

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

www.flsb.uscourts.gov

In re:

BIRD GLOBAL, INC., *et al.*,¹

Debtors.

Chapter 11 Cases

Case No. 23-20514-CLC

(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES, (II) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT, AND REQUEST FOR WAIVER OF LOCAL RULE 9013-1(L)(2)(b) REQUIREMENT (Expedited Hearing Requested)²

Any utility who fails to file with the Court and serve Debtors' counsel a written response to this motion at least two business days prior to the scheduled hearing on this Motion, pursuant to Local Rule 9013-1(L), will be deemed to have consented to the entry of an order in the form attached to this Motion (unless the hearing is set on less than five days' notice). Any scheduled hearing may then be canceled.

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through their proposed undersigned counsel, file this motion (the "Motion"), on an expedited basis, for the entry of an order, (i) determining that the Debtors' Utility Providers (defined herein) have been provided with adequate assurance of payment within the meaning of

¹ The address of the Debtors is 392 Northeast 191st Street, #20388, Miami, FL 33179. The last four digits of the Debtors' federal tax identification numbers are: (i) Bird Global, Inc. (3155); (ii) Bird Rides, Inc. (9939); (iii) Bird US Holdco, LLC (8390); (iv) Bird US Opco, LLC (6873); and (v) Skinny Labs, Inc. (8176).

² Section 366(c)(2) of the Bankruptcy Code provides, in part, that subject to paragraphs (3) and (4), with respect to a chapter 11 case, like those filed by the Debtors, a utility provider may alter, refuse or discontinue service if within 30 days after the filing of the petition, the utility does not receive from a chapter 11 debtor adequate assurance of payment for utility service that is satisfactory to the utility provider. 11 U.S.C. § 366(c)(2). Given the December 20, 2023, filing date, the Debtors respectfully request that the Court set this Motion for hearing on **January 16, 2024, at 10:00 a.m.** when it is hearing other matters in the Debtors' chapter 11 cases.

11 U.S.C. § 366; (ii) approving the Debtors’ proposed adequate assurance and related procedures; (iii) prohibiting the Utility Providers from altering, refusing or discontinuing Utility Services (defined herein) on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance; (iv) determining that the Debtors are not required to provide any additional adequate assurance beyond what is proposed in this Motion; and (v) granting related relief. In support of this Motion, the Debtors rely upon the *Declaration of Christopher Rankin in Support of Chapter 11 Petitions and First Day Pleadings* [ECF No. 31] (the “First Day Declaration”) and respectfully represent as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are section 105 and 366 of Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), and rule 9013-1(L) of the Local Bankruptcy Rules for the Southern District of Florida (the “Local Rules”).

Background

4. On December 20, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
5. The Debtors are operating their businesses and managing their affairs as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.
6. For a detailed description of the Debtors and their operations, the Debtors respectfully refer the Court and parties in interest to the First Day Declaration.

The Utility Providers

7. In connection with the operation of their businesses, the Debtors use electricity, gas, water/sewer, waste management, telecommunications, and other services (collectively, the “Utility Services”) provided by approximately one-hundred (100) utility providers and other entities (collectively, the “Utility Providers”). A list identifying the Utility Providers is attached hereto as **Exhibit “A”** (the “Utility Provider List”). The Debtors’ business operations depend upon uninterrupted service in order to continue operations and preserve the value of their assets.³

8. As further reflected on Exhibit A, historically, the Debtors spend an aggregate of approximately \$542,021 each month on Utility Services from the Utility Providers. Certain Utility Providers have required the Debtors to post deposits to secure the Debtors’ payment or performance of certain obligations. Specifically, **Exhibit “A”** reflects a total of \$336,045 in deposits provided to four (4) of the Utility Providers, as follows: (i) \$1,245 for Georgia Power (Account No. 25147-44099); (ii) \$4,800 for SRP (Account No 805-858-000); (iii) \$230,000 for Hologram, Inc. (Account No. 21766); and (iv) \$100,000 for Verizon Wireless (Account No. 342297304-00001).

9. To the best of the Debtors’ knowledge, while they are not current on all utility payments, there are no material defaults with respect to undisputed invoices for Utility Services as of the Petition Date. The Debtors intend to pay any post-petition obligations for Utility Services in a timely fashion and in the ordinary course.

³ In their cash management motion, the Debtors disclosed the existence of Intercompany Transactions with Non-Debtor Affiliates (as defined in the motion). [ECF No. 11, ¶ 48]. The Court approved the continuation of Intercompany Transactions in the ordinary course of business subject to certain conditions. [ECF No. 93, ¶ 12]. In that regard, the Debtors disclose that at least one utility provides services to a Debtor and a Non-Debtor Affiliate, with the costs allocated between the Debtor and Non-Debtor Affiliate.

10. Uninterrupted utility services are essential to ongoing operations and, therefore, to the success of the Debtors' chapter 11 cases. Should the Utility Providers refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, which could be harm the estates and the Debtors' efforts in connection with these cases. It is therefore critical that utility services continue uninterrupted.

Relief Requested

11. By this Motion, the Debtors seek entry of an order: (i) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (ii) approving the Proposed Adequate Assurance and the Adequate Assurance Procedures (as each is defined below); (iii) prohibiting the Utility Providers from altering, refusing or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Proposed Adequate Assurance; (iv) determining that the Debtors are not required to provide any additional adequate assurance beyond the Proposed Adequate Assurance; and (v) granting related relief.

A. The Proposed Adequate Assurance

12. The Debtors intend to pay all post-petition obligations owed to the Utility Providers in a timely manner and expect to have sufficient funds available to pay all undisputed post-petition utility obligations.

13. Nevertheless, to provide adequate assurance of payment for future services to the Utility Providers as set forth in section 366(c) of the Bankruptcy Code, the Debtors propose to deposit an initial cash sum (the "Adequate Assurance Deposit") within ten (10) business days after the date of entry of the order approving this Motion into a segregated, account under the Debtors' control (the "Adequate Assurance Account") to be opened at an institution that is an

approved depository, for the benefit of the Utility Providers, unless any such Utility Provider agrees in writing to a lesser amount or is paid in advance for Utility Services.

14. The Debtors propose that the amount of the Adequate Assurance Deposit be equal to the approximate aggregate cost of two weeks of Utility Services provided by the Utility Providers servicing the Debtors' business, calculated using the historical average for such payments during the calendar year 2023, and adjusted downwards per account by the available security deposit and/or surety bond for that particular account. As such, and as reflected on Exhibit A, the Debtors propose an Adequate Assurance Deposit in the total amount of \$104,127, provided that the Debtors may, in their sole discretion and without further application to the Court or order from the Court, reduce this amount in the event that their relationship with any Utility Provider ends as a result of the termination of a lease or otherwise. In that event, the Debtors may reduce the Adequate Assurance Deposit by the portion escrowed for any Utility Provider whose relationship has been terminated. The Debtors further request authority to cause the Adequate Assurance Deposit and any funds held in the Adequate Assurance Account to be returned to the Debtors, (a) as provided pursuant to, or consistent with, any further order of the Court, or (b) without further order of the Court, upon the earlier of the effective date of a chapter 11 plan or such other time as the Debtors' Chapter 11 cases may be closed.

15. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' previous security deposits and the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "Proposed Adequate Assurance"), constitute sufficient adequate assurance to the Utility Providers. Specifically, as shown on **Exhibit A**, no Proposed Adequate Assurance is necessary for four (4) Utility Providers, Georgia Power, SRP, Hologram, and Verizon, as those entities hold deposits in excess of the cost of 2 weeks of utility

service. Otherwise, the Debtors set forth Proposed Adequate Assurance for the remaining ninety-six (96) Utility Providers. If any Utility Provider believes additional assurance is required, it may request such assurance pursuant to the following procedures.

B. The Proposed Adequate Assurance Procedures

16. In light of the severe consequences to the Debtors of any interruption in services by the Utility Providers, but recognizing the right of the Utility Providers to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors propose the following procedures (the “Adequate Assurance Procedures”) for approval by the Court:

- (a) Absent compliance with the Adequate Assurance Procedures, the Utility Providers may not alter, refuse, or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these chapter 11 cases or any unpaid prepetition charges or request payment of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- (b) Within three (3) business days after the entry of an order on this Motion, the Debtors will serve a copy of said order on the Utility Providers (the “Utility Provider List”) by first class mail. In the event that any Utility Provider has been omitted from the Utility Provider List, the Debtors shall supplement said list and shall promptly serve a copy of the order on such Utility Provider upon learning of such omission.
- (c) If a Utility Provider is not satisfied with the Proposed Adequate Assurance provided by the Debtors, the Utility Provider must make a request for an additional assurance of payment (an “Adequate Assurance Request”) and serve such request so that it is received by the Debtors and their bankruptcy counsel at the following addresses no later than fifteen (15) days of entry of an order granting this Motion: (i) Debtors, 392 NE 191st Street, #20388, Miami, FL 33179 (Attn: Chris Rankin, Chief Restructuring Officer, Email: chris.rankin@bird.com); and (ii) attorneys for the Debtors, Berger Singerman LLP, 1450 Brickell Avenue, Suite 1900, Miami, Florida 33131 (Attn: Paul Steven Singerman, Esq., Email: singerman@bergersingerman.com, Jordi Guso, Esq., Email: jguso@bergersingerman.com, Robin J. Rubens, Esq., Email: rrubens@bergersingerman.com, and Clay Roberts, Esq., Email: croberts@bergersingerman.com).

- (d) Any Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location for which utility services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) include a proposal for what would constitute adequate assurance of future payment from the Debtors, along with an explanation of why such proposal is reasonable. Any Adequate Assurance Request that fails to meet these requirements shall be deemed an invalid request for adequate assurance.
- (e) Upon the Debtors' receipt of any Adequate Assurance Request at the addresses set forth above, the Debtors shall have until thirty (30) days from the receipt of such Adequate Assurance Request or such other date as the parties mutually agree (the "Resolution Period") to negotiate with such Utility Provider to resolve such Utility Provider's request for additional assurance of payment and advise the Utility Provider that the Adequate Assurance Request is acceptable.
- (f) If the Debtors determine, in their discretion, that an Adequate Assurance Request or any consensual agreement reached in connection therewith is reasonable, the Debtors, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility Provider serving such Adequate Assurance Request and, in connection with such agreements, provide the Utility Provider with additional adequate assurance of payment, including payments on prepetition amounts owing, cash deposits, prepayments, or other forms of security, to the extent authorized pursuant to any orders authorizing the use of cash collateral and the applicable budgets thereunder.
- (g) If the Debtors determine that the Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.
- (h) Pending resolution of an Adequate Assurance Request at any such Determination Hearing and entry of a final, non-appealable order thereon finding that the Utility Provider is not adequately assured of future payment, such Utility Provider shall be prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition service or on account of any objections to the Proposed Adequate Assurance.

- (i) Any Utility Provider that does not timely request assurance of payment through an Adequate Assurance Request pursuant to the Adequate Assurance Procedures, automatically will be deemed to have received assurance of payment that is satisfactory to the Utility Provider under section 366(c)(2) without further action by the Debtors and without prejudice to the right of such Utility Provider to seek relief in the future pursuant to section 366(c)(3).⁴

17. The Debtors request that any security deposits and/or surety bonds that were in place prior to the Petition Date shall remain in place and shall continue to be held by those Utility Providers holding same, except upon either (a) written agreement(s) between the Debtors and a Utility Provider, or other applicable procedures, without further order of the Court or (b) further order(s) of the Court.

18. The Debtors also request authorization to adjust periodically the amount in the Adequate Assurance Deposit to reflect the following factors: (a) the termination of Utility Services by any Utility Provider(s) to the Debtors; (b) the entry into any agreements between the Debtors and the applicable Utility Provider; and (c) the removal of any amount spent on Utility Services from Utility Providers that hold a post-petition security deposit, surety bond or other security from the Debtors for such services.

C. Subsequent Modifications of Utility Provider List

19. Although, the Debtors have made every attempt to identify any and all Utility Providers, certain Utility Providers that currently provide Utility Services to the Debtors may not be listed on the Utility Provider List. Accordingly, the Debtors request that the Court: (a) authorize the Debtors to provide notice and a copy of the Order granting this Motion to Utility

⁴ As a condition of accepting the Proposed Adequate Assurance, the Debtors propose that a Utility Provider shall be deemed to have stipulated that the Proposed Adequate Assurance constitutes adequate assurance of payment to such Utility Provider within the meaning of section 366 of the Bankruptcy Code, and that the Utility Provider shall be prohibited from challenging or opting out of the Adequate Assurance Procedures, filing an Adequate Assurance Request, or requesting any additional adequate assurance of payment of any kind at any time, notwithstanding any attempt by such Utility Provider to reserve a right to seek any such relief.

Providers not listed on the Utility Provider List (collectively, the “Additional Utility Providers”), as such Utility Providers are identified, and (b) provide that the Additional Utility Providers are subject to the terms of the Order, including the Adequate Assurance Procedures. As a result, each Additional Utility Provider will be afforded thirty (30) days from the service of the Order granting this Motion on such Additional Utility Provider to request assurance of payment from the Debtors pursuant to the Adequate Assurance Procedures.

The Requested Relief Should Be Granted

20. Section 366(a) of the Bankruptcy Code protects a debtor against the immediate termination of utility services after it files for bankruptcy. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility provider may alter, refuse, or discontinue a debtor’s utility service if the utility provider does not receive “adequate assurance of payment” for post-petition utility services from the debtor within thirty (30) days after the commencement of the debtor’s chapter 11 case. 11 U.S.C. § 366(c)(2).

21. Section 366(c) of the Bankruptcy Code (a) defines the forms of adequate assurance of payment that a debtor may employ in providing adequate assurance of payment to include cash deposits, letters of credit, certificates of deposit, surety bonds, prepayments of utility consumption or another form of security that is mutually agreed upon between the utility provider and the debtor; (b) excludes from the definition of adequate assurance the availability of an administrative expense claim; and (c) provides that a court may not consider certain facts in determining the amount of assurance that is adequate. 11 U.S.C. §§ 366(c)(1)(A)–(B) and (c)(3)(B).

22. Although section 366 of the Bankruptcy Code does clarify what forms adequate assurance of payment may take and what factors the court should consider when determining

whether such assurance is adequate, the statute still requires courts to determine what amount, if any, is necessary to provide adequate assurance of payment. Congress did not set a minimum adequate assurance amount, but rather vested discretion in the courts to determine the appropriate level of adequate assurance required in each case. Accordingly, section 366 of the Bankruptcy Code does not give utility companies a blank check or the right to extract from debtors an unlimited amount of adequate assurance. Under section 366(c) of the Bankruptcy Code, there is nothing to prevent a court from deciding that, on the facts of the case before it, the amount required of a debtor to adequately assure payment to utility providers is zero or nominal.⁵

23. In addition, section 366(b) requires only that a utility's assurance of payment be "adequate." Courts have long recognized that adequate assurance of performance does not constitute an absolute guarantee of a debtor's ability to pay. *See, e.g., In re Caldor, Inc. - N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with 'adequate assurance' of payment. The statute does not require an 'absolute guarantee of payment.'") (citations omitted) (hereinafter "Caldor"), *aff'd sub nom Virginia Elec. & Power Co. v. Caldor, Inc. - N.Y.*, 117 F.3d 646 (2d Cir. 1997); *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008); *In re Steinebach*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance [A]ll § 366(b) requires is that a utility be

⁵ Under section 366 prior to the 2005 amendments to the Bankruptcy Code, courts had the discretion to determine that the amount of adequate assurance payments or collateral required in a particular case was zero. *See Virginia Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 650 (2d Cir. 1997) ("Even assuming that 'other security' should be interpreted narrowly, we agree with the appellees that a bankruptcy court's authority to modify the level of the deposit or other security, provided for under §366(b), includes the power to require no deposit or other security where none is necessary to provide a utility supplier with adequate assurance of payment."). Since the revised section 366(c)(3) still allows the courts to order the modification of the amount of an assurance of payment, the courts remain free to require no deposit or security where none is necessary to ensure adequate assurance of payment in any particular case.

protected from an unreasonable risk of non-payment”); *In re Adelphia Bus. Sols.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“In determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment”); *In re Penn Jersey Corp.*, 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (stating that section 366(b) of the Bankruptcy Code “contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor’s financial circumstances”). Whether utilities are subject to an unreasonable risk of nonpayment for post-petition services must be determined from the facts of each case. *See In re Anchor Glass Container Corp.*, 342 B.R. 872, 875 (Bankr. M.D. Fla. 2005); *In re Keydata Corp.*, 12 B.R. 156 (Bankr. D. Mass. 1981).

24. Furthermore, as part of this analysis, courts have recognized that “[i]n deciding what constitutes ‘adequate assurance’ in a given case, a bankruptcy court must ‘focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.’” *Virginia Elec. & Power Co.*, 117 F.3d at 650 (emphasis in original) (quoting *Penn Jersey*, 72 B.R. at 985); *In re Adelphia Bus. Sols.*, 280 B.R. at 80 (“The requirement for ‘adequate assurance’ of payment, which, at least in this Circuit, need not necessarily be provided by deposit.”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972) (upholding lower court’s decision that no utility deposits were necessary where such deposits “would jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”); *see also New Rochelle Tel. Corp.*, 397 B.R. at 639 (“deciding what constitutes adequate assurance, a bankruptcy court must focus on the utility’s need for assurance with the debtor’s scarce financial resources”).

25. Based upon the foregoing, the Debtors believe the Utility Providers have adequate assurance of payment even without recourse to the Adequate Assurance Deposit. The Debtors anticipate having sufficient resources to pay, and intend to pay, all valid post-petition obligations for utility services in a timely manner. In addition, the Debtors' reliance on the Utility Services for the operation of their businesses and for the preservation of value of their assets provides them with an incentive to stay current on their utility obligations. These factors, which the Court may consider when determining the amount of any adequate assurance payments, justify finding that the Debtors are not required to make any additional adequate assurance payments in these Chapter 11 cases. In light of the foregoing, the Debtors respectfully submit that the Proposed Adequate Assurance, as set forth on Exhibit A of this Motion, is more than sufficient to assure the Utility Providers of future payment. By offering the Proposed Adequate Assurance and the Adequate Assurance Procedures, the Debtors seek to implement an organized process that facilitates the determination of the amount of assurance of payment that is adequate.

26. Absent the approval of the proposed procedures, the Utility Providers could discontinue service, without warning, thirty (30) days after the Petition Date, if they claim they have not yet received a "satisfactory" adequate assurance payment. The Debtors could then be forced to address numerous requests by Utility Providers in an unorganized manner at a critical period in their Chapter 11 cases when their efforts should be focused on maximizing value for all of their stakeholders. The orderly process contemplated by the Adequate Assurance Procedures is necessary for a smooth transition by the Debtors into Chapter 11 and will aid in their reorganization efforts. Moreover, the proposed procedures will ensure that all parties act in good faith by establishing a fair process. Because the Adequate Assurance Procedures are reasonable

and in accord with the purposes of section 366 of the Bankruptcy Code, the Court should grant the relief requested herein.

27. Moreover, this Court has the authority to grant the relief requested herein pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” The basic purpose of section 105 is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.” *See* 2 COLLIER ON BANKRUPTCY ¶ 105.01, at 105-6 (Alan N. Resnick & Henry J. Sommers eds., 16th ed 2014). As such, the determination of “adequate assurance” within the meaning of section 366 of the Bankruptcy Code is fully within this Court’s discretion. *See In re Marion Steel Co.*, 25 B.R. 188, 198 (Bankr. D. Ohio 1983). In this regard, bankruptcy courts are not bound by state or local regulations governing what constitutes adequate assurance of payment for post-petition utility services. *Id.* at 199; *In re Begley*, 41 B.R. 402, 405-06 (Bankr. E.D. Pa. 1984), *aff’d*, 760 F.2d 36 (3d Cir. 1987).

28. The Debtors submit that on the facts of these Chapter 11 cases, the Proposed Adequate Assurance is sufficient to provide adequate assurance to the Utility Providers of the Debtors’ future performance. Additionally, the Debtors propose to further protect the Utility Providers through the Adequate Assurance Procedures outlined above. The Debtors submit that granting the requested relief will not prejudice the rights of the Utility Providers to seek additional adequate assurance of payment under section 366 of the Bankruptcy Code should the Proposed Adequate Assurance fail to provide the Utility Providers with adequate assurance of payment.

29. As stated above, the Debtors cannot continue their operations without the continued services of the Utility Providers. If any of the Utility Providers alter, refuse, or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted and the value of their estates would be negatively impacted. In contrast, if the Court grants the relief requested herein, the Utility Providers will not be prejudiced by the continuation of their services.

30. Relief similar to that sought herein has been granted by this Court and courts in other Districts. *See, e.g., In re AeroTech Miami Inc. d/b/a iAero Tech, et al.*, Case No. 23-17503-RAM (Bankr. S.D. Fla. Oct. 16, 2023); *In re Vital Pharmaceuticals, Inc., et al.*, Case No. 22-17842-PDR (Bankr. S.D. Fla. Oct. 28, 2022); *In re American Purchasing Services, LLC, et al.*, Case No. 20-23495-SMG (Bankr. S.D. Fla. Jan. 11, 2021); *In re Tamarac 10200, LLC, et al.*, Case No. 20-23346-PDR (Bankr. S.D. Fla. Dec. 31, 2020); *In re Adinath Corp., et al.*, Case No. 15-16885-LMI (Bankr. S.D. Fla. May 13, 2015); *In re Antaramian Properties, LLC*, Case No. 9:14-bk-10145-CED (Bankr. M.D. Fla. Oct. 20, 2014); *In re WRS Holding Company*, Case No. 8:14-08588-CPM (Bankr. M.D. Fla. Aug. 13, 2014); *In re Decorator Industries, Inc.*, Case No. 11-37641-BKC-JKO (Bankr. S.D. Fla. Oct. 6, 2011); *In re Robb & Stucky Limited LLLP*, Case No. 8:11-bk-02801-CED (Bankr. M.D. Fla. Feb. 24, 2011); *In re Pace Industries, LLC*, Case No. 20-10927 (MFW) (Bankr. D. Del. April 14, 2020); *In re The Krystal Company*, Case No. 20-61065 (PWB) (Bankr. N.D. Ga. Feb. 13, 2020); *In re VCHP Neptune Beach, LLC*, Case No. 3:20-bk-00740-CJJ (Bankr. M.D. Fla. Mar. 19, 2020); *Integrity Home Health Care, Inc.*, Case No. 8:20-bk-00014-CPM (Bankr. M.D. Fla. Jan. 24, 2020); *In re Mattress Pal Holdings, LLC*, Case No. 6:19-bk-02247-CCJ (Bankr. M.D. Fla. April 11, 2019).

31. Accordingly, the Debtors submit that granting the relief requested in this Motion is both necessary and appropriate. Such relief will help the Debtors' efforts to reorganize in an orderly manner and will not prejudice the rights of the Utility Providers under section 366 of the Bankruptcy Code.

Local Rule 9013-1(L)(2)(b) Waiver Request

Pursuant to Local Rule 9013-1(L)(2)(B), undersigned counsel must contact each of the Utility Providers and make a good faith effort to comply with the requirements under § 366, prior to the filing of the Utility Motion (the "Local Rule"). Compliance with the Local Rule would require counsel to contact ninety-six (96) separate Utility Providers in a very short time frame, during a period including the holiday season. Given the short time frame that § 366 provides protection to the Debtors, contacting each of the ninety-six (96) Utility Providers for which adequate assurance is due prior to filing the Utility Motion would be arduous, inefficient and could delay necessary relief to the Debtors. The Debtors respectfully request the Court waive the requirement of Local Rule 9013-1(L)(2)(B).

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as **Exhibit "B"**: (i) determining that their Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (ii) approving the Proposed Adequate Assurance and the Adequate Assurance Procedures; (iii) prohibiting the Utility Providers from altering, refusing or discontinuing services on account of prepetition amounts outstanding or on account of any perceived inadequately or Proposed Adequate Assurance; (iv) determining that the Debtors are not required to provide any additional adequate assurance beyond the Proposed Adequate Assurance; and (v) granting such other and further relief as this Court deems necessary.

Dated: December 29, 2023

Respectfully submitted,

BERGER SINGERMANN LLP
*Proposed Counsel for the Debtors and
Debtors-in-Possession*
1450 Brickell Avenue, Ste. 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: /s/ Paul A. Avron
Paul Steven Singerman
Florida Bar No. 378860
singerman@bergersingerman.com
Jordi Gusó
Florida Bar No. 863580
jguso@bergersingerman.com
Clay B. Roberts
Florida Bar No. 116058
croberts@bergersingerman.com
Paul A. Avron
Florida Bar No. 50814
pavron@bergersingerman.com

EXHIBIT “A”

(List of Utility Providers)

Utility Motion
Exhibit A: List of Utility Providers

| Utility Type | Name & Address of Provider | Account Number(s) | Past Due as of Petition Date (\$ USD) | Deposits on Hand, if Any (\$ USD) | Average Monthly Spend (\$ USD) | Adequate Assurance Amount (\$ USD) |
|------------------|---|----------------------------------|---|--|--------------------------------------|---------------------------------------|
| Power / Gas | 435 West Ave Associates, LLC 1080 Main St. Pawtucket RI, 02860 | 1455806 | 8,524.00 | None | 4,794.22 | 2,397.11 |
| Power | Alabama Power 600 18th St N, Birmingham, AL | 01027-81117 | - | None | 194.89 | 97.45 |
| Power | American Electric Power PO Box 371496 Pittsburgh PA 15250-7496 | 101-126-201-1-6 | - | None | 512.62 | 256.31 |
| Trash | American Industrial Services 5626 Cherry Ave. Long Beach, CA 90805 | Unavailable | - | None | 1,307.19 | 653.59 |
| Power | APS MS 3200 PO Box 53933 Phoenix, AZ 85072-3933 | 2794778178 | - | None | 1,777.26 | 888.63 |
| Internet | AT&T P.O. Box 5019 Carol Stream IL 60197-5019 | 329245520 | - | None | 73.50 | 36.75 |
| Phone service | AT&T P.O. Box 6463 Carol Stream IL 60197-5014 | 287323430021 | 17,558.75 | None | 17,558.75 | 8,779.37 |
| Power | Avista Utilities 1411 E. Mission Ave. Spokane, WA 99252-0001 | Unavailable | - | None | 834.83 | 417.42 |
| Power | BGE 110 W Fayette St, Baltimore, MD 21201 | 8156668383 | - | None | 1,611.50 | 805.75 |
| Gas | Black Hills Energy PO Box 6001 Rapid City SD 57709-6001 | 3535 5055 85 | - | None | 108.99 | 54.49 |
| Water | Boxelder Sewer 3201 E Mulberry St UNIT Q, Fort Collins, CO 80524 | 8013002 | - | None | 25.00 | 12.50 |
| Gas | Center Point P.O. Box 4671 Houston, Texas 77210-4671 | 64029331473 | - | None | 30.00 | 15.00 |
| Power / Internet | Central Rural Electric Cooperative P.O. Box 1809, Stillwater, OK 74076 | 3561104; 3561105 | - | None | 701.92 | 350.96 |
| Internet | Century Link PO Box 2961, Phoenix, AZ 85062-2961 | PPB02836156 | - | None | 350.84 | 175.42 |
| Power | City of Columbus Department of Utilities 111 N. Front Street Columbus, Ohio 43215 | 2865837-1296768 | - | None | 834.83 | 417.42 |
| Water | City of Durham Utility Bill 101 City Hall Plaza Durham, NC 27701 | 325559724767 | - | None | 110.10 | 55.05 |
| Trash | City of Fayetteville 113 West Mountain Street Fayetteville, AR 72701 | 88998880 | - | None | 77.31 | 38.66 |
| Gas / Power | City of Salem Utilities PO BOX-715997 Philadelphia PA 19171-5997 | 30450-006; 30257-004 | - | None | 384.97 | 192.49 |
| Power | City of San Marcos 630 East Hopkins Street, San Marcos TX 78666 | 00008931-06 | - | None | 308.12 | 154.06 |
| Water / Trash | City of Santa Monica 1685 Main Street - City Hall East, Santa Monica, CA 90401 | 00291189-11 | - | None | 1,040.62 | 520.31 |
| Power | City of St. George Utility Bill P.O. BOX 1750, St. George UT 84771-1750 | 43-811027-03 | - | None | 421.40 | 210.70 |
| Water | City of Stillwater 723 S. Lewis Street, P.O. Box 1449, Stillwater OK 74076-1449 | 344609-73384 | - | None | 412.16 | 206.08 |
| Power / Water | City of Tallahassee 435 N. Macomb St. Relay Box, Tallahassee, FL 32301 | 3560380971 | - | None | 1,035.93 | 517.96 |
| Water | City of Tempe Tempe Water Division - 31 E. 5th St., Tempe, AZ 85281 | 5946213103 | - | None | 200.59 | 100.30 |
| Trash | City Waste Services of New York 529 Coster St, Bronx, 10474, Bronx, NY | 37063 | - | None | 294.47 | 147.24 |
| Gas | Columbia Gas P.O. Box 4629. Carol Stream, IL 60197-4629 | 20624275 004 000 9; 20624275 005 | - | None | 241.54 | 120.77 |
| Gas | Columbia Gas P.O. Box 4660 Carol Stream, IL 60197-4660 | Unavailable | - | None | 86.87 | 43.44 |

Utility Motion
Exhibit A: List of Utility Providers

| Utility Type | Name & Address of Provider | Account Number(s) | Past Due as of Petition Date (\$ USD) | Deposits on Hand, if Any (\$ USD) | Average Monthly Spend (\$ USD) | Adequate Assurance Amount (\$ USD) |
|-----------------------|--|--|---|--|--------------------------------------|---------------------------------------|
| Internet | Comcast P.O Box 70219, Philadelphia, PA 19176 | 8220204142127278; 8993113480228397; 8993113480228397; 8299600840756928; 8299600074156738; 8771 30 052 2897051; 8772106210535641; 8529 10 221 0132394; 8529 11 398 1706407; 8778102115053545; 8299 70 005 1207007; 8497606100573796; 8396511720909242; 8299 40 043 | - | None | 3,453.64 | 1,726.82 |
| Power / Gas | ConEdison Consolidated Edison of New York, Inc. - Att. Law Department - 4 Irving Place RM 1875 New York, NY 10003 | 32-6407-0300-0008-1; 32-6407-0300- 0008-2 | - | None | 1,111.23 | 555.61 |
| Gas | Consumers energy PO Box 740309 Cincinnati OH 95274- 0309 | 1030 4241 6596 | - | None | 496.01 | 248.01 |
| Internet | Cox PO Box 53249, Phoenix, AZ 85072-3249 | 001 8410 272399101; 18501272873601; 001 0806 086265902; 001 1033 005494405; 436- 251401902 | - | None | 1,596.15 | 798.07 |
| Water | Crystal Springs 200 Eagles Landing Boulevard, Lakeland, Florida 33810 | 964751722901032 | - | None | 43.83 | 21.92 |
| Trash | Culver City Trash City Hall, 2nd Floor 9770 Culver Blvd Culver City 90232 | Unavailable | - | None | 294.47 | 147.24 |
| Water | DC Water 1385 Canal Street, SE, Washington, DC 20003 | 1455312-0 | - | None | 550.37 | 275.19 |
| Water | Dekalb County Watershed 1300 Commerce Drive Decatur, GA 30030 | 8864578 | - | None | 50.00 | 25.00 |
| Gas | Dominion Energy PO Box 5759, Cleveland, OH 44101 | 6180017169612 | - | None | 211.25 | 105.62 |
| Gas | Dominion Energy PO BOX 27031, Richmond VA 23261-7031 | 3324034075 | - | None | 428.62 | 214.31 |
| Gas / Power | DTE Energy 982 Broadway St, Ann Arbor, MI 48105 | 9200 147 8648 6 | - | None | 625.01 | 312.51 |
| Power | Duke Energy PO Box 1094, Charlotte NC 28201-1094 | 9100 3457 6617; 9100 8510 1459; 2030451527 | - | None | 723.25 | 361.63 |
| Power | Duquesne Light Company PO Box 371324 Pittsburgh, PA 15250 | 2483-342-899, 1513-421-637, 1017-047- 349 | - | None | 372.00 | 186.00 |
| Internet | Fireline Broadband 9911 Norwalk Blvd Santa Fe Springs, CA 90670 | 2516 | 1,199.00 | None | 1,199.00 | 599.50 |
| Internet | Frontier PO Box 74047 Cincinnati, OH 45247-0407 | 310-392-2290-070821-5 | - | None | 102.17 | 51.09 |
| Power / Water / Trash | Gainesville Regional Utilities 301 SE 4th Avenue, Gainesville, FL 32601 | 2000770030192 | - | None | 553.08 | 276.54 |
| Gas | Gas South P.O. Box 723728Atlanta, Georgia 31139 | 7327694076 | - | None | 160.00 | 80.00 |
| Power | Georgia Power 96 Annex, Atlanta, Georgia 30396 | 25147-44099 | - | 1,245.00 | 1,108.33 | - |
| Water | Golden State Water Company 630 E. Foothill Blvd., San Dimas, CA 91773 | 18242803080; 08424486796 | - | None | 200.59 | 100.30 |
| Mobile data | Hologram, Inc. 2045 W Grand Ave Ste B PBM #25937 Chicago, IL 60612 | 21766 | 1,088,565.61 | 230,000.00 | 313,329.81 | - |
| Mobile data | Hologram, Inc. 2045 W Grand Ave Ste B PBM #25937 Chicago, IL 60612 | Unavailable | 30,963.92 | None | 6,473.44 | 3,236.72 |
| Internet | Infinite Internet 148 Vista Royale Blvd Vero Beach, FL 32962 | Unavailable | - | None | 102.91 | 51.46 |

Utility Motion
Exhibit A: List of Utility Providers

| Utility Type | Name & Address of Provider | Account Number(s) | Past Due as of Petition Date (\$ USD) | Deposits on Hand, if Any (\$ USD) | Average Monthly Spend (\$ USD) | Adequate Assurance Amount (\$ USD) |
|--------------|--|------------------------------------|---|--|--------------------------------------|---------------------------------------|
| Water | Kentucky American Water P.O. Box 6029 Carol Stream, IL 60197-6029 | 210051372470 | - | None | 346.16 | 173.08 |
| Power | KU Utilities (Power) P.O. Box 9001954 Louisville, KY 40290-1954 | 3500-1128-8775 | - | None | 148.41 | 74.21 |
| Power | Lansing Board of Power & Light P.O. Box 13007 Lansing MI 48901-3007 | 10152273 | - | None | 241.51 | 120.76 |
| Water | Loachapoka Water Authority 4742 Co Rd 188, Loachapoka, AL 36865 | 21691 | - | None | 53.78 | 26.89 |
| Trash | LRS Waste Management 5500 Pearl Street Rosemont, IL 60018 | 51994.1 | - | None | 103.11 | 51.56 |
| Trash | Marpan 222 East Pershing Street, Tallahassee, FL 32301 | 10008 | - | None | 292.02 | 146.01 |
| Internet | MonkeyBrains 286 12th Street, San Francisco CA 94103 | 17095 | 1,525.00 | None | 275.00 | 137.50 |
| Trash | MTG Disposal LLC 19 Industrial Way Seekonk MA 02771-2011 | 6388-021524 | 211.00 | None | 188.07 | 94.04 |
| Power | Nashville Electric Service 1214 Church St #100, Nashville, TN 37246 | Unavailable | - | None | 834.83 | 417.42 |
| Gas | NW Natural PO Box 6017, Portland OR 97228-6017 | 4258033-2 | - | None | 234.09 | 117.05 |
| Water | NYC Water Board 59-17 Junction Blvd, Queens, NY 11373 | 0000170086001 | - | None | 200.59 | 100.30 |
| Gas | Oklahoma Natural Gas PO Box 219296, Kansas City MO KS 64121-9296 | 213785785 2613955 00 | 69.00 | None | 110.92 | 55.46 |
| Gas | Online Energy Audit & Kit Program - Columbia Gas of Pennsylvania P.O. Box 70285 Philadelphia PA 19176-0285 | 210345940010008 | - | None | 127.33 | 63.67 |
| Gas | Peoples Gas PO Box 644760, Pittsburgh, PA 15264 | 2100008420650 | - | None | 578.37 | 289.19 |
| Power | Pepco PO Box 13608, Philadelphia PA 19101 | 5002 2839 000 | 34,060.00 | None | 3,181.30 | 1,590.65 |
| Power / Gas | PG&E 4940 Allison Pkwy Vacaville CA 95688 | 6966952229-9 | - | None | 936.57 | 468.28 |
| Power | PG&E Box 997300, Sacramento CA 95899-7300 | 6482748084-5 | - | None | 3,303.99 | 1,652.00 |
| Power | PGE P.O. Box 4438 Portland, OR 97208 | 4163966923 | - | None | 775.31 | 387.65 |
| Gas | Piedmont Natural Gas PO Box 1246 Charlotte NC 28201-1246 | Unavailable | - | None | 276.40 | 138.20 |
| Water | Portland Water Bureau 664 N Tillamook St, Portland, OR 97227 | 2936876100 | - | None | 30.54 | 15.27 |
| Power | Poudre Valley REA PO BOX 698 Fort Collins CO 80522 | 31810002; 29060007 | 302.00 | None | 256.68 | 128.34 |
| Trash | Recology PO Box 60846, Los Angeles CA 90060-0846 | 516325609 | - | None | 294.47 | 147.24 |
| Trash | Republic Services 5011 S Lilley Rd, Canton, MI 48188 | 3-0241-0092444 | - | None | 139.44 | 69.72 |
| Trash | Republic Services PO Box 78829, Phoenix, AZ 85062-8829 | 3-0696-0046351 | - | None | 422.75 | 211.38 |
| Power | Rocky Mountain Power SLC 1407 W North Temple St, Salt Lake City, UT 84116 | 76176553-001 6 | - | None | 509.76 | 254.88 |
| Trash | Rubicon Global, LLC 2096 Britains Ln, Columbus, OH 43224 | 15303 | - | None | 88.40 | 44.20 |
| Trash | Rumpke 1300 E Monument Avenue, Dayton, OH 45402 | 1710116 | 31.00 | None | 47.04 | 23.52 |
| Power / Gas | San Diego Gas and Electric PO Box 25111, Santa Ana, CA 92799-5111. | 6078 209 084 9 | - | None | 2,041.55 | 1,020.78 |
| Gas | Socal Gas PO BOX C MONTEREY PARK CA 91756-5111 | 13350332519 | - | None | 34.87 | 17.44 |
| Power | Southern California Edison P.O. BOX 300 ROSEMEAD CA 91772-0002 | 8003890196; 8015855087; 8011409774 | 1,756.00 | None | 5,597.79 | 2,798.90 |

Utility Motion
Exhibit A: List of Utility Providers

| Utility Type | Name & Address of Provider | Account Number(s) | Past Due as of Petition Date (\$ USD) | Deposits on Hand, if Any (\$ USD) | Average Monthly Spend (\$ USD) | Adequate Assurance Amount (\$ USD) |
|---------------|---|--|---|--|--------------------------------------|---------------------------------------|
| Internet | Spectrum Business PO Box 901, Time Warner Cable-Northeast, Carol Stream IL 60132-0901 | 8361 10 001 1904400; 8314103020191033; 8349 10 012 0019014; 8260161021218084; 8260161573031877; 8363 28 292 1358758; 8362 20 047 1614140 | - | None | 1,413.30 | 706.65 |
| Power | SRP (Salt Water Project) SRP Headquarters 1500 N. Mill Ave. Tempe, AZ 85288 | 805-858-000 | - | 4,800.00 | 2,316.35 | - |
| Power | SWEPSCO PO Box 371496 Pittsburgh PA 15250 | 966-217-809-5-4 | - | None | 834.83 | 417.42 |
| Internet | TDS Dept 0012, Palatine IL 60055-0012 | 8224400010936115 / | 179.00 | None | 160.11 | 80.06 |
| Power | TECO P.O. Box 31318, Tampa FL 33631-3318 | 211022929536 & 211027202509 | - | None | 618.48 | 309.24 |
| Power | Tucson Electric Power P.O.Box 5171, Harlan IA 51593-0671 | 6572448204 | - | None | 400.77 | 200.39 |
| Mobile data | Twilio Inc 375 Beale Street Suite 300 San Francisco CA 94105 | AC672dda9947de0599541e713b08aa45 87 | 147,820.00 | None | 48,654.10 | 24,327.05 |
| Internet | Verizon Fios 1095 Avenue of the Americas, New York, NY 10036 | 356-055-841-0001-55 | 85.00 | None | 512.52 | 256.26 |
| Phone service | Verizon P.O. BOX 25505 Lehigh Valley PA 18002-5505 | 242173140-00001 | 50,335.00 | None | 24,000.00 | 12,000.00 |
| Mobile data | Verizon Wireless P.O. BOX 761 Bedminster NJ 07921 | 342297304-00001 | 43,209.00 | 100,000.00 | 17,013.45 | - |
| Mobile data | Vodafone Americas Inc. 1450 Broadway, Suite 11-104 New York, NY 10018 | 1000064339 | 563,553.00 | None | 50,000.00 | 25,000.00 |
| Gas | Washington Gas PO Box 37747, Philadelphia PA 19101-5047 | 110001400248 | - | None | 1,073.47 | 536.74 |
| Trash | Waste Management 1800 Broadway St NE, Minneapolis, MN 55413 | 268086763006 | - | None | 236.00 | 118.00 |
| Trash | Waste Management 800 Capitol Street, Ste 3000, Houston, Texas, 77002 | 26-83807-73001 | - | None | 472.00 | 236.00 |
| Trash | Waste Management Computershare 462 South 4th Street, Suite 1600 Louisville, KY 40202 | 28-72866-03003; 27-32137-43004 | - | None | 472.00 | 236.00 |
| Trash | Waste Management PO Box 13648, Philadelphia PA 19101-3648 | 23-20537-83005; 8299 40 043 3015083 | - | None | 965.12 | 482.56 |
| Trash | Waste Managment SLC PO Box 13648, Philadelphia PA 19101-3648 | Unavailable | - | None | 172.04 | 86.02 |
| Power / Gas | WE Energies PO Box 6042, Caril Stream IL 60197-6042 | 0711228177-00005 | - | None | 780.22 | 390.11 |
| Power | West Penn Power P.O. BOX 3687 Akron OH 44309-3687 | 100146274210 | 264.00 | None | 200.80 | 100.40 |
| Power / Gas | Xcel Energy PO Box 9477 MPLS MN 55484-9477 | 5100140218645; 53-0014452513-4 | - | None | 812.20 | 406.10 |
| Internet | Xfinity SLC/Comcast Business P.O Box 70219, Philadelphia, PA 19176 | 8495440050906885 | - | None | 266.26 | 133.13 |
| Recycling | Zarc Recycling 26 South Linden Avenue, South San Francisco CA 94080 | 810 | 399.00 | None | 460.37 | 230.18 |
| Total | | | 1,990,609.28 | 336,045.00 | 542,021.01 | 104,126.53 |

EXHIBIT “B”

(Proposed Order)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

BIRD GLOBAL, INC., *et al.*,¹

Debtors.

Chapter 11 Cases

Case No. 23-20514-CLC
(Jointly Administered)

**ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING
SERVICES, (II) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE
PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCE OF PAYMENT, AND REQUEST
FOR WAIVER OF LOCAL RULE 9013-1(L)(2)(b) REQUIREMENT**

THIS MATTER having come before the Court for a hearing on January ____, 2024, at
_____ a.m./p.m., in Miami, Florida, upon the *Debtors' Motion for Entry of an Order (I)
Prohibiting Utilities From Altering, Refusing, or Discontinuing Services, (II) Deeming Utilities*

¹ The address of the Debtors is 392 Northeast 191st Street, #20388, Miami, FL 33179. The last four digits of the Debtors' federal tax identification numbers are: (i) Bird Global, Inc. (3155); (ii) Bird Rides, Inc. (9939); (iii) Bird US Holdco, LLC (8390); (iv) Bird US Opco, LLC (6873); and (v) Skinny Labs, Inc. (8176).

Adequately Assured of Future Performance, and (III) Establishing Procedures for Determining Adequate Assurance of Payment, and Request for Waiver of Local Rule 9013-1(L)(2)(b) Requirement [ECF No. ____] (the “Motion”)² filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”). The Court, having considered the Motion, finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (c) this matter is core pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the Constitution; (d) notice of the Motion and the hearing thereon was sufficient under the circumstances; and (e) 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, it is

ORDERED that:

1. The Motion is **GRANTED**.
2. The Debtors’ request for a waiver of the Local Rule 9013-1(L)(2)(b) requirement to contact each of the Utility Providers prior to the filing of the Motion is **GRANTED**.
3. The Debtors are hereby authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion, including setting up a segregated bank account at an approved depository and depositing therein the Adequate Assurance Deposit, which comprises the Proposed Adequate Assurance for each Utility Provider as set forth on **Exhibit A** to this Order.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry and the Debtors’ Proposed Adequate Assurance for each Utility Provider as set forth on **Exhibit A**, if any, are deemed satisfactory, subject to a Utility Provider

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

serving an Adequate Assurance Request in accordance with the Adequate Assurance Procedures.

5. The Utility Providers are forbidden to discontinue, alter or refuse service on account of any unpaid prepetition charges, or require additional adequate assurance of payment other than the Proposed Adequate Assurance, if any, subject to a Utility Provider serving an Adequate Assurance Request in accordance with the Adequate Assurance Procedures.

6. Any Utility Provider who accepts the Proposed Adequate Assurance reflected on **Exhibit A**, shall be deemed to have stipulated that said Proposed Adequate Assurance constitutes adequate assurance of future payment to such Utility Provider, and said Utility Provider shall be deemed to have waived any right to seek additional adequate assurance during the course of these chapter 11 cases.

7. Any Utility Provider desiring a deposit in an amount greater than the Proposed Adequate Assurance reflected in **Exhibit A**, must request such assurance pursuant to the following procedures (the “Adequate Assurance Procedures”):

- a. Absent compliance with the Adequate Assurance Procedures, the Utility Providers may not alter, refuse, or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these chapter 11 cases or any unpaid prepetition charges or request payment of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- b. Within three (3) business days after the entry of this Order, the Debtors shall serve a copy of this Order on the Utility Providers (the “Utility Provider List”) by first class mail. In the event that any Utility Provider has been omitted from the Utility Provider List, the Debtors shall supplement said list and shall promptly serve a copy of this Order on such Utility Provider upon learning of such omission.
- c. Any Utility Provider desiring additional adequate assurance, other than the Proposed Adequate Assurance provided by the Debtors, must make such a request (an “Adequate Assurance Request”) and serve such request so that it is received by the Debtors and their bankruptcy counsel at the following addresses no later than fifteen (15) days of entry of this Order: (i) Debtors, 392 NE 191st Street, #20388, Miami, FL 33179 (Attn: Chris Rankin, Chief

Restructuring Officer, Email: chris.rankin@bird.com); and (ii) attorneys for the Debtors, Berger Singerman LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131 (Attn: Paul Steven Singerman, Esq., Email: singerman@bergersingerman.com, Jordi Guso, Esq., Email: jguso@bergersingerman.com, Robin J. Rubens, Esq., Email: rrubens@bergersingerman.com, and Clay Roberts, Esq., Email: croberts@bergersingerman.com).

- d. Any Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location for which utility services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposit; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) include a proposal for what would constitute adequate assurance of future payment from the Debtors, along with an explanation of why such proposal is reasonable. Any Adequate Assurance Request that fails to meet these requirements shall be deemed an invalid request for adequate assurance.
- e. Upon the Debtors' receipt of any Adequate Assurance Request at the addresses set forth above, the Debtors shall have until thirty (30) days from the receipt of such Adequate Assurance Request or such other date as the parties mutually agree (the "Resolution Period") to negotiate with such Utility Provider to resolve such Utility Provider's request for additional assurance of payment and advise the Utility Provider that the Adequate Assurance Request is acceptable.
- f. If the Debtors determine, in their discretion, that an Adequate Assurance Request or any consensual agreement reached in connection therewith is reasonable, the Debtors, without further order of the Court, may enter into agreements granting additional adequate assurance to the Utility Provider serving such Adequate Assurance Request and, in connection with such agreements, provide the Utility Provider with additional adequate assurance of payment, including payments on prepetition amounts owing, cash deposits, prepayments, or other forms of security, to the extent authorized pursuant to any orders authorizing the use of cash collateral and the applicable budgets thereunder.
- g. If the Debtors determine that the Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.

- h. Pending resolution of an Adequate Assurance Request at any such Determination Hearing and entry of a final, non-appealable order thereon finding that the Utility Provider is not adequately assured of future payment, such Utility Provider shall be prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition service or on account of any objections to the Proposed Adequate Assurance.
- i. Any Utility Provider that does not timely request assurance of payment through an Adequate Assurance Request pursuant to the Adequate Assurance Procedures, automatically will be deemed to have received assurance of payment that is satisfactory to the Utility Provider under section 366(c)(2) without further action by the Debtors and without prejudice to the right of such Utility Provider to seek relief in the future pursuant to section 366(c)(3).

8. The Debtors are authorized to cause the Adequate Assurance Deposit and any funds held in the Adequate Assurance Account to be returned to the Debtors, (a) as provided pursuant to, or consistent with, any further order of the Court, or (b) without further order of the Court, upon the earlier of the effective date of a chapter 11 plan or such other time as the Debtors' Chapter 11 cases may be closed.

9. The Debtors are authorized to add or remove any Utility Provider from the Utility Provider List. To the extent that the Debtors identify additional Utility Providers, the Debtors shall file amendments to the Utility Provider List, and shall serve copies of this Order on such newly-identified Utility Providers. Any Utility Provider subsequently added to the Utility Provider List shall be bound by this Order and the Adequate Assurance Procedures herein.

10. In accordance with this Order and any other Order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is directed to receive, process, honor, and pay all such checks presented for payment of the obligations described in the Motion and fund all requests made by the Debtors related thereto to the extent that sufficient funds are on deposit.

11. The Debtors' service of the Motion and this Order upon the Utility Provider List shall not constitute an admission or concession that each such entity is a "utility" within the meaning of Bankruptcy Code section 366, and the Debtors reserve all rights and defenses with respect thereto.

12. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under Bankruptcy Code section 365.

13. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any interim or final order entered by the Court approving the Debtors' use of cash collateral (the "Cash Collateral Order") and budget thereunder. To the extent that there is any inconsistency between the terms of this Order and the Cash Collateral Order, the terms of the Cash Collateral Order shall control.

14. The Court retains jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

#

Submitted by:

Paul Steven Singerman, Esq.
BERGER SINGERMAN LLP
1450 Brickell Avenue, Ste. 1900
Miami, FL 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340
Email: singerman@bergersingerman.com

(Attorney Singerman is directed to serve this order upon all non-registered users who have yet to appear electronically in this case and file a conforming certificate of service.)