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Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 10-

Chapter 11

In re:

ZAYAT STABLES, LLC,

Debtor-in-Possession.

**NOTICE OF MOTION FOR AN ORDER:
(A) GRANTING INTERIM RELIEF
PURSUANT TO 11 U.S.C. § 366(b); (B)
AUTHORIZING THE PAYMENT OF
ADEQUATE ASSURANCE FOR
POSTPETITION UTILITY SERVICES;
(C) FIXING FINAL HEARING DATE TO
DETERMINE ADEQUATE
ASSURANCE; AND (D) GRANTING
OTHER RELATED RELIEF**

HEARING DATE AND TIME:

February __, 2010, at __:___.m.

ORAL ARGUMENT REQUESTED

TO: All Parties-in-Interest

PLEASE TAKE NOTICE that pursuant to an Order Regarding Application for Expedited Consideration of First Day Matters served herewith, on the __ day of February, 2010, at _____m., or as soon thereafter as proposed counsel may be heard, the undersigned, proposed counsel for Zayat Stables, LLC, the within debtor and debtor-in-possession, shall move before the assigned United States Bankruptcy Judge, at the United States Bankruptcy Court, 50 Walnut

Street, Third Floor, Newark, NJ 07102, for entry of an Order: (a) granting interim relief pursuant to 11 U.S.C. § 366(b); (b) authorizing the payment of adequate assurance for postpetition utility services; (c) fixing a final hearing date to determine the sufficiency of adequate assurance; and (d) granting other related relief (the “Motion”).

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the undersigned shall rely on the Affidavit of Ahmed Zayat in support of the “First Day Motions” and the accompanying Verified Application, which sets forth the relevant factual and legal bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Motion is also being submitted.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall be presented in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters.

PLEASE TAKE FURTHER NOTICE that unless objections are timely presented, the Motion shall be deemed uncontested in accordance with D.N.J. LBR 9013-1(a) and the relief requested may be granted without a hearing.

PLEASE TAKE FURTHER NOTICE that the undersigned requests oral argument on the return date of the Motion.

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Proposed Attorneys for Zayat Stables, LLC,
Debtor-in-Possession

By: /s/ Michael D. Sirota
Michael D. Sirota
Warren A. Usatine

DATED: February 3, 2010

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 10-

Chapter 11

In re:

ZAYAT STABLES, LLC,

Debtor-in-Possession.

**VERIFIED APPLICATION IN SUPPORT
OF THE DEBTOR'S MOTION FOR AN
ORDER: (A) GRANTING INTERIM
RELIEF PURSUANT TO 11 U.S.C.
§ 366(b); (B) AUTHORIZING THE
PAYMENT OF ADEQUATE
ASSURANCE FOR POSTPETITION
UTILITY SERVICES; (C) FIXING
FINAL HEARING DATE TO
DETERMINE ADEQUATE
ASSURANCE; AND (D) GRANTING
OTHER RELATED RELIEF**

HEARING DATE AND TIME:

February __, 2010, at __:__ .m.

ORAL ARGUMENT REQUESTED

TO: Honorable Judge of the
United States Bankruptcy Court

The Application of Zayat Stables, LLC, the within debtor and debtor-in-possession (the “Debtor”), by and through its proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully represents:

I. INTRODUCTION AND JURISDICTION

1. This Application is submitted in support of the Debtor’s motion for an order: (a) granting interim relief pursuant to 11 U.S.C. § 366(b); (b) authorizing the payment of adequate assurance for postpetition utility services; (c) fixing a final hearing date to determine the sufficiency of adequate assurance; and (d) granting other related relief (the “Motion”).

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

II. BACKGROUND

4. On February 3, 2010 (the “Filing Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11, the United States Code (the “Bankruptcy Code”). Since the Filing Date, the Debtor has remained in possession of its assets and continued management of its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. A detailed description of the Debtor’s business and the facts precipitating the filing of the Debtor’s Chapter 11 proceeding are set forth in the Affidavit of Ahmed Zayat in support of the Debtor’s various “First Day Motions.” Those facts are incorporated herein by reference.

III. RELIEF REQUESTED AND BASIS THEREFOR

6. In connection with its business operations, the Debtor obtains telephone, internet, facsimile, and mobile phone service (the “Utility Services”) from various utility providers (the “Utility Companies,” and each one individually, a “Utility Company”). A schedule identifying each of the Utility Companies is attached as **Exhibit A**.

7. The Debtor believes its estimated average monthly utility payments to the Utility Companies is approximately \$2,810.00. Before the Filing Date, the Debtor paid all undisputed invoices for Utility Services on a timely basis and was substantially current on its utility bills.

8. For the Debtor to operate its business without disruption and ensure an orderly transition into Chapter 11, it must continue to receive post-petition services from the Utility Companies. Loss of any Utilities Services or even a temporary interruption thereof would be extremely harmful to the Debtor and its estate.

9. Pursuant to Section 366(b) of the Bankruptcy Code, a utility company cannot alter, refuse or discontinue service to a debtor within twenty (20) days after the commencement of a bankruptcy case solely on the basis of the filing of the bankruptcy proceeding. 11 U.S.C. §§ 366(a) and 366(b). A utility company may, however, discontinue services if a debtor does not provide satisfactory adequate assurance of the performance of its postpetition obligations to the utility company within thirty (30) days of the commencement of the case. 11 U.S.C. § 366(c)(2).

10. The term “adequate assurance of payment” is defined as: (a) a cash deposit; (b) a letter of credit; (c) a certificate of deposit; (d) a surety bond; (e) a prepayment of utility consumption; or (f) 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).

11. To comply with that statutory mandate, the Debtor respectfully submits that the posting of security deposits with the Utility Companies in an amount equal to one (1) month of the average monthly utility bills, except in those circumstances where a Utility Company receives a partial prepayment equal to at least the amount of the proposed deposit, will constitute “adequate assurance of payment” under Section 366 of the Bankruptcy Code.¹ See, e.g., Adamar of New Jersey, Inc., et al., Case No. 09-20711 (Bankr. D.N.J. April 29, 2009) (two (2) weeks); TCI 2 Holdings, LLC, et al., Case No. 09-13654 (Bankr. D.N.J. February 17, 2009) (two (2) weeks); In re Tarragon Corporation, et al., Case No. 09-10555 (Bankr. D.N.J. January 14, 2009) (ten (10) days for all but three (3) utilities); Shapes/Arch Holdings, L.L.C., et al., Case No. 08-14631 (Bankr. D.N.J. March 16, 2008) (two (2) weeks); In re Princeton Ski Shop, Inc., et al., Case No. 07-26206 (Bankr. D.N.J. November 7, 2007) (ten (10) days adequate assurance for all but one (1) utility); In re Marcal Paper Mills, Inc., Case No. 06-21886 (Bankr. D.N.J. December 4, 2006) (ten (10) days adequate assurance for all but two (2) utilities); In re Best Manufacturing Group LLC, et al., Case No. 06-17415 (Bankr. D.N.J. August 11, 2006) (ten (10) days); In the Matter of Beth Israel Hospital Association of Passaic d/b/a PBI Regional Medical Center, Case No. 06-16186 (Bankr. D.N.J. July 31, 2006) (ten (10) days). Consistent with the Debtor’s past practices, the Debtor will pay all undisputed utility invoices for post-petition services on a timely basis during its Chapter 11 proceeding.

¹ Many cases in this Court hold that payment equal to two (2) weeks of anticipated utility expenses constitutes “adequate assurance of payment” under Section 366 of the Bankruptcy Code. However, because the utility payments to the Utility Companies is de minimis, the Debtor agrees to post an amount equal to one (1) month.

12. Moreover, the Debtor proposes a procedure whereby a Utility Company objecting to the adequate assurance payments proposed by the Debtor may file objections before the final hearing on the Motion (the “Final Hearing”). That procedure is set forth in detail in the accompanying proposed form of Order.

13. Based on the foregoing, the Debtor submits that the assurance of payment to the Utility Companies is adequate and conforms with the express provisions and intent of Section 366 of the Bankruptcy Code, is not prejudicial to the rights of any Utility Company to object to the proposed adequate assurance payments at the Final Hearing and is in the best interests of the Debtor and its estate.

IV. NOTICE

14. The Debtor requests that the Court schedule the Final Hearing no later than thirty (30) days after the Filing Date, which would allow the Debtor ample time to provide notice of said hearing date to the Utility Companies by regular first-class mail.

15. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests entry of an Order granting the Motion
and such other relief as the Court deems just and appropriate under the circumstances

Respectfully submitted,

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Proposed Attorneys for Zayat Stables, LLC,
Debtor-in-Possession

By: /s/ Michael D. Sirota
Michael D. Sirota
Warren A. Usatine

DATED: February 3, 2010

VERIFICATION

AHMED ZAYAT, of full age, certifies as follows:

1. I am the sole member and officer of Zayat Stables, LLC, the within debtor and debtor-in-possession (the "Debtor"). As such, I have full knowledge of the facts set forth in, and am duly authorized to make this Application on the Debtor's behalf.

2. I have read the Verified Application and certify that the statements contained therein are true based upon my personal knowledge, information and belief.

3. I am aware that if any of the factual statements contained in the Verified Application are willfully false, I am subject to punishment.

DATED: February 3, 2010

/s/ Ahmed Zayat
AHMED ZAYAT

EXHIBIT A

SCHEDULE OF UTILITY COMPANIES

| Type | Name/Address | Account # | Average Monthly |
|-------------------|--|------------------|------------------------|
| Telephone | Cablevision Lightpath, Inc P.O. Box 360111 Pittsburgh, PA 15251-6111 | 49283 | \$860.00 |
| Internet / Fax | Verizon P.O. Box 4833 Trenton, NJ 18650-4833 | 201678082060831Y | \$90.00 |
| Mobile | Verizon Wireless P.O. Box 408 Newark, NJ 07101-0408 | 382263193-00001 | \$820.00 |
| Mobile | AT&T Mobility P.O. Box 6463 Carol Stream, IL 60197-6463 | 821955184 | \$1,040.00 |

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
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Case No. 10-

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ORDER: (A) GRANTING INTERIM RELIEF PURSUANT TO 11 U.S.C. § 366(b); (B) AUTHORIZING THE PAYMENT OF ADEQUATE ASSURANCE FOR POSTPETITION UTILITY SERVICES; (C) FIXING FINAL HEARING DATE TO DETERMINE ADEQUATE ASSURANCE; AND (D) GRANTING OTHER RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through four (4), is hereby **ORDERED**.

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Debtor: ZAYAT STABLES, LLC
Case No. 10-
Caption of Order: ORDER: (A) GRANTING INTERIM RELIEF PURSUANT TO 11 U.S.C. § 366(b); (B) AUTHORIZING THE PAYMENT OF ADEQUATE ASSURANCE FOR POSTPETITION UTILITY SERVICES; (C) FIXING FINAL HEARING DATE TO DETERMINE ADEQUATE ASSURANCE; AND (D) GRANTING OTHER RELATED RELIEF

THIS MATTER having been opened to the Court by Zayat Stables, LLC, the within debtor and debtor-in-possession (the “Debtor”), by and through its proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., upon motion for entry of an Order: (a) granting interim relief pursuant to 11 U.S.C. § 366(b); (b) authorizing the payment of adequate assurance for postpetition utility services; (c) fixing final hearing date to determine adequate assurance; and (d) granting other related relief (the “Motion”);¹ and good and sufficient notice of the hearing on the Motion having been provided in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters, previously entered by the Court, as evidenced by the Affidavit of Service filed with the Court; and the Court having considered the Motion, the opposition thereto, if any, and the arguments of counsel; and good cause appearing for the entry of this Order,

IT IS ORDERED as follows:

1. Within twenty (20) business days hereof, the Debtor shall pay a cash deposit equivalent to one (1) month of utility service to each of the Utility Companies, except to the extent any of the Utility Companies receive partial or full prepayment in the ordinary course of business with the practice to continue post-petition, which collectively shall constitute “adequate

¹ All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Verified Application submitted in support of the Motion (the “Application”).

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Debtor: ZAYAT STABLES, LLC
Case No. 10-
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assurance of payment” under 11 U.S.C. § 366. Said deposits shall be applicable solely to Utility Services provided from and after the Filing Date (as such term is defined in the Application submitted in support of the Motion (the “Application”) and shall not be applied by the Utility Companies to any prepetition Utility Services.

2. The Debtor shall pay on a timely basis, in accordance with prepetition practices, all undisputed invoices with respect to postpetition Utility Services.

3. A hearing to consider entry of a final order fixing the amount of adequate assurance to be paid to the Utility Companies shall be held on _____, 2010, at __: __ .m. (the “Final Hearing”). A Utility Company may seek an earlier hearing date by filing an application for entry of an order shortening time with this Court. The Debtor reserves all rights to oppose any request for a hearing on shortened time to consider the amount of adequate assurance to be paid to the Utility Companies.

4. Objections to the proposed adequate assurance amounts may be filed by the Utility Companies so as to be received by the Debtor’s counsel no later than seven (7) days before the Final Hearing. In the event no objections are filed, this Order shall continue in full force and effect and shall be deemed a final Order without the need for further notice or hearing in accordance with Federal Rules of Bankruptcy Procedure, including the Final Hearing.

5. Absent any further order of this Court, the Utility Companies are hereby enjoined through and including the date of the Final Hearing from: (a) altering, refusing, or discontinuing

(Page 4)

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Utility Services to, or discriminating against, the Debtor; or (b) requiring the payment by the Debtor of any deposit or other security for Utility Services, except as provided for herein.

6. Within two (2) business days from the date hereof, a true copy of this Order shall be served by regular first class mail to the Utility Companies. For Utility Companies that may have been omitted from **Exhibit "A"** to the Debtor's Application, the Debtor shall promptly provide notice of this Order upon learning of such Utility Company.

7. Nothing in this Order or the Motion shall be deemed or construed to constitute the postpetition assumption or adoption of any agreement pursuant to Section 365 of the Bankruptcy Code.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

9. A true copy of this Order shall be served on all other parties-in-interest within seven (7) days hereof.