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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>Décor Holdings, Inc., et al.,<sup>1</sup></b>	:	<b>Case No. 19-71020 (REG)</b>
	:	<b>Case No. 19-71022 (REG)</b>
<b>Debtors.</b>	:	<b>Case No. 19-71023 (REG)</b>
	:	<b>Case No. 19-71024 (REG)</b>
	:	<b>Case No. 19-71025 (REG)</b>
	:	
	:	<b>Joint Administration Requested</b>
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**MOTION FOR INTERIM AND FINAL ORDERS (A) PROHIBITING UTILITY COMPANIES FROM DISCONTINUING, ALTERING, OR REFUSING SERVICE, (B) DEEMING UTILITY COMPANIES TO HAVE ADEQUATE ASSURANCE OF PAYMENT, AND (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE**

Décor Holdings, Inc. (“Décor”), and its affiliated debtors and debtors in possession (collectively, the “Debtors”), as debtors and debtors in possession in the above-captioned chapter 11 cases (these “Chapter 11 Cases”), hereby submit this motion (the “Motion”) for entry of interim and final orders (the “Interim Order” and “Final Order,” respectively), in

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Décor Holdings, Inc. (4174); Décor Intermediate Holdings LLC (5414); The Robert Allen Duralee Group, Inc. (8435); The Robert Allen Duralee Group, LLC (1798); and The Robert Allen Duralee Group Furniture, LLC (2835). The corporate headquarters and the mailing address for the Debtors listed above is 49 Wireless Boulevard, Suite 150, Hauppauge, NY 11788. The Debtors also maintain a separate corporate office at 2 Hampshire Street, Suite 300, Foxboro, MA 02035.

substantially the forms attached hereto: (a) prohibiting the Debtors' utility providers (collectively, the "Utility Companies") from discontinuing, altering, or refusing service to the Debtors except as set forth in this Motion; (b) determining that the Utility Companies have been provided with adequate assurance of payment on the basis of the establishment of the Utility Deposits (as defined below); and (c) approving the Debtors' proposed procedures for Utility Companies to request additional assurance of payment. In support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory bases for the relief requested herein are sections 105(a), 363, and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **Background**

5. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
6. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
7. No trustee, examiner, creditors' committee, or other official committee has been appointed in the Debtors' Chapter 11 Cases.

8. The Debtors are the second largest supplier of decorative fabrics and furniture to the design industry in the United States. They design, manufacture and sell decorative fabrics, wall coverings, trimmings, upholstered furniture, drapery hardware and accessories for both residential and commercial applications. The Debtors have three primary business lines: (a) selling decorative fabrics and furniture to interior designers; (b) providing decorative fabrics and fabricated products to hospitality customers, including hotels and resorts, and retail manufacturers who sell products to the trade and/or consumers; and (c) manufacturing custom-made furniture for both residential and commercial use.

9. The Debtors maintain showroom premises located in major metropolitan cities across the United States and Canada, and an extensive worldwide agent showroom network that collectively services more than 30 countries around the globe. The Debtors offer more than 5,000 fabrics and 1,000 wall coverings, ranging from \$20 to \$600 retail, and they have relationships with more than 100 textile mills from around the world. Every year, the Debtors' design studio creates new fabric collections consisting of as many as thirty designs per collection, with each design available in a variety of colors, and introduces extensive collections of passementerie tassels, braids, fringes, ropes and cords.

10. The Duralee Debtors<sup>2</sup> have sold their products under a variety of brands, including Duralee Furniture, Duralee Drapery Hardware, Duralee Contract, Suburban Home, DF Monogram, Highland Court, Bailey & Griffin, Lulu DK, Clarke & Clarke and James Hare brands. The Robert Allen Group Debtor<sup>3</sup> has sold its products under the Robert Allen, Beacon Hill, Robert Allen Contract, and Robert Allen @ Home brands and is

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<sup>2</sup> The Duralee Debtors include, The Robert Allen Duralee Group, LLC and The Robert Allen Duralee Group Furniture, LLC (together, the "Duralee Debtors")

<sup>3</sup> The Robert Allen Group Debtor includes, The Robert Allen Duralee Group, Inc. (the "Robert Allen Group Debtor")

renowned for the Robert Allen Color Library, widely known as the first fine fabric collection to be designed by color. The Robert Allen Group Debtor has been one of the world's largest designers of fine fabrics for the interior design trade, and recognized for over 75 years as a brand leader in its field.

11. In March, 2017, the Duralee Debtors and certain of their non-debtor affiliates (the "Duralee Group") and the Robert Allen Group Debtor and certain of its non-debtor affiliates (the "Robert Allen Group", and together with the Duralee Group, the "Robert Allen Duralee Group") entered into a merger (the "Merger") that resulted in the combination of the Duralee business and the Robert Allen Group business. After the Merger, the Debtors implemented a number of cost-cutting measures, including significant reduction in the size of their workforce. The Debtors encountered difficulty, however, implementing additional cost-cutting measures, such as consolidating redundant leased showroom spaces and integrating a single computer system which would unify the company's accounts payable, sales, and other essential software systems.

12. The Debtors' inability to effectively implement necessary cost-cutting measures, coupled with the recent decline in the home furnishing market, caused the Debtors to incur substantial losses, necessitating these chapter 11 filings. Through the chapter 11 process, the Debtors intend to undertake a going concern sale to preserve and maximize the value of their business. To fund operations during these Chapter 11 Cases, the Debtors are seeking approval of a debtor in possession financing facility (the "DIP Financing"), as well as further reduce the company's overhead costs and expenses through various forms of consolidation.

13. A more detailed description of the Debtors' business, capital structure, and the circumstances leading to the chapter 11 filings is set forth in the *Declaration of Lee*

*Silberman in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”)<sup>4</sup> filed contemporaneously herewith and incorporated herein by reference.

### **The Utility Companies**

14. The Debtors regularly incur expenses for electricity, gas, internet, and telecommunication services in the ordinary course of business (collectively, the “Utility Services”). These Utility Services are provided by the Utility Companies.<sup>5</sup> Prior to the Petition Date, the Debtors spent an average of approximately \$94,600 each month for Utility Services, and the Debtors anticipate that their Utility Service costs will not materially change during their Chapter 11 Cases.

15. Uninterrupted Utility Services are essential to the Debtors’ ongoing operations and, therefore, to the success of their sale efforts through these Chapter 11 Cases. Should one or more of the Utility Companies refuse or discontinue service—even for a brief period—it would severely disrupt the Debtors’ operations to the detriment of their estates, creditors, and employees. It is, therefore, critical that Utility Companies be prevented from interrupting the Debtors’ Utility Services.

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<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the First Day Declaration

<sup>5</sup> A non-exhaustive list of the Utility Companies is attached hereto as **Exhibit A**. Although the Debtors believe that **Exhibit A** includes all of the Utility Companies, the Debtors reserve the right, without further order of the Court, to supplement the list if any Utility Company has been omitted. The relief requested in this Motion is with respect to all Utility Companies and is not limited only to those identified in **Exhibit A**. Additionally, the listing of any entity on **Exhibit A** is not an admission that any particular entity is a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.

In addition to the services provided by the Utility Companies, the Debtors receive additional utility services that are provided for by the Debtors’ landlords and the expenses of which are included in the Debtors rent obligations. Through this Motion, the Debtors are only seeking to authorization to pay Utility Companies that are in direct privity with the Debtors and not any utility service providers that contract with the Debtors’ landlords or other third parties.

**Relief Requested**

16. By this Motion, the Debtors seek entry of the Interim Order and Final Order: (a) prohibiting the Utility Companies from discontinuing, altering, or refusing service to the Debtors except as set forth in this Motion; (b) determining that the Utility Companies have been provided with adequate assurance of payment on the basis of the establishment of the Utility Deposits (as defined below); and (c) approving the Debtors' proposed procedures for Utility Companies to request additional assurance of payment. Although the Debtors seek continued Utility Services from the Utility Companies, the Debtors are not seeking authority or direction to pay any specific claim pursuant to this Motion.

**Proposed Adequate Assurance and Adequate Assurance Procedures**

17. Section 366 of the Bankruptcy Code prevents utility companies from discontinuing, altering, or refusing service to a debtor after commencement of a bankruptcy case. See 11 U.S.C. § 366(a). A utility company may discontinue its services to a chapter 11 debtor, pursuant to section 366(c)(2) of the Bankruptcy Code, if the debtor has not provided such utility company with adequate assurance of payment. See 11 U.S.C. § 366(c)(2).

18. To provide adequate assurance of payment for future services to its Utility Companies, the Debtors propose to provide a deposit equal to approximately 50% of the Debtors' estimated monthly utility spend attributable to the Utility Companies, or approximately \$47,300 in the aggregate (collectively, the "Utility Deposit"). If the Debtors identify an Added Utility Company (as defined below), the Debtors will provide a deposit to the Added Utility Company by an amount equal to approximately 50% of the Debtors' estimated monthly utility liability attributable to such Added Utility Company.

19. In order to safeguard and maintain the Utility Deposit, the Debtors propose to establish a segregated account (the “Deposit Account”) at Wells Fargo Bank, N.A. (the “Bank”) and deposit the Utility Deposit into such Deposit Account for the benefit of the Utility Companies. The Deposit Account would serve to provide the Utility Companies adequate assurance of payment for services provided after the Petition Date. The Deposit Account may be drawn on by a Utility Company in a manner that is substantially similar to a letter of credit. In the event that the Debtors fail to timely pay for postpetition Utility Services, the Utility Company would be permitted to submit a draw request (the “Draw Request”), substantially in the form attached hereto as **Exhibit B**, to the Bank in the amount of the unpaid charges for the postpetition services rounded up to the nearest \$100. The Draw Request must: (i) state the amount owed for postpetition Utility Services; and (ii) provide the Bank with wire transfer or other payment instructions.

20. The Utility Company would be required to provide notice of the Draw Request to the Debtors in the manner indicated in the form of Draw Request. Absent payment by the Debtors, notice of which shall be provided by the Debtors to the Bank, on the fifth business day after receipt of the Draw Request by the Bank, the Debtors shall be permitted to pay, and direct the Bank to pay, the requesting Utility Company the amount set forth in the Draw Request, provided that there are sufficient funds in the Deposit Account to make such payment. Following payment of any Draw Request from the Deposit Account, the Debtors shall take such reasonable steps necessary to replenish the Deposit Account to ensure that the reserve of \$47,300 is maintained.

21. The Bank shall have no obligation to investigate the bona fides of the Draw Request, and as set forth in the proposed order attached hereto, the Debtors will assume all risks with respect to the acts and omissions of, or misuse of the Deposit Account by the

respective Utility Companies that are the beneficiaries of such Deposit Account. Moreover, the Debtors' only recourse in the event of an improper Draw Request is against the party making such Draw Request and not against the Bank.

22. It is possible that during the course of these Chapter 11 Cases, certain utility accounts with respect to the Utility Companies may be closed in the ordinary course of the Debtors' business (each, a "Closed Account"). If any account with respect to a Utility Company becomes closed during the course of these Chapter 11 Cases, the Debtors request authorization to decrease the amount of the Utility Deposit by withdrawing from the Deposit Account the amount deposited with respect to such Closed Account, solely to the extent no known dispute regarding the postpetition payments exists.

23. In addition, the Debtors seek to establish reasonable procedures (the "Adequate Assurance Procedures") by which a Utility Company may request additional assurance of future payment, if such Utility Company believes that the Utility Deposit does not provide it with satisfactory adequate assurances. Such Adequate Assurance Procedures will provide that:

- i. Absent any further order of this Court and except as otherwise provided in this Motion, Utility Companies may not (a) alter, refuse, or discontinue service to, or discriminate against, the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges, or (b) request provision of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- ii. The Debtors shall serve a copy of the Motion and signed copy of the Interim Order via first-class mail, within five (5) business days after the date that the Interim Order is entered by this Court, on each of the Utility Companies identified in **Exhibit A**. If the Debtors learn that a Utility Company was omitted from **Exhibit A**, the Debtors shall file a supplement to **Exhibit A**, adding the name of such Utility Company (the "Added Utility").

Company”), and shall promptly serve such Added Utility Company with a copy of the Motion and the Interim Order or, if it has been entered, the Final Order (each such service, a “Supplemental Service”).

- iii. Any Utility Company may request additional adequate assurance of payment (an “Additional Payment Request”) within thirty (30) days after the Petition Date or, in the case of an Added Utility Company, within thirty days of such company’s Supplemental Service (collectively, the “Additional Payment Request Deadline”) by submitting a written request to counsel to the Debtors, Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attn: Mark T. Power, Janine M. Figueiredo, and Jeremiah P. Ledwidge.
- iv. Any Additional Payment Request must (a) be in writing; (b) set forth the location for which Utility Services are provided; (c) include a summary of the Debtors’ payment history relevant to the affected account(s), including any account numbers, any security deposits or other prepayments or assurances previously provided by the Debtors; (d) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth in this Motion does not constitute satisfactory adequate assurance of payment; and (e) include a proposal for what would constitute adequate assurance of payment from the Debtors, along with an explanation of why such proposal is reasonable.
- v. If a Utility Company makes a timely Additional Payment Request that the Debtors believe is reasonable, the Debtors shall be authorized to comply, in their sole discretion, with such request without further order of this Court.
- vi. If the Debtors believe that a Utility Company’s Additional Payment Request is unreasonable, the Debtors will schedule a hearing within a reasonable time following the submission of such Request (a “Determination Hearing”) to determine whether additional assurance of payment to such Utility Company is necessary. If the Utility Company reaches an agreement with the Debtors before the Determination Hearing, such agreement shall be deemed to be adequate assurance of payment that is satisfactory to the Utility Company.

- vii. Pending resolution of a Utility Company's Additional Payment Request at a Determination Hearing, such party will be prohibited from altering, refusing, or discontinuing service to the Debtors or discriminating against the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges.
- viii. If a Utility Company fails to send an Additional Payment Request by the Additional Payment Request Deadline, such Utility Company will have waived its right to make an Additional Payment Request and will be deemed to have received, by virtue of the Utility Deposit, adequate assurance of payment in accordance with section 366(c)(1)(A)(vi) of the Bankruptcy Code.
- ix. Upon receipt of a Utility Deposit, a Utility Company will be deemed to have adequate assurance of payment unless and until a future order of this Court is entered requiring further assurance of payment.

**Basis for Relief**

24. This Court has the authority to grant the relief requested in this Motion pursuant to sections 105(a), 363, and 366 of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). This equitable power is granted to effect the policies and goals of chapter 11 reorganization, which are to rehabilitate the debtor, In re Ionosphere Clubs, Inc., 98 B.R. 174, 176-77 (Bankr. S.D.N.Y. 1989), and to “create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.” Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987). See also In re Structurlite Plastics Corp., 86 B.R. 922, 932 (Bankr. S.D. Ohio 1998) (rejecting a bright line rule prohibiting

payment of prepetition debts because it “may well be too inflexible to permit the effectuation of the rehabilitation purposes of the Code”).

25. The Debtors submit that the Court should use its section 105(a) powers in these Chapter 11 Cases to grant the relief requested in this Motion because such relief is necessary to continue the Debtors’ normal business operations and to preserve the Debtors’ ability to restructure its business in an orderly manner and complete the contemplated sale process. The Debtors already have limited access to cash, and could face an even greater cash drain if the Utility Companies condition the provision of postpetition services to the Debtors upon the payment of exorbitantly burdensome and/or unreasonable deposits or other forms of adequate assurance of payment.

26. Courts are also empowered to authorize debtors to pay for postpetition services under section 363(b)(1), which provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). This section gives the court “broad flexibility in tailoring its orders to meet a wide variety of circumstances.” Ionosphere Clubs, Inc., 98 B.R. at 175. Before the court can apply section 363(b) in its favor, the debtor must “articulate some business justification, other than mere appeasements of major creditors.” Id. (finding that the debtor gave “sound business reasons for its decision to pay pre-petition wages,” those reasons being that it was necessary to “serve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale”); see also In re New Bedford Capacitor, Inc., No. 01-14680-JNF, 2003 WL 25889620, at \*5 (Bankr. D. Mass. June 27, 2003) (holding that debtor’s purchase of additional directors and officers liability insurance when the estate had “potential risks of liability” and “the fees that might be incurred by estate professionals litigating any

uninsured claims or objecting to indemnification claims, could likely exceed” the cost of the policy was within the debtor’s sound business judgment pursuant to § 363(b)(1)). Here, the Debtors’ request to pay the Utility Deposits satisfies this standard because the failure to do so could have a material adverse impact on the Debtors’ day-to-day operations, which would, in turn, hinder the Debtors’ chapter 11 efforts.

27. Section 366 of the Bankruptcy Code is designed to protect the debtor from utility service cutoffs, while also providing utility companies with adequate assurance that the debtor will be able to pay for postpetition services. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. Under this section, a utility may not, during the first twenty days of the case, alter, refuse, or discontinue services to a debtor in a chapter 11 case solely because of unpaid prepetition amounts. See 11 U.S.C. § 366(a). The utility may do so thereafter, however, unless the debtor furnishes “adequate assurance” of payment, which the Debtors seek to do through this Motion, in the form of a deposit or otherwise, for postpetition services in a form “satisfactory” to the utility within thirty (30) days of the petition date. See 11 U.S.C. § 366(c)(2).

28. Section 366(c)(1)(A) of the Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “BAPCPA”), provides that “adequate assurance of payment” means (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee. 11 U.S.C. § 366(c)(1)(A). Accordingly, while the statute now specifies the form of assurance that will be deemed to be adequate, it leaves the question of the amount of assurance that must be provided within this Court’s discretion. See 11 U.S.C. § 366(b) and (c)(3)(A).

29. Leaving the determination as to the amount of assurance that a debtor will need to provide in the discretion of the Court conforms with the pre-amendment case law, under which courts generally looked to the facts and circumstances of each case to ensure that utility companies were not subjected to an unreasonable risk of nonpayment for postpetition services. See, e.g., In re Keydata Corp., 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981); In re Adelpia Bus. Solutions, Inc., 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002).

30. Courts construing section 366 of the Bankruptcy Code have long recognized that adequate assurance of payment does not constitute an absolute guaranty of the debtor's ability to pay. See, e.g., In re Caldor, Inc., 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 guaranty of payment.") (internal citation omitted); Steinebach v. Tucson Elec. Power Co. (In re Steinebach), 303 BR 634, 641 (Bankr. D. Ariz. 2004) (observing that "[a]dequate assurance of payment is not, however, absolute assurance"); In re Adelpia, 280 B.R. at 80 (stating that "[i]n determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment, but must only determine that the utility is not subject to an unreasonable risk of nonpayment for postpetition services"); In re Penn Jersey Corp., 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (stating that section 366 "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"). Further, courts have recognized that, in determining what constitutes "adequate" assurance, 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.” Va. Elec. & Power Co. v. Caldor, Inc., 117 F.3d 646, 650 (2d. Cir. 1997) (quoting In re Penn Jersey, 72 B.R. at 985).

31. As set forth above, if the Utility Companies are permitted to terminate Utility Services, a substantial disruption to the Debtors’ operations will occur, and the Debtors’ business will be irreparably harmed. If faced with imminent termination of Utility Services, the Debtors would be forced to pay whatever amounts are demanded by the Utility Companies to avoid the cessation of essential Utility Services and a severe disruption of the Debtors’ business.

32. Here, the Debtors submit that establishing the Utility Deposits, a substantial cash reserve relative to the Debtors’ estimated monthly consumption, provides adequate assurance to the Utility Companies under section 366(c) of the Bankruptcy Code. In addition, the Debtors submit that the Adequate Assurance Procedures set forth in this Motion, whereby any Utility Company can request additional adequate assurance if it believes there are facts and circumstances that would merit greater protection, provide an orderly process for giving adequate assurance of payment to the Utility Companies without risking irreparable harm to the estate.

33. The nature of section 366 has not been changed by the BAPCPA – the Court retains the discretion to modify any request for assurance of payment, and assurance of payment need only be adequate in light of the facts and circumstances of a given case. Accordingly, the determination procedures proposed in this Motion are similar to those approved by courts prior to the BAPCPA. The Debtors’ proposed procedures do permit a Utility Company to make an Additional Payment Request, however, and the Debtors will provide assurance of payment in addition to the Utility Deposit if deemed necessary by the Court.

34. Procedures similar to those detailed in this Motion have been approved by bankruptcy courts in this District under the standards set forth by Congress in the BAPCPA. See, e.g., In re Interfaith Medical Center, Inc., Case No. 12-48226 (CEC) (Bankr. E.D.N.Y. Dec. 20, 2012) [Docket No. 77]; In re Global Aviation Holdings Inc., et al., Case No. 12-40783 (CEC) (Bankr. E.D.N.Y. Mar. 5, 2012) [Docket No. 172]; Suffolk Regional Off-Track Betting Corp., Case No. 11-42250 (CEC) (Bankr. E.D.N.Y. Apr. 1, 2011) [Docket No. 24]; In re The Brown Publishing Co., et al., Case No. 10-73295 (DTE) (E.D.N.Y. June 3, 2010) [Docket No. 120].

**The Requirements of Bankruptcy Rule 6003 Have Been Satisfied**

35. Bankruptcy Rule 6003(b) provides that “[e]xcept to the extent that relief is necessary to avoid immediate irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligating regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . .”. Fed. R. Bankr. P. 6003(b). This Motion requests extraordinary relief as defined in the Local Bankruptcy Rules for the Eastern District of New York and the Guidelines for First Day Motions adopted by the Board of Judges for the United States Bankruptcy Court for the Eastern District of New York and in accordance with Rule 9077-1 of the Local Bankruptcy Rules for the Eastern District of New York. As described in the Motion, the Debtors believe that they may need to make upcoming payments and provide Adequate Assurance Deposits to the Utility Companies. The Debtors would suffer immediate and irreparable harm if they are not permitted to continue paying the Utility Companies in the ordinary course as they become due and owing, and to provide Adequate Assurance Deposits to the Utility Companies. The failure to maintain the Utility Services would have immediate negative consequences to

the Debtors' business operations to the detriment and prejudice of all parties in interest. Accordingly, the Debtors submit that the relief requested in this Motion is consistent with Bankruptcy Rule 6003(b).

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

36. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Reservation of Rights**

37. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' or any other party's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. If this Court grants the relief sought herein, any payment made pursuant to this Court's order is not intended and should not be construed as an admission of the validity of any claim or a waiver of the Debtors' or any other party's rights to subsequently dispute such claim.

**Notice**

38. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the Eastern District of New York; (b) the Office of the United States Attorney for the Eastern District of New York; (c) the Debtors' consolidated top thirty (30) largest unsecured creditors; (d) Counsel to Wells Fargo Bank, N.A. and PNC Bank, N.A., the Debtors' secured creditors and proposed DIP Lenders; (e) Corber Corp., the Debtors' secured creditor; (f) the Internal Revenue Service; (g) the Securities Exchange Commission; (h) the Tax Division of the United States Department of Justice; (i) the Office of the New York State Attorney General; (j) the New York State Department of Taxation and Finance;

(k) the Governmental Authorities; (l) the Utility Companies; and (m) any other parties required to receive service under Bankruptcy Rule 2002, Rule 2002-2 of the Local Bankruptcy Rules for the Eastern District of New York, and the Guidelines for First Day Motions adopted by the Board of Judges for the United States Bankruptcy Court for the Eastern District of New York.

39. A copy of this Motion is also available on the website maintained by the Debtors' noticing and claims agent, Omni Management Group LLC, at <https://omnimgt.com/radg>. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested, the Debtors submit that no other or further notice of this Motion is required.

**No Prior Request**

40. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, substantially in the form attached hereto, and grant such other and further relief as is just and appropriate.

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Dated: February 12, 2019  
New York, New York

Respectfully submitted,

/s/ Mark T. Power

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Debtors in Possession*

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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**Décor Holdings, Inc., et al.,<sup>1</sup>** : **Case No. 19-71020 (REG)**  
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**INTERIM ORDER (A) PROHIBITING UTILITY COMPANIES FROM  
DISCONTINUING, ALTERING, OR REFUSING SERVICE, (B) DEEMING  
UTILITY COMPANIES TO HAVE ADEQUATE ASSURANCE OF PAYMENT,  
AND (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR  
ADDITIONAL ASSURANCE**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of for entry of an interim order (this “Interim Order”) (a) prohibiting providers of electricity, gas, internet, and telecommunication services directly to the Debtors (collectively, the “Utility Companies”) from discontinuing, altering, or refusing service to the Debtors except as set forth in the Motion; (b) determining that the Utility Companies have been provided with adequate assurance of payment on the basis of the Utility Deposits; and (c) approving the Debtors’ proposed procedures for Utility Companies to request additional assurance of payment; and upon the First Day Declaration; and this Court having found that (a) it has jurisdiction to

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Décor Holdings, Inc. (4174); Décor Intermediate Holdings LLC (5414); The Robert Allen Duralee Group, Inc. (8435); The Robert Allen Duralee Group, LLC (1798); and The Robert Allen Duralee Group Furniture, LLC (2835). The corporate headquarters and the mailing address for the Debtors listed above is 49 Wireless Boulevard, Suite 150, Hauppauge, NY 11788. The Debtors also maintain a separate corporate office at 2 Hampshire Street, Suite 300, Foxboro, MA 02035.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and (b) the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and (c) venue of these Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having further determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein on an interim basis; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor, it is

**HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis until such time as the Court enters a final order on this matter (the "Final Order").

2. The final hearing (the "Final Hearing") on this Motion shall be held on **February \_\_\_\_\_, 2019 at \_\_:\_\_ .m** (prevailing Eastern Time). Any party in interest objecting to the relief sought at the Final Hearing shall serve and file a written objection upon (a) proposed counsel to the Debtors, Hahn &Hessen LLP, 488 Madison Ave., New York, New York 10022 (Attn: Mark T. Power, Esq. and Janine M. Figueiredo, Esq., Fax: (212) 478-7400) (b) counsel to Wells Fargo Bank, N.A. and PNC Bank, N.A., Otterbourg, P.C., 230 Park Avenue, New York, New York 10169-0075 (Attn: Daniel F. Fiorillo, Esq. and Jonathan N. Helfat, Esq., Fax: (212) 682-6104); (c) counsel to any Committee; and (d)

the U.S. Trustee, Long Island Federal Plaza Courthouse, 560 Federal Plaza, Central Islip, New York 11722 (Attn: Christine H. Black); and shall be filed with the Clerk of the United States Bankruptcy Court for the Eastern District of New York, in each case, to allow actual receipt of the foregoing no later than **[-]:[-] [-].[m], prevailing Eastern time, on February \_\_\_, 2019** (the “Objection Deadline”). In the event no responses or objections to the relief requested are received by the Objection Deadline, this Court may enter the Final Order on this Motion without the need for the Final Hearing.

3. Until such time as the Final Order is entered by this Court, all Utility Companies are prohibited from (a) discontinuing, altering, or refusing service to the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges and (b) discriminating against the Debtors, or requiring payment of a security deposit or receipt of any other security from the Debtors for continued service, as a result of the Debtors’ bankruptcy filing or any outstanding prepetition invoices.

4. Within twenty (20) days of the date of the commencement of these Chapter 11 Cases, the Debtors shall provide a deposit equal to 50% of the Debtors’ estimated cost of monthly utility consumption for such Utility Companies based on a yearly average (the “Utility Deposit”), which amount shall be held in a newly created, segregated account of the Debtors (the “Deposit Account”) under the Debtors’ control for the benefit of the Utility Companies.

5. Notwithstanding anything to the contrary in any other order of this Court, no creditor, including any lender providing debtor in possession financing, shall have any interest in or lien on the Utility Deposit or the Deposit Account.

6. With respect to any Added Utility Company, the Debtors will provide a deposit to the Added Utility Company equal to 50% of the estimated cost of one month of such Added Utilities Company's services utilized by the Debtors, based on a yearly average.

7. In the event the Debtors fail to timely pay for postpetition Utility Services following the entry of this Interim Order, the Utility Company to which any such payment is owed shall act in accordance with the following procedures:

- a. The Utility Company is entitled to submit a Draw Request, in the form attached hereto as **Exhibit B**, to the Debtors and the Bank in the amount of the unpaid charges owed to such Utility Company for such postpetition Utility Services.
- b. Notice of any Draw Request shall be sent to the Debtors and the Bank, with copies to counsel for the Debtors, as indicated in the form of Draw Request attached hereto. Through the Draw Request, such Utility Company shall only be permitted to seek payment for unpaid postpetition utility charges.
- c. In the Draw Request, the Utility Company shall (i) certify the amount owed for postpetition Utility Services, and (ii) provide the Bank with wire transfer or other payment instructions.
- d. The Bank shall have no obligation to investigate the bona fides of the Draw Request, and the Debtors will assume all risks with respect to the acts and omissions of, or misuse of the Deposit Account by the respective Utility Companies that are the beneficiaries of such Deposit Account. Moreover, the Debtors' only recourse in the event of an improper Draw Request is against the party making such Draw Request and not against the Bank.
- e. Absent payment by the Debtors, notice of which shall be provided by the Debtors to the Bank, on the fifth business day after receipt of the Draw Request by the Bank, the Debtors shall be permitted to pay, and direct the Bank to pay, the requesting Utility Company the amount set forth in the Draw Request, provided that there are sufficient funds in the Deposit Account to make such payment. Following payment of any Draw Request from the Deposit Account,

the Debtors shall take steps to replenish the Deposit Account to ensure that the reserve of \$47,300 is established.

8. Within five (5) business days of entry of this Interim Order, the Debtors shall serve the Motion and this Interim Order via first-class mail on the Utility Companies listed on **Exhibit A** to the Motion and each other party that the Debtors believe could be affected by the Motion.

9. The procedures for determining requests for additional assurance of payment as described in the Motion are approved as follows:

- i. Absent any further order of this Court and except as provided in this Interim Order, Utility Companies shall not (a) alter, refuse, or discontinue service to, or discriminate against, the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges, or (b) request provision of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- ii. The Debtors shall serve the Motion and a signed copy of this Interim Order on each of the Utility Companies identified on the list attached to the Motion as **Exhibit A**. If the Debtors learn that a Utility Company was omitted from **Exhibit A**, the Debtors shall file a supplement to **Exhibit A**, adding the name of such Utility Company (the "Added Utility Company"), and shall promptly serve such Added Utility Company with a copy of the Motion and this Interim Order.
- iii. Any Utility Company may request additional adequate assurance of payment (an "Additional Payment Request") within thirty days after the Petition Date or, in the case of an Added Utility Company, within thirty (30) days of such company's Supplemental Service (collectively, the "Additional Payment Request Deadline") by submitting a written request to counsel to the Debtors, Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attn: Mark T. Power, Janine M. Figueiredo, and Jeremiah P. Ledwidge.
- iv. Any Additional Payment Request must (a) be in writing; (b) set forth the location for which Utility Services are

provided; (c) include a summary of the Debtors' payment history relevant to the affected account(s), including any account numbers and any security deposits or other prepayments or assurances previously provided by the Debtors; (d) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth in this Interim Order does not constitute satisfactory adequate assurance of payment; and (e) include a proposal for what would constitute adequate assurance of payment from the Debtors, along with an explanation of why such proposal is reasonable.

- v. If a Utility Company makes an Additional Payment Request that the Debtors believe is reasonable, the Debtors are authorized to comply, in their sole discretion, with such request without further order of this Court.
- vi. If the Debtors believe that a Utility Company's Additional Payment Request is unreasonable, the Debtors shall schedule a hearing within a reasonable time following the submission of such Request (a "Determination Hearing") to determine whether additional assurance of payment to such Utility Company is necessary. If the Utility Company reaches an agreement with the Debtors before the Determination Hearing, such agreement shall be deemed to be adequate assurance of payment that is satisfactory to the Utility Company.
- vii. Pending resolution of a Utility Company's Additional Payment Request at a Determination Hearing, such party shall be prohibited from altering, refusing, or discontinuing service to the Debtors or discriminating against the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges.
- viii. If a Utility Company fails to send an Additional Payment Request by the Additional Payment Request Deadline, such Utility Company will be deemed to have received, by virtue of the Utility Deposit, adequate assurance of payment in accordance with section 366(c)(1)(A)(vi) of the Bankruptcy Code.
- ix. Upon receipt of a Utility Deposit, a Utility Company shall be deemed to have adequate assurance of payment

unless and until a future order of this Court is entered requiring further assurance of payment.

10. The Debtors are authorized, in their sole discretion, to amend the list of Utility Companies attached as **Exhibit A** to the Motion to add or remove any Utility Company.

11. If any utility becomes a Closed Account prior to the entry of a Final Order, without the need for further order of this Court or notice to any parties, the Debtors shall be authorized to decrease the amount of the Utility Deposit by withdrawing from the Deposit Account the amount deposited with respect to such Closed Account only to the extent the Utility Company has not provided notice to the Debtor that a dispute regarding postpetition payments exists.

12. Nothing in this Interim Order or on **Exhibit A** constitutes a finding that any entity is or is not a Utility Company for purposes of this Interim Order or under section 366 of the Bankruptcy Code.

13. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

14. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (i) an admission as to the validity or priority of any claim against the Debtors; (ii) a waiver of the Debtors' right to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion (including any exhibits attached thereto); (v) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (vi) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law;

or (vii) to create any rights in favor of, or enhance the status of, any claim held by any person or entity.

15. To the extent that there is any inconsistency between the terms of the interim or final order approving the DIP Financing, if and when entered, and this Interim Order, the terms of the interim or final order approving the DIP Financing, as applicable, shall govern.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion, and the requirements of Bankruptcy Rules 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

18. Notwithstanding the applicability of any Bankruptcy Rules, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Interim Order.

**Proposed Final Order**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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 :  
**In re:** : **Chapter 11**  
 :  
**Décor Holdings, Inc., et al.,**<sup>1</sup> : **Case No. 19-71020 (REG)**  
 : **Case No. 19-71022 (REG)**  
**Debtors.** : **Case No. 19-71023 (REG)**  
 : **Case No. 19-71024 (REG)**  
 : **Case No. 19-71025 (REG)**  
 :  
 : **Joint Administration Requested**  
 ----- X

**FINAL ORDER (A) PROHIBITING UTILITY COMPANIES FROM  
DISCONTINUING, ALTERING, OR REFUSING SERVICE, (B) DEEMING  
UTILITY COMPANIES TO HAVE ADEQUATE ASSURANCE OF PAYMENT,  
AND (C) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR  
ADDITIONAL ASSURANCE**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of a final order (this “Final Order”): (a) prohibiting providers of electricity, gas, internet, and telecommunication services directly to the Debtors (collectively, the “Utility Companies”) from discontinuing, altering, or refusing service to the Debtors except as set forth in the Motion; (b) determining that the Utility Companies have been provided with adequate assurance of payment on the basis of the Utility Deposits; and (c) approving the Debtors’ proposed procedures for Utility Companies to request additional assurance of payment; and upon the First Day Declaration; and this Court having found that (a) it has jurisdiction to consider the Motion pursuant to 28 U.S.C.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Décor Holdings, Inc. (4174); Décor Intermediate Holdings LLC (5414); The Robert Allen Duralee Group, Inc. (8435); The Robert Allen Duralee Group, LLC (1798); and The Robert Allen Duralee Group Furniture, LLC (2835). The corporate headquarters and the mailing address for the Debtors listed above is 49 Wireless Boulevard, Suite 150, Hauppauge, NY 11788. The Debtors also maintain a separate corporate office at 2 Hampshire Street, Suite 300, Foxboro, MA 02035.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

§§ 157 and 1334; and (b) the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and (c) venue of these Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having held a hearing on interim relief on \_\_\_\_\_, 2019; and this Court having entered an order granting interim relief on \_\_\_\_\_, 2019; and this Court having further determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having reviewed the Motion and having heard statements in support of the Motion at a further hearing held before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefor, it is

**HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. The Debtors shall pay all postpetition utility charges in accordance with their prepetition practices for postpetition Utility Services rendered by the Utility Companies to the Debtors.
3. The Debtors are deemed to have furnished the Utility Companies with adequate assurance of payment for postpetition services by providing the Utility Deposit, which Deposit is being held in the Deposit Account. With respect to any Added Utility Company, the Debtors will provide a deposit to the Added Utility Company equal to 50% of the estimated cost of one month of such Added Utility Company's services utilized by the Debtors, based on a yearly average.

4. In the event the Debtors fail to timely pay for postpetition Utility Services, the Utility Company to which any such payment is owed shall act in accordance with the following procedures:

- a. The Utility Company is entitled to submit a Draw Request, in the form attached hereto as **Exhibit B**, to the Debtors and the Bank in the amount of the unpaid charges owed to such Utility Company for such postpetition Utility Services.
- b. Notice of any Draw Request shall be sent to the Debtors and the Bank, with copies to counsel for the Debtors, as indicated in the form of Draw Request attached hereto. Through the Draw Request, such Utility Company shall only be permitted to seek payment for unpaid postpetition utility charges.
- c. In the Draw Request, the Utility Company shall (i) certify the amount owed for postpetition Utility Services, and (ii) provide the Bank with wire transfer or other payment instructions.
- d. The Bank shall have no obligation to investigate the bona fides of the Draw Request, and the Debtors will assume all risks with respect to the acts and omissions of, or misuse of the Deposit Account by the respective Utility Companies that are the beneficiaries of such Deposit Account. Moreover, the Debtors' only recourse in the event of an improper Draw Request is against the party making such Draw Request and not against the Bank.
- e. Absent payment by the Debtors, notice of which shall be provided by the Debtors to the Bank, on the fifth business day after receipt of the Draw Request by the Bank, the Debtors shall be permitted to pay, and direct the Bank to pay, the requesting Utility Company the amount set forth in the Draw Request, provided that there are sufficient funds in the Deposit Account to make such payment. Following payment of any Draw Request from the Deposit Account, the Debtors shall take steps to replenish the Deposit Account to ensure that the reserve of \$47,300 is established.

5. Notwithstanding anything to the contrary in any other order of this Court, no creditor, including any lender providing debtor-in-possession financing, shall have any interest in or lien on the Utility Deposit or the Deposit Account.

6. Absent any further order of this Court, and except as set forth otherwise in this Final Order, all Utility Companies are prohibited from: (a) discontinuing, altering, or refusing service to the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges; and (b) discriminating against the Debtors, or requiring the payment of a security deposit or receipt of any other security from the Debtors for continued service, as a result of the Debtors' bankruptcy filing or any outstanding prepetition invoices, except as set forth herein.

7. The procedures for determining requests for additional assurance of payment as described in the Motion are approved as follows:

- i. Absent any further order of this Court and except as provided in this Final Order, Utility Companies shall not alter, refuse, or discontinue service to, or discriminate against, the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges, or (b) request provision of a deposit or receipt of other security in connection with any unpaid prepetition charges.
- ii. The Debtors previously served the Motion and a copy of the signed Interim Order on each of the Utility Companies identified on the list attached to the Motion as **Exhibit A**, as supplemented. If the Debtors learn that a Utility Company was omitted from **Exhibit A**, the Debtors shall file a supplement to **Exhibit A**, adding the name of such Utility Company (the "Added Utility Company"), and shall promptly serve such Added Utility Company with a copy of the Motion and this Final Order (each such service, a "Supplemental Service").
- iii. Any Utility Company may request additional adequate assurance of payment (an "Additional Payment Request") by the Additional Payment Request Deadline by submitting a written request to counsel to the Debtors, Hahn & Hessen LLP, 488 Madison Avenue, New York, NY 10022, Attn: Mark T. Power, Janine M. Figueiredo, and Jeremiah P. Ledwidge.

- iv. Any Additional Payment Request must (a) be in writing; (b) set forth the location for which Utility Services are provided; (c) include a summary of the Debtors' payment history relevant to the affected account(s), including any account numbers and any security deposits or other prepayments or assurances previously provided by the Debtors; (d) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth in this Final Order does not constitute satisfactory adequate assurance of payment; and (e) include a proposal for what would constitute adequate assurance of payment from the Debtors, along with an explanation of why such proposal is reasonable.
- v. If a Utility Company makes an Additional Payment Request that the Debtors believe is reasonable, the Debtors are authorized to comply, in their sole discretion, with such request without further order of this Court.
- vi. If the Debtors believe that a Utility Company's Additional Payment Request is unreasonable, the Debtors shall schedule a hearing within a reasonable time following the submission of such Request (a "Determination Hearing") to determine whether additional assurance of payment to such Utility Company is necessary. If the Utility Company reaches an agreement with the Debtors before the Determination Hearing, such agreement shall be deemed to be adequate assurance of payment that is satisfactory to the Utility Company.
- vii. Pending resolution of a Utility Company's Additional Payment Request at a Determination Hearing, such party shall be prohibited from altering, refusing, or discontinuing service to the Debtors or discriminating against the Debtors on account of the commencement of these Chapter 11 Cases or any unpaid prepetition charges.
- viii. If a Utility Company fails to send an Additional Payment Request by the Additional Payment Request Deadline, such Utility Company will be deemed to have received, by virtue of the Utility Deposit, adequate assurance of payment in accordance with section 366(c)(1)(A)(vi) of the Bankruptcy Code.

ix. Upon receipt of a Utility Deposit, a Utility Company shall be deemed to have adequate assurance of payment unless and until a future order of this Court is entered requiring further assurance of payment.

8. The Debtors are authorized, in their sole discretion, to amend the list of Utility Companies attached as **Exhibit A** to the Motion to add or remove any Utility Company.

9. If any utility becomes a Closed Account during the course of these Chapter 11 Cases, without the need for further order of this Court or notice to any parties, the Debtors shall be authorized to decrease the amount of the Utility Deposit by withdrawing from the Deposit Account the amount deposited with respect to such Closed Account only to the extent the Utility Company has not provided notice to the Debtors that a dispute regarding postpetition payments exists.

10. Nothing in this Final Order or on **Exhibit A** constitutes a finding that any entity is or is not a Utility Company for purposes of this Final Order or under section 366 of the Bankruptcy Code.

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

12. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (i) an admission as to the validity or priority of any claim against the Debtors; (ii) a waiver of the Debtors' right to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion (including any exhibits attached thereto); (v) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code;

(vi) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (vii) to create any rights in favor of, or enhance the status of, any claim held by any person or entity.

13. To the extent that there is any inconsistency between the terms of the interim or final order approving the DIP Financing, if and when entered, and this Final Order, the terms of the interim or final order approving the DIP Financing, as applicable, shall govern.

14. The contents of this Motion satisfy the requirements of Bankruptcy Rule 6003(b).

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

16. Notwithstanding any applicability of any of the Bankruptcy Rules, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

17. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Final Order.

**Exhibit A****List of Utilities and Utility Companies**

<b>Utility Company</b>	<b>Address</b>	<b>Service Provided</b>	<b>Account Number (If Available)</b>	<b>Average Monthly Bill</b>
Consumers Energy	PO Box 369 Royal Oak, MI 48068	Gas	100042883528/100042866838/1 00042837649	\$90
Granite Telecommunications	PO Box 983119 Client ID # 311 Boston, MA 02298	Telephone	2062545	\$656
North State Communications	PO Box 612 High Point, NC 27261	Telephone	175534	\$67
Verizon	140 West St. New York, NY, 10007	Telephone	9817093367	\$8,344
Verizon Fios	140 West St. New York, NY, 10007	Internet	154-821-683-0001-30	\$136
AT&T Mobility	PO Box 13591 Newark, NJ 07188	Telephone	824324223	\$1,657
AT&T	PO Box 13591 Newark, NJ 07188	Internet	831-000-6138 960	\$1,021
Board of Public Works	PO Box 64 Gaffney, SC 29342	Electric	14151001	\$15,257
Georgia Power	241 Ralph McGill Boulevard, NE Atlanta, GA 30308	Electric	53389-00007/52969- 00005/39109-00036	\$1,821
Dialog Tech, Inc.	75 Remittance Drive Dept. 6234 Chicago, IL 60675	Telephone	321554	\$3,990
ConEdison	4 Irving Pl. New York, NY 10003	Electric	43-4117-2160-0004-0	\$415
Piedmont Natural Gas	PO Box 660920 Dallas, TX 75266	Gas	4001580323001; 4003569203001	\$1,614
Hudson Energy	PO Box 731137 Dallas, TX 75373	Electric	111278528LG; I64920567/I64920566/I6492056 5/I64920564	\$5,142
Atmos Energy	PO Box 790311 St. Louis, MO 63179	Gas	3031315968	\$127
Florida Power & Light	700 Universe Blvd Juno Beach, FL 33408	Electric	85259-37093	\$266
PSEG Long Island	PO Box 9039 Hicksville, NY 11802	Electric	0417-6012-88-0	\$3,002
DTE Energy	PO Box 740786 Cincinnati, OH 45274	Electric	910029781366	\$429
National Grid	PO BOX 11737 Newark, NJ 07101	Electric	03038-74035 81896-42017	\$4,247
Optimum	1111 Stewart Ave Bethpage, NY 11714	Internet	07801-467234-03-1	\$158
Flowroute	1221 2nd Avenue, Suite 330, Seattle, WA 98101	Voice		\$3,094

Airespring	1801 West Olympic Boulevard Pasadena, CA 91199	Voice	1331345	\$3,900
ACC Business	PO Box 105306 Atlanta, GA 105306	Internet	1201828	\$1,616
XO Communications	PO BOX 15043 Albany, NY 12212	Voice	004000000120862	\$7,800
Comcast	PO Box 1577 Newark, NJ 07101	Internet	930902951; 8773 10 313 1163743; 8495 75 261 0620248; 8771 30 011 2006121/8711 30 011 2560176; 8499 10 002 4809419; 8299 70 001 5914060; 8777 70 317 6564717/8777 70 317 5699977; 8155 20 052 5100550; 8529 10 133 0422909/8529 10 133 0453730; 8220 18 893 0503297/8220 18 893 0906615	\$6,593
Crown Castle (Lighttower)	PO Box 27135 New York, NY 10087	Internet		\$1,345
Cablevision LightPath	PO Box 360111 Pittsburgh, PA 15251	Internet	45539; 54312	\$3,983
WOW Business	PO Box 4350 Carol Stream, IL 60197	Internet	14790564	\$197
Century Link	PO Box 660068 Dallas, TX 75266	Internet	87976645	\$1,132
Spectrum (TWC)	PO Box 750456 Houston, TX 77275	Internet	43990101; 8150 20 001 0098405; 47147001; 8448 20 031 0909634	\$1,740
GTT	PO Box 842630 Dallas, TX 75284	Internet	LW17085	\$470
City of Morganton	PO Box 3448 Morganton, NC 28680	Electric, Water, Sewer	8698-00	\$10,000
Other				\$2,000

**Exhibit B**

**Deposit Account Draw Request**

**DEPOSIT ACCOUNT DRAW REQUEST**

\_\_\_\_\_, 2019

Décor Holdings, Inc.  
Attn.: Lee Silberman  
49 Wireless Boulevard  
Suite 150  
Hauppauge, NY 11788  
Tel.: 631.273.8800 ext. 4255

Wells Fargo Bank, N.A.  
Attn.: [PERSON]  
[ADDRESS]

Re: The Décor Holdings, Inc.  
Utilities Deposit Account (the "Deposit Account")

The undersigned (the "Beneficiary") hereby certifies to Décor Holdings, Inc. that:

1. The Beneficiary is making a request for payment in lawful currency of the United States of America from the Deposit Account in the amount of \$\_\_\_\_\_.
2. The Beneficiary hereby certifies that it is owed \$\_\_\_\_\_ for postpetition utility services provided to Décor Holdings, Inc.
3. The Beneficiary is entitled to payment of funds reserved through the Deposit Account pursuant to the *Final Order Pursuant to Sections 105 (a) and 366 of the Bankruptcy Code (I) Approving the Debtors' Proposed Form of Adequate Assurance of Payment, (II) Resolving Objections by Utility Companies, and (III) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service*, entered by the United States Bankruptcy Court for the Eastern District of New York in the bankruptcy cases of In re Décor Holdings, Inc., *et al.* Case No. 19-

[\_\_\_\_\_]

Please wire transfer the proceeds of the drawing to the following account of the Beneficiary at the financial institution indicated below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Draw Request as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

[UTILITY]

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name & Title

cc: Mark T. Power, Esq.  
Hahn & Hessen LLP  
Fax: 212-478-7400  
Email: mpower@hahnhausen.com