

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

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In re:

HINES HORTICULTURE, INC., et al.,<sup>1</sup>

Debtors.

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)  
) Chapter 11

)  
) Case No. 08-11922

)  
) Jointly Administered

)  
) Re: Docket Nos. 10 & 40

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**FINAL ORDER DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR  
FUTURE UTILITY SERVICES**

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Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors (collectively, the "Debtors") for the entry of the Final Order determining adequate assurance of payment for future utility services and the First Day Declaration; the Court having entered the Interim Order Determining Adequate Assurance of Payment for Future Utility Services and Setting a Final Hearing [Docket No. 40] (the "Interim Order"); it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED**

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<sup>1</sup> The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's federal tax identification numbers are: Hines Horticulture, Inc. (3204) and Hines Nurseries, Inc. (1319). The location of the Debtors' corporate headquarters and the service address for both Debtors is: 12621 Jeffrey Road, Irvine, California 92620.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

1. The Motion is granted as provided herein on a final basis.
2. The Utility Providers are prohibited from altering, refusing or discontinuing service on account of any unpaid prepetition charges or requiring additional adequate assurance of payment other than as set forth in the Motion.

1. The Adequate Assurance Deposit is hereby approved on a final basis and is deemed adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code.

2. A Utility Provider desiring additional assurances of payment beyond the Adequate Assurance Deposit, whether in the form of deposits, prepayments or otherwise must serve an Additional Assurance Request in accordance with the procedures set forth of Exhibit 1 attached hereto (which shall be substantially the same as Exhibit 1 attached to the Interim Order) (the "Adequate Assurance Procedures") upon the Debtors at the following addresses: (a) Hines Horticulture, Inc. and Hines Nurseries, Inc., 12621 Jeffrey Road, Irvine, California 92620, Attn: Claudia M. Pieropan; and (b) Kirkland & Ellis LLP, 200 East Randolph Street, Chicago, Illinois 60601, Attn: Anup Sathy, P.C., Ray C. Schrock and Ross M. Kwasteniet.

3. Any Additional Assurance Request must (a) be made in writing, (b) set forth the location for which utility services are provided, (c) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits, and (d) explain why the Utility Provider believes the Adequate Assurance Deposit is not sufficient adequate assurance of future payment.

4. Upon the Debtors' receipt of any Additional Assurance Request at the addresses set forth in paragraph 4 of this Final Order, the Debtors shall have the Resolution Period to

negotiate with such Utility Provider to resolve such Utility Provider's request for additional assurance of payment.

5. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the requesting Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments and other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

6. If the Debtors determine that an Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider filing such Additional Assurance Request during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a Determination Hearing.

7. Pending resolution of any such Determination Hearing, the Utility Provider filing such Additional Assurance Request shall be prohibited from altering, refusing or discontinuing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the adequacy of the Adequate Assurance Deposit.

8. A Utility Provider shall be deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code unless and until (a) the Debtors, in their sole discretion, agree to an alternative assurance of payment with the Utility Provider or (b) the Court enters an order requiring that additional adequate assurance of payment be provided.

9. A Utility Provider who fails to make an Additional Assurance Request shall be deemed to have stipulated that the Adequate Assurance Deposit constitutes adequate assurance of payment to such Utility Provider within the meaning of section 366 of the Bankruptcy Code.

10. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Provider, and the Interim Order and Final Order shall apply to any such Utility Provider that is subsequently added to the Utility Service List.

11. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of the Motion and the Final Order on such subsequently added Utility Provider. Such subsequently added entities would then have 20 days from service of the Motion and the Final Order to make an objection. Pending resolution of any such objection, the subsequently added Utility Provider filing such objection shall be prohibited from altering, refusing or discontinuing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the adequacy of the Adequate Assurance Deposit.

12. Any Utility Provider who failed to file a timely objection to the Motion in accordance with the Objection Procedures is deemed to consent to the Adequate Assurance Procedures and shall be bound by this Order.

13. Nothing in this Order or the Motion shall be deemed to constitute the postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

14. The Debtors' service of this Motion upon the Utility Service List shall not constitute an admission or concession that such entities are a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

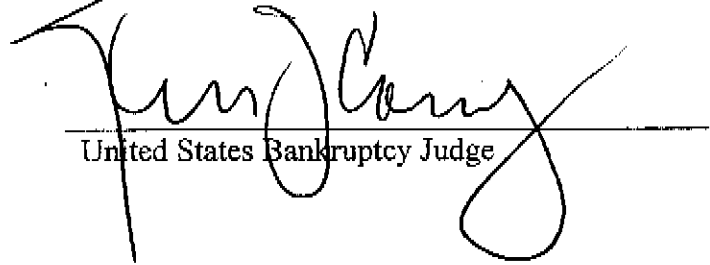
15. The relief granted herein is for all Utility Providers providing utility services to the Debtors and is not limited to those listed on the Utility Service List.

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

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

18. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Date: Sept 10, 2008  
Wilmington, Delaware

  
United States Bankruptcy Judge