

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA**

_____	)	
	)	Chapter 11
In re:	)	
	)	Case No. 17-11444-SAH
Eateries, Inc., <i>et al.</i> <sup>1</sup>	)	
	)	Jointly Administered
Debtors.	)	
_____	)	

**MOTION FOR ENTRY OF ORDER PROVIDING ADEQUATE ASSURANCE OF  
UTILITY PAYMENTS AND NOTICE OF OPPORTUNITY FOR HEARING**

**YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THIS DOCUMENT CAREFULLY AND CONSULT YOUR ATTORNEY ABOUT YOUR RIGHTS AND THE EFFECT OF THIS DOCUMENT.** A HEARING WILL BE CONDUCTED ON THIS MATTER AT THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, OLD POST OFFICE BUILDING, 215 DEAN A. MCGEE AVENUE, OKLAHOMA CITY, OKLAHOMA. IF YOU DO NOT WANT THE COURT TO GRANT THE REQUESTED RELIEF, YOU MUST FILE A WRITTEN RESPONSE OR OBJECTION SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, 215 DEAN A. MCGEE AVENUE, OKLAHOMA CITY, OK 73102. IN ADDITION TO FILING YOUR RESPONSE WITH THE CLERK, YOU MUST SERVE A FILE-STAMPED COPY OF YOUR RESPONSE OR OBJECTION ON THE SIGNING ATTORNEY AND TO ANY OTHER PARTY SPECIFIED. IF NO RESPONSE OR OBJECTION IS TIMELY FILED, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED WITHOUT HEARING.

EMERGENCY RELIEF AND AN EXPEDITED HEARING HAVE BEEN REQUESTED. IF THIS COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS TIME TO RESPOND. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE

<sup>1</sup> The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH.

EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT AND IMMEDIATELY SERVE A COPY OF YOUR RESPONSE ON COUNSEL FOR THE DEBTOR AND ON ANY OTHER PARTY SPECIFIED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession (collectively the “Debtors”), hereby file this motion (the “Motion”) for entry of interim and final orders providing adequate assurance of utility payments. In support of this Motion, the Debtors rely upon and incorporates herein by reference the Affidavit of William C. Liedtke, III, Vice President of Eateries, and Zanesville, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions, sworn to on April 17, 2017 (the “First Day Affidavit”).<sup>2</sup> In further support of the Motion, the Debtors respectfully represent as follows.

#### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is 11 U.S.C. § 366.

#### **BACKGROUND**

3. On April 18, 2016 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Oklahoma (the “Bankruptcy Court”).

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<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning set forth in the First Day Affidavit.

4. The Debtors continue to operate their businesses as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. The U.S. Trustee has not yet appointed any official committees in these cases, and no request has been made for the appointment of a trustee or examiner.

5. These cases are jointly administered pursuant to this Court's Order entered April 18, 2017. [Dkt. No. 5]. A description of the Debtors' business, the reasons for filing these Chapter 11 cases and the relief sought from this Court to allow for a smooth transition into operations under Chapter 11 is set forth in the First Day Affidavit [Dkt. No. 10], which was filed contemporaneously with this Motion. The Debtors hereby adopt and incorporate the First Day Affidavit as if fully set forth herein.

### **RELIEF REQUESTED**<sup>3</sup>

6. By this Motion, the Debtors seek entry of an interim order (the "Interim Order"): (i) prohibiting utility companies (collectively the "Utilities" or individually a "Utility") from altering, refusing, or discontinuing services to the Debtors on account of prepetition invoices, pending entry of a final order granting the relief requested herein or the Interim Order becoming a final order (the "Final Order"); (ii) authorizing and approving the amount and method by which the Debtors may furnish certain utilities with adequate assurance of payment for post-petition utility services and directing the utilities to continue providing such services pending entry of the Final Order and (iii) scheduling a final hearing on this Motion within 30 days of the Petition Date (the "Final Hearing").

#### **A. Utility Services**

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<sup>3</sup> Nothing herein shall be deemed an assumption of any executory contract that could bind the Debtors in the future.

7. Several Utilities provide the Debtors with traditional utility services, such as telephone and communications services, electricity, water, sewer, gas, and other similar services that are necessary for the continued operation of the Debtors' day-to-day business operations. A list of all identified Utilities is attached hereto as Exhibit "A" (the "Utility Service List").<sup>4</sup> In some cases, the Debtors have paid a security deposit to a Utility. The Debtors have made a good-faith effort to identify all Utilities and list them on the Utility Service List.

8. Uninterrupted utility service is critical to the ability of the Debtors to operate and maintain the value of their businesses and to maximize value for the benefit of the creditors. The Debtors could not operate their businesses without utility service. Should any Utility refuse or discontinue service, the Debtors could be forced to cease or limit operations. Such a cessation would substantially disrupt operations and result in loss of revenues, which could irreparably harm the Debtors.

**B. The Adequate Assurance Deposit**

9. Section 366 of the Bankruptcy Code provides that a utility may alter, refuse, or discontinue a Chapter 11 debtor's utility service if the utility does not receive from the debtor adequate "assurance of payment" within 30 days from the Petition Date. 11 U.S.C. § 366(b). Section 366(c)(1)(A) defines the phrase "adequate assurance of payment" to mean, among other things, a cash deposit. 11 U.S.C. § 366(c)(1)(A). Accordingly, the Debtors propose to provide a deposit to each requesting Utility in an amount equal to two weeks' worth of utility service as calculated by the Debtors according to the last historical 52-week period (each, an "Adequate

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<sup>4</sup> Inclusion of any entity on, or the exclusion of any entity from, the Utility Service List is not an admission by the Debtors that such entity is or is not a "utility" within the meaning of § 366, and the Debtors reserve their right to contend that any entity listed on Exhibit A is not a utility. The Debtors request that this Motion apply to all Utilities regardless of whether they are currently identified on the Utility Service List, and the Debtors have proposed a procedure herein for supplementing the Utility Service List.

Assurance Deposit”); provided, however, that (a) a request for such deposit is made in writing no later than thirty (30) days after the Petition Date (the “Request Deadline”); (b) such requesting Utility does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit shall be deemed to be the Adequate Assurance Deposit for purposes of this Motion); and (c) such requesting Utility is not currently paid in advance for its services. All payments of Adequate Assurance Deposits, prepayments, or other payments contemplated herein shall be subject to the terms of any orders authorizing debtor-in-possession financing and the use of cash collateral entered by the Court and budgets submitted by the Debtors with respect to the same.<sup>5</sup>

10. As a condition of requesting and accepting an Adequate Assurance Deposit, and absent compliance with the Adequate Assurance Procedures (defined below), the requesting Utility shall be deemed to have (a) stipulated that the Adequate Assurance Deposit constitutes adequate assurance of Payment of such Utility within the meaning of § 366 of the Bankruptcy Code, and (b) waived any right to seek additional or different adequate assurance during the course of these cases.<sup>6</sup> Likewise, any Utility that does not request an Adequate Assurance Deposit by the Request Deadline and does not file a Procedures Objection to opt out of the Adequate Assurance Procedures (as described below) shall be deemed to have adequate assurance that is satisfactory to it within the meaning of § 366 of the Bankruptcy Code.

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<sup>5</sup> The Debtors have filed concurrently herewith a Motion for Interim and Final Orders (A) Authorizing the Debtors to Use Cash Collateral, (B) Authorizing the Debtors to Obtain Post-Petition Financing, (C) Granting Security Interests and Superpriority Administrative Expense Status to Existing Lender, (D) Granting Adequate Protection to Existing Lien Holders, (E) Scheduling a Final Hearing, and (F) Granting Related Relief.

<sup>6</sup> The Debtors further request that, if not already returned or applied, any Adequate Assurance Deposit requested by and provided to any Utility be returned to the Debtors at the conclusion of these Cases.

11. The Debtors submit that the availability of the Adequate Assurance Deposit (if timely requested) together with their demonstrated ability to pay future utility service in the ordinary course of business (collectively, the “Proposed Adequate Assurance”) constitutes sufficient adequate assurance of future payment to satisfy the requirements imposed by § 366 of the Bankruptcy Code. That said, if any Utility believes additional assurance is required, it may request such assurance under the procedures outlined below.

**C. The Adequate Assurance Procedures**

12. To address the right of any requesting Utility under § 366(c)(2) of the Bankruptcy Code to seek adequate assurance in an amount above the proposed Adequate Assurance Deposit or to object to the procedures outlined herein, the Debtors propose the following procedures (the “Adequate Assurance Procedures”) be adopted:

- a) Within two (2) business days after entry of the Interim Order, the Debtors will mail a copy of the Interim Order to the Utilities on the Utility Service List.
- b) If a Utility is not satisfied with the Proposed Adequate Assurance and seeks additional assurances of payment in the form of deposits, prepayments, or otherwise (an “Additional Assurance Request”), it must serve a request within 14 days of service of the Interim Order upon the Debtors and their counsel at the following address: Crowe & Dunlevy, Attn: Lysbeth L. George, 324 North Robinson Avenue, Oklahoma City, Oklahoma 73102, e-mail address: lysbeth.george@crowedunlevy.
- c) If a Utility is not satisfied with procedures outlined herein and wishes to object to such procedures, it must file an objection with the Court (the “Procedures Objection”) within 14 days of service of the Interim Order and serve such Procedures Objection upon the Debtors and their counsel at the following address: Crowe & Dunlevy, Attn: Lysbeth L. George, 324 North Robinson Avenue, Oklahoma City, Oklahoma 73102, e-mail address: lysbeth.george@crowedunlevy.
- d) Any Additional Assurance Request must (i) be made in writing; (ii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iii) describe any deposits, prepayments, or

other security currently held by the requesting Utility; (iv) explain why the requesting Utility believes the Proposed Adequate Assurance is insufficient adequate assurance of future payment; and (v) identify, and explain the basis of, the Utility's proposed adequate assurance requirement under § 366(c)(2) of the Bankruptcy Code.

- e) Upon the Debtors' timely receipt of an Additional Assurance Request at the address noted above, the Debtors shall have the greater of either (i) 14 days from the receipt of such Additional Assurance Request or (ii) 30 days from the Petition Date (collectively, the "Resolution Period") to negotiate with the requesting Utility to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement between the parties.
- f) The Debtors may resolve any Additional Assurance Request by mutual agreement with the requesting Utility and without further order of the Court and may, in connection with any such resolution, provide the requesting Utility with additional adequate assurance of future payment in a form satisfactory to the Utility, including, without limitation, cash deposits, prepayments, and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- g) If the Debtors determine that an Additional Assurance Request is not reasonable, and are unable to resolve such request during the Resolution Period, the Debtors will request, during or immediately after the Resolution Period, a hearing before this Court to determine the adequacy of assurances of payment made to the requesting Utility (the "Determination Hearing"), pursuant to § 366(c)(3)(A) of the Bankruptcy Code.
- h) Pending the resolution of the Additional Assurance Request or a Procedures Objection outlined herein at a Determination Hearing, the requesting Utility shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- i) Any Utility that does not comply with the Adequate Assurance Procedures is deemed to find the Proposed Adequate Assurance satisfactory to it and is forbidden from discontinuing, altering, or refusing service on account of any unpaid prepetition charges, or requiring additional assurance of payment (other than the Proposed Adequate Assurance). The Interim Order shall be deemed the Final Order vis-a-vis all Utilities that do not timely file and serve a Procedures Objection.

13. As noted above, § 366(c) of the Bankruptcy Code requires the Debtors to, within 30 days of the Petition Date, provide the Utilities with "adequate assurance of payment for utility

service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2). Thereafter, any such adequate assurance provided by the Debtors may be modified by the Court after notice and a hearing under § 366(c)(3)(A) of the Bankruptcy Code. *Id.* § 366(c)(3)(A). Under the Adequate Assurance Procedures, however, the Debtors may seek a determination of appropriate adequate assurance at a Determination Hearing held after the first 30 days of these Cases without providing interim assurances deemed “satisfactory” to the Utility. Although the Adequate Assurance Procedures are reasonable, certain Utilities might assert that, if an adequate assurance dispute is not resolved within the 30-day period immediately after the Petition Date, these procedures as implemented do not strictly comply with § 366 of the Bankruptcy Code. Thus, if any Utility wants to opt out of the Adequate Assurance Procedures, such Utility must do so by filing a Procedures Objection and the Debtors submit that this Court schedule a hearing and issue a ruling on such Procedures Objection within 30 days after the Petition Date.

**D. Final Hearing Date**

14. To resolve any objections within 30 days of the Petition Date, the Debtors request that the Court schedule the Final Hearing on any unresolved Procedures Objections approximately thirty (30) days after the Petition Date. The Debtors further request that if no objections are filed with the Court, then the interim order entered by the Court become a final order without further need for hearing.

**E. Subsequent Modification(s) to the Utility Service List**

15. Despite good-faith efforts by the Debtors to list every Utility from which the Debtors receive service, certain Utilities may not be included on the Utility Service List. If the Debtors discover those certain Utilities, then the Debtors will amend the Utility Service List, and



shall serve copies of the Interim Order and Final Order (when and if entered) on such newly identified Utilities.

16. The Debtors request that the Interim and Final Orders be binding on all Utilities, regardless of when any such Utility was added to the Utility Service List, provided that any such newly identified Utility shall have until the later of fourteen (14) days from the date of service and thirty (30) days from the date of the Interim Order granting this Motion to serve an Additional Assurance Request or Procedures Objection in compliance with the proposed Adequate Assurance Procedures. The Debtors shall have the periods specified in the proposed Adequate Assurance Procedures to seek to resolve any such request by mutual agreement with the Utility without further order of the Court or to request a Determination Hearing with the Court to determine the adequacy of assurance of payment with respect to such Utility in accordance with such procedures.

17. The Debtors believe that the Proposed Adequate Assurance and Adequate Assurance Procedures are reasonable and satisfy the requirements of § 366 of the Bankruptcy Code. Based on the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

18. Similar relief to that requested herein has been granted in this district. *See In re GMX Resources, Inc., et al*, 13-11456 and affiliated entities at Dkt. No. 75 (Bankr. W.D. Okla., April 3, 2013) .

19. Courts in other jurisdictions have likewise granted similar relief to that requested herein. *See In re Dynegy Holdings, LLC*, Case No. 11-38111 (Bankr. S.D.N.Y. November 9, 2011); *In re Seahawk Drilling, Inc.*, Case No. 11-20089 (Bankr. S.D. Tex. February 14, 2011); *In*

*re Otero Cnty. Hosp. Ass'n, Inc.*, Case No. 11-13686 (Bankr. D.N.M. September 12, 2011); *In re Stallion Oilfield Services, Inc.*, Case No. 09-13562 (Bankr. D.Del. October 20, 2009); *In re Crusader Energy Group*, Case No. 09-31797 (Bankr. N.D. Tex. May 18, 2009).

**REQUEST FOR INTERIM AND FINAL RELIEF**

20. Because uninterrupted utility service is critical to the Debtors' ability to operate and maintain the value of their businesses for the ultimate distribution herein, the Debtors request that this Court grant the relief requested herein immediately on an interim basis for every Utility, and on a final basis to every Utility that does not file a Procedures Objection as defined herein. Unless otherwise addressed, all Procedures Objections will be resolved by separate order of this Court. If no Procedures Objections are filed, the Debtors request that the Interim order become a Final Order without further action of this Court. A proposed Order granting the relief requested herein is attached hereto as Exhibit "B".

**NOTICE**

21. Notice of this pleading has been provided by e-mail, facsimile, or overnight delivery to: (i) the Office of the United States Trustee; (ii) SpiritBank, care of counsel Kevin Blaney; (iii), Fresh Capital, LLC, Practical Investors, LLC, and Fiesta Holdings, Inc. care of counsel Jared Giddens, Dillon Curran, Justin Pybas ("Secured Lenders"); (iv) Debtors' landlords listed on Schedule G, and (v) the twenty largest unsecured creditors for each of the Debtors. In light of the expedited nature of the relief requested herein and the irreparable harm to the Debtors that may ensue if the relief requested is not granted, the Debtors submit that no further notice need be given and that the notice provided by the Debtors is sufficient.

**CONCLUSION**

The Debtors respectfully request that this Court enter an order granting the relief requested herein and such other and further relief to which they may be justly entitled.

Dated this 18th day of April, 2017.

Respectfully submitted,

*s/ Mark A. Craige*

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Facsimile: (405) 272-5203

lysbeth.george@crowedunlevy.com

PROPOSED COUNSEL FOR DEBTOR

Loc Name	Type	Vendor	Account Number	Address	City	State	Zip	Current Stat	Deposit amou	Two weeks E
Jasper	Electric	Alabama Power Company	50924-25034	PO BOX 242	BIRMINGHAM	AL	35292	ACH	5110.5	1723.06
Jasper	Gas	Alagasco	200000573207	PO BOX 2224	BIRMINGHAM	AL	35246-0022	ACH		524.01
Danville	Trash	Republic Services #726	3-0726-0010876	PO BOX 9001099	LOUISVILLE	KY	40290-1099	ACH		219.59
Danville	Gas	Ameren Illinois	7417848005	PO BOX 88034	CHICAGO	IL	60680-1034	ACH		318.99
Danville	Electric	Ameren Illinois	7417848005	PO BOX 88034	CHICAGO	IL	60680-1034	ACH		1069.44
Carbondale	Gas	Ameren Illinois	9542003722	PO BOX 88034	CHICAGO	IL	60680-1034	ACH		198.31
Carbondale	Electric	Ameren Illinois	9542003722	PO BOX 88034	CHICAGO	IL	60680-1034	ACH		913.29
St Clairsville	Electric	American Electric Power	075-418-510-4-9	PO BOX 24002	CANTON	OH	44701-4002	ACH		1448.61
Selingsgrove	Water	Aqua Pennsylvania	001588301 0803652	762 W LANCASTER AVE	BRYN MAWR	PA	19010-3489	ACH		418.60
Zanesville	Phone Long Distance	AT&T	740 455-9100 577 6	PO BOX 8100	AURORA	IL	60507	ACH		82.38
Jasper	Phone	AT&T	205 302 6474 029 0549	PO BOX 105262	ATLANTA	GA	30348	ACH		33.27
St Clairsville	Phone	AT&T	740 526 0286 689 0	PO BOX 8100	AURORA	IL	60507	ACH		22.55
Selingsgrove	Phone Long Distance	AT&T	492815	PO BOX 5017	CAROL STREAM	IL	60197	ACH		5.36
Greenville	Gas	Atmos Energy	3013833576	PO BOX 790311	ST LOUIS	MO	63179-0311	ACH	2090.22	114.65
St Clairsville	Water	Belmont County Sanitary Sewer	101-50500-00	PO BOX 457	ST CLAIRSVILLE	OH	43950	ACH		456.73
Carbondale	Water	Carbondale Water	4-55090-01	BOX 2947	CARBONDALE	IL	62902-2947	ACH		128.35
Bridgeport	Water	City of Bridgeport	012-001040-02	515 W MAIN ST PO BOX 1310	BRIDGEPORT	WV	26330-6310	ACH		442.08
Greenville	Water	City of Greenville	10122	PO BOX 897	GREENVILLE	MS	38702-0897	ACH		380.72
State College	Water	College Township Water Authority	511025007	1481 E COLLEGE AVE	STATE COLLEGE	PA	16801	current		16.53
State College	Gas	Columbia Gas	16748649 002 000 8	PO BOX 742537	CINCINNATI	OH	45274-2537	ACH		851.15
Washington	Gas	Columbia Gas of PA 68 & 78	15348648 002 000 6	PO BOX 742537	CINCINNATI	OH	45274-2537	ACH		672.77
Danville	Phone	Comcast STR 49-43	8771 40 308 0012533	PO BOX 3001	SOUTHEASTERN	PA	19398-3001	ACH		53.78
Selingsgrove	Trash	Disposal Management Services	202144	154 QUARRY RD	COAL TOWNSHIP	PA	17866	current		234.05
Morgantown	Gas	Dominion Hope	3 5000 4030 1192	PO BOX 26783	RICHMOND	VA	23261-6783	ACH		273.03
Bridgeport	Gas	Dominion Hope	5 5000 4030 1333	PO BOX 26783	RICHMOND	VA	23261-6783	ACH		297.83
Zanesville	Gas	Energy Cooperative	9914972802	PO BOX 4970 1500 GRANVILLE RD	NEWARK	OH	43058-4970	ACH		310.08
Greenville	Electric	Entergy Mississippi Inc	81400749	PO BOX 8105	BATON ROUGE	LA	70891-8105	ACH		940.74
Morgantown	Phone	Granite Telecommunications	2566724	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		10.13
Greenville	Phone	Granite Telecommunications	2527045	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		136.72
Bridgeport	Phone	Granite Telecommunications	2527076	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		110.92
Jasper	Phone	Granite Telecommunications	2527078	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		91.01
St Clairsville	Phone	Granite Telecommunications	2527081	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		102.77
Washington	Phone	Granite Telecommunications	2527085	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		113.24
State College	Phone	Granite Telecommunications	2512441	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		122.30
Selingsgrove	Phone	Granite Telecommunications	2512898	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		11.53
Carbondale	Phone	Granite Telecommunications	2527089	100 NEWPORT AVE EXT	QUINCY	MA	2171	current		85.76
St Clairsville	Gas	Matheson	AX227	15 LOMBARD ST	MARTINS FERRY	OH	43935	current		767.92
Morgantown	Electric	Mon Power	110 094 897 565	76 SOUTH MAIN STREET	AKRON	OH	44308-1890	ACH	3544	1172.26
Bridgeport	Electric	Mon Power	110 094 897 532	76 SOUTH MAIN STREET	AKRON	OH	44308-1890	ACH		1240.23
Morgantown	Water	Morgantown Mall Associates LP	810	9500 MALL ROAD	MORGANTOWN	WV	26501	current		105.91
State College	Water	Nittany Centre Realty LLC	832	150 GREAT NECK RD	GREAT NECK	NY	11021	Pd through Jan 17		397.59
Washington	Water	Pennsylvania American Water Co	1024-210032136840	PO BOX 371412	PITTSBURGH	PA	15250-7412	ACH		431.36
Selingsgrove	Electric	PPL Electric Utilities	80674-85016	2 NORTH 9TH ST CPC GENN1	ALLEN TOWN	PA	18101-1175	ACH		1219.38
Selingsgrove	Gas	Ugi Penn Natural Gas Inc	920202064633	PO BOX 15533	WILMINGTON	DE	19886-5533	ACH		357.37
Selingsgrove	Phone	Verizon 85	570 374-9071 384 31Y	PO BOX 5156	TAMPA	FL	33675	current		186.19
Washington	Trash	Washington East Washington JOI	1092.11930.1	PO BOX 510	WASHINGTON	PA	15301-0510	ACH		193.56
Zanesville	Trash	Waste Management	10850017	415 DAY HILL ROAD	WINDSOR	CT	6095	current		374.06
Morgantown	Trash	Waste Management	10680024	415 DAY HILL ROAD	WINDSOR	CT	6095	current		207.77
Washington	Trash	Waste Management	5512026	415 DAY HILL ROAD	WINDSOR	CT	6095	current		487.04
State College	Trash	Waste Management	5410030	415 DAY HILL ROAD	WINDSOR	CT	6095	current		171.95
Washington	Electric	West Penn Power	100 096 959 570	76 SOUTH MAIN STREET	AKRON	OH	44308-1890	ACH		826.64
State College	Electric	West Penn Power	100 091 420 164	76 SOUTH MAIN STREET	AKRON	OH	44308-1890	ACH	1954	1060.29
Morgantown	Phone	West Side Telecommunications	2815	1451 FAIRMONT RD	MORGANTOWN	WV	26501-9729	ACH		86.87
Morgantown	Phone Long Distance	XO Communications	4000000150925	8851 SANDY PARKWAY	SANDY	UT	84070	ACH		9.80
Greenville	Phone Long Distance	XO Communications	4000000150903	8851 SANDY PARKWAY	SANDY	UT	84070	ACH		10.79
Jasper	Phone Long Distance	XO Communications	4000000150899	8851 SANDY PARKWAY	SANDY	UT	84070	ACH		9.52
St Clairsville	Phone Long Distance	XO Communications	4000000150915	8851 SANDY PARKWAY	SANDY	UT	84070	ACH		13.81
State College	Phone Long Distance	XO Communications	4000000150917	8851 SANDY PARKWAY	SANDY	UT	84070	ACH		14.63
Selingsgrove	Phone Long Distance	XO Communications	4000000150914	8851 SANDY PARKWAY	SANDY	UT	84070	ACH		14.94
Carbondale	Phone Long Distance	XO Communications	4000000150907	8851 SANDY PARKWAY	SANDY	UT	84070	ACH		7.07

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA**

_____	)	
	)	Chapter 11
In re:	)	
	)	
EATERIES, INC.; <i>et al.</i> <sup>1</sup>	)	Case No. 17-11444
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**INTERIM AND PROPOSED FINAL ORDER PROVIDING  
ADEQUATE ASSURANCE OF UTILITY PAYMENTS  
[This Order Corresponds to the Motion at Docket No. \_\_\_\_]**

Upon the motion, dated April 18, 2017 (the “Motion”), of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), for entry of interim and final orders providing adequate assurance of utility payments; and upon the Affidavit of William C. Liedtke, III, Vice-President and Managing Member of Debtors, in Support of Debtors’ Chapter 11 Petitions and First Day Motions sworn to on April 17, 2017; and the Court having determined

<sup>1</sup> The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH.

that it has jurisdiction over the matters raised by the Motion and that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and it appearing that proper and adequate notice has been given and that no other or further notice is necessary; and upon the record herein, and after due deliberation thereon, it is hereby

ORDERED, ADJUDGED, AND DECREED

1. The Motion is granted on an interim basis.
2. Subject to the procedures described below, no Utility may (a) alter, refuse, terminate, or discontinue utility service to, or discriminate against, the Debtors on the basis of the commencement of these Cases or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Proposed Adequate Assurance, as a condition to the Debtors receiving such utility services pending the entry of a Final Order or this order becoming a Final Order as set forth below.
3. A Utility shall be entitled to the Adequate Assurance Deposit provided that (a) it requests such a deposit in writing no later than thirty (30) days after the Petition Date (the "Request Deadline"); (b) such requesting Utility does not already hold a deposit equal to or greater than the Adequate Assurance Deposit (which existing deposit shall be deemed to be the Adequate Assurance Deposit for purposes of this Motion); and (c) such requesting Utility is not currently paid in advance for its services.
4. A Utility that requests and accepts an Adequate Assurance Deposit in accordance with the requirements of the Motion shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of future payment to such Utility, and such Utility shall be deemed to have waived any right to seek additional adequate assurance during the course of these Cases. Any adequate Assurance Deposit requested by, and provided to, any

Utility pursuant to the procedures described herein shall be returned to the Debtors at the conclusion of these Cases, if not returned or applied earlier.

5. The following Adequate Assurance Procedures are approved in all respects:
  - i. Within two (2) business days after entry of the Interim Order, the Debtors will mail a copy of the Interim Order to the Utilities on the Utility Service List.
  - ii. If a Utility is not satisfied with the Proposed Adequate Assurance and seeks additional assurances of payment in the form of deposits, prepayments, or otherwise (an “Additional Assurance Request”), it must serve a request within 14 days of service of the Interim Order upon the Debtors and their counsel at the following address: Crowe & Dunlevy, Attn: Lysbeth L. George, 324 North Robinson Avenue, Oklahoma City, Oklahoma 73102, e-mail address: lysbeth.george@crowedunlevy.
  - iii. If a Utility is not satisfied with procedures outlined herein and wishes to object to such procedures, it must file an objection with the Court (the “Procedures Objection”) within 14 days of service of the Interim Order and serve such Procedures Objection upon the Debtors and their counsel at the following address: Crowe & Dunlevy, Attn: Lysbeth L. George, 324 North Robinson Avenue, Oklahoma City, Oklahoma 73102, e-mail address: lysbeth.george@crowedunlevy.
  - iv. Any Additional Assurance Request must (i) be made in writing; (ii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iii) describe any deposits, prepayments, or other security currently held by the requesting Utility; (iv) explain why the requesting Utility believes the Proposed Adequate Assurance is insufficient adequate assurance of future payment; and (v) identify, and explain the basis of, the Utility’s proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code.
  - v. Upon the Debtors’ timely receipt of an Additional Assurance Request at the address noted above, the Debtors shall have the greater of either (i) 14 days from the receipt of such Additional Assurance Request or (ii) 30 days from the Petition Date (collectively, the “Resolution Period”) to

negotiate with the requesting Utility to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement between the parties.

- vi. The Debtors may resolve any Additional Assurance Request by mutual agreement with the requesting Utility and without further order of the Court and may, in connection with any such resolution, provide the requesting Utility with additional adequate assurance of future payment in a form satisfactory to the Utility, including, without limitation, cash deposits, prepayments, and/or other forms of security, if the Debtors believe such additional assurance is reasonable.
- vii. If the Debtors determine that an Additional Assurance Request is not reasonable, and are unable to resolve such request during the Resolution Period, the Debtors will request, during or immediately after the Resolution Period, a hearing before this Court to determine the adequacy of assurances of payment made to the requesting Utility (the “Determination Hearing”), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- viii. Pending the resolution of the Additional Assurance Request or a Procedures Objection outlined herein at a Determination Hearing, the requesting Utility shall be restrained from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- ix. Any Utility that does not comply with the Adequate Assurance Procedures is deemed to find the Proposed Adequate Assurance satisfactory to it and is forbidden from discontinuing, altering, or refusing service on account of any unpaid prepetition charges, or requiring additional assurance of payment (other than the Proposed Adequate Assurance). The Interim Order shall be deemed the Final Order vis-a-vis all Utilities that do not timely file and serve a Procedures Objection.

7. Any Utility that does not request an Adequate Assurance Deposit by the Request Deadline and does not file a Procedures Objection to the Adequate Assurance Procedures shall



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

8. All payments of Adequate Assurance Deposits, prepayments, or other payments contemplated herein shall be subject to the terms of any orders authorizing debtor-in-possession financing and the use of cash collateral entered by the Court and budgets submitted by the Debtors with respect to the same.

9. If necessary, a final hearing to resolve any Procedures Objection shall be conducted on \_\_\_\_\_, 2017, at \_\_\_\_:00 \_\_\_\_m., Central Time.

10. A Utility shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors agree to (i) an Adequate Assurance Request, (ii) an Additional Assurance Request, or (iii) an alternative assurance of payment with the Utility during the Resolution Period; or (b) this Court enters an order at the Final Hearing or any Determination Hearing requiring that additional adequate assurance of payment be provided.

11. The Debtors are authorized to amend the Utility Service List to add or to delete any Utility, and this Order shall apply to any such Utility that is subsequently added to the Utility Service List. Any newly identified Utility added to the Utility Service List shall have until the later of fourteen (14) days from the date of service or thirty (30) days from the date of this Order to serve an Additional Assurance Request or Procedures Objection in compliance with the Adequate Assurance Procedures. The Debtors shall have the periods specified in the Adequate Assurance Procedures to seek to resolve any such request by mutual agreement with the Utility without further order of the Court or to request a Determination Hearing with the Court to determine the adequacy of assurance of payment with respect to such Utility in accordance with such procedures. Nothing herein constitutes a finding that an entity is or is not a Utility

hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

12. The Debtors shall serve a copy of this Order on each Utility listed on the Utility Service List within two (2) business days of the date this Order is entered. The Debtors shall also serve this Order on each Utility subsequently added by the Debtors to the Utility Service List as soon as practicable.

13. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry. This order shall be deemed a Final Order to any Utility that does not file a Procedures Objection as described herein.

14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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APPROVED FOR ENTRY:

**CROWE & DUNLEVY**

*/s/Mark A. Craige*

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