

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-12277 (___)

**DEBTOR’S MOTION FOR INTERIM AND FINAL ORDERS (I) PROHIBITING
UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING
UTILITY SERVICES, (II) DEEMING UTILITY COMPANIES ADEQUATELY
ASSURED OF FUTURE PAYMENT, (III) ESTABLISHING PROCEDURES FOR
DETERMINING ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT,
AND (IV) SETTING A FINAL HEARING RELATED THERETO**

The above-captioned debtor and debtor in possession (the “**Debtor**”) hereby submits this motion (this “**Motion**”) for the entry of interim and final orders, substantially in the form attached hereto as **Exhibit B** (the “**Proposed Interim Order**”) and **Exhibit C** (the “**Proposed Final Order**,” and together with the Proposed Interim Order, the “**Proposed Orders**”) (a) prohibiting the Debtor’s utility service providers from altering, refusing, or discontinuing utility services on account of prepetition invoices, (b) deeming the Debtor’s utility service providers adequately assured of future payment, (c) establishing procedures for determining additional adequate assurance of future payment and authorizing the Debtor to provide additional adequate assurance of future payment to its utility service providers, and (d) setting a final hearing related thereto. In support of this Motion, the Debtor relies upon and incorporates by reference the *Declaration of Erika Badan in Support of Chapter 11 Petition and First Day Motions* (the “**First Day**

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.



Declaration)² filed contemporaneously herewith. In further support of this Motion, the Debtor respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Pursuant to Rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

2. The statutory and legal predicates for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

3. On the date hereof (the “**Petition Date**”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its businesses and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Bankruptcy Code. No official committees have been appointed in this chapter 11 case and no request has been made for the appointment of a trustee or an examiner.

4. Additional information regarding the Debtor's businesses, its capital structure, and the circumstances leading to the filing of this chapter 11 case is set forth in the First Day Declaration.

I. UTILITY COMPANIES AND UTILITY SERVICES

5. In connection with the operation of its businesses, the Debtor obtains various utility services, including, but not limited to, electricity, water, gas, waste removal, and internet services (collectively, the "**Utility Services**") from utility companies (each, a "**Utility Company**," and collectively, the "**Utility Companies**"). Attached hereto as **Exhibit A** is a list (the "**Utility Service List**") of the Utility Companies providing services to the Debtor as of the Petition Date.³ The Debtor could not operate its businesses in the absence of continuous Utility Services. Thus, any interruption in such services would disrupt the Debtor's day-to-day operations and be incredibly harmful. On average, the Debtor pays approximately \$24,000 per month for Utility Services.

RELIEF REQUESTED

6. By this Motion, the Debtor requests that the Court enter the Proposed Orders, (a) prohibiting the Utility Companies from altering, refusing, or discontinuing the Utility Services on account of prepetition invoices, including the making of demands for security deposits or accelerated payment terms, (b) determining that the Debtor has provided each of the Utility Companies with "adequate assurance of payment" within the meaning of section 366 of the

³ The Debtor has endeavored to identify all of the Utility Companies and list them on **Exhibit A** hereto. However, inadvertent omissions may have occurred, and the omission from **Exhibit A** hereto of any entity providing Utility Services to the Debtor shall not be construed as an admission, waiver, acknowledgement, or consent that section 366 of the Bankruptcy Code does not apply to such entity. In addition, the Debtor reserves the right to assert that any of the entities now or hereafter included on the Utility Service List are not "utilities" within the meaning of section 366(a) of the Bankruptcy Code.

Bankruptcy Code (“**Adequate Assurance**”), based on the Debtor’s establishment of a segregated account in the amount of \$12,000 (the “**Utility Deposit**”), which equals approximately 50% of the Debtor’s estimated monthly cost of the Utility Services, (c) establishing procedures for determining additional adequate assurance of future payment, if any, and authorizing the Debtor to provide additional adequate assurance of future payment to the Utility Companies (the “**Assurance Procedures**”), and (d) setting a final hearing (the “**Final Hearing**”) on the proposed Adequate Assurance and Assurance Procedures.

BASIS FOR RELIEF

7. The unexpected termination or cessation (even if only temporary) of any of the Utility Services will result in disruption to the Debtor’s businesses, as well as a potential loss of revenue and profits. Any such interruption of the Utility Services would diminish or impair the Debtor’s efforts to preserve and maximize the value of its estate and to successfully prosecute this chapter 11 case. It is therefore critical that the Utility Services continue uninterrupted.

8. Section 366 of the Bankruptcy Code provides that, in a chapter 11 case, during the initial thirty (30) days after the commencement of the case, utilities may not alter, refuse, or discontinue service to, or discriminate against, a debtor solely on the basis of the commencement of its case or the existence of prepetition debts owed by the debtor. In a chapter 11 case, following the thirty-day period under section 366(c) of the Bankruptcy Code, utilities may discontinue service to the debtor if the debtor does not provide adequate assurance of future payment of its postpetition obligations in a form that is satisfactory to the utility, subject to the Court’s ability to modify the amount of adequate assurance.

9. The Debtor intends to pay undisputed postpetition charges for the Utility Services when due in the ordinary course of business. Nonetheless, to provide adequate assurance of

payment for future services to the Utility Companies under section 366 of the Bankruptcy Code, the Debtor proposes to establish the Utility Deposit, which represents approximately 50% of the Debtor's estimated aggregate monthly utility expenses, into a segregated account (the "**Utility Deposit Account**") within twenty (20) days of the Petition Date, to be maintained during the pendency of this chapter 11 case in the manner provided for herein and in the Proposed Orders.

10. While the form of adequate assurance of payment may be limited to the types of security enumerated in section 366(c)(1)(A) of the Bankruptcy Code,⁴ the determination of the amount of the adequate assurance is within the discretion of the Court. It is well established that the requirement that a utility receive adequate assurance of payment does not require a guarantee of payment. Instead, the protection granted to a utility under section 366 of the Bankruptcy Code is intended to avoid exposing the utility to an unreasonable risk of nonpayment.

11. The Debtor submits that the Utility Deposit constitutes sufficient adequate assurance to the Utility Companies. However, the Debtor proposes to establish the Assurance Procedures, pursuant to which a Utility Company may request additional adequate assurance of payment. If any Utility Company believes additional assurance is required, it may request such additional assurance pursuant to the Assurance Procedures. The Assurance Procedures are as follows:

- a. Any Utility Company desiring assurance of future payment for utility service beyond the Adequate Assurance must serve a request (an "**Additional Assurance Request**") so that it is received by the following: (i) the Debtor, Attn: Heidi Robinson (heidi.robinson@food52.com); (ii) proposed counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: James Diver (jdiver@ycst.com); (iii) counsel for the DIP Lender, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North

⁴ Section 366(c)(1)(A) provides that "assurance of payment" may be in the form of a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or another form of security that is mutually agreed on between the utility and the debtor. 11 U.S.C. § 366(c)(1)(A).

Carolina 28202, Attn: James R. Langdon (jimlangdon@mvlaw.com) and C. Cowden W. Rayburn (cowdenrayburn@mvlaw.com), and Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: William E. Chipman Jr. (chipman@chipmanbrown.com); and (iv) counsel to any statutory committee appointed in this chapter 11 case.

- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments, or other security currently held by the requesting Utility Company; and (v) explain why the requesting Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Debtor's receipt of an Additional Assurance Request at the addresses set forth above, the Debtor shall promptly negotiate with the requesting Utility Company to resolve its Additional Assurance Request.
- d. The Debtor may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in its discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments, and/or other forms of security, if the Debtor believes such additional assurance is reasonable. Without the need for any notice to, or action, order, or approval of, the Court, the Debtor may reduce the amount of the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtor and the affected Utility Company.
- e. If the Debtor determines that an Additional Assurance Request is not reasonable or are not able to resolve such request, the Debtor will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the "**Determination Hearing**"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code, which Determination Hearing shall be held at the next regularly-scheduled omnibus hearing in this chapter 11 case or such other date and time agreed to by the parties.

- f. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtor on account of unpaid charges for prepetition services, the commencement of this chapter 11 case, or any objections to the Adequate Assurance, or requiring the Debtor to furnish any additional deposit or other security for the continued provision of services.
- g. The Adequate Assurance shall be deemed adequate assurance of payment for any Utility Company that has received service of the Motion and the Proposed Interim Order or the Proposed Final Order, as applicable, that fails to make an Additional Assurance Request.

12. In addition to establishing the Assurance Procedures, the Debtor requests a Final Hearing on this Motion to be held within twenty-five (25) days of the Petition Date to ensure that, if a Utility Company argues it can unilaterally refuse service to the Debtor on the thirty-first (31st) day after the Petition Date, the Debtor will have the opportunity, to the extent necessary, to request that the Court make such modifications to the Assurance Procedures in time to avoid any potential termination of the Utility Services.

13. It is possible that, despite the Debtor's reasonable efforts, certain Utility Companies have not yet been identified by the Debtor or included on the Utility Service List (each, an "**Additional Utility Company**," and collectively, the "**Additional Utility Companies**"). Thus, promptly upon the discovery of an Additional Utility Company, the Debtor will increase the Utility Deposit by an amount equal to approximately 50% of the Debtor's estimated aggregate monthly utility expense for each Additional Utility Company subsequent to the Petition Date. In addition, the Debtor requests that the Court provide that the Additional Utility Companies are subject to the terms of the Proposed Orders (including the Assurance Procedures) once entered by the Court.

14. Further, it is possible that during the course of this chapter 11 case, certain utility accounts with the Utility Companies with respect to which funds have been contributed to the Utility Deposit will be closed (each, a "**Closed Account**"). The Debtor requests that if any utility

account with a Utility Company becomes a Closed Account during the course of this chapter 11 case, the Debtor shall be authorized to decrease the amount of the Utility Deposit by withdrawing from the Utility Deposit Account the amount deposited with respect to such Closed Account upon either (a) obtaining the affected Utility Company's consent to do so or (b) filing with the Court and serving upon the affected Utility Company a notice of the Debtor's intent to reduce the Utility Deposit within fourteen (14) days thereof and receiving no response thereto.

15. The Debtor submits that its proposed method of furnishing adequate assurance of payment for postpetition Utility Services is not prejudicial to the rights of any Utility Company and is in the best interest of the Debtor's estate and creditors. Because uninterrupted Utility Services are vital to the Debtor's business and, consequently, to the success of this chapter 11 case, the relief requested herein is necessary and in the best interests of the Debtor's estate and creditors. Such relief ensures that the Debtor's business operations will not experience any unexpected or inopportune interruption during the pendency of this chapter 11 case and provides the Utility Companies and the Debtor with an orderly, fair procedure for determining "adequate assurance" of payment.

16. For the foregoing reasons, the Debtor believes that granting the relief requested herein is appropriate and in the best interests of its estate and creditors.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

17. Under Bankruptcy Rule 6003, the Court may grant a motion to "use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" within twenty-one (21) days after the commencement of a chapter 11 case to the extent "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtor believes an immediate and orderly transition into chapter 11 is critical to the success of this chapter

11 case. As discussed in detail above, immediate and irreparable harm would result if the relief requested herein is not granted because any unexpected disruption of Utility Services would substantially diminish or impair the Debtor's effort in this chapter 11 case to preserve and maximize the value of its estate. Accordingly, the Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully requests that the Court approve the relief requested in this Motion on an emergency basis.

18. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief sought herein is necessary for the Debtor to operate its businesses without interruption, thereby preserving value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

19. Nothing in the Proposed Orders or this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay a claim.

NOTICE

20. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the DIP Lender; (c) counsel to The Chernin Group; (d) counsel to Avidbank; (e) the creditors listed on the Debtor's list of twenty (20) creditors holding the largest unsecured claims against the Debtor; (f) the United States Attorney for the District of Delaware; (g) the Internal Revenue Service; (h) the state attorneys general for states in which the Debtor conducts business; (i) the Utility Companies; and (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtor submits that, under the circumstances, no other or further notice is required.

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WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Orders granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: December 29, 2025
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Andrew M. Lee

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Kara Hammond Coyle (No. 4410)
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*Proposed Counsel for the Debtor
and Debtor in Possession*

EXHIBIT A

Utility Service List

Name of Provider	Type of Service	Account #	Address of Provider
BNY Tower Associates LLC (Landlord)	Water, Sewer, Electric	1558583	BNY Tower Associates LLC 800 Boylston St, Ste 1900 Boston, MA 02199
Portland General Electric (PGE)	Electric	1080130000	2181 NW Nicolai St Portland, OR 97210-1857
NW Natural Gas	Gas	2465383-4	PO Box 6017 Portland, OR 97228-6017
Arrow Sanitary Service	Trash, Recycling	2011-71839012	5455 NE 109th Ave Portland, OR 97220-1129
Portland Water Bureau	Water	297-167-260-0	2181 NW Nicolai St Portland, OR 97210-1857
Comcast	Internet	8778102115225120	3731 SW Rose Street Seattle, WA 98126
Verizon / Spectrum Business	Internet	U0542515	56 Hillcrest Drive Bernardston, MA 01337
Zayo	Telephone	937544	PO Box 734521 Chicago, IL 60673-4521

EXHIBIT B

Proposed Interim Order

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

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-____ (____)

Ref. Docket No. ____

**INTERIM ORDER (I) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING UTILITY SERVICES, (II) DEEMING
UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE PAYMENT,
(III) ESTABLISHING PROCEDURES FOR DETERMINING ADDITIONAL
ADEQUATE ASSURANCE OF PAYMENT, (IV) SETTING A FINAL HEARING
RELATED THERETO, AND (V) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an interim order (this “**Interim Order**”), pursuant to sections 105(a) and 366 of the Bankruptcy Code, (a) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of prepetition invoices, (b) deeming the Utility Companies adequately assured of future payment, (c) establishing Assurance Procedures for determining additional adequate assurance of future payment and authorizing the Debtor to provide additional adequate assurance of future payment to the Utility Companies, and (d) setting a final hearing related thereto; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors, and is necessary to avoid immediate and irreparable harm to the Debtor and its estate, as contemplated by Bankruptcy Rule 6003(b); and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on an interim basis as set forth herein.
2. Objections to entry of an order granting the Motion on a final basis must be filed by _____, 2026 at 4:00 p.m. (ET) and served on: (a) proposed counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com), Kara Hammond Coyle, Esq. (kcoyle@ycst.com), Elizabeth S. Justison, Esq. (ejustison@ycst.com), S. Alexander Faris, Esq. (afaris@ycst.com), and Andrew M. Lee, Esq. (alee@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Esq. (Benjamin.A.Hackman@usdoj.gov); (c) counsel for the DIP Lender, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: James R. Langdon, Esq. (jimlangdon@mvlaw.com) and C. Cowden W. Rayburn, Esq. (cowdenrayburn@mvlaw.com), and Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: William E. Chipman Jr., Esq. (chipman@chipmanbrown.com); and (d) counsel to any statutory

committee appointed in this chapter 11 case. A final hearing, if required, on the Motion will be held on _____, 2026 at _____.m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. Subject to the Assurance Procedures set forth below, no Utility Company may (a) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, the Debtor on the basis of the commencement of this chapter 11 case or on account of outstanding prepetition invoices, or (b) require additional assurance of payment, other than the Utility Deposit, as a condition to the Debtor receiving such Utility Services.

4. The Debtor shall deposit, as adequate assurance for the Utility Companies, the Utility Deposit into a segregated account maintained at a bank that has entered into a Uniform Depository Agreement in a form prescribed by the Office of the United States Trustee for the District of Delaware (the “**Utility Deposit Account**”) within twenty (20) days of the Petition Date to be maintained during the pendency of this chapter 11 case as provided for herein. Notwithstanding anything to the contrary in any other order of this Court, including any DIP financing order, no creditor, including the DIP Lender, shall have any interest in or lien on the Utility Deposit.

5. Subject to the Assurance Procedures set forth below, the Utility Deposit constitutes adequate assurance of future payment to the Utility Companies under section 366 of the Bankruptcy Code (the “**Adequate Assurance**”).

6. The following Assurance Procedures are approved in all respects:

- a. Any Utility Company desiring assurance of future payment for utility service beyond the Adequate Assurance must serve a request (an “**Additional Assurance Request**”) so that it is received by the following: (i) the Debtor, Attn: Heidi Robinson (heidi.robinson@food52.com); (ii) proposed counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000

North King Street, Wilmington, Delaware 19801, Attn: James Diver (jdiver@ycst.com); (iii) counsel for the DIP Lender, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: James R. Langdon (jimlangdon@mvlaw.com) and C. Cowden W. Rayburn (cowdenrayburn@mvlaw.com), and Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: William E. Chipman Jr. (chipman@chipmanbrown.com); and (iv) counsel to any statutory committee appointed in this chapter 11 case.

- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments, or other security currently held by the requesting Utility Company; and (v) explain why the requesting Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Debtor's receipt of an Additional Assurance Request at the addresses set forth above, the Debtor shall promptly negotiate with the requesting Utility Company to resolve its Additional Assurance Request.
- d. The Debtor may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in its discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments, and/or other forms of security, if the Debtor believes such additional assurance is reasonable. Without the need for any notice to, or action, order, or approval of, the Court, the Debtor may reduce the amount of the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtor and the affected Utility Company.
- e. If the Debtor determines that an Additional Assurance Request is not reasonable or are not able to resolve such request, the Debtor will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the "**Determination Hearing**"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code, which Determination Hearing shall be held

at the next regularly-scheduled omnibus hearing in this chapter 11 case or such other date and time agreed to by the parties.

- f. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtor on account of unpaid charges for prepetition services, the commencement of this chapter 11 case, or any objections to the Adequate Assurance, or requiring the Debtor to furnish any additional deposit or other security for the continued provision of services.
- g. The Adequate Assurance shall be deemed adequate assurance of payment for any Utility Company that has received service of the Motion and this Interim Order or the Final Order (defined below), as applicable, that fails to make an Additional Assurance Request.

7. The Debtor is authorized, as necessary, to provide a copy of this Interim Order, and any final order approving the relief requested in the Motion (any such order, the “**Final Order**”), to any Utility Company not listed on the Utility Service List (each, an “**Additional Utility Company**,” and collectively, the “**Additional Utility Companies**”) as such Additional Utility Companies are identified. Promptly upon providing a copy of this Interim Order and the Final Order to an Additional Utility Company, the Debtor shall increase the Utility Deposit by an amount equal to approximately 50% of the Debtor’s estimated monthly utility expense for such Additional Utility Company. The Additional Utility Companies shall be subject to the terms of this Interim Order and the Final Order, including the Assurance Procedures, as of the date of service of the Interim Order or the Final Order, as applicable.

8. Each Utility Company that has received service of the Motion and this Interim Order shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtor, in its discretion, agrees to an alternative assurance of payment with the Utility Company; or (b) this Court enters an order, after a Determination Hearing, requiring that additional adequate assurance of payment be provided to the Utility Company.

9. If any utility account with a Utility Company becomes a Closed Account during the course of this chapter 11 case, without the need for further order of this Court or notice to any parties except as otherwise provided herein, the Debtor shall be authorized to decrease the amount of the Utility Deposit by withdrawing from the Utility Deposit Account the amount deposited with respect to such Closed Account upon either (a) obtaining the affected Utility Company's consent to do so or (b) filing with this Court and serving upon the affected Utility Company a notice of the Debtor's intent to reduce the Utility Deposit within fourteen (14) days thereof and receiving no response thereto. If a Utility Company timely objects, the Debtor shall request a hearing before this Court at the next omnibus hearing date in this chapter 11 case, not less than fourteen (14) days after the objection is filed, or such other date that the Debtor and the Utility Company may agree, and the Debtor shall not decrease the amount of the Utility Deposit with respect to the affected Utility Company until such objection has been resolved either consensually or by order of this Court. Upon the effective date of a chapter 11 plan in this chapter 11 case, the Debtor may close the Utility Deposit Account without the need for any notice to, or action, order or approval of, this Court.

10. Nothing in this Interim Order is intended or shall be deemed to constitute a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List or is served with a copy of this Interim Order, the Motion or the Final Order.

11. Nothing in this Interim Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or

amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay any claim.

12. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

13. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtor's estate.

14. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

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

EXHIBIT C

Proposed Final Order

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

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-____ (____)

Ref. Docket Nos. ____ & ____

**FINAL ORDER (I) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING UTILITY SERVICES, (II) DEEMING UTILITY
COMPANIES ADEQUATELY ASSURED OF FUTURE PAYMENT,
(III) ESTABLISHING PROCEDURES FOR DETERMINING ADDITIONAL
ADEQUATE ASSURANCE OF PAYMENT; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an order (this “**Final Order**”), pursuant to sections 105(a) and 366 of the Bankruptcy Code, (a) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of prepetition invoices, (b) deeming the Utility Companies adequately assured of future payment, and (c) establishing Assurance Procedures for determining additional adequate assurance of future payment and authorizing the Debtor to provide additional adequate assurance of future payment to the Utility Companies; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C.

¹ The Debtor in this chapter 11 case is Food52, Inc. and the last four digits of the Debtor’s federal tax identification number are 2604. For the purpose of this chapter 11 case, the Debtor’s service address is 1 Dock 72 Way, 13th Floor, Brooklyn, New York 11205.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

§ 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, if any; and this Court having previously entered the *Interim Order (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, (IV) Setting a Final Hearing Related Thereto; and (V) Granting Related Relief* [Docket No. ___]; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtor, its estate, and its creditors; and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. Subject to the Assurance Procedures set forth below, no Utility Company may (a) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, the Debtor on the basis of the commencement of this chapter 11 case or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Utility Deposit, as a condition to the Debtor receiving such Utility Services.
3. To the extent not already done, the Debtor shall promptly deposit, as adequate assurance for the Utility Companies, the Utility Deposit into a segregated account maintained at a bank that has entered into a Uniform Depository Agreement in a form prescribed by the Office of the United States Trustee for the District of Delaware (the “**Utility Deposit Account**”) to be maintained during the pendency of this chapter 11 case as provided for herein. Notwithstanding anything to the contrary in any other order of this Court, including any DIP financing order, no creditor, including the DIP Lender, shall have any interest in or lien on the Utility Deposit.

4. Subject to the Assurance Procedures set forth below, the Utility Deposit constitutes adequate assurance of future payment to the Utility Companies under section 366 of the Bankruptcy Code (the “**Adequate Assurance**”).

5. The following Assurance Procedures are approved in all respects:

- a. Any Utility Company desiring assurance of future payment for utility service beyond the Adequate Assurance must serve a request (an “**Additional Assurance Request**”) so that it is received by the following: (i) the Debtor, Attn: Heidi Robinson (heidi.robinson@food52.com); (ii) proposed counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: James Diver (jdiver@ycst.com); (iii) counsel for the DIP Lender, Moore & Van Allen PLLC, 100 N. Tryon Street, Suite 4700, Charlotte, North Carolina 28202, Attn: James R. Langdon (jimlangdon@mvlaw.com) and C. Cowden W. Rayburn (cowdenrayburn@mvlaw.com), and Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Wilmington, Delaware 19801, Attn: William E. Chipman Jr. (chipman@chipmanbrown.com); and (iv) counsel to any statutory committee appointed in this chapter 11 case.
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits, prepayments, or other security currently held by the requesting Utility Company; and (v) explain why the requesting Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Debtor’s receipt of an Additional Assurance Request at the addresses set forth above, the Debtor shall promptly negotiate with the requesting Utility Company to resolve its Additional Assurance Request.
- d. The Debtor may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in its discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments, and/or other forms of security, if the Debtor believes

such additional assurance is reasonable. Without the need for any notice to, or action, order, or approval of, the Court, the Debtor may reduce the amount of the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtor and the affected Utility Company.

- e. If the Debtor determines that an Additional Assurance Request is not reasonable or are not able to resolve such request, the Debtor will request a hearing before the Court to determine the adequacy of assurances of payment made to the requesting Utility Company (the “**Determination Hearing**”), pursuant to section 366(c)(3)(A) of the Bankruptcy Code, which Determination Hearing shall be held at the next regularly-scheduled omnibus hearing in this chapter 11 case or such other date and time agreed to by the parties.
- f. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall be restrained from discontinuing, altering or refusing service to the Debtor on account of unpaid charges for prepetition services, the commencement of this chapter 11 case, or any objections to the Adequate Assurance, or requiring the Debtor to furnish any additional deposit or other security for the continued provision of services.
- g. The Adequate Assurance shall be deemed adequate assurance of payment for any Utility Company that has received service of the Motion and the Interim Order or this Final Order, as applicable, that fails to make an Additional Assurance Request.

6. The Debtor is authorized, as necessary, to provide a copy of this Final Order to any Utility Company not listed on the Utility Service List (each, an “**Additional Utility Company**,” and collectively, the “**Additional Utility Companies**”) as such Utility Companies are identified. Promptly upon providing a copy of this Final Order to an Additional Utility Company, the Debtor shall increase the Utility Deposit by an amount equal to approximately 50% of the Debtor’s estimated monthly utility expense for such Additional Utility Company. The Additional Utility Companies shall be subject to the terms of this Final Order, including the Assurance Procedures, as of the date of service of this Final Order.

7. Each Utility Company that has received service of the Motion and this Final Order shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtor, in its discretion, agrees to an alternative assurance of payment with the Utility Company; or (b) this Court enters an order, after a Determination Hearing, requiring that additional adequate assurance of payment be provided to the Utility Company.

8. If any utility account with a Utility Company becomes a Closed Account during the course of this chapter 11 case, without the need for further order of this Court or notice to any parties except as otherwise provided herein, the Debtor shall be authorized to decrease the amount of the Utility Deposit by withdrawing from the Utility Deposit Account the amount deposited with respect to such Closed Account upon either (a) obtaining the affected Utility Company's consent to do so or (b) filing with this Court and serving upon the affected Utility Company a notice of the Debtor's intent to reduce the Utility Deposit within fourteen (14) days thereof and receiving no response thereto. If a Utility Company timely objects, the Debtor shall request a hearing before this Court at the next omnibus hearing date in this chapter 11 case, not less than fourteen (14) days after the objection is filed, or such other date that the Debtor and the Utility Company may agree, and the Debtor shall not decrease the amount of the Utility Deposit with respect to the affected Utility Company until such objection has been resolved either consensually or by order of this Court. Upon the effective date of a chapter 11 plan in this chapter 11 case, the Debtor may close the Utility Deposit Account without the need for any notice to, or action, order, or approval of, this Court.

9. Nothing in this Final Order is intended or shall be deemed to constitute a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy

Code, whether or not such entity is listed on the Utility Service List or is served with a copy of the interim order on the Motion previously entered by this Court, this Final Order or the Motion.

10. Nothing in this Final Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; or (c) shall be construed as a promise to pay any claim.

11. The Debtor is authorized to take any and all actions necessary to effectuate the relief granted herein.

12. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

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