

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, et al.,<sup>1</sup></b>	)	<b>Case No. 18-<u>10274</u></b>
	)	
<b>Debtors.</b>	)	<b>(Joint Administration Requested)</b>
	)	

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**DEBTORS’ EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE ON ACCOUNT OF PRE-PETITION INVOICES, (B) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (C) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”) file this *Emergency Motion For Interim and Final Orders (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service on Account of Pre-Petition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment* (this “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is Section 366 of title 11 of the United States Code (the “Bankruptcy Code”).

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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 (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

## **BACKGROUND**

### **A. Introduction**

1. On February 23, 2018 (the “Petition Date”), the Debtors filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code.

2. The factual background relating to the Debtors’ commencement of these cases is set forth in detail in the *Declaration of David Leach in Support of First-Day Motions and Applications* (the “First-Day Declaration”),<sup>2</sup> filed on the Petition Date and incorporated herein by reference.

3. The Debtors have continued in possession of their properties and continue to operate and manage their business as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. As of the date of this filing, no official committee of unsecured creditors has been appointed in these cases, and no request has been made for the appointment of a trustee or examiner.

### **B. The Utility Providers**

5. Utility services are essential to the Debtors’ ability to sustain operations while these chapter 11 cases are pending. In the normal conduct of its business, the Debtors have direct relationships with nine utility companies (collectively, the “Utility Companies”) for the provision of telephone, internet, water, power, and other services (the “Utility Services”). A list identifying

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<sup>2</sup> Capitalized terms that are used but not defined in this Motion have the meanings ascribed to such terms in the First-Day Declaration.

the Utility Companies and their notice addresses is attached hereto as Exhibit A (the “Utilities Service List”).<sup>3</sup>

6. At all relevant times, the Debtors have attempted to remain current with regard to their utility bills. Furthermore, to the best of the Debtors’ knowledge, the Debtors are current on all amounts owing to the Utility Companies, other than payment interruptions that may be caused by the commencement of these chapter 11 cases.

7. Continued and uninterrupted Utility Service is vital to the Debtors’ ability to sustain their operations during these chapter 11 cases. Because of the nature of the Debtors’ operations, termination or interruption of the Debtors’ utility service would dramatically impair the Debtors’ ability to conduct business and would cause considerable economic and environmental harm.

**RELIEF REQUESTED**

8. By this Motion, the Debtors respectfully request the entry of an interim and final order (the “Interim Order” and the “Final Order,” respectively), pursuant to Section 366: (a) prohibiting the Utility Companies from altering, refusing, or discontinuing service on account of pre-petition invoices, (b) deeming utilities adequately assured of future performance, and (c) establishing the Determination Procedures for determining adequate assurance of payment.

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<sup>3</sup> The listing of any entity on Exhibit A is not an admission that such entity is a utility within the meaning of Section 366. The Debtors reserve all rights to further address the characterization of any particular entities listed on Exhibit A as a utility company subject to Section 366(a). The Debtors further reserve the right to terminate the services of any Utility Company at any time and to seek an immediate refund of any utility deposit without effect to any right of setoff or claim asserted by such Utility Company against the Debtors. This Motion does not seek assumption or rejection of any executory contract under Section 365 of the Bankruptcy Code, and the Debtors reserve the right to claim that any contract with the Utility Companies is or is not an executory contract, as the facts may dictate. The relief requested herein is with respect to all Utility Companies, and is not limited only to those listed on Exhibit A.

9. The Debtors also request that the Court schedule a final hearing on this Motion (the “Final Hearing”) at its convenience on a date in advance of the expiration of thirty days following the Petition Date in order to, as discussed below: (a) address any outstanding objections to the Motion and (b) resolve any disputes regarding adequate assurance of payment prior to the expiration of the thirty-day period set forth in Section 366(c)(2) of the Bankruptcy Code.

**A. The Proposed Adequate Assurance**

10. The Debtors intend to pay all post-petition obligations owed to the Utility Companies in a timely manner and expect that they will have funds sufficient to pay all post-petition utility obligations.

11. Nevertheless, to provide adequate assurance of payment for future services, the Debtors propose to pay each Utility Company a deposit in an amount equal to the approximate cost of one-half of one month of utility service from such Utility Company calculated as a historical average for the three-month period (the “Adequate Assurance Deposits”). The proposed Adequate Assurance Deposits are set forth on Exhibit A.

12. A Utility Company seeking the proposed Adequate Assurance Deposit must request the Adequate Assurance Deposit in writing to counsel for the Debtors, at King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521, (Attention: Jonathan W. Jordan), so that it is received on or before 4:00 p.m. (Eastern Time) on March 26, 2018.

13. As a condition of receiving the Adequate Assurance Deposit, the requesting Utility Company shall be deemed to have stipulated that (i) the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility Company within the meaning of Section 366 of the Bankruptcy Code and (ii) it shall not seek additional or different adequate

assurance during the course of these chapter 11 cases absent further order from this Court and a showing of changed circumstances.

14. The Debtors submit that the Adequate Assurance Deposits, in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business (collectively, the "Proposed Adequate Assurance"), constitute sufficient adequate assurance to the Utility Companies. If any Utility Company believes additional assurance is required, they may request such assurance pursuant to the procedures described below.

**B. The Proposed Determination Procedures**

15. To address the rights of a Utility Company under Section 366(c)(2) of the Bankruptcy Code and in light of the severe consequences to the Debtors of any interruption in services by the Utility Companies, the Debtors propose the following procedures (the "Determination Procedures") for approval and adoption:

A. Absent compliance with the Determination Procedures, a Utility Company may not alter, refuse or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these chapter 11 cases or any unpaid pre-petition charges or request payment of a deposit or receipt of other security in connection with any unpaid pre-petition charges.

B. Within three business days after the entry of the Interim Order on the Motion, the Debtors will serve a copy of the Interim Order to the Utility Companies on the Utility Service List by overnight delivery. In the event that any Utility Company has been omitted from the Utility Service List, the Debtors shall supplement this list and shall promptly serve a copy of the Interim Order on such Utility Company upon learning of such omission.

C. If a Utility Company is not satisfied with the Proposed Adequate Assurance provided by the Debtors, the Utility Company must make a request for additional assurance of payment (a "Request") and serve such Request so that it is received no later than seven days prior to the Final Hearing by counsel for the Debtors, at King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521 (Attention: Jonathan W. Jordan). Any such Request by a Utility Company must specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company and must set forth (i) the type of utility services that are provided and the associated account number, (ii) the location for which the relevant utility services are provided, (iii) a list of any deposits or other security currently held by such Utility Company and held by such

Utility Company immediately prior to the Petition Date on account of the Debtors, (iv) a description of any payment delinquency or irregularity by the Debtors for the preceding three months (whether pre-petition or post-petition), and (v) the average amount owed by the Debtors for the prior three months.

D. Without further order of the Court, the Debtors may enter into agreements granting to the Utility Companies that have submitted Requests any assurance of payment that the Debtors, in their sole discretion, determine is reasonable.

E. If a Utility Company timely requests assurance of payment that the Debtors believe is unreasonable, and if after good faith negotiations by the parties, the parties are not able to resolve the issue, the adequacy of assurances of payment with respect to any such Utility Company pursuant to Section 366(c)(3) of the Bankruptcy Code will be determined at the Final Hearing.

F. Pending resolution of a Request at the Final Hearing and pending entry of a final, non-appealable order thereon finding that the Utility Company is not adequately assured of future payment, such Utility Company shall be (i) prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for pre-petition services or on account of any objections to the Proposed Adequate Assurance and (ii) deemed to have adequate assurance of payment.

G. Any Utility Company that does not timely request assurance of payment through a Request pursuant to the Determination Procedures automatically will be deemed to have received assurance of payment that is satisfactory to the Utility Company under Section 366(c)(2) without further action by the Debtors and without prejudice to the right of such Utility Company to seek relief in the future pursuant to Section 366(c)(3).

16. Although the Debtors have made every attempt to identify any and all Utility Companies, certain utility companies that currently provide utility services for the Debtors may not be listed on the Utility Service List. Accordingly, the Debtors request that the Court: (a) authorize the Debtors to provide notice and a copy of the Interim Order (which, for purposes of this paragraph, shall be the Final Order on this Motion after entry of such Final Order) to utility companies not listed on the Utility Service List (collectively, the “Additional Utility Companies”), as such Additional Utility Companies are identified, and (b) provide that the Additional Utility Companies are subject to the terms of the Interim Order, including the Determination Procedures. As a result, the Additional Utility Companies will be afforded 20

days from the service of the Interim Order on a particular Additional Utility Company to request assurance of payment from the Debtors pursuant to the Determination Procedures.

**BASIS FOR RELIEF**

17. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination of utility services after commencing its case. 11 U.S.C. § 366(a). Section 366 applies to entities providing electricity, gas, oil, water, trash removal, and/or telephone services, as well as any other entity that supplies services that cannot be readily obtained or replaced elsewhere, or which constitutes a monopoly with respect to the services it provides to a debtor. *See In re Nw. Recreational Activities, Inc.*, 8 B.R. 7, 9 (Bankr. N.D. Ga. 1980) (discussing the application of Section 366 to “utilities”).

18. In a chapter 11 case, a utility company may not alter, refuse, or discontinue services to a debtor solely because of unpaid pre-petition amounts unless, during the 20-day period following the commencement date, the utility does not receive “adequate assurance” of payment for post-petition services.<sup>4</sup> 11 U.S.C. § 366(b). Furthermore, under Section 366(c)(2),

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<sup>4</sup> Section 366 of the Bankruptcy Code provides, in relevant part, as follows:

(a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. 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 of payment.

\* \* \*

(c) . . . .

a utility may alter, refuse, or discontinue service, if during the 30-day period beginning on the petition date, the utility does not receive from the debtor adequate assurance of payment that is *satisfactory to the utility*.

19. Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “2005 Amendments”), it was well established by courts, commentators, and legislative history that Section 366 of the Bankruptcy Code did not require, as a matter of course, that the debtor provide a deposit or other security to its utilities as adequate assurance of payment.<sup>5</sup> Pursuant to changes made effective by the 2005 Amendments, in

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(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

(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 of payment under paragraph (2).

(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider —

(i) the absence of security before the date of the filing of the petition;

(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or

(iii) the availability of an administrative expense priority.

11 U.S.C. § 366.

<sup>5</sup> For example, in *Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 647 (2d Cir. 1997), the United States Court of Appeals for the Second Circuit affirmed the bankruptcy court’s ruling that the debtor’s pre-petition payment history, its post-petition liquidity, and the administrative expense priority afforded to post-petition invoices constituted adequate assurance of future performance. The Second Circuit rejected the argument that Section 366(b) nevertheless required a “deposit or other security,” holding that “a bankruptcy court’s authority to ‘modify’ the level of

determining whether an assurance of payment is adequate, the court may not consider (i) the absence of security before the petition date; (ii) the debtor's history of timely payments; or (iii) the availability of an administrative expense priority. 11 U.S.C. § 366(c)(3)(B). While the amended Section 366(c) clarifies what does and does not constitute "assurance of payment" and what can be considered in determining whether such assurance is adequate, Congress, in enacting that Section, did not divest this Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility Company. 11 U.S.C. § 366(c)(3)(A). Specifically, pursuant to Section 366(c)(3)(A), "[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment." *Id.*; see *In re Beach House Prop., LLC*, Case No. 08-11761, 2008 Bankr. LEXIS 1091, at \*3-\*4 (Bankr. S.D. Fla. Apr. 8, 2008) (*quoting* 3 Collier on Bankruptcy ¶ 366.03[2] (rev. 15th ed. 2006) ("Under § 366(c)(2), the debtor must pay what the utility demands, *unless the court orders otherwise.*" (emphasis added in *Beach House*))). Under Section 366(c), there is nothing to prevent a court from deciding, as courts did before the enactment of the 2005 Amendments, that, on the facts of the case before it, the amount required of the debtor to provide adequate assurance of payment to a utility company is nominal, or even zero. See *In re Buffets Holdings, Inc.*, No. 08-10141 (Bankr. D. Del. Jan. 23, 2008) (approving adequate assurance consisting of an escrow equal to 50% of the estimated costs of monthly utility consumption); *In re Pac-West Telecomm, Inc.*, No. 07-10562 (Bankr. D. Del. May 2, 2007) (approving adequate assurance that was a one-time supplemental prepayment to each utility company equal to prorated amount of one week's charges).

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the 'deposit or other security,' provided for under Section 366(b), includes the power to require no 'deposit or other security' where none is necessary to provide a utility supplier with 'adequate assurance of payment.'" *Id.* at 650.

20. Historically, chapter 11 debtors were able, under Section 366 of the Bankruptcy Code, to put the onus on utility providers to argue that whatever form of adequate assurance proposed by the debtor was insufficient. The 2005 Amendments arguably shift the burden onto the debtor to provide adequate assurance that the utility providers find satisfactory, and to seek court review if a utility provider does not accept the proposed adequate assurance. Under this reading of Section 366, a Utility Company could, on the 29th day following the Petition Date, announce that the proposed adequate assurance is not acceptable, demand an unreasonably large deposit in the context of the risk from the Debtors, and threaten to terminate the utility service the next day unless the Debtors comply with the demand. While the Debtors do not concede that this is a correct reading of amended Section 366, the Debtors nonetheless believe it is prudent to require Utility Companies to raise any objections to the Proposed Adequate Assurance so that such objections may be heard by the Court prior to the running of the 30-day period following the Petition Date.

21. Congress has not changed the requirement that the assurance of payment only be “adequate.” Courts construing Section 366(b) of the Bankruptcy Code have long recognized that “adequate” assurance of payment does not require an absolute guarantee of the debtor’s ability to pay. *See, e.g., In re Caldor, Inc. – N. Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires [a] [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with ‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc. – N. Y.*, 117 F.3d 646 (2d Cir. 1997); *In re Anchor Glass Container Corp.*, 342 B.R. 872, 875 (Bankr. M.D. Fla. 2005); *Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002); *In re Astle*, 338 B.R. 855, 860–61 (Bankr. D. Idaho 2006) (“Adequate assurance of payment

under subsection (b) does not require an absolute guarantee of payment. What is required is that the utility will be protected from unreasonable risk of nonpayment.” (internal quotation marks omitted)); *In re Adelfia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“The requirement is for ‘adequate assurance’ of payment, which . . . need not necessarily be provided by deposit . . . . Whether utilities have adequate assurance of future payment is determined by the individual circumstances of each case.”) (citation omitted). Despite the language in Section 366(c)(2) of the Bankruptcy Code allowing a utility to take action against a debtor should the debtor fail to provide adequate assurance of payment that is “satisfactory” to the utility, Section 366 of the Bankruptcy Code does not require that the assurance provided be “satisfactory” once the Court determines the appropriate amount of adequate assurance.

22. The protection granted to a utility is intended to avoid exposing the utility to an unreasonable risk of nonpayment. *Adelfia*, 280 B.R. at 80. 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. at 875; *In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981).

23. The essence of the Court’s inquiry is an examination of the totality of the circumstances in making an informed judgment as to whether utilities will be subject to an unreasonable risk of nonpayment for post-petition services. *Adelfia*, 280 B.R. at 82–83; *see also Anchor Glass Container Corp.*, 342 B.R. at 875 (“The type of arrangement that constitutes adequate assurance of future payment is a fact-intensive inquiry, determined under the individual circumstances of the case.”).

24. The Debtors believe that the Proposed Adequate Assurance is reasonable and satisfies the requirements of Section 366 of the Bankruptcy Code. The Proposed Adequate

Assurance in this Motion is similar to the relief granted in other chapter 11 cases. *See, e.g., In re Tortilleria El Maizal, Inc.*, No. 13-59899 (Bankr. N.D. Ga. May 10, 2013) (Mullins, J.) [Docket No. 24]; *In re GK Mgmt., Inc.*, No. 12-23945 (Bankr. N.D. Ga. Nov. 20, 2012) (Brizendine, J.) [Docket No. 29]; *In re Cagle's, Inc.*, No. 11-80202 (Bankr. N.D. Ga. Oct. 20, 2011) (Bihary, J.) [Docket No. 32]; *In re Sea Island Co.*, Case No. 10-21034 (Bankr. S.D. Ga. Sept. 10, 2010) (Dalis, J.) [Docket No. 172]; *In re Currahee Partners, LLC*, No. 09-73838 (Bankr. N.D. Ga. June 23, 2009) (Hagenau, J.) [Docket No. 47]; *In re SemCrude, L.P.*, Case No. 08-11525 (BLS) (Bankr. D. Del. August 19, 2008) (approving adequate assurance in the form of a letter of credit or escrow account containing an amount equal to two weeks' deposit); *In re Landsource Comtys. Dev. LLC*, Case No. 08-11111 (KJC) (Bankr. D. Del. June 16, 2008) (approving adequate assurance to requesting utilities in an amount equal to two weeks' deposit); and *In re Steve & Barry's Manhattan, LLC*, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 31, 2008) (approving adequate assurance to requesting utilities in an amount equal to two weeks' deposit).

25. Further, the Court possesses 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 Determination Procedures will ensure that the Utility Services are continued without prejudicing the Utility Companies.

26. The relief requested herein will ensure that the Debtors' operations will not be disrupted by the suspension or termination of vital Utility Services or the requests by the Utility Companies of unnecessarily large deposits that could endanger the Debtors' liquidity. If a disruption occurs, the impact on the Debtors' business operations and revenues would be extremely harmful to the Debtors and all of their creditors. Without the requested relief, any interruption in services by the Utility Companies could bring the Debtors' operations to a

grinding halt and potentially create an economic or environmental harm. Even if the Utility Companies did not interrupt their services, without the requested relief, the Debtors could be forced to address numerous requests by Utility Companies in a disorganized manner during a critical period in these chapter 11 cases and during a time when their efforts should be more productively focused on the decommissioning, wind down, and remediation process. At the same time, the relief requested provides the Utility Companies with a fair and orderly procedure for determining requests for additional or different adequate assurance.

### **NOTICE**

27. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Utility Companies; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

### **CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court:

- (a) enter an Interim Order substantially in the form attached hereto as Exhibit B granting the relief requested herein on an interim basis;
- (b) enter a Final Order substantially in the form attached hereto as Exhibit C granting the relief requested herein on a final basis; and

(c) grant the Debtors such other and further relief as is just and proper.

Dated: February 23, 2018  
Augusta, Georgia

Respectfully submitted,

KING & SPALDING LLP

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PROPOSED COUNSEL FOR THE  
DEBTORS-IN-POSSESSION

**EXHIBIT A**  
**Utilities Service List**

**Utilities Service List**

Vendor Name	Address	City	State	Zip	Adequate Assurance Deposit
Georgia Power Co.	96 Annex	Atlanta	GA	30396	\$108,921
SCANA Energy Marketing <sup>1</sup> (“SCANA”)	1330 Lady Street, Suite 300	Columbia	SC	29201	\$0
Augusta Utilities Department (potable water)	530 Greene St, Rm 118	Augusta	GA	30911	\$4,000
Augusta Communications – Radios	113 Cherry St	Augusta	GA	30907	\$0
PCS Sales (USA), Inc. (electricity, steam, and rail & water access)	1101 Skokie Blvd Suite 400	Northbrook	IL	60062	\$14,000
Earthlink (Internet & VOIP phones)	PO Box 2252	Birmingham	AL	35246	\$5,000
AT&T	PO Box 6463	Carol Stream	IL	60197	\$3,750
Verizon (Cell)	3241 Washington Rd	Augusta	GA	30907	\$2,000
First Communications (Long Distance & Conferencing)	PO Box 772069	Detroit	MI	48277	\$750

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<sup>1</sup> SCANA carries prepaid balance of \$164,000 as of the Petition Date, with Fibrant.

**EXHIBIT B**  
**Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, et al.,<sup>1</sup></b>	)	<b>Case No. 18-<u>10274</u></b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	

**INTERIM ORDER (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING,  
OR DISCONTINUING SERVICE ON ACCOUNT OF PRE-PETITION INVOICES, (B)  
DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE,  
AND (C) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE  
ASSURANCE OF PAYMENT**

This matter is before the Court on the *Emergency Motion for Interim and Final Orders (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service on Account of Pre-Petition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment* (the “Motion”) of

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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 (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion, the *Declaration of David Leach in Support of First Day Motions and Applications*, and the matters reflected in the record of the hearing held on the Motion on [\_\_\_\_], 2018. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant’s assets; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Utility Companies; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. \_\_\_\_ ) is GRANTED.
2. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
3. A final hearing (the “Final Hearing”) upon the Debtors’ Motion shall be held before the undersigned on \_\_\_\_\_ \_\_, 2018 at \_\_\_\_\_, or as soon thereafter as counsel

may be heard. Any Utility Company that objects to the relief sought in the Motion must file a written objection to the Motion and serve a copy of the objection on counsel for the Debtors so that the objection is received at least seven days before the Final Hearing.

4. The Debtors are directed to pay on a timely basis, in accordance with their pre-petition practices, all undisputed invoices in respect of post-petition utility services rendered by the Utility Companies to the Debtors.

5. A Utility Company seeking an Adequate Assurance Deposit must request the Adequate Assurance Deposit in writing to counsel for the Debtors, at King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521 (Attention: Jonathan W. Jordan), so that it is received on or before 4:00 p.m. (Eastern Time) on March 26, 2018. If a Utility Company requests to receive the Adequate Assurance Deposit, the Debtors are directed to pay the appropriate Adequate Assurance Deposit to the Utility Company.

6. As a condition of receiving the Adequate Assurance Deposit, the requesting Utility Company shall be deemed to have stipulated that (i) the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility Company within the meaning of Section 366 of the Bankruptcy Code and (ii) it shall not seek additional or different adequate assurance during the course of these chapter 11 cases absent further order from this Court and a showing of changed circumstances.

7. Until such time as the Final Order is entered, subject to the procedures described below, no Utility Company may alter, refuse, terminate, or discontinue services to, and/or discriminate against the Debtors on the basis of commencement of these cases or on account of unpaid invoices for service provided by any of the Utility Companies to the Debtors prior to the Petition Date.

8. Notwithstanding the terms of paragraph 5 above, the following procedures shall be used by the Court to determine, if necessary, whether the requested assurance of payment by a Utility Company is adequate (the “Determination Procedures”):

- a. Absent compliance with the Determination Procedures, a Utility Company may not alter, refuse or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these chapter 11 cases or any unpaid pre-petition charges or request payment of a deposit or receipt of other security in connection with any unpaid pre-petition charges.
- b. Within three business days after the entry of this Order on the Motion, the Debtors will serve a copy of this Order to the Utility Companies on the Utility Service List by overnight delivery. In the event that any Utility Company has been omitted from the Utility Service List, the Debtors shall supplement this list and shall promptly serve a copy of the Interim Order on such Utility Company upon learning of such omission.
- c. If a Utility Company is not satisfied with the Proposed Adequate Assurance provided by the Debtors, the Utility Company may make a request for additional assurance of payment (a “Request”) and serve such Request so that it is received no later than seven days prior to the Final Hearing by counsel for the Debtors, at King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521, (Attention: Jonathan W. Jordan). Any such Request by a Utility Company must specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company and must set forth (i) the type of utility services that are provided and the associated account number, (ii) the location for which the relevant utility services are provided, (iii) a list of any deposits or other security currently held by such Utility Company and held by such Utility Company immediately prior to the Petition Date on account of the Debtors, (iv) a description of any payment delinquency or irregularity by the Debtors for the prior three months (whether pre-petition or post-petition), and (v) the average amount owed by the Debtors for the prior three months.
- d. Without further order of the Court, the Debtors may enter into agreements granting to the Utility Companies that have submitted Requests any assurance of payment that the Debtors, in their sole discretion, determine is reasonable.
- e. If a Utility Company timely requests an assurance of payment that the Debtors believe is unreasonable, and if after good faith negotiations by the parties, the parties are not able to resolve the issue, the adequacy of assurances of payment with respect to any such Utility Company pursuant to Section 366(c)(3) of the Bankruptcy Code will be determined at the Final Hearing.
- f. Pending resolution of a Request at the Final Hearing and pending entry of a final, non-appealable order thereon finding that the Utility Company is not adequately

assured of future payment, such Utility Company shall be (i) prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for pre-petition services or on account of any objections to the Proposed Adequate Assurance and (ii) deemed to have adequate assurance of payment.

- g. Any Utility Company that does not timely request assurance of payment through a Request pursuant to the Determination Procedures automatically will be deemed to have received assurance of payment that is satisfactory to the Utility Company under Section 366(c)(2) without further action by the Debtors and without prejudice to the right of such Utility Company to seek relief in the future pursuant to Section 366(c)(3).

9. In addition, the Debtors are authorized, as necessary, to provide notice and a copy of this Interim Order to any Additional Utility Companies as such Additional Utility Companies are identified. Such Additional Utility Companies shall be subject to the terms of the Interim Order, including the Determination Procedures. **If an Additional Utility Company fails to submit a Request within 20 days after being served with this Interim Order, the Additional Utility Company shall be deemed to have received adequate assurance of payment that is satisfactory to such Additional Utility Company pursuant to Section 366(c)(2) of the Bankruptcy Code without prejudice to the right of such Additional Utility Company to seek relief in the future pursuant to Section 366(c)(3)(A).**

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

11. Counsel for the Debtors are directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties

receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Utility Companies; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002, within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

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PROPOSED COUNSEL FOR THE  
DEBTORS-IN-POSSESSION

**EXHIBIT C**  
**Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, et al.<sup>1</sup></b>	)	<b>Case No. 18- <u>10274</u></b>
	)	
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	

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**FINAL ORDER (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE ON ACCOUNT OF PRE-PETITION INVOICES, (B) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (C) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

This matter is before the Court on the *Emergency Motion for Interim and Final Orders (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service on Account of Pre-Petition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment* (the "Motion") of

<sup>1 1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”). On \_\_\_\_\_, 2018, the Court granted the Motion on an interim basis and scheduled a Final Hearing for \_\_\_\_\_, 2018. All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion, the *Declaration of David Leach in Support of First-Day Motions and Applications*, and the matters reflected in the record of the hearings held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant’s assets; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Utility Companies; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. \_\_\_\_ ) is GRANTED.
2. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

3. The Debtors are directed to pay on a timely basis, in accordance with their pre-petition practices, all undisputed invoices in respect of post-petition utility services rendered by the Utility Companies to the Debtors.

4. If a Utility Company requests to receive the Adequate Assurance Deposit, the Debtors are directed to pay the appropriate Adequate Assurance Deposit to the Utility Company. A Utility Company seeking the proposed Adequate Assurance Deposit must have requested the Adequate Assurance Deposit in writing to counsel for the Debtors, at King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521, (Attention: Jonathan W. Jordan), so that it was received on or before 4:00 p.m. (Eastern Time) on March 26, 2018.

5. As a condition of receiving the Adequate Assurance Deposit, the requesting Utility Company shall be deemed to have stipulated that (i) the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility Company within the meaning of Section 366 of the Bankruptcy Code and (ii) it shall not seek additional or different adequate assurance during the course of these chapter 11 cases absent further order from this Court and a showing of changed circumstances.

6. No Utility Company may alter, refuse, terminate, or discontinue services to, and/or discriminate against the Debtors on the basis of commencement of these cases or on account of unpaid invoices for service provided by any of the Utility Companies to the Debtors prior to the Petition Date.

7. The Determination Procedures set forth in the Interim Order are hereby approved on a final basis.

8. In addition, the Debtors are authorized, as necessary, to provide notice and a copy of this Final Order to any Additional Utility Companies as such Additional Utility Companies

are identified. Such Additional Utility Companies shall be subject to the terms of the Final Order, including the Determination Procedures. **If an Additional Utility Company fails to submit a Request within 20 days after being served with this Final Order, the Additional Utility Company shall be deemed to have received adequate assurance of payment that is satisfactory to such Additional Utility Company pursuant to Section 366(c)(2) of the Bankruptcy Code without prejudice to the right of such Additional Utility Company to seek relief in the future pursuant to Section 366(c)(3)(A).**

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

10. Counsel to the Debtors is directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Utility Companies; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002, within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

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PROPOSED COUNSEL FOR THE  
DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FIBRANT, LLC, et al.,<sup>1</sup></b>	)	<b>Case No. 18-10274</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	

**INTERIM ORDER (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE ON ACCOUNT OF PRE-PETITION INVOICES, (B) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE, (C) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT, AND (D) SCHEDULING FINAL HEARING**

This matter is before the Court on the *Emergency Motion for Interim and Final Orders (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service on Account of Pre-Petition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment* (the “Motion”) of

<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: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

Fibrant, LLC and its affiliated debtors-in-possession (the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion, the *Declaration of David Leach in Support of First Day Motions and Applications*, and the matters reflected in the record of the hearing held on the Motion on March 1, 2018. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant’s assets; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Utility Companies; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002; that no further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion (Docket No. 14) is GRANTED on an interim basis, subject to the rights of interested parties to file objections with regard to any issues raised in the Motion.
2. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

3. A final hearing (the “Final Hearing”) upon the Debtors’ Motion shall be held before the undersigned on **March 21, 2018 at 10:00 AM**. Any Utility Company that objects to the relief sought in the Motion must file a written objection to the Motion and serve a copy of the objection on counsel for the Debtors so that the objection is received at least seven days before the Final Hearing.

4. The Debtors are directed to pay on a timely basis, in accordance with their pre-petition practices, all undisputed invoices in respect of post-petition utility services rendered by the Utility Companies to the Debtors.

5. A Utility Company seeking an Adequate Assurance Deposit must request the Adequate Assurance Deposit in writing to counsel for the Debtors, at King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521 (Attention: Jonathan W. Jordan), so that it is received on or before 4:00 p.m. (Eastern Time) on March 26, 2018. If a Utility Company requests to receive the Adequate Assurance Deposit, the Debtors are directed to pay the appropriate Adequate Assurance Deposit to the Utility Company.

6. As a condition of receiving the Adequate Assurance Deposit, the requesting Utility Company shall be deemed to have stipulated that (i) the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility Company within the meaning of Section 366 of the Bankruptcy Code and (ii) it shall not seek additional or different adequate assurance during the course of these chapter 11 cases absent further order from this Court and a showing of changed circumstances.

7. Until such time as the Final Order is entered, subject to the procedures described below, no Utility Company may alter, refuse, terminate, or discontinue services to, and/or discriminate against the Debtors on the basis of commencement of these cases or on account of

unpaid invoices for service provided by any of the Utility Companies to the Debtors prior to the Petition Date.

8. Notwithstanding the terms of paragraph 5 above, the following procedures shall be used by the Court to determine, if necessary, whether the requested assurance of payment by a Utility Company is adequate (the “Determination Procedures”):

- a. Absent compliance with the Determination Procedures, a Utility Company may not alter, refuse or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of these chapter 11 cases or any unpaid pre-petition charges or request payment of a deposit or receipt of other security in connection with any unpaid pre-petition charges.
- b. Within three business days after the entry of this Order on the Motion, the Debtors will serve a copy of this Order to the Utility Companies on the Utility Service List by overnight delivery. In the event that any Utility Company has been omitted from the Utility Service List, the Debtors shall supplement this list and shall promptly serve a copy of the Interim Order on such Utility Company upon learning of such omission.
- c. If a Utility Company is not satisfied with the Proposed Adequate Assurance provided by the Debtors, the Utility Company may make a request for additional assurance of payment (a “Request”) and serve such Request so that it is received no later than seven days prior to the Final Hearing by counsel for the Debtors, at King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309-3521, (Attention: Jonathan W. Jordan). Any such Request by a Utility Company must specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company and must set forth (i) the type of utility services that are provided and the associated account number, (ii) the location for which the relevant utility services are provided, (iii) a list of any deposits or other security currently held by such Utility Company and held by such Utility Company immediately prior to the Petition Date on account of the Debtors, (iv) a description of any payment delinquency or irregularity by the Debtors for the prior three months (whether pre-petition or post-petition), and (v) the average amount owed by the Debtors for the prior three months.
- d. Without further order of the Court, the Debtors may enter into agreements granting to the Utility Companies that have submitted Requests any assurance of payment that the Debtors, in their sole discretion, determine is reasonable.
- e. If a Utility Company timely requests an assurance of payment that the Debtors believe is unreasonable, and if after good faith negotiations by the parties, the parties are not able to resolve the issue, the adequacy of assurances of payment

with respect to any such Utility Company pursuant to Section 366(c)(3) of the Bankruptcy Code will be determined at the Final Hearing.

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

9. In addition, the Debtors are authorized, as necessary, to provide notice and a copy of this Interim Order to any Additional Utility Companies as such Additional Utility Companies are identified. Such Additional Utility Companies shall be subject to the terms of the Interim Order, including the Determination Procedures. **If an Additional Utility Company fails to submit a Request within 20 days after being served with this Interim Order or the Final Order, the Additional Utility Company shall be deemed to have received adequate assurance of payment that is satisfactory to such Additional Utility Company pursuant to Section 366(c)(2) of the Bankruptcy Code without prejudice to the right of such Additional Utility Company to seek relief in the future pursuant to Section 366(c)(3)(A).**

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

11. Counsel for the Debtors are directed to serve a copy of this Order on: (a) the Office of the United States Trustee for the Southern District of Georgia; (b) the holders of the 20 largest unsecured claims against the Debtors on a consolidated basis; (c) the agent to lenders that previously asserted a blanket lien on Fibrant's assets; (d) the Internal Revenue Service; (e) the

United States Attorney's Office for the Southern District of Georgia; (f) the Office of the Georgia Attorney General; (g) the Georgia Department of Revenue; (h) the United States Environmental Protection Agency, (i) the Georgia Environmental Protection Division; (j) parties receiving any other first-day motions; (k) Koninklijke DSM, N.V. and DSM Coating Resins, Inc.; (l) ChemicalInvest Holding, B.V.; (m) the Utility Companies; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002, within three days of the entry of this Order and to file a certificate of service with the Clerk of the Court.

END OF DOCUMENT

Prepared and presented by:

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**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION**

In re:

FIBRANT, LLC, ET AL.,<sup>1</sup>

Debtors.

Case No.: 18-10274

Chapter 11

Jointly Administered

**ORDER AND JOINT STIPULATION BETWEEN DEBTORS  
AND GEORGIA POWER COMPANY REGARDING  
ADEQUATE ASSURANCE OF PAYMENT**

This stipulation is before the Court pursuant to the Debtors' Motion for Interim and Final Orders (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service on Account of Pre-Petition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, And (C) Establishing Procedures for Determining Adequate Assurance of Payment (the "Motion")

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if any), are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC (7625); Fibrant Center South, LLC (8270); and Georgia Monomers Company, LLC (0042).

D.E. 14) filed by the Debtors. Following the entry of the Court's Final Order (A) Prohibiting Utilities from Altering, Refusing, Or Discontinuing Service on Account of Pre-Petition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate assurance Payment (D.E. 165), the Debtors and Georgia Power Company ("Georgia Power") have conferred regarding the Motion and agreed to the following as to Georgia Power regarding payment for utility services provided by Georgia Power to Debtors pursuant to this Order and Joint Stipulation Regarding Adequate Assurance of Payment Pursuant to Section 366 of the Bankruptcy Code.

Debtors and Georgia Power agree that:

1. The requirements for adequate assurance of future payment of utility service to Georgia Power under § 366 of the Bankruptcy Code will be satisfied by a deposit in the total amount of \$187,639.00 payment (the "Deposit"), to be received by Georgia Power at the address provided below within three business days of the date of entry of this Order and Joint Stipulation; and

2. Payment of the above-described amount must be received by counsel for Georgia Power by the applicable deadline at the following address:

Georgia Power Company  
c/o Courtney A. McCormick  
50 N. Laura Street, Suite 3300  
Jacksonville, Florida 32202  
(904) 798-3200

3. Any undisputed charge for post-petition utility services furnished by Georgia Power to Debtors shall constitute an administrative expense of Debtors' bankruptcy estates in accordance with § 503(b) of the Bankruptcy Code.

4. Debtors shall timely pay all charges for post-petition utility services provided to

the Service Address.

5. If Debtors fail to timely pay the amount due under Paragraph 1 of this Stipulation, Georgia Power may immediately terminate utility service to the Service Address without further notice to Debtors, without regard to any notice requirements set forth in Georgia Power's Rules and Regulations approved by the Georgia Public Service Commission (the "Rules and Regulations") and without the need for any further order from the Court.

6. If Debtors fail to timely pay any charges to Georgia Power for actual post-petition utility services supplied to Debtors at the Service Address, as to which there is not a good faith dispute, normal procedures for termination of utility services as set forth in the Rules and Regulations shall apply without the need for any further order from the Court.

7. Notwithstanding the terms of this Stipulation or the Order approving this Stipulation, Georgia Power shall have the right to request further adequate assurance should there be a material increase in the amount of post-petition electric utility usage by Debtors.

8. Except as expressly set forth in this Stipulation or the Order approving this Stipulation, Georgia Power's Rules and Regulations approved by the Georgia Public Service Commission shall govern the post-petition relationship between Debtors and Georgia Power.

9. The undersigned counsel are authorized to enter into this Joint Stipulation Regarding Adequate Assurance of Payment Pursuant to § 366 of the Bankruptcy Code.

Based upon the foregoing stipulations, and for cause shown, it is

**ORDERED:**

1. The stipulation and agreement of Debtors and Georgia Power as set forth above is approved on the terms in paragraph 1 – 9 above, which are adopted and made an Order of this Court.

2. So long as Debtors are in compliance with the terms of this Order, Georgia Power shall not alter, refuse or disconnect services on account of: (a) Debtors' failure to pay a prepetition invoice when due, (b) the filing of this bankruptcy case, or (c) the failure to post a deposit in excess of the amounts described herein.

Consented to and prepared by:

McGUIREWOODS LLP  
By     /s/ Thomas R. Walker      
Thomas R. Walker (GA Bar No. 732755)  
1230 Peachtree Street N.E., Suite 2100  
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[trwalker@mcguirewoods.com](mailto:trwalker@mcguirewoods.com)

*Counsel for Georgia Power Company*

Consented to by:

KING & SPALDING LLP  
By     /s/ Jonathan W. Jordan     (with express permission by Thomas R. Walker)  
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*Counsel for Debtors in Possession*