

HEARING DATE AND TIME: August 8, 2017 at 10:00AM (Eastern Time)

RESPONSE DEADLINE: August 1, 2017 at 4:00PM (Eastern Time)

**WILK AUSLANDER LLP**

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*Proposed Counsel for Debtors and  
Debtors in Possession*

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

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In re:	:
	:
	: Chapter 11
BICOM NY, LLC, <i>et al.</i> , <sup>1</sup>	:
	:
	: Case No. 17-11906(MEW)
Debtors.	:
	:
	: (Jointly Administrated)
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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES AND  
DEBTORS’ OFFER OF ASSURANCE OF PAYMENT TO UTILITY PROVIDERS**

BICOM NY, LLC d/b/a Jaguar Land Rover Manhattan (“BICOM”), ISCOM NY, LLC d/b/a Maserati of Manhattan (“ISCOM”), and Bay Ridge Automotive Company, LLC d/b/a Bay Ridge Ford (“BRAC”) (collectively, the “Debtors”), by and through their proposed counsel Wilk Auslander, LLP, submit this motion (the “Motion”) pursuant to §§ 105(a) and 366 of title 11 of the U.S. Code (the “Bankruptcy Code”) requesting entry of an order: (a) determining that the Proposed Adequate Assurance (as defined and described below) provides the Utility Providers (as defined below) with adequate assurance of payment within the meaning of § 366 of the Bankruptcy Code; (b) prohibiting the Utility Providers from altering, refusing, or discontinuing

<sup>1</sup> The last four digits of each Debtor’s taxpayer identification number are as follows: BICOM NY, LLC (9990); ISCOM NY, LLC (1589); and Bay Ridge Automotive Company, LLC (0694). The Debtors’ addresses are 787 11th Avenue, New York, NY 10019; 1 York Street, New York, NY 10013; and 612 86<sup>th</sup> Street, Brooklyn, NY 11228, respectively.

services; (c) approving procedures for resolving any dispute concerning adequate assurance in the event that a Utility Provider is not satisfied with the Proposed Adequate Assurance (the “Adequate Assurance Procedures”); and (d) granting related relief.

## **BACKGROUND**

### ***a. Introduction***

1. On July 10, 2017 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under Chapter 11 the Bankruptcy Code.
2. The Debtors are managing their property as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. No trustee, examiner, or committee of creditors has been appointed in these cases.
4. The Debtors are franchisees of the various automobile brands referenced above and operate automobile retail dealerships in New York City. Additional description of the Debtors’ businesses and the reasons for commencing these chapter 11 cases are set forth in the *Declaration of Gary B. Flom (I) in Support of First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* filed on the Petition Date (the “First Day Declaration”) [ECF No. 12].

### ***b. Utility Services and Utility Providers***

5. In connection with the operation of their businesses, the Debtors obtain electricity, telephone, internet, cable, waste services (including recycling), and other similar services (collectively, the “Utility Services”) from approximately 13 utility companies (collectively, the “Utility Providers”) identified on Exhibit 1 (the “Utility Service List”) to the proposed form of order (the “Proposed Order”) attached to this Motion as Exhibit A.<sup>2</sup> The

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<sup>2</sup> Although the Debtors believe that the Utility Service List includes all of their Utility Providers, the Debtors reserve the right to supplement the list if they inadvertently omitted any Utility Provider. Additionally, the listing of an entity on the Utility Service List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.

Debtors utilize the Utility Services at various facilities, as further detailed in the First Day Declaration, that serve as showrooms, service centers, offices, and storage facilities

6. Uninterrupted Utility Services are essential to the Debtors' ongoing operations and the overall success of these chapter 11 cases. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations could be severely disrupted, and such disruption could damage the value of the Debtors' estates and jeopardize their ability to manage their reorganization efforts. Accordingly, it is essential that the Utility Services continue uninterrupted during these chapter 11 cases.

7. It is estimated that, on average, the Debtors pay, in the aggregate, approximately \$94,000 per month for the Utility Services. The Debtors project that the costs that will be incurred for Utility Services after the Petition Date will not be materially more than the monthly historical average for such services.

**PROPOSED ADEQUATE ASSURANCE PAYMENT  
AND ADEQUATE ASSURANCE PROCEDURES**

8. The Debtors intend to pay post-petition obligations owed to the Utility Providers in the ordinary course of business and in a timely manner. The Debtors believe that the funds from the debtor-in-possession financing (the "DIP Loan") provided by J.P. Morgan Chase Bank, N.A. and cash generated in the ordinary course of business will provide sufficient liquidity to pay the Utility Providers for Utility Services in accordance with pre-petition practice during the pendency of these chapter 11 cases.

9. To provide additional assurance of payment, the Debtors propose to deposit \$47,151.00 (the "Adequate Assurance Deposit") with the Debtors' proposed counsel to be held in an escrow account with counsel to act as escrow agent (the "Adequate Assurance Account"). The Adequate Assurance Deposit is equal to the estimated aggregate cost for two weeks of

Utility Services. The Adequate Assurance Deposit will be held in the Adequate Assurance Account for the duration of these chapter 11 cases and may be applied to any post-petition defaults in payment to the Utility Providers. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' cash flow from operations and funds available under the DIP Loan, demonstrates their ability to pay for future Utility Services in accordance with pre-petition practice (collectively, the "Proposed Adequate Assurance") and constitutes sufficient adequate assurance to the Utility Providers in satisfaction of § 366 of the Bankruptcy Code.

10. In accordance with the Utility Providers' rights under § 366 of the Bankruptcy Code (discussed below), Utility Providers may request additional or modified assurance of payment pursuant to the Adequate Assurance Procedures below:

- a. The Debtors will serve a copy of this Motion within two days after it is filed with the Court and the order granting the relief requested herein to each Utility Provider within two days after entry of the order by the Court.
- b. The Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$47,151.00, within three days of entry of the order granting this Motion; *provided* that to the extent any Utility Provider receives value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.
- c. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set for such Utility Provider in the column labeled "Adequate Assurance Deposit" on the Utility Service List.
- d. If an amount relating to Utility Services provided post-petition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (i) BNF Partners, NY, LLC, 609 West 46 Street, New York, NY, 10036, Attn: John D. Tremaroli, Vice-President, CFO; and (ii) proposed counsel to the Debtors, Wilk Auslander, LLP, 1515 Broadway, 43<sup>rd</sup> Floor, New York, NY, 10036, Attn: Eloy A. Peral, Esq. ([eperal@wilkauslander.com](mailto:eperal@wilkauslander.com)) (the "Notice Recipients"). The Debtors shall honor such request within five days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further

order of the Court; *provided* that in no event shall a Utility Provider be permitted to receive aggregate disbursements in excess of the total amount set forth for such Utility Provider under the column labeled “Adequate Assurance Deposit” on the Utility Service List.

- e. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be removed from the account and returned to the Debtors on the earlier of: (i) the Debtors’ termination of Utility Services from such Utility Provider; (ii) dismissal of one or more of the cases; (iii) the effective date of any chapter 11 plan approved in these cases; and (iv) the sale of all or substantially all of the Debtors’ assets.
- f. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the Notice Recipients.
- g. Any Additional Assurance Request must be made and actually received by the Notice Recipients no later than 20 days after service of the order granting the relief requested herein. If a Utility Provider fails to timely file an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- h. Upon the Debtors’ receipt of any Additional Assurance Request, the Utility Provider and the Debtor will negotiate in good faith to resolve such Utility Provider’s Additional Assurance Request (the “Resolution Period”).
- i. The Debtors may, without further order from this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider and, the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, payments of prepetition balances, prepayments, or other forms of security if the Debtors believe such additional assurance is reasonable.
- j. If the Debtors determine that the Additional Assurance Request is unreasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, any party in interest, including the Utility Provider who furnished the Adequate Assurance Request may, during or after the Resolution Period, request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to § 366(c)(3) of the Bankruptcy Code.

- k. During the Resolution Period and pending resolution of any Determination Hearing, the Utility Provider furnishing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

#### **OFFER OF ASSURANCE OF PAYMENT TO UTILITY PROVIDERS**

11. By this Motion, in accordance with § 366(c)(2) of the Bankruptcy Code, the Debtors offer the Proposed Adequate Assurance to the Utility Providers as adequate assurance of payment. To the extent that a Utility Provider disputes that the Proposed Adequate Assurance is satisfactory, such dispute will be resolved through the Adequate Assurance Procedures, subject to the Bankruptcy Court's approval of such procedures.

#### **JURISDICTION AND VENUE**

12. Pursuant to 28 U.S.C. § 1334, the Court has jurisdiction over this Motion, which is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

#### **BASIS FOR RELIEF**

13. Section 366 of the Bankruptcy provides that “a utility may not alter, refuse, or discontinue service to, or discriminate against, 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.” 11 U.S.C. § 366(a) However, § 366(c), applicable to chapter 11 cases, establishes an exception to this prohibition where the debtor fails to provide its utility suppliers, within 30 days after the date of the order for relief, with “adequate assurance of payment for utility service that is satisfactory to the utility.”

11 U.S.C. § 366(c)(2).<sup>3</sup> If assurance of payment is timely offered by the debtor, and the parties disagree as to the adequacy of payment, a party in interest may request that the court modify the debtor's assurance of payment. *In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338 (CS), 2011 WL 5546954, at \*5 (Bankr. S.D.N.Y. Nov. 14, 2011). *See also* 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 of payment").

14. Section 366(c)(1) of the Bankruptcy Code provides a non-exhaustive list of examples of what constitutes "assurance of payment." 11 U.S.C. § 366(c)(1). Although assurance of payment must be "adequate," it need not constitute an absolute guarantee of the debtor's ability to pay. *See In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338 (CS), 2011 WL 5546954, at \*5 ("Courts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full." (citation omitted); *In re Caldor, Inc.-NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires . . . '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.-NY*, 117 F.3d 646 (2d Cir. 1997).

15. Bankruptcy Courts are "afforded reasonable discretion in determining what constitutes adequate assurance of payment for continuing utility services." *In re Great Atl. & Pac. Tea Co., Inc.*, No. 11-CV-1338 CS, 2011 WL 5546954, at \*5 (citing *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 81 (Bankr.S.D.N.Y.2002)). This determination requires a "fact-

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<sup>3</sup> Section 366(c), which fixes the 30 days deadline to provide assurance of payment, applies only to chapter 11 cases, while § 366(b), which does not reference any chapter of the Bankruptcy Code, sets a 20 day deadline to provide assurance of payment. The 30 day deadline in § 366(c)(2) controls here because the Debtors are chapter 11 debtors. *See 3 Collier on Bankruptcy* § 366.03[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) ("It is unclear how the 30-day period [in section 366(c)(2) of the Bankruptcy Code] meshes with the normal 20-day period in section 366(b). The better view is that, because section 366(c) is more specifically applicable to chapter 11 cases, the 30- day period, rather than the 20-day period in section 366(b), should apply.").

driven analysis in order to balance the utility provider's need to be free from unreasonable risk of nonpayment and the debtor's scarce financial resources during bankruptcy.” *Id. See also Va. Elec. & Power Co.*, 117 F.3d at 650 (“[A] bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.”).

16. Here, the Proposed Adequate Assurance adequately safeguards the Utility Providers against the risk of nonpayment for future Utility Services. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due, as supported by the DIP Loan, provide assurance of the Debtors’ payment of future obligations. Moreover, termination of the Utility Services could result in the Debtors’ inability to operate their businesses to the detriment of all stakeholders. *See In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that § 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”). A deposit or other form of security equal to two weeks of a debtor’s historical or projected costs of utility services has been found to constitute adequate assurance of payment particularly where, as here, the debtor has access to debtor-in-possession financing. *See, e.g., In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338 (CS), 2011 WL 5546954, at \*5 (describing the “several factors [the bankruptcy court considered] in coming to its conclusion that a two-week cash deposit was sufficient”). In addition, a debtor’s deposit of its assurance of payment under § 366 of the Bankruptcy Code into the escrow account controlled by its bankruptcy counsel as escrow agent has been found to be an acceptable form of assurance of payment. *See In re Gospel Rescue Ministries of Washington, D.C. Inc.*, No. 12-00405, 2012 WL 2343698, at \*1 (Bankr. D.D.C. June 20, 2012). *See also In re Great Atl. & Pac. Tea Co., Inc.*,

No. 11-CV-1338 CS, 2011 WL 5546954, at 6 (“The Bankruptcy Court reasonably found that the Adequate Assurance Account was a cash deposit or akin to a letter of credit within the meaning of the Bankruptcy Code, and that there was no persuasive reason why the utility providers, rather than an escrow agent, needed to control it.”).

17. Lastly, Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores, Inc.*, No. 08-35653 (KRH), 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (“The plain language of § 366 of the Bankruptcy Code allows the court to adopt the Procedures set forth in the Utility Order.”). The Debtors submit that the Adequate Assurance Procedures are entirely consistent with and implement the mechanism and time periods in § 366 for providing assurance of payment and resolving any dispute regarding the adequacy of the payment. To the extent that the Adequate Assurance Procedures do not exactly conform with § 366, the Court is nonetheless empowered to approve the Adequate Assurance Procedures pursuant to § 105 of the Bankruptcy Code and shorten or enlarge the time periods in § 366 pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure. *See In re Great Atl. & Pac. Tea Co., Inc.*, No. 11-CV-1338 CS, 2011 WL 5546954, at \*7 (“[A] court may enlarge the 30–day and 20–day protective time periods under Sections 366(c)(2) and 366(b), respectively, if a party can show good cause.”)

#### **NOTICE**

18. The Debtors have provided notice of this Motion to: (a) the Utility Providers listed on the Utility Service List; (b) the United States Trustee for Region 2; (c) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (d) counsel for JP Morgan Chase Bank, NA; (e) the United States Attorney for the Southern District of New York; (f) the United States Securities and Exchange Commission; (g)

the Internal Revenue Service; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

**NO PRIOR REQUEST**

19. No prior request for the relief sought in the Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an Order, substantially in the form attached hereto as Exhibit A, respectively, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: New York, New York  
July 21, 2017

**WILK AUSLANDER LLP**

By: /s/ Eric J. Snyder  
Eric J. Snyder, Esq.  
Eloy A. Peral, Esq.  
1515 Broadway, 43rd Floor  
New York, New York 10036  
(212) 981-2300

*Proposed Counsel for the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

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

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 In re: :  
 : Chapter 11  
 BICOM NY, LLC, *et al.*,<sup>4</sup> :  
 : Case No. 17-11906(MEW)  
 Debtors. :  
 : (Jointly Administrated)  
 ----- X

**ORDER GRANTING DEBTORS’ MOTION FOR ENTRY OF  
AN ORDER DETERMINING ADEQUATE ASSURANCE  
OF PAYMENT FOR FUTURE UTILITY SERVICES**

UPON the motion (the “Motion”) of the above-captioned debtors (collectively, as the “Debtors”) pursuant to sections 105(a) and 366 of title 11 of the U.S. Code (the “Bankruptcy Code”) requesting entry of an order: (a) determining that the Proposed Adequate Assurance (as defined and described below) provides the Utility Providers (as defined below) with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (b) prohibiting the Utility Providers from altering, refusing, or discontinuing services; (c) approving procedures for resolving any dispute concerning adequate assurance in the event that a Utility Provider is not satisfied with the Proposed Adequate Assurance (the “Adequate Assurance Procedures”); and (d) granting related relief; and it appearing that proper and sufficient notice of the relief sought in the Motion has been given; and it further appearing that the requested relief is reasonable and proper and a hearing on the Motion having been held on \_\_\_\_\_; and sufficient cause appearing to me therefor and due consideration having been given; it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

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<sup>4</sup> The last four digits of each Debtor’s taxpayer identification number are as follows: BICOM NY, LLC (9990); ISCOM NY, LLC (1589); and Bay Ridge Automotive Company, LLC (0694). The Debtors’ addresses are 787 11th Avenue, New York, NY 10019; 1 York Street, New York, NY 10013; and 612 86<sup>th</sup> Street, Brooklyn, NY 11228, respectively.

2. All Utility Providers are prohibited from altering, refusing, or discontinuing service to, or discriminating against, the Debtors as a result of the Debtors' bankruptcy filing or any outstanding prepetition invoices, or requiring payment of a deposit or receipt or any other security for continued service postpetition, other than in accordance with the Adequate Assurance Procedures.

3. The following Adequate Assurance Procedures are approved in all respects:

- a. The Debtors will serve a copy of this Motion within two days after it is filed with the Court and the order granting the relief requested herein to each Utility Provider within two days after entry of the order by the Court.
- b. The Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$47,151.00, within three days of entry of the order granting this Motion; *provided* that to the extent any Utility Provider receives value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.
- c. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set for such Utility Provider in the column labeled "Adequate Assurance Deposit" on the Utility Service List.
- d. If an amount relating to Utility Services provided post-petition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to: (i) BNF Partners, NY, LLC, 609 West 46 Street, New York, NY, 10036, Attn: John D. Tremaroli, Vice-President, CFO; and (ii) proposed counsel to the Debtors, Wilk Auslander, LLP, 1515 Broadway, 43<sup>rd</sup> Floor, New York, NY, 10036, Attn: Eloy A. Peral, Esq. ([eperal@wilkauslander.com](mailto:eperal@wilkauslander.com)) (the "Notice Recipients"). The Debtors shall honor such request within five days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court; *provided* that in no event shall a Utility Provider be permitted to receive aggregate disbursements in excess of the total amount set forth for such Utility Provider under the column labeled "Adequate Assurance Deposit" on the Utility Service List.
- e. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be removed from the account and returned to the Debtors on the earlier of: (i) the Debtors' termination of Utility Services from such Utility

Provider; (ii) dismissal of one or more of the cases; (iii) the effective date of any chapter 11 plan approved in these cases; and (iv) the sale of all or substantially all of the Debtors' assets.

- f. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the Notice Recipients.
  - g. Any Additional Assurance Request must be made and actually received by the Notice Recipients no later than 20 days after service of the order granting the relief requested herein. If a Utility Provider fails to timely file an Additional Assurance Request, the Utility Provider shall be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
  - h. Upon the Debtors' receipt of any Additional Assurance Request, the Utility Provider and the Debtor will negotiate in good faith to resolve such Utility Provider's Additional Assurance Request (the "Resolution Period").
  - i. The Debtors may, without further order from this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider and, the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, payments of prepetition balances, prepayments, or other forms of security if the Debtors believe such additional assurance is reasonable.
  - j. If the Debtors determine that the Additional Assurance Request is unreasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, any party in interest, including the Utility Provider who furnished the Adequate Assurance Request may, during or after the Resolution Period, request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "Determination Hearing") pursuant to § 366(c)(3) of the Bankruptcy Code.
  - k. During the Resolution Period and pending resolution of any Determination Hearing, the Utility Provider furnishing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
4. A Utility Provider shall be deemed to have received adequate assurance of

payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy

Code unless and until, subject to the limitations of this Order: (a) the Debtors agree to (i) an Additional Assurance Request or (ii) an alternative adequate assurance payment with the Utility Provider during the Resolution Period; or (b) this Court enters an order at any Determination Hearing requiring that additional adequate assurance of payment be provided.

5. The Debtors' Proposed Adequate Assurance is hereby approved and is deemed adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code.

6. The Adequate Assurance Deposit shall be removed from the account on the earlier of: (i) the Debtors' termination of Utility Services from such Utility Provider; (ii) dismissal of one or more of the cases; (iii) the effective date of any chapter 11 plan approved in these cases; and (iv) the sale of all or substantially all of the Debtors' assets.

7. The Debtors shall serve a copy of this Order on each Utility Provider listed on the Utility Service List within two (2) days after the date this Order is entered.

8. Notwithstanding the relief granted herein and any actions taken, nothing contained in the Motion or this Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' or any party in interest's rights to subsequently dispute and/or contest such claim or lien, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

9. This Order shall be immediately effective, enforceable, and binding upon its entry.

10. All time period set forth in this Order and the Adequate Assurance Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

12. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: New York, New York  
July \_\_, 2017

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HONORABLE MICHAEL E. WILES  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Utility Service List**

### Utility Service List

COMPANY NAME	ADDRESS	SERVICE	ADEQUATE ASSURANCE DEPOSIT
VERIZON	P.O. BOX 15124 ALBANY, NY 12212	Internet/Telephone/Cable	\$3,100.00
CABLEVISION LIGHT PATH INC.	P.O. BOX 360111 PITTSBURGH, PA 15251-6111	Internet/Telephone/Cable	\$500.00
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.	4 IRVING PLACE, ROOM 1875-S NEW YORK, NY 10003	Electricity	\$22,550.00
TIME WARNER CABLE	P.O. BOX 11820 NEWARK, NJ 07101-8120	Internet/Telephone/Cable	\$3,850.00
NATIONAL GRID	P.O. BOX 11741 NEWARK, NJ 07101-9839	Gas	\$2,400.00
COGENT COMMUNICATIONS, INC	P.O. BOX 791087 BALTIMORE, MD 21279-1087	Internet/Telephone/Cable	\$350.00
EVOLVEIP	P.O. BOX 1023 SOUTHEASTERN, PA 19398-1023	Internet/Telephone/Cable	\$10,000.00
FIBER TECHNOLOGIES NETWORKS, LLC	300 MERIDIAN CENTRE ROCHESTER, NY 14618	Internet/Telephone/Cable	\$200.00
TELX-NEW YORK, LLC	P.O. BOX 10157 UNIONDALE, NY 11555	Internet/Telephone/Cable	\$895.00
AT&T	TBD	Internet/Telephone/Cable	\$750.00
STARTEC GLOBAL COMMUNICATIONS	11300 ROCKVILLE PIKE SUITE 900 ROCKVILLE, MD 20852	Internet/Telephone/Cable	\$0.00
AB OIL SERVICE LTD	1599 OCEAN AVE BOHEMIA, NY 11716	Waste removal/recycling	\$0.00
METROPOLITAN PAPER RECYCLING	847 SHEPHERD AVE BROOKLYN, NY 11208	Waste removal/recycling	\$2,556.50
<b>TOTAL</b>			<b>\$47,151.00</b>

**WILK AUSLANDER LLP**  
1515 Broadway, 43<sup>rd</sup> Floor  
New York, New York 10036  
Telephone: (212) 981-2300  
Eric J. Snyder, Esq.  
Eloy A. Peral, Esq.

*Proposed Counsel for Debtors and  
Debtors in Possession*

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

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In re: :  
: Chapter 11  
BICOM NY, LLC, *et al.*,<sup>1</sup> :  
: Case No. 17-11906(MEW)  
Debtors. :  
: (Jointly Administrated)  
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**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES AND  
DEBTORS' OFFER OF ASSURANCE OF PAYMENT TO UTILITY PROVIDERS**

**PLEASE TAKE NOTICE** that upon the motion (the "Motion") of BICOM NY, LLC d/b/a Jaguar Land Rover Manhattan, ISCOM NY, LLC d/b/a Maserati of Manhattan, and Bay Ridge Automotive Company, LLC d/b/a Bay Ridge Ford (collectively, the "Debtors"), pursuant to §§ 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code"), the Debtors will move before the Honorable Michael E. Wiles in Courtroom 617, at the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York 10004-1408, on **August 8, 2017 at 10:00AM**, or as soon thereafter as counsel can be heard, for entry of an order: (a) determining that the Proposed Adequate Assurance (as

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<sup>1</sup> The last four digits of each Debtor's taxpayer identification number are as follows: BICOM NY, LLC (9990); ISCOM NY, LLC (1589); and Bay Ridge Automotive Company, LLC (0694). The Debtors' addresses are 787 11th Avenue, New York, NY 10019; 1 York Street, New York, NY 10013; and 612 86<sup>th</sup> Street, Brooklyn, NY 11228, respectively.

defined and described in the Motion) provides the Utility Providers (as defined in the Motion) with adequate assurance of payment within the meaning of § 366 of the Bankruptcy Code; (b) prohibiting the Utility Providers from altering, refusing, or discontinuing services; (c) approving procedures for resolving any dispute concerning adequate assurance in the event that a Utility Provider is not satisfied with the Proposed Adequate Assurance (the “Adequate Assurance Procedures”); and (d) granting related relief.

**PLEASE TAKE FURTHER NOTICE**, that responses, if any, to the relief requested in the Motion shall be in writing, shall state with particularity the grounds for the objection, shall be filed with the Clerk of the Bankruptcy Court and served upon the undersigned counsel so as to be received no later than **August 1, 2017 at 4:00PM (Eastern Time)** and upon any other person whose interests would be affected if the Motion is granted or denied.

**PLEASE TAKE FURTHER NOTICE** that objecting parties are required to attend the hearing, and failure to appear may result in relief being granted or denied upon default.

Dated: New York, New York  
July 21, 2017

**WILK AUSLANDER LLP**

By: /s/ Eric J. Snyder  
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*Proposed Counsel for the Debtors and  
Debtors in Possession*