  
6 Petition Date. 11 U.S.C. § 366(b). Also, section 366(c) provides that a utility may alter, refuse or  
7 discontinue service if the utility does not receive, within 30 days of a chapter 11 filing, adequate  
8 assurance of payment for utility service *that is satisfactory to the utility*. 11 U.S.C. § 366(c)(2).

9                   This Court, however, has the power to modify the form and amount of an assurance of  
10 payment after notice and a hearing. 11 U.S.C. § 366(c)(2), (3)(A).

11                   **A. The Proposed Utility Deposits Constitute Adequate Assurance of Future Performance**  
12   **for the Utility Companies**

13                   The amount of any cash deposit or other form of adequate assurance is ultimately a matter to  
14 be determined by the Court. While section 366(c)(2) of the Bankruptcy Code requires that the  
15 adequate assurance of payment initially be satisfactory to the utility provider, section 366(c)(3) of  
16 the Bankruptcy Code expressly authorizes the Court to modify the amount of such assurance after  
17 notice and a hearing. *See* 11 U.S.C. § 366(c)(2), (3)(A). In making a determination regarding the  
18 amount of assurance pursuant to section 366(c)(3) of the Bankruptcy Code, the Court may not  
19 consider the following: (i) the absence of security before the petition date; (ii) the debtor's history of  
20 timely payment; and (iii) the availability of an administrative expense priority to the utility company.  
21 *See* 11 U.S.C. § 366(c)(3)(B). However, with few exceptions, section 366(c) leaves the  
22 determination regarding the amount of deposit or other form of security as adequacy of assurance of  
23 payment within the Court's discretion. *See In re Pacific Gas & Elec. Co.*, 271 B.R. 626, 644 (N.D.  
24 Cal. 2002) (“The use of the word ‘may’ in the second sentence [of section 366(b)] contemplates that  
25 the decision of whether to order security lies within the discretion of the Bankruptcy Court.”); *In re*  
26 *Steinbach*, 303 B.R. 634, 641 (Bankr. D. Az. 2004) (“Bankruptcy courts are afforded reasonable  
27 discretion in determining what constitutes adequate assurance.”).

1 Section 366 of the Bankruptcy Code requires a cash deposit or other enumerated form of  
2 security that is “adequate.” The Bankruptcy Code does not, however, define what is “adequate,”  
3 except that administrative priority is not sufficient as a form of adequate assurance of payment. *See*  
4 11 U.S.C. §§ 366(c)(1)(A)(B), (3)(B)(iii). Bankruptcy courts may consider factors that could  
5 minimize the amount of the deposit, including: (a) the right of the utility to terminate service upon  
6 nonpayment, (b) the chapter 11 estates’ liquidity, and (c) the estates’ net worth and ability to pay  
7 their postpetition obligations. *See In re Best Products*, 203 B.R. 51, 54 (Bankr. E.D. Va. 1996) (the  
8 court in Best Products approved a deposit of one-half the average monthly utility invoice, and  
9 permitted the debtor to apply prepetition deposits and prepayments to the postpetition adequate  
10 assurance deposits).

11 When determining the amount of a required adequate assurance, bankruptcy courts should be  
12 conservative in order to conserve an estates’ scarce financial resources. *See In re Magnesium Corp.*  
13 of America, 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002) (“In deciding what constitutes ‘adequate  
14 assurance’ in a given case, a bankruptcy court must ‘focus upon the need of the utility for assurance,  
15 and to require that the debtor supply no more than that, since the debtor almost performe has a  
16 conflicting need to conserve scarce financial resources.”), *quoting Virginia Elec. & Power Co. v.*  
17 Caldor, 117 F.3d 646 650 (2d Cir. 1997); *see also In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr.  
18 E.D. Pa. 1987). By its terms, section 366 of the Bankruptcy Code, as amended, does not require that  
19 the deposit or other security be more than a nominal amount. *See In re Crystal Cathedral Ministries*,  
20 454 B.R. 124,131 (Bankr. C.D. Cal. 2011) (adequate assurance “is not to be confused with actual  
21 payment or an absolute guarantee of payment.”).

22 Accordingly, the Debtors propose to allocate to each of the Utility Companies cash in an  
23 amount equal to approximately one month of the estimated average monthly cost as reflected on  
24 **Exhibit A**. The Debtors believe that such a deposit is more than adequate under the totality of the  
25 facts and circumstances. The Debtors believe that limiting the Utility Deposits to those Utility  
26 Companies whose Utility Deposit exceeds the amount of \$250 is appropriate in these Cases because  
27 these amounts are small in the context of the Debtors’ operations, the Debtors have budgeted for the  
28 payment of the Utility Companies’ postpetition services, and the tracking of such small amounts

1 would add an unnecessary administrative burden to the Debtors' already taxed financial staff.  
2 Moreover, should any Utility Company dispute the Debtors' proposed treatment, such Utility  
3 Company has the right to request further adequate assurance of payment in accordance with the  
4 Procedures set forth herein. Under the circumstances, the Debtors submit that approval of the \$250  
5 threshold in connection with the Utility Deposits be approved.

6 **B. The Procedures Proposed by the Debtors Properly Balance the Interests of the Utility**  
7 **Companies and those of the Debtors**

8 By this Motion, the Debtors seek to implement an orderly process to resolve requests for  
9 adequate assurance of payment without unduly burdening the estates or the Court. The Procedures  
10 will provide an efficient and orderly process to resolve any Request without judicial intervention,  
11 unless absolutely necessary. The Procedures properly balance the interests of the Utility Companies  
12 under section 366 of the Bankruptcy Code and those of the Debtors and their estates. First, the  
13 Procedures protect the Debtors against the termination of critical utility services upon which their  
14 business depends. To continue day-to-day operations, the Debtors must ensure that there is no  
15 termination of these Utility Services. Disruption of the Utility Services, even for a brief period,  
16 could have a devastating impact on the Debtors' ability to maintain their operations.

17 Second, the Procedures are consistent with the rights of the Utility Providers to adequate  
18 assurance of future payment pursuant to section 366 of the Bankruptcy Code. To the extent a Utility  
19 Company believes that, under the facts and circumstances, providing post-petition services to the  
20 Debtors warrants greater protection, it can request adequate assurance of payment. If the Debtors  
21 and Utilities Companies are unable to reach an agreement on the amount and form of adequate  
22 assurance within the parameters set forth above, such adequate assurance will be determined by this  
23 Court. Thus, the Procedures provide a mechanism for each Utility Company to request and obtain  
24 the adequate assurance of payment to which it is entitled pursuant to the Bankruptcy Code. Further,  
25 the Utility Companies will not be prejudiced by the continuation of their services. The Debtors have  
26 budgeted for post-petition payments to the Utility Companies. The Utility Companies are further  
27 protected by the provisions granting them an expedited hearing if there is a failure to cure a payment  
28 default within twenty-one (21) days after written notice of such default.

1 In sum, the Procedures strike the appropriate balance of protecting the Utility Company  
2 against the risk of nonpayment without unduly burdening the Debtors' chances of reorganization and  
3 protecting the Debtors against the termination of critical Utility Services. Approving the Procedures  
4 is entirely within the Court's authority under section 366 of the Bankruptcy Code, and section 105(a)  
5 of the Bankruptcy Code, which states that the Court "may issue any order, process or judgment that  
6 is necessary or appropriate to carry out the provisions of this title." See 11 U.S.C. § 105(a). The  
7 purpose of section 105(a) of the Bankruptcy Code is to "assure the bankruptcy court[']s power to  
8 take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction."  
9 2 COLLIER ON BANKRUPTCY ¶ 105.01 (15th rev. ed. 2001). Because the proposed Procedures  
10 protect both the Debtors and the Utility Companies, they carry out section 366 of the Bankruptcy  
11 Code in a manner fully consistent therewith and are an appropriate exercise of this Court's authority  
12 under section 105(a) of the Bankruptcy Code. Accordingly, the Procedures should be approved.

13 **C. Waiver of the Stay Is Appropriate**

14 Moreover, the Debtors seek a waiver of any stay of the effectiveness of the order approving  
15 this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[a]n order authorizing the use, sale  
16 or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of  
17 the order, unless the court orders otherwise." As set forth in the Motion, the payments proposed  
18 herein are essential to prevent immediate and irreparable harm to the Debtors' business operations  
19 and prospects for reorganization. Accordingly, the Debtors submit that ample cause exists to justify  
20 a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent that it  
21 applies.  
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1 **IV. CONCLUSION**

2 Based upon the foregoing, the Debtors respectfully request that the Court enter an order  
3 providing the following relief: (a) a determination that the Proposed Adequate Assurance constitutes  
4 adequate assurance of payment for future utility services as contemplated by sections 366(b) and  
5 (c)(3)(A) of the Bankruptcy Code; (b) a prohibition barring the Utility Companies from altering,  
6 refusing, or discontinuing services to the Debtors without further order of this Court; and (c) such  
7 other and further relief as the Court deems just and proper.

8 Dated: August 30, 2018

PACHULSKI STANG ZIEHL & JONES LLP

9  
10 By /s/ William N. Lobel

11 William N. Lobel

12 [Proposed] Attorneys for Ruby's SoCal Diners,  
13 LLC, *et al.*, Debtors and Debtors-in-Possession



EXHIBIT "A"

Ruby's Huntington Beach LTD

Utility name	Account Number	Contact	Avg Month	Address	City	State	Zip
SoCal Gas	2406434163	800-427-2000	\$1,500	PO Box C	Monterey Park	CA	91756-5111
Tiger Natural Gas Inc	240642416	918-491-6998	\$370	Department 2192	Tulsa	OK	74182
Rainbow Disposal	3-0605-0003307	714-847-3581	\$800	PO Box 78829	Phoenix	AZ	85062-8829
Southern California Edison	2-38-185-5659	800-990-7788	\$3,500	PO Box 300	Rosemead	CA	91772-0001
TPX Communications	106667925-0	877-487-8722	\$500	PO Box 509013	San Diego	CA	92150-9013
			<hr/>				
			\$6,670				

Ruby's Laguna Hills LTD

Utility name	Account Number	Contact	Comment	Avg Month	Address	City	State	Zip
SoCal Gas	12763007502	800-427-2000		\$ 750	PO Box C	Monterey Park	CA	91756-5111
TPX Communications	106667925-0	877-487-8722		\$ 600	PO Box 509013	San Diego	CA	92150-9013
Southern California Edison	2-38-185-5600	800-990-7788		\$ 650	PO Box 300	Rosemead	CA	91772-0001
El Toro Water District	17062	949-837-0660	Water and Sewer	\$ 500	24251 Los Alisos Blvd.	Lake Forest	CA	92630
Total				<u>\$ 2,500</u>				

Ruby's Oceanside LTD

Utility name	Account Number	Contact	Comment	Avg Month	Contact	Address	City	State	Zip
SDGE	52351366924	800-336-7343		\$1,500		PO Box 2511	Santa Ana	CA	92799-5111
Waste Management	0272026-2539-1	800-596-7444		\$700		PO Box 5410	Los Angeles	CA	90054-1065
TPX Communications	106667925-0	877-487-8722		\$800		PO Box 5090	San Diego	CA	92150-9013
City of Oceanside	313328	760-435-4500	Water	\$4,000	Financial Services Department	300 N. Coast	Oceanside	CA	92054
City of Oceanside	4110133754	760-435-4500	Electrical thrc	\$4,000	Financial Services Department	301 N. Coast	Oceanside	CA	92055

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\$11,000

Ruby's Palm Springs LTD

Utility name	Account Number	Contact	Comment	Avg Month	Address	City	State	Zip
SoCal Gas	14987532166	800-427-2000		\$500	PO Box C	Monterey Park	CA	91756-5111
TPX Communications	106667925-0	877-487-8722		\$370	PO Box 509013	San Diego	CA	92150-9013
Southern California Edison	2-38-185-5874	800-990-7788		\$2,500	PO Box 300	Rosemead	CA	91772-0001
Tiger Natural Gas Inc	1498753216	918-491-6998		\$400	Department 2192	Tulsa	OK	74182
				<hr/>				
				\$3,770				