

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

In re: )  
 ) Chapter 11  
 )  
LANG HOLDINGS, INC., ) Case No. 09- 12543 ( )  
a Delaware Corporation, et al.,<sup>1</sup> )  
 ) (Joint Administration Pending)  
Debtors. )  
 )  
 )

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**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO  
11 U.S.C. §§ 105(a) AND 366 (I) PROHIBITING UTILITY PROVIDERS FROM  
ALTERING, REFUSING OR DISCONTINUING SERVICES TO THE DEBTORS;  
(II) DEEMING UTILITY PROVIDERS ADEQUATELY ASSURED OF FUTURE  
PERFORMANCE; AND (III) ESTABLISHING PROCEDURES TO DETERMINE  
REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

Lang Holdings, Inc., and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (the “Motion”) for entry of interim and final orders pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”) (i) prohibiting the Debtors’ utility providers (collectively, the “Utilities”) from altering, refusing or discontinuing utility service to the Debtors; (ii) deeming the Debtors’ Utilities adequately assured of future performance; and (iii) establishing procedures to determine requests for additional adequate assurance of payment by the Debtors’ Utilities. In support of this Motion, the Debtors rely upon the Declaration of Laurie Gilner in Support of Chapter 11 Petitions and First Day Relief (the “Gilner Declaration”), filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

## **JURISDICTION**

1. The Court has jurisdiction over these chapter 11 cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and this Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested therein are sections 105(a) and 366 of the Bankruptcy Code.

## **BACKGROUND**

2. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. As of the date hereof, no request for appointment of a chapter 11 trustee or examiner has been made, and no official committee has been appointed.

4. Information regarding the Debtors' history and business operations, their capital structure and primary secured indebtedness, and the events leading up to the commencement of these chapter 11 cases can be found in the Gilner Declaration, which is incorporated herein by reference.

## **RELIEF REQUESTED**

5. By this Motion, the Debtors seek entry of (i) an interim order, in substantially the form attached hereto as Exhibit B (the "Interim Order"), and (ii) a final order, in substantially the form attached hereto as Exhibit C (the "Final Order"), (a) prohibiting the Utilities from altering, refusing or discontinuing service to the Debtors on account of prepetition invoices, including the making of demands for security deposits or accelerated payment terms;

(b) providing that the Utilities have “adequate assurance of payment” within the meaning of section 366 of the Bankruptcy Code, based, inter alia, on the Debtors’ establishment of a segregated account containing an amount equal to fifty percent (50%) of the Debtors’ estimated average monthly cost of utility service, which may be adjusted by the Debtors for reasons specified herein; and (c) establishing procedures for resolving requests for additional adequate assurance and authorizing the Debtors to provide adequate assurance of future payment to the Utilities.

### **THE UTILITIES AND UTILITY SERVICES**

6. In connection with the operation of their businesses and management of their properties, the Debtors obtain utility services (collectively, the “Utility Services”) from various utilities, as that term is used in section 366 of the Bankruptcy Code. Attached hereto as Exhibit A is a list of Utilities that provide Utility Services to the Debtors as of the Petition Date. The relief requested herein is for all Utilities providing Utility Services to the Debtors, and is not limited to those listed on Exhibit A.<sup>2</sup> The Debtors reserve the right to supplement Exhibit A by filing a notice (a “Supplemental Notice” and, together with Exhibit A, as may be so supplemented, the “Utilities List”) at a later date with the Court.

7. During the past 12 months, the Debtors paid an average of approximately \$30,000 per month on account of Utility Services.

8. Uninterrupted utility services are essential to the Debtors’ ongoing operations and the success of the Debtors’ efforts to maximize the value of their assets for the benefit of all stakeholders. A disruption of the Utility Services at any of the Debtors’ facilities

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<sup>2</sup> The inclusion of any entity on, as well as any omission of any entity from, Exhibit A is not an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights with respect thereto.

would be costly to the Debtors and harmful to their businesses, as the Debtors would be forced from the outset of these chapter 11 cases to focus on finding replacement Utilities and services, rather than focusing on efforts to maximize the value of their assets. Moreover, the business disruption that likely would result from interruption of the Utility Services would damage the Debtors' customer relationships and revenues and would adversely affect the Debtors' chapter 11 efforts, to the detriment of their estates, creditors and employees. It is therefore critical that Utility Services to the Debtors continue uninterrupted.

### **THE PROPOSED ADEQUATE ASSURANCE**

9. The Debtors intend to pay all postpetition obligations and expect that revenues generated from their business operations, along with the proceeds from the Debtors' proposed debtor-in-possession financing, will be sufficient to pay all undisputed postpetition obligations owed to the Utilities in a timely manner. However, to provide adequate assurance of payment for future services to the Utilities as set forth in section 366(c) of the Bankruptcy Code, the Debtors propose to deposit an initial sum equal to fifty percent (50%) of the Debtors' estimated average monthly cost of Utility Services (the "Adequate Assurance Deposit") into an interest-bearing, newly-created, segregated account (the "Adequate Assurance Account") within twenty (20) days of the Petition Date, pending further order of this Court. Because the Debtors' approximate monthly spending on Utility Services is approximately \$30,000, the Adequate Assurance Deposit will be approximately \$15,000.

10. The Debtors further propose to maintain the Adequate Assurance Account with a minimum balance equal to fifty percent (50%) of the Debtors' estimated average monthly cost of Utility Services through the final hearing on the Motion. Thereafter, the Debtors propose to adjust the amount in the Adequate Assurance Account to reflect the following factors: (i) the

termination of Utility Services by the Debtors regardless of any Additional Assurance Requests (as defined below), and (ii) agreements with the Utilities. These adjustments will permit the Debtors to maintain the Adequate Assurance Account with an amount that consistently provides the Utilities that do not otherwise hold deposits or security for their Utility Services with a half-month deposit on account of such services.

11. The Debtors submit that the Adequate Assurance Deposit, taken together with the facts and circumstances of the Debtors' chapter 11 cases (together, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utilities. Specifically, the Debtors are seeking approval of postpetition debtor-in-possession financing that the Debtors believe will provide more than adequate liquidity to meet their cash needs during these cases. As a result, the Debtors submit that they are objectively very likely to continue paying their obligations to the Utilities postpetition.

12. These protections ensure that all Utilities will have adequate assurance of payment throughout these cases, and the Debtors believe that no other or further assurance is necessary. However, if any Utility believes adequate assurance is required beyond the protections described herein, it must request such assurance pursuant to the procedures described below (the "Adequate Assurance Procedures").

#### **THE PROPOSED ADEQUATE ASSURANCE PROCEDURES**

13. To ensure that all Utilities receive adequate notice of the Proposed Adequate Assurance, the Debtors propose that the Court approve and adopt the following Adequate Assurance Procedures:

- (a) The Debtors will serve a copy of this Motion, together with the proposed Final Order, which includes the proposed procedures, on

each Utility within three (3) business days after entry of the Interim Order by the Court.

- (b) If an Utility is not satisfied with the Adequate Assurance Deposit provided by the Debtors, the Utility must serve a request for additional adequate assurance (the “Additional Assurance Request”) so that it is received by the Debtors at the following addresses: (i) the Debtors, Lang Holdings, Inc., 514 Wells Street, Delafield, Wisconsin 53018, Attn: Michael Garvey; and (ii) attorneys for the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Kevin P. Garland, Esq.
- (c) Any Additional Adequate Assurance Request must: (i) be made in writing; (ii) set forth the type of Utility Services provided as well as the location and account number(s); (iii) include a summary of the Debtors’ payment history relevant to each affected account(s), including any security deposits; and (iv) include a proposal for what would constitute adequate assurance from the Debtors, along with an explanation as to why the Utility believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (d) Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility serving an Additional Assurance Request, if the Debtors, in their discretion, determine that the Additional Assurance Request is reasonable.
- (e) If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility, the Debtors will request a hearing before this Court within a reasonable time after receipt of the Additional Assurance Request to determine the adequacy of assurance of payment with respect to a particular Utility pursuant to section 366(c)(3) of the Bankruptcy Code. Such hearing will be without prejudice to the right of any Utility to seek relief separately under section 366(c)(3) of the Bankruptcy Code (any hearing requested by the Debtors or a Utility, the “Determination Hearing”).
- (f) Pending resolution of such dispute at the Determination Hearing, the relevant Utility shall be restrained from altering, refusing or discontinuing service to the Debtors on account of unpaid charges

for prepetition services or on account of any objections to the Proposed Adequate Assurance.

- (g) The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility that fails to make an Additional Assurance Request.

14. Although the Debtors have made a good faith effort to identify all of the Utilities that currently provide Utility Services to the Debtors, it is possible that some Utilities may not be listed on Exhibit A. To the extent that the Debtors identify additional Utilities, the Debtors will file a Supplemental Notice and will serve the Interim Order or Final Order, as applicable, and the Supplemental Notice on all Utilities listed in such Supplemental Notice. The Debtors request that the Interim Order and the Final Order be binding on all Utilities, including any Utility set forth on any Supplemental Notice; provided, however, that any party included on a Supplemental Notice shall be provided twenty (20) days from the date of service of any Supplemental Notice to object to its inclusion in the Interim Order and Final Order. If an objection is received within such twenty (20) day period, such objection will be heard at the next regularly-scheduled hearing date, or on such date as mutually agreed to by the parties.

15. Nothing in the Interim Order or the Final Order will constitute a finding that any entity is or is not a Utility under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List.

#### **BASIS FOR RELIEF**

16. The relief requested herein will ensure that the Debtors' operations will not be disrupted. If a disruption occurred, the impact on the Debtors' business operations and revenue would be extremely harmful. Furthermore, the relief requested provides the Utilities with a fair and orderly procedure for determining requests for additional or different adequate assurance. Without the Adequate Assurance Procedures, the Debtors could be forced to address

numerous requests by Utilities in a disorganized manner at a critical period in these chapter 11 cases and during a time when the Debtors' efforts could be more productively focused on the continuation of the Debtors' operations for the benefit of all parties in interest.

17. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination of utility services after commencing its case. Under that section, a utility may not, during the first 30 days of a chapter 11 case, alter, refuse or discontinue services to, or discriminate against, a debtor solely on the basis of the commencement of the case or the failure of the debtor to pay a pre-petition debt. See 1 U.S.C. § 366.<sup>3</sup> A utility may, however, do so if, following such 30-day period, the debtor does not provide "adequate assurance" of payment for postpetition services in a form "satisfactory" to the utility, subject to the Court's ability to modify the amount of adequate assurance. Pursuant to section 366(c)(3)(B), in determining whether an assurance of payment is adequate, a court may not consider (a) the absence of security before the petition date, (b) a debtor's history of timely payments or (c) the availability of an administrative expense priority.

18. While the 2005 amendments to the Bankruptcy Code provided guidance as to the required nature of adequate assurance, the Court retains the discretion to determine the

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<sup>3</sup> Section 366 of the Bankruptcy Code applies to entities that are traditionally viewed as utilities, such as those that provide electricity, telephone service or water, and to any entity that supplies services that cannot be readily obtained or replaced elsewhere, or which constitutes a monopoly with respect to the services that it provides to the debtor. See, e.g., One Stop Realtour Place, Inc. v. Allegiance Telecom of Pennsylvania, Inc. (In re One Stop Realtour Place, Inc.), 268 B.R. 430, 436-37 (Bankr. E.D. Pa. 2001) (provider of telephone service is a utility regardless of whether telephone service may be available from another provider); In re Coastal Dry Dock & Repair Corp., 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986) (landlord of the Brooklyn Navy Yard "occupies 'a special position with respect to the debtor' in its role as the [debtor's] utility supplier"). Despite the wide latitude afforded in determining those entities that constitute utilities under section 366, some of the companies listed in Exhibit A may also provide goods or services to the Debtors in a capacity other than that of a utility. With respect to any such goods or services, such companies are not entitled to adequate assurance under section 366. Moreover, the Debtors are not foreclosed from taking the position that any of the entities listed on Exhibit A are not utilities within the meaning of section 366.

amount of adequate assurance necessary. Compare 11 U.S.C. § 366(b) (2005) (“On request of a party-in-interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance.”) with 11 U.S.C. § 366 (c)(3)(A) (“On request of a party-in-interest and after notice and a hearing, the court may order modification of the amount of an assurance payment under paragraph (2) [which is governed by an adequacy standard]”). Courts construing section 366(b) have long recognized that in determining adequate assurance, the Court is not required to give the Utilities 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. See, e.g., Id.; In re Astle, 338 B.R. 855, 861 (Bankr. D. Idaho 2006); In re Steineback, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Adequate assurance of payment is not . . . absolute assurance. The key to achieving the balance required by section 366 is not to confuse adequate assurance with adequate protection, which must be provided to a creditor under 11 U.S.C. § 361.”). Historically, whether a utility is subject to an unreasonable risk of nonpayment must be determined from the facts and circumstances of each case. See In re Anchor Glass Container Corp., 342 B.R. 872, 875 (Bankr. M.D. Fla. 2005). While section 366(c) limits the factors a court may consider, it is likely that determinations of adequate assurance will remain within the Court’s discretion. Cf. In re Adelpia Bus. Solutions, Inc., 280 B.R. at 80; Marion Steel Co. v. Edison Co. (In re Marion Steel Co.), 35 B.R. 188, 195 (Bankr. D. Ohio 1983). The Debtors believe that the Proposed Adequate Assurance is sufficient and reasonable and constitutes adequate assurance of payment under section 366(c) of the Bankruptcy Code.

19. The relief requested in this Motion and the Adequate Assurance Procedures proposed herein are similar to the relief granted in other recent chapter 11 cases filed

after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 102, 119 Stat. 23, 25 (codified at 15 U.S.C.A. § 301 (2005 & Supp. 2006)) became effective. See, e.g., In re AFY Holding Co., Case No. 08-12175 (Bankr. D. Del. Oct. 14, 2008) (PJW) (deeming utilities adequately assured where the debtors established a segregated account containing an amount equal to fifty percent (50%) of the debtors' estimated monthly cost of utility service); In re ProxyMed Transaction Serv., Inc., Case No. 08-11551 (Bankr. D. Del. Aug. 18, 2008) (BLS) (same); In re Nat'l Dry Cleaners Inc., Case No. 08-11382 (Bankr. D. Del. July 7, 2008) (CSS) (same); In re Distributed Energy Sys. Corp., Case No. 08-11101 (Bankr. D. Del. June 25, 2008) (KG) (same); In re Buffets Holdings, Inc., Case No. 08-10141 (Bankr. D. Del. Feb. 27, 2008) (MFW) (same); In re New Century TRS Holdings, Inc., No. 07-10416 (Bankr. D. Del. Apr. 24, 2007) (KJC) (deeming utilities adequately assured where debtor provided two-weeks deposit for utilities).

20. Further, the Court has the power, under section 105(a) of the Bankruptcy Code 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). The proposed procedures will ensure the Debtors' continued Utility Services without unduly prejudicing the Utilities.

21. Based on the foregoing, the Debtors submit that the relief requested herein is necessary and in keeping with the spirit and intent of section 366 of the Bankruptcy Code, is not prejudicial to the rights of any Utility, is in the best interests of the Debtors' estates and creditors and, therefore, that it is appropriate for the Court to grant this Motion.

### **NOTICE**

22. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee; (ii) the Debtors' thirty (30) largest unsecured creditors on a consolidated

basis; (iii) the Debtors' prepetition secured lenders; and (iv) the Debtors' banks. Notice of this Motion and any order entered with respect thereto will be served in accordance with Local Rule 9013-1(m). Further, in light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

23. Notice of entry of the Interim Order and notice of the hearing on the final relief requested herein also will be provided to the Utilities.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, granting the Motion and such other and further relief as is just and proper.

Dated: Wilmington, Delaware  
July 16, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ David R. Hurst

Michael R. Nestor (No. 3526)

David R. Hurst (No. 3743)

Patrick A. Jackson (No. 4976)

Kevin A. Garland (No. 5171)

Pilar G. Kraman (No. 5199)

The Brandywine Building

1000 West Street, 17th Floor

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

*Proposed Counsel for the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**List of Utilities**

### List of Utilities

<u>Utility</u>	<u>Account No.</u>	<u>Facility Location</u>	<u>City/State</u>
Bay State Gas Contact: Senior Representative 2025 Roosevelt Ave. Springfield, MA 01104 800-392-6066 866-234-2894 (fax)	152-013-006-3	Wrentham Store	Springfield, MA
Modesto Irrigation District Contact: Lein 1231 Eleventh Street P.O. Box 5355 Modesto, CA 95352 209-526-7337 209-526-7359 (fax)	17600400184	Turner Office	Modesto, CA
NationalGrid Contact: Acct. Processing Dept. P.O. Box 1005 Woburn, MA 01807-1005 800-322-3223 508-357-4730 (fax)	38043-82002	Wrentham Store	Woburn, MA
Sturgeon Bay Utilities Contact: Processing Dept. 230 E. Vine Street P.O. Box 27 Sturgeon Bay, WI 54235 920-746-2820 920-746-2822 (fax)	006-01006178-00	Door County Store	Sturgeon Bay, WI
Town of Brookfield Contact: Dorothy Sanitary District No.4-Town of Brookfield P.O. Box 1296 Brookfield, WI 53008-1296 262-798-8631 262-796-0339 (fax)	10740	Miller O'Connell	Brookfield, WI

### List of Utilities

<u>Utility</u>	<u>Account No.</u>	<u>Facility Location</u>	<u>City/State</u>
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Village of Hartland			
Contact: Faith 210 Cottonwood Avenue Hartland, WI 53029 262-367-2714 262-367-2430 (fax)	02-00023320-00-2	Distribution Center	Hartland, WI
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WE Energies			
Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	7414-713-015	Distribution Center	Milwaukee, WI
<hr/>			
WE Energies			
Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	1285-145-469	Distribution Center	Milwaukee, WI
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WE Energies			
Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	0844-095-905	Distribution Center	Milwaukee, WI
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WE Energies			
Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	3040-735-343	Delafield	Milwaukee, WI
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List of Utilities

<u>Utility</u>	<u>Account No.</u>	<u>Facility Location</u>	<u>City/State</u>
WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	3488-913-072	Delafield	Milwaukee, WI
WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	8045-138-303	Delafield B	Milwaukee, WI
WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	5093-459-749	Delafield B	Milwaukee, WI
WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	1214-856-668	Delafield Store	Milwaukee, WI
WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	1820-599-872	Johnson Creek Store	Milwaukee, WI

List of Utilities

<u>Utility</u>	<u>Account No.</u>	<u>Facility Location</u>	<u>City/State</u>
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WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	1489-958-779	Miller O'Connell	Milwaukee, WI
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WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	1229-226-734	Miller O'Connell	Milwaukee, WI
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WE Energies Contact: Collections Dept. 231 W. Michigan Street P.O. Box 2089 Milwaukee, WI 53201-2089 800-242-9137 414-221-2117 (fax)	7002-481-199	New Berlin Store	Milwaukee, WI
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Wisconsin Public Service Contact: Andy Summer P.O. Box 19003 Green Bay, WI 54307-9003 877-444-0888 800-305-9754 (fax)	0406501619-00003	Door County Sale	Green Bay, WI
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Wisconsin Public Service Contact: Andy Summer P.O. Box 19003 Green Bay, WI 54307-9003 877-444-0888 800-305-9754 (fax)	0406501619-00002	Door County Store	Green Bay, WI
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**EXHIBIT B**

**Interim Order**

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

In re: )  
 ) Chapter 11  
 )  
LANG HOLDINGS, INC., ) Case No. 09- 12543 ( )  
a Delaware Corporation, et al.,<sup>1</sup> )  
 ) (Joint Administration Pending)  
Debtors. )  
 )  
 )

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**INTERIM ORDER (I) PROHIBITING UTILITIES FROM ALTERING,  
REFUSING OR DISCONTINUING SERVICE, AND (II) DEEMING  
UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE**

Upon consideration of the Motion<sup>2</sup> of the above-captioned Debtors for entry of interim and final orders pursuant to sections 105(a) and 366 of the Bankruptcy Code (i) prohibiting Utilities from altering, refusing or discontinuing services to the Debtors, except as set forth herein; (ii) deeming the Utilities adequately assured of future performance; and (iii) establishing procedures for resolving requests for additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Utilities; and upon consideration of the Gilner Declaration and the entire record of these chapter 11 cases; and due and sufficient notice being given under the circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor; it is hereby

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED on an interim basis.
2. The Debtors shall, on or before twenty (20) days after the Petition Date, furnish Utilities with adequate assurance of payment for postpetition services by depositing \$15,000 (the "Adequate Assurance Deposit"), which amount is equal to fifty percent (50%) of the Debtors' estimated average monthly cost of Utility Services, into a segregated account maintained by the Debtors (the "Adequate Assurance Account").
3. Pending the final hearing on the Motion, all Utilities are prohibited from altering, refusing or discontinuing Utility Services to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or any unpaid prepetition charges.
4. The Debtors shall serve a copy of the Motion and this Order, together with the proposed final utility order, which includes the proposed procedures, on each Utility within three (3) business days after entry of this Order by the Court.
5. A final hearing on the Motion will be held on August \_\_\_\_, 2009, at \_\_\_\_\_ (ET) (the "Final Hearing"). The deadline by which any objection to the Motion must be filed and served on counsel to the Debtors is 4:00 p.m. (ET) on the date that is seven (7) calendar days prior to the Final Hearing. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order. If no objections are filed to the Motion, this Court may enter the Final Order attached to the Motion without further notice or hearing.
6. The terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

7. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware  
July \_\_, 2009

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United States Bankruptcy Judge

**EXHIBIT C**

**Final Order**

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

In re:	)	
	)	Chapter 11
	)	
LANG HOLDINGS, INC.,	)	Case No. 09- <u>12543</u> (____)
a Delaware Corporation, <u>et al.</u> , <sup>1</sup>	)	
	)	(Joint Administration Pending)
Debtors.	)	
	)	

**FINAL ORDER (I) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICE, (II) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE AND (III) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon consideration of the Motion<sup>2</sup> of the above-captioned Debtors for entry of interim and final orders pursuant to sections 105(a) and 366 of the Bankruptcy Code

(i) prohibiting Utilities from altering, refusing or discontinuing services to the Debtors, except as set forth herein; (ii) deeming the Utilities adequately assured of future performance; and

(iii) establishing procedures for resolving requests for additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Utilities; and upon consideration of the Gilner Declaration and the entire record of these chapter 11 cases; and due and sufficient notice being given under the circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest;

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

and an Interim Order on this matter having been entered on July \_\_\_\_, 2009; and after due deliberation, and good and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED on a final basis.
2. The Debtors shall maintain the Adequate Assurance Account with a minimum balance equal to 50% of the Debtors' estimated monthly cost of Utility Services, which may be adjusted by the Debtors if the Debtors terminate any Utility Service provided by a Utility, make other arrangements with respect to adequate assurance of payment, or determine that an entity listed on Exhibit A to the Motion is not a Utility.
3. Except in accordance with the procedures set forth herein and absent further order of the Court, all Utilities are prohibited from altering, refusing or discontinuing Utility Services to, or discriminating against, the Debtors on account of the commencement of these chapter 11 cases or any unpaid prepetition charges.
4. The Debtors shall serve a copy of this Final Order on each Utility within three (3) business days after entry of this Final Order by the Court.
5. If a Utility is not satisfied with the Adequate Assurance Deposit provided by the Debtors, the Utilities must serve a request for additional adequate assurance (the "Additional Assurance Request") so that it is received by the Debtors at the following addresses:  
(i) the Debtors, Lang Holdings, Inc., 514 Wells Street, Delafield, Wisconsin 53018, Attn: Michael Garvey; and (ii) attorneys for the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Kevin P. Garland, Esq.

6. Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the type of Utility Services provided as well as the location and account number(s); (iii) include a summary of the Debtors' payment history relevant to each affected account(s), including any security deposits; and (iv) include a proposal for what would constitute adequate assurance from the Debtors, along with an explanation as to why the Utility believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

7. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility serving an Additional Assurance Request, if the Debtors, in their discretion, determine that the Additional Assurance Request is reasonable.

8. If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility, the Debtors will promptly request a hearing before this Court after receipt of the Additional Assurance Request to determine the adequacy of assurance of payment with respect to a particular Utility pursuant to section 366(c)(3) of the Bankruptcy Code. Such hearing will be without prejudice to the right of any Utility to seek relief separately under section 366(c)(3) of the Bankruptcy Code (any hearing requested by the Debtors or a Utility, a "Determination Hearing"). Nothing set forth herein is intended to, nor shall it, modify or alter the burdens of proof in connection with a Determination Hearing

9. Pending resolution of such dispute at the Determination Hearing, the relevant Utility shall be restrained from altering, refusing or discontinuing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

10. The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility that fails to make an Additional Assurance Request.

11. Nothing herein constitutes a finding that any entity is or is not a Utility hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List.

12. If and to the extent the Debtors become delinquent with respect to a Utility Service prior to termination thereof then such Utility may file a notice of such delinquency (the "Delinquency Notice") with this Court and serve such notice on (i) the Debtors, Lang Holdings, Inc., 514 Wells Street, Delafield, Wisconsin 53018, Attn: Michael Garvey; and (ii) attorneys for the Debtors, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attn: Kevin P. Garland, Esq. If the Debtors have not cured such delinquency and no party in interest has objected to the Delinquency Notice, in either case within 10 days, then the Debtors shall remit to such Utility from the Utility Deposit Account the lesser of (i) the amount allocated in the Utility Deposit Account for such Utility account, and (ii) the amount of postpetition charges claimed as delinquent in the Delinquency Notice.

13. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

14. The terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

15. Notwithstanding the relief granted herein and any actions taken pursuant hereto, nothing herein shall be deemed: (i) an admission as to the validity 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 hereunder; (v) a request or authorization to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; or (vi) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

16. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware  
July \_\_, 2009

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United States Bankruptcy Judge