

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

In re:

FOOD52, INC.,¹

Debtor.

Chapter 11

Case No. 25-12277 (LSS)

Ref. Docket Nos. 4 & 34

**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. 34]; 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.
- b. 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.

- c. 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.
- d. 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.
- e. 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.

Dated: January 21st, 2026
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE