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7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF ARIZONA**

9 In re:

10 REALTY EXECUTIVES, INC.,

11 Debtor.

CHAPTER 11

Case No. 2-11-bk-12497-RJH

**MOTION FOR ORDER
(I) PROHIBITING DEBTOR'S UTILITY
COMPANIES FROM ALTERING,
REFUSING OR DISCONTINUING
SERVICE; AND (II) DETERMINING
THAT DEBTOR'S UTILITY
COMPANIES ARE ADEQUATELY
ASSURED OF PAYMENT FOR FUTURE
UTILITY SERVICES**

16 Realty Executives, Inc. ("Debtor"), as debtor and debtor-in-possession in the above-
17 captioned Chapter 11 bankruptcy case, hereby moves this Court for entry of an order pursuant to
18 Section 366 of the BANKRUPTCY CODE (i) prohibiting the Debtor's utility companies (as defined
19 below) from altering, refusing, or discontinuing services, and (ii) determining that the Debtor's
20 utility companies are adequately assured of payment for future utility services for purposes of §
21 366(b) and (c)(2) of the BANKRUPTCY CODE. This Motion is supported by the accompanying
22 Memorandum of Points and Authorities.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I.**

25 **BACKGROUND**

26 1. On April 30, 2011 (the "Petition Date"), the Debtor filed its voluntary petition for
27 relief under Chapter 11 of the BANKRUPTCY CODE.

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1 2. Pursuant to Sections 1107 and 1108 of the BANKRUPTCY CODE, the Debtor is
2 continuing to manage its property and assets as debtor-in-possession. No trustee or examiner has
3 been appointed in the Debtor's Chapter 11 case.

4 3. This Court has jurisdiction to hear this Application pursuant to 28 U.S.C. §§ 1334
5 and 157. This Application represents a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
6 Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates
7 for this Motion are § 366, 503 and 507 of the BANKRUPTCY CODE.

8 4. The Debtor is a franchisee of Realty Executives International, Inc. Realty
9 Executives International, Inc. is the franchisor and is not a party to this proceeding. The Debtor
10 is headquartered in Phoenix, Arizona. The Debtor was founded in October of 1965 with an
11 innovative concept that allowed Realtors to be paid full commissions for their closed real estate
12 transactions while paying a monthly "desk fee" to the company. For 20 years after its inception,
13 the Debtor's company grew steadily and focused on hiring only the most productive and
14 experienced Realtors in Maricopa County. The Company motto was "no beginners, no kidding."

15 5. In 1985, the Debtor's focus became more widespread with the launch of new
16 agent trainee programs, the development of vendor partnerships, and creation of more than 60
17 different commission fee plans. By 2007, the company grew to more than 1,800 Sales
18 Executives (agents) who were members of Realty Executives, Inc., in the Phoenix area.

19 6. With this growth in Sales Executives (agents) also came a significant increase in
20 brokerage overhead and expenses. Most notably, the company's operations grew to 17 branch
21 offices and employed more than 120 non-agent staff members.

22 7. In the spring of 2007, the real estate market significantly decreased nationally and
23 in the Metropolitan Phoenix market, and the Debtor was unable to maintain its profitability. At
24 the same time, the Debtor continued to renew and expand office leases and greatly outspent its
25 competitors from a marketing and advertising perspective. As a result, the Debtor was unable to
26 maintain its profitability.

27 8. In October of 2009, the Debtor put in place a restructuring plan aimed at right
28 sizing the Debtor's operations and overhead so that the Debtor could return to profitability and

1 its founding principles. In December of 2010, a specific restructuring plan was adopted by the
2 Board to eliminate costs, improve operations, and restructure executive fee plans. By mid-April
3 of 2011, it became clear that the Debtor could not complete the necessary restructuring plan,
4 which required significant office lease terminations and modifications, without the help of a
5 Chapter 11 filing.

6 **II.**

7 **DEBTOR'S UTILITY COMPANIES**

8 9. In the normal course of the Debtor's operations, the Debtor uses telephone
9 services and data services provided by Qwest Communications ("Qwest").

10 10. In the normal course of the Debtor's operations, the Debtor uses electrical
11 services provided by Arizona Public Service ("APS"), Salt River Project ("SRP"), and Tucson
12 Electric Power ("TEP").

13 11. In the normal course of the Debtor's operations, the Debtor uses gas services
14 provided by Southwest Gas ("Southwest").

15 12. In the normal course of the Debtor's operations, the Debtor uses water services
16 provided by City of Phoenix (the "Water Company").

17 13. In the normal course of Debtor's operations, the Debtor uses waste services
18 provided by Waste Management.

19 14. In the normal course of Debtor's operations, the Debtor uses data services
20 provided by Cox Communications ("Cox") and Comcast Cable ("Comcast").

21 15. Collectively, Qwest, APS, SRP, TEP, Southwest, the Water Company, Waste
22 Management, Cox and Comcast are referred to herein as the "Utility Companies."

23 16. Any and all services provided by the Utility Companies to the Debtor on the
24 Petition Date are referred to herein as the "Utility Services."

25 17. The Debtor's business operations depend on the Utility Services for its continued
26 operations and to preserve the value of its assets.

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IV.

APPLICABLE AUTHORITY

Section 366 of the BANKRUPTCY CODE provides 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.

...
(c)(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 payment¹ for utility service that is satisfactory to the utility.

11 11 U.S.C. § 366(a), (c)(2); *see also Steinebach v. Tucson Elec. Power Co. (In re Steinebach)*,
12 303 B.R. 634, 641 (Bankr. D. Ariz. 2003) (utility companies are not entitled to adequate
13 protection, rather, “what is required is that the utility be protected from an **unreasonable risk** of
14 non-payment.”) (emphasis added). For the purpose of evaluating whether a debtor has provided
15 adequate assurance of payment, the Court may not consider the absence of security before the
16 petition date, the debtor’s pre-petition payment history, or the availability of an administrative
17 expense priority. *See* 11 U.S.C. § 366(c)(3)(B).

As described above, the Debtor’s post-petition operating revenues are more than
sufficient to timely pay all of the Debtor’s post-petition administrative expenses, including future
Utility Services provided by the Utility Companies. Moreover, the Debtor proposes to provide to
the Utility Companies an Adequate Assurance Deposit in the amount of \$500.00 to each of the
Utility Companies as adequate assurance of payment for future Utility Services.

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¹ For purposes of § 366(c), the term “assurance of payment” means either “(i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.” 11 U.S.C. § 366(c)(1)(A).

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V.

NOTICE

The Debtor will serve a copy of the Order, once entered, upon the Utility Companies, thereby notifying them of their rights. The attached Proposed Order provides that the Utility Companies so served are subject to the scope of the Order from the date of service and are afforded thirty (30) days from the date of such service to make a request, if any, to the Debtor for additional adequate assurance of payment.

VI.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Order pursuant to 11 U.S.C. § 366(a): (a) prohibiting the Utility Companies from altering, refusing or discontinuing future Utility Services on account of the filing of this case or pre-petition invoices, (b) determining that the Utility Companies are adequately assured of future payment by the Adequate Assurance Deposit proposed by the Debtor and (c) granting such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 30th day of April, 2011.

ALLEN, SALA & BAYNE, PLC

/s/ PS 11160

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COPY of the foregoing e-mailed this
30th day of April, 2011, to:

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/s/ Sherry Gomez