

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

In re:)	
)	Chapter 11
)	
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	Case No. 09-12074 (KJC)
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket Nos. 11 and 61

**CERTIFICATION OF COUNSEL REGARDING DEBTORS' MOTION FOR INTERIM
AND FINAL ORDERS (A) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
REFUSING OR DISCONTINUING SERVICE; (B) APPROVING THE DEBTORS' PROPOSED
ADEQUATE ASSURANCE; AND (C) ESTABLISHING PROCEDURES FOR
RESOLVING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

On June 16, 2009, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed their Motion for Interim and Final Orders (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Approving the Debtors’ Proposed Adequate Assurance; and (C) Establishing Procedures for Resolving Requests for Additional Adequate Assurance [Docket No. 11] (the “Motion”). On June 17, 2009, the Court entered an order [Docket No. 61] (the “Interim Order”) approving the Motion on an interim basis. Subsequent to the filing of the Motion and entry of the Interim Order, Southern California Edison Company, Salt River Project and Arizona Public Service (collectively, the “Respondents”) filed an objection [Docket No. 161] (the “Objection”) to entry of an order approving the Motion on a final basis. The Debtors have worked with the Respondents to address the Objection, and have done so through changes to the proposed form of order filed

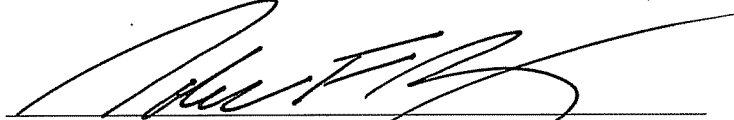
¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

with the Motion (the "Proposed Order") and a stipulation providing the Respondents with adequate assurance under section 366 of title 11 of the United States Code.

Attached hereto as Exhibit A is a revised Proposed Order (the "Revised Proposed Order").² The Debtors submit that the Revised Proposed Order is appropriate and consistent with the Debtors' discussions with the Respondent, and that entry of the Revised Proposed Order is in the best interests of the Debtors, their estates and creditors. Accordingly, the Debtors respectfully request the Court to enter the Revised Proposed Order at its earliest convenience without further notice or hearing.

Dated: Wilmington, Delaware
July 15, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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----and----

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2100 McKinney Avenue, Suite 1100

² For ease of reference, attached hereto as Exhibit B is a copy of the Revised Proposed Order marked against the Proposed Order.

Dallas, Texas 75201-6911
Telephone: (214) 698-3100
Facsimile: (214) 571-2900

PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT A

Revised Proposed Order

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

IN RE:)	
)	Chapter 11
BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i>,¹)	
)	Case No. 09-12074 (KJC)
Debtors.)	
)	Jointly Administered
)	
)	Ref. Docket Nos. 11, 61 and _____

FINAL ORDER (A) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING OR DISCONTINUING SERVICE; (B) APPROVING THE DEBTORS' PROPOSED ADEQUATE ASSURANCE; AND (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE

Upon consideration of the motion (the "***Motion***") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), for entry of a final order pursuant to sections 105(a) and 366 of title 11 of the United States Code (the "***Bankruptcy Code***") (a) prohibiting Utility Providers² from altering, refusing, or discontinuing service; (b) approving the Debtors' proposed adequate assurance, and (c) establishing procedures for resolving requests for additional adequate assurance, all as set forth in the Motion; and upon the Street Declaration in support thereof; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

² Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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:

1. The Motion is granted as set forth below on a final basis.
2. This Order shall not apply to Southern California Edison Company, Salt River Project and Arizona Public Service.
3. Absent compliance with the procedures contained herein for requesting additional assurance, all Utility Providers listed on the Utility Service List, annexed to the Motion as *Exhibit C* and thereafter amended by that certain Notice of Filing of Amended Exhibit C to Debtors' Motion for Interim and Final Orders (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Approving the Debtors' Proposed Adequate Assurance; and (C) Establishing Procedures for Resolving Requests for Additional Adequate Assurance [Docket No. 142] (the "**Utility Service List Amendment**"), are (a) prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of any unpaid prepetition charges, (b) discriminating against the Debtors, or (c) requiring a payment of a deposit or receipt or any other security for continued services as a result of the Chapter 11 Cases or any outstanding prepetition invoices other than (x) the \$263,000 deposit (the "**Adequate Assurance Deposit**") that the Debtors have made into a single segregated account (the "**Adequate**

Assurance Deposit Account") for the benefit of all Utility Providers or (y) the letters of credit or security deposits that the Debtors have issued or paid for the benefit of certain Utility Providers (each a "*Direct Utility Deposit*" and together with the Adequate Assurance Deposit, the "*Proposed Adequate Assurance*").

4. If an amount relating to postpetition Utility Services provided by any Utility Provider is unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Deposit Account by giving written notice to the Debtors, via facsimile, to Paul Street, Building Materials Holding Corporation, facsimile number 208-331-4477 and Michael A. Rosenthal, Gibson, Dunn & Crutcher LLP, facsimile number 212-351-6258, in which case the disbursement shall only be honored on the date that is three business days after the date of such Utility Provider's request.

5. Except as provided herein with respect to the rights of Utility Providers, the creditors of the Debtors shall have no interest in, or lien on, the Adequate Assurance Deposit or the Adequate Assurance Deposit Account.

6. The Adequate Assurance Deposit shall be maintained until the earlier of (a) entry of an order of the Court authorizing the return of the Adequate Assurance Deposit to the Debtors and (b) the effective date of a chapter 11 plan for the Debtors (at which time the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the reorganized Debtors).

7. The Debtors shall have the right to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of (a) a Utility Provider that the Debtors subsequently determine should be removed from the Utility Service List, (b) the Debtors discontinue service from a Utility Provider, or (c) to the extent that an Additional Assurance

Request is properly serviced by a Utility Provider and any settlement resulting in such Utility Provider's removal from the Utility Service List or in the payment of alternate assurance to the Utility Provider.

8. The Debtors' Proposed Adequate Assurance satisfies the requirements under section 366 of the Bankruptcy Code.

9. The following additional requirements and procedures (the "**Adequate Assurance Procedures**"), with respect to the submission of requests for additional assurance by any Utility Provider not satisfied with the Adequate Assurance Deposit (each an "**Additional Assurance Request**"), are approved, and absent compliance with the following Adequate Assurance Procedures, the Utility Providers are forbidden to (i) alter, refuse, or discontinue service to the Debtors, (ii) discriminate against the Debtors on account of any prepetition charges, or (iii) require additional adequate assurance of payment other than the Proposed Adequate Assurance:

- a. Within three business days after the date that this Final Order is docketed, the Debtors will mail a copy of this Final Order to the Utility Providers on the Utility Service List;
- b. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon the following parties: (i) Building Materials Holding Corporation, 720 Park Blvd., Ste 200, Boise, ID 83712 (Attn: Paul Street); (ii) the attorneys for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti, Jr.); and (iii) the attorneys for the Official Committee of Unsecured Creditors, Arent Fox, LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036-5339 (Attn: Christopher J. Giaimo and Katie A. Lane) and Benesch, Friedlander, Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801, Wilmington, DE 19801 (Attn: Bradford J. Sandler) (collectively, the "**Notice Parties**");
- c. Each Additional Assurance Request must (i) be in writing; (ii) set forth the type of Utility Services and the location for which such Services are provided; (iii) include a summary of the Debtors' payment history relevant to the

affected account(s), including any deposits and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) be actually received by the Notice Parties;

- d. Upon the Notice Parties' receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall have the greater of (i) 14 days from the receipt of such Additional Assurance Request or (ii) 20 days from the Petition Date (collectively, the "**Resolution Period**") to negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request;
- e. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further order of the Court and may, in connection with any such agreement and in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, and/or other forms of security, without further order of the Court to the extent the Debtors believe such additional assurance is reasonable in the exercise of their business judgment;
- f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors will file a motion with the Court to request a hearing before the Court within a reasonable time after receipt of the Additional Assurance Request to determine the adequacy of assurance of payment with respect to a particular Utility Provider (the "**Determination Motion**") pursuant to section 366(c)(3) of the Bankruptcy Code;
- g. Pending resolution of any such Determination Motion, any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance; and
- h. The Debtors may, in their discretion, resolve any Determination Motion by mutual agreement with the requesting Utility Provider without further order of the Court and may, in connection with any such agreement and in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, and/or other forms of security, without further order of the Court to the extent the Debtors believe that such additional assurance is reasonable in the exercise of their business judgment.

10. The relief granted herein is for all Utility Providers providing Utility Services to the Debtors and is not limited to those listed on the Utility Service List annexed to the Motion as *Exhibit C* and thereafter amended by the Utility Service List Amendment.

11. The Debtors are authorized to supplement, as necessary, the Utility Service List and shall serve copies of the Motion, the Interim Order, and this Final Order on such newly identified Utility Providers.

12. The Interim Order and this Final Order shall be binding on all Utility Providers providing Utility Services, regardless of when each Utility Provider was added to the Utility Service List, provided that (a) the Debtors shall increase the amount of the Adequate Assurance Deposit by an amount equal to the average cost of two weeks of Utility Services provided by such additional Utility Provider over the past 12 months, *provided* that such Utility Provider does not currently hold a cash deposit, letter of credit, or other security deposit, and (b) any such newly identified Utility Provider shall have until 14 days from the date of such service to serve an Additional Assurance Request in compliance with the proposed Adequate Assurance Procedures, which request must actually be received by the Notice Parties within this time period.

13. The Debtors shall have the periods specified in the proposed Adequate Assurance Procedures set forth herein to seek to resolve any such request by mutual agreement with the Utility Provider without further order of the Court or to file a Determination Motion with the Court to determine the adequacy of assurance of payment with respect to such Utility Provider in accordance with such Procedures.

14. Any Utility Provider that does not seek an Additional Adequate Assurance Request within 30 days after the date of the Interim Order and/or does not timely file a

Procedures Objection shall be deemed to have adequate assurance that is satisfactory to it, within the meaning of section 366 of the Bankruptcy Code.

15. Nothing in the Motion or this Final Order shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

16. The Debtors' service of the Motion, the Interim Order, or this Final Order upon a company, or a Utility Service's inclusion on the Utility Service List, shall not constitute an admission or concession that any such entity is a utility within the meaning of section 366 of the Bankruptcy Code and the Debtors reserve all rights and defenses with respect thereto.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of applicable rules.

19. Pursuant to Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

20. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Final Order.

Dated: Wilmington, Delaware
July __, 2009

KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Blackline of Revised Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:

BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-_____12074 (KJC)

Jointly Administered

Ref. Docket No. _____Nos. 11, 61 and _____

**FINAL ORDER (A) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
REFUSING OR DISCONTINUING SERVICE; (B) APPROVING THE DEBTORS'
PROPOSED ADEQUATE ASSURANCE; AND (C) ESTABLISHING PROCEDURES
FOR RESOLVING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon consideration of the motion (the "**Motion**") of Building Materials Holding Corporation and its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**")^a for entry of a final order pursuant to sections 105(a) and 366 of title 11 of the United States Code (the "**Bankruptcy Code**") (a) prohibiting Utility Providers² from altering, refusing, or discontinuing service; (b) approving the Debtors' proposed adequate assurance, and (c) establishing procedures for resolving requests for additional adequate assurance, all as set forth in the Motion; and upon the Street Declaration in support thereof; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. sections 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and notice of

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Building Materials Holding Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

² Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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:

1. The Motion is granted as set forth below on a final basis.

2. This Order shall not apply to Southern California Edison Company, Salt River Project and Arizona Public Service.

3. ~~2-~~ Absent compliance with the procedures contained herein for requesting additional assurance, all Utility Providers listed on the Utility Service List, annexed to the ~~Motions as **Exhibit C**~~ Motion as **Exhibit C** and thereafter amended by that certain Notice of Filing of Amended Exhibit C to Debtors' Motion for Interim and Final Orders (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Approving the Debtors' Proposed Adequate Assurance; and (C) Establishing Procedures for Resolving Requests for Additional Adequate Assurance [Docket No. 142] (the "**Utility Service List Amendment**"), are (a) prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of any unpaid prepetition charges, (b) discriminating against the Debtors, or (c) requiring a payment of a deposit or receipt or any other security for continued services as a result of the Chapter 11 Cases or any outstanding prepetition invoices other than (x) the \$263,000 deposit (the "**Adequate Assurance Deposit**") that the Debtors have made into a single segregated escrow account (the "**Adequate Assurance Deposit Account**") ~~with an escrow agent (the "**Utility Escrow**~~

~~Agent~~") for the benefit of all Utility Providers or (y) the letters of credit or security deposits that the Debtors have issued or paid for the benefit of certain Utility Providers (each a "***Direct Utility Deposit***" and together with the Adequate Assurance Deposit, the "***Proposed Adequate Assurance***").

4. ~~3.~~ If an amount relating to postpetition Utility Services provided by any Utility Provider is unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Deposit Account by giving written notice to the ~~Utility Escrow Agent with a simultaneous copy by Debtors, via~~ facsimile, to Paul Street, Building Materials Holding Corporation, facsimile number 208-331-4477 and Michael A. Rosenthal, Gibson, Dunn & Crutcher LLP, facsimile number 212-351-6258, in which case the disbursement shall only be honored on the date that is three business days after the date of such Utility Provider's request.

5. ~~4.~~ Except as provided herein with respect to the rights of Utility Providers, the creditors of the Debtors shall have no interest in, or lien on, the Adequate Assurance Deposit or the Adequate Assurance Deposit Account.

6. ~~5.~~ The Adequate Assurance Deposit shall be maintained until the earlier of (a) entry of an order of the Court authorizing the return of the Adequate Assurance Deposit to the Debtors and (b) the effective date of a chapter 11 plan for the Debtors (at which time the Adequate Assurance Deposit shall automatically, without further order of the Court, be returned to the reorganized Debtors).

7. ~~6.~~ The Debtors shall have the right to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of (a) a Utility Provider that the Debtors subsequently determine should be removed from the Utility Service List, (b) the Debtors

discontinue service from a Utility Provider, or (c) to the extent that an Additional Assurance Request is properly serviced by a Utility Provider and any settlement resulting in such Utility Provider's removal from the Utility Service List or in the payment of alternate assurance to the Utility Provider.

8. ~~7.~~ The Debtors' Proposed Adequate Assurance satisfies the requirements under section 366 of the Bankruptcy Code.

9. ~~8.~~ The following additional requirements and procedures (the "*Adequate Assurance Procedures*"), with respect to the submission of requests for additional assurance by any Utility Provider not satisfied with the Adequate Assurance Deposit (each an "*Additional Assurance Request*"), are approved, and absent compliance with the following Adequate Assurance Procedures, the Utility Providers are forbidden to (i) alter, refuse, or discontinue service to the Debtors, (ii) discriminate against the Debtors on account of any prepetition charges, or (iii) require additional adequate assurance of payment other than the Proposed Adequate Assurance:

- a. Within three business days after the date that ~~the Interim~~this Final Order is docketed, the Debtors will mail a copy of ~~the Interim~~this Final Order to the Utility Providers on the Utility Service List;
- b. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must ~~file an Additional Assurance Request with the Court and serve such~~serve an Additional Assurance Request upon the following parties: (i) Building Materials Holding Corporation, 720 Park Blvd., Ste 200, Boise, ID 83712 (Attn: Paul Street); and; (ii) the attorneys for the Debtors, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, DE 19801 (Attn: Sean M. Beach and Robert F. Poppiti, Jr.); and (iii) the attorneys for the Official Committee of Unsecured Creditors, Arent Fox, LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036-5339 (Attn: Christopher J. Giaimo and Katie A. Lane) and Benesch, Friedlander, Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801.

Wilmington, DE 19801 (Attn: Bradford J. Sandler) (collectively, the "**Notice Parties**");

- c. Each Additional Assurance Request must (i) be in writing; (ii) set forth the type of Utility Services and the location for which such Services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any deposits and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) be actually received by the Notice Parties;
- d. Upon the Notice Parties' receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall have the greater of (i) 14 days from the receipt of such Additional Assurance Request or (ii) 20 days from the Petition Date (collectively, the "**Resolution Period**") to negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request;
- e. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider without further order of the Court and may, in connection with any such agreement and in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, and/or other forms of security, without further order of the Court to the extent the Debtors believe such additional assurance is reasonable in the exercise of their business judgment;
- f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors will file a motion with the Court to request a hearing before the Court within a reasonable time after receipt of the Additional Assurance Request to determine the adequacy of assurance of payment with respect to a particular Utility Provider (the "**Determination Motion**") pursuant to section 366(c)(3) of the Bankruptcy Code;
- g. Pending resolution of any such Determination Motion, any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance; and
- h. The Debtors may, in their discretion, resolve any Determination Motion by mutual agreement with the requesting Utility Provider without further order of the Court and may, in connection with any such agreement and in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment,

letter of credit, and/or other forms of security, without further order of the Court to the extent the Debtors believe that such additional assurance is reasonable in the exercise of their business judgment.

10. ~~9.~~ The relief granted herein is for all Utility Providers providing Utility Services to the Debtors and is not limited to those listed on the Utility Service List annexed to the ~~Motions~~ Motion as ***Exhibit C*** and thereafter amended by the Utility Service List Amendment.

11. ~~10.~~ The Debtors are authorized to supplement, as necessary, the Utility Service List and shall serve copies of the Motion, the Interim Order, and ~~the~~ this Final Order on such newly identified Utility Providers.

12. ~~11.~~ The Interim Order and this Final Order shall be binding on all Utility Providers providing Utility Services, regardless of when each Utility Provider was added to the Utility Service List, provided that (a) the Debtors shall increase the amount of the Adequate Assurance Deposit by an amount equal to the average cost of two weeks of Utility Services provided by such additional Utility Provider over the past 12 months, *provided* that such Utility Provider ~~that~~ does not currently hold a cash deposit, letter of credit, or other security deposit, and (b) any such newly identified Utility Provider shall have until 14 days from the date of such service to serve an Additional Assurance Request in compliance with the proposed Adequate Assurance Procedures, which request must actually be received by the Notice Parties within this time period.

13. ~~12.~~ The Debtors shall have the periods specified in the proposed Adequate Assurance Procedures set forth herein to seek to resolve any such request by mutual agreement with the Utility Provider without further order of the Court or to file a Determination Motion with the Court to determine the adequacy of assurance of payment with respect to such Utility Provider in accordance with such Procedures.

14. ~~13.~~ Any Utility Provider that does not seek an Additional Adequate Assurance Request within 30 days after the date of the Interim Order and/or does not timely file a Procedures Objection shall be deemed to have adequate assurance that is satisfactory to it, within the meaning of section 366 of the Bankruptcy Code.

15. ~~14.~~ Nothing in the Motion or this Final Order shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the right to dispute any claim, or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

16. ~~15.~~ The Debtors' service of the Motion, the Interim Order, or this Final Order upon a company, or a Utility Service's inclusion on the Utility Service List, shall not constitute an admission or concession that any such entity is a utility within the meaning of section 366 of the Bankruptcy Code and the Debtors reserve all rights and defenses with respect thereto.

17. ~~16.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

18. ~~17.~~ 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)~~ applicable rules.

19. ~~18.~~ ~~Notwithstanding~~ Pursuant to Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

20. ~~19.~~ This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Final Order.

Dated: Wilmington, Delaware
 July , 2009

KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE