

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

IN RE:	§	
SCHLOTZSKY'S, INC.	§	CASE NO. 04-54504
SCHLOTZSKY'S RESTAURANTS, INC.	§	CASE NO. 04-54506
SCHLOTZSKY'S REAL ESTATE, INC.	§	CASE NO. 04-54507
SCHLOTZSKY'S FRANCHISOR, LLC	§	CASE NO. 04-54508
SCHLOTZSKY'S FRANCHISE OPERATIONS, LLC	§	CASE NO. 04-54509
SCHLOTZSKY'S BRAND PRODUCTS, LLC	§	CASE NO. 04-54510
DFW RESTAURANT TRANSFER CORP.	§	CASE NO. 04-54511
56 <sup>TH</sup> AND 6 <sup>TH</sup> , INC.	§	CASE NO. 04-54512
RAD ACQUISITION CORP.	§	CASE NO. 04-54513
SAN FELIPE, LLC,	§	CASE NO. 04-54514
<b>Debtors.</b>	§	<b>CHAPTER 11</b>
	§	(Motion for Joint Administration Pending)

**EMERGENCY MOTION FOR ORDER EXTENDING PERIOD DURING WHICH  
UTILITY COMPANIES MAY NOT ALTER, REFUSE OR DISCONTINUE SERVICES**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Schlotsky's, Inc. ("SI"), Schlotsky's Restaurants, Inc. ("Restaurants"), Schlotsky's Real Estate, Inc. ("Real Estate"), Schlotsky's Franchisor, LLC ("Franchisor"), Schlotsky's Franchise Operations, LLC ("Franchise Operations"), Schlotsky's Brand Products ("Brand Products"), DFW Restaurant Transfer Corp. ("DFW"), 56<sup>th</sup> and 6<sup>th</sup>, Inc. ("56<sup>th</sup> and 6<sup>th</sup>"), RAD Acquisition Corp. ("RAD"), San Felipe, LLC ("San Felipe") (collectively, "Schlotsky's" or the

“Debtors”), files this their Emergency Motion for Order Extending Period During Which Utility Companies may not Alter, Refuse or Discontinue Services (the “Motion”), and respectfully represent as follows::

## **I. JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **II. BACKGROUND**

2. The Bankruptcy Cases. On August 3, 2004 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division.

3. Since the Petition Date, the Debtors have managed their affairs and conducted their businesses as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee has been appointed in the Debtors’ Chapter 11 cases.

4. The Debtors’ Businesses. SI, through its wholly-owned subsidiaries, is a franchisor and operator of restaurants in the fast casual sector under the Schlotzsky’s brand. Schlotzsky’s restaurants offer a current menu of hot sandwiches and pizza served on their proprietary buns and crusts as well as wraps, chips, salads, soups, desserts and beverages.

5. As of August 2, 2004, the Schlotzsky’s system included 471 domestic franchised restaurants, twenty-one (21) company-owned restaurants (“Company Restaurants”) and twenty-

one (21) international franchised restaurants located in thirty-six (36) states, the District of Columbia, and six (6) foreign countries.

6. In 2003, the Schlotzsky's system generated revenues of approximately \$56.2 million through two business segments: franchise operations and restaurant operations. The Franchise Operations segment is a key source of revenues for Schlotzsky's through royalties that Franchisor collects from its franchisees for the use of trademarks and operating systems and license fees that Brand Products receives from manufacturers and supply chain managers of Schlotzsky's brand products. Several brand products, including chips, cheeses and meats, are available for retail sale in grocery and other retail stores. The Restaurant Operations segment operates the Company Restaurants.

7. Schlotzsky's, Inc. SI is a Texas corporation with executive offices located at 203 Colorado Street, Suite 600, Austin, Texas 78701. SI is the parent corporation of Franchisor, Restaurants, Real Estate, Franchise Operations, DFW and RAD. SI has approximately one hundred nine (109) employees, including the corporate office staff and the restaurant managers of the Company Restaurants.

8. Schlotzsky's Franchisor, LLC. Franchisor is a Delaware limited liability company wholly owned by SI and is the parent company of Brand Products. Franchisor is the "Franchisor" or "Grantor" under all franchise agreements, area developer agreements and master license agreements, owns Schlotzsky's intellectual property, including the trademarks, and also licenses Brand Products the right to sublicense private label use of the Schlotzsky's brand. Franchisor has no employees.

9. Schlotzsky's Brand Products, LLC. Brand Products is a Delaware limited liability company wholly owned by Franchisor. Brand Products receives license fees from licensed third party manufacturers and supply chain managers based on their sales of Schlotzsky's brand products to distributors who in turn sell to the Schlotzsky's restaurant system and to retail outlets. Brand Products has no employees.

10. Schlotzsky's Restaurants, Inc. Restaurants is a Texas corporation wholly-owned by SI and is the parent corporation of 56th and 6th. Restaurants operates the twenty-one (21) Company Restaurants. Fifteen (15) of these Company Restaurants are in Schlotzsky's long-term portfolio that Schlotzsky's intends to operate for the purposes of leadership of the franchise system and, in certain cases, to stimulate the redevelopment of certain markets. These stores also are used to demonstrate sales potential and key operating metrics, to build brand awareness, and to serve as laboratories for product development, concept refinement, product and process testing, and training. In addition, Schlotzsky's operates six (6) Company Restaurants that were developed for or acquired from franchisees and are expected to be operated until those stores are re-franchised or otherwise divested. Restaurants has approximately 625 employees.

11. Schlotzsky's Franchise Operations, LLC. Franchise Operations is a Delaware limited liability company wholly owned by SI. Franchise Operations is party to a management agreement pursuant to which it manages, services and administers certain assets owned by Franchisor, Brand Products, and two SI affiliates, Schlotzsky's N.A.M.F., Inc. and Schlotzsky's NAMF Funding, LLC, including all franchise agreements, area developer agreements and master license agreements, all Schlotzsky's intellectual property, including trademarks, and also all

licensing by Brand Products of private label use of the Schlotzsky's brand. Franchise Operations has approximately 22 employees.

12. Schlotzsky's Real Estate, Inc. Real Estate is a Texas corporation wholly-owned by SI. Real Estate is party to a number of real estate mortgage and lease contracts and documentation for the Company Restaurants that are operated by Restaurants. Real Estate has no employees.

13. DFW Restaurant Transfer Corp. DFW is a Texas corporation wholly-owned by SI. DFW serves as the Area Developer under certain Area Developer Agreements that were re-purchased by Schlotzsky's through DFW and holds certain real estate and equipment leases and contracts associated with several recently closed Company Restaurants in Georgia, Mississippi and Utah. Pursuant to these Area Developer Agreements, DFW performs certain ongoing services for franchisees in its area developer territories and receives a percentage of the gross sales from those franchisees. DFW has no employees.

14. RAD Acquisition Corp. RAD is a Texas corporation wholly-owned by SI. RAD serves as the Area Developer under certain Area Developer Agreements that were re-purchased by Schlotzsky's through RAD and holds certain real estate and equipment leases and contracts associated with recently closed Company Restaurants in Tennessee and New Mexico. Pursuant to these Area Developer Agreements, RAD performs certain ongoing services for franchisees in its area developer territories and receives a percentage of the gross sales from those franchisees. RAD has no employees.

15. 56th & 6th, Inc. 56th & 6th is a Texas corporation wholly-owned by Restaurants. 56th & 6th is party to certain Franchise Agreements and other agreements related to the

operation of three now closed Schlotzsky's restaurants in New York and Tennessee. 56th & 6th no longer has employees.

16. San Felipe, LLC San Felipe is a Texas limited liability company that is owned 50% by SRI and 50% by a third party named Uptown Restaurants, Inc. Restaurants has sole right and authority to control the operations of San Felipe. As a Special Member, Uptown Restaurants, Inc.'s sole right is to receive a Special Member Cash Distribution to be paid in monthly installments through September 2006. San Felipe, LLC operates one Schlotzsky's restaurant in Texas and has approximately twenty (20) employees.

### **III. RELIEF REQUESTED**

17. The Debtors anticipate filing a motion relating to adequate assurance of payment of utilities (the "Adequate Assurance Motion") within the first days following the Petition Date. Because the Adequate Assurance Motion has not been decided by the Court, the Debtors seek an extension of the twenty-day period within which they must provide adequate assurance of payment to the Utility Companies attached as **Exhibit A** hereto for post-petition utility services until (a) the date on which this Court enters an order approving the Adequate Assurance Motion, or (b) if the Court denies the relief requested in the Adequate Assurance Motion, the date which is thirty (30) days after the entry date of an order denying the relief requested in the Adequate Assurance Motion (the "Extended Period").

### **IV. BASIS FOR RELIEF**

18. Section 366 of the Bankruptcy Code governs the rights and obligations of utility companies as providers of services to debtors in bankruptcy. In particular, Section 366 provides:

- (a) Except as provided in subsection (b) 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.
- (b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

11 U.S.C. § 366.

19. The extension requested in this Motion is necessary to assure there is no termination of the Debtors' utility services prior to a decision by the Court on the Adequate Assurance Motion. Moreover, given the competing demands on the time and attention of the Debtors' employees during the initial post-petition period, twenty (20) days is too short a period of time to negotiate the form of adequate assurance of payment, if any, to be furnished to all of the Utility Companies.

20. An extension of the twenty-day period will give the Debtors adequate opportunity to negotiate with the Utility Companies and will ensure that the Debtors are not required to pledge cash assets for the benefit of the Utility Companies that would be better used in other aspects of the Debtors' reorganization.

21. There is a very low probability that any Utility Company would be harmed by the relief requested since the Debtor's cash flow projections include payment of all Utility Company obligations as they come due.

22. The Extended Period for this Court to hear and enter an order pursuant to the Adequate Assurance Motion is necessary to ensure that the Debtors' proposed method of furnishing adequate assurance of payment is not unilaterally rejected by the Utility Companies. In the event the Court does not approve the Adequate Assurance Motion, the additional thirty (30) days will provide the Debtors with a sufficient period of time to contact each of the Utility Companies and attempt to negotiate a mutually acceptable form of adequate assurance of payment.

23. The Debtors respectfully request that the Court exercise its authority to prevent the expiration of the twenty-day period that will occur if notice and a hearing are required. Courts have recognized in other contexts that a bankruptcy court may grant extensions of time *ex parte*. See, e.g. *Chapman Investment Assoc. v. Am. Healthcare Mgmt. (In re Am. Healthcare Mgmt, Inc.)*, 900 F.2d 827, 832 (5th Cir. 1990) (recognizing that bankruptcy court has authority to grant extension of time to assume or reject leases without affording other parties notice and a hearing).

## V. NOTICE

24. Pursuant to the Standing Order on First Day Motions in Chapter 11 Cases dated May 3, 2001, the Debtors have served notice of this hearing on the United States Trustee's Office for the Western District of Texas, the twenty largest unsecured creditors, known secured creditors, and counsel for Commercial National Bank, NS Associates I, Ltd. ("NS"), and Jeff and John Wooley via hand-delivery, telephone, telecopier, or email. In light of the nature of the relief requested, the Debtors respectfully submit that the Court may enter an Order granting the relief requested without further notice or hearing.

**WHEREFORE**, the Debtors respectfully request that the Court enter an Order (i) granting this Motion in full and in all respects; and (ii) granting to the Debtors such other and further relief to which the Debtors may be justly entitled.

**RESPECTFULLY SUBMITTED THIS 3RD DAY OF AUGUST, 2004.**

HAYNES AND BOONE, LLP

By: /s/ Robert D. Albergotti  
Robert D. Albergotti  
State Bar No. 00969800  
Sarah B. Foster  
State Bar No. 07297500  
HAYNES AND BOONE, LLP  
901 Main Street, Suite 3100  
Dallas, Texas 75202  
Tel.: 214-651-5000  
Fax: 214-651-5940

PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

## EXHIBIT A

Aaron's Home Repair Services  
11225 Jockey Bluff Drive  
Austin, Tx 78748

Alabama Power  
#2 Industrial Park Dr.  
Pelham, Al 35124

Allegiance Telecom Of Arizona,  
P.O. Box 650226  
Dallas, Tx 75265-0226

Allegiance Telecom Of Texas,  
P.O. Box 650226  
Dallas, Tx 75265-0226

Allegiance Telecom, Inc,  
P.O. Box 650226  
Dallas, Tx 75265-0226

American Waste Removal Inc.  
502 Carmony Lane N.E.  
Albuquerque, Nm 87107

Aps(2907)  
P.O. Box 2907  
Phoenix, Az 85062

At &T (2971)  
P.O. Box 2971  
Omaha, Ne 68103-2971

At&T (2969)  
P.O. Box 2969  
Omaha, Ne 68103-2969

At&T (9001310)  
P.O. Box 9001310  
Louisville, Ky 40290-1310

At&T Wireless  
Po Box 105773  
Atlanta, Ga 30348-5773

At&T Wireless (650054)  
P.O. Box 650054  
Dallas, Tx 75265-0054

At&T Wireless (8220)  
P.O. Box 8220  
Aurora, Il 60572-8220

Bell South (105262)  
P.O. Box 105262  
Atlanta, Ga 30348-5262

Bell South (740144)  
P.O. Box 740144  
Atlanta, Ga 30374-0144

Bestline  
500 Capital Of Texas Hwy North, Building 8  
Suite 200  
Austin, Tx 78746-3335

Birch Telecom  
P.O. Box 660111  
Dallas, Tx 75266-0111

Birmingham Water Works Board  
3600 1st Avenue North  
Birmingham, Al 35222

Browning Ferris Industries  
National Accounts Service Ctr, P.O. Box  
99917  
Chicago, Il 60696-7717

Center Point Energy  
P.O. Box 1325  
Houston, Tx 77251-1325

City Of Austin Utilities  
P.O. Box 2267  
Austin, Tx 78768-2267

City Of Austin- Utilities  
P.O. Box 2267  
Austin, Tx 78783-2267

City Of Cartersville  
P.O. Box 1390, 10 Public Square  
Cartersville, Ga 30120

City Of Cedar Park  
600 N. Bell Blvd  
Cedar Park, Tx 78613

City Of College Station - Util  
Utility Customer Services, Po Box 10230  
College Station, Tx 77842

City Of Hoover  
P.O. Box 830269  
Birmingham, Al 35283-0269

City Of Houston, Water  
P.O. Box 1560  
Houston, Tx 77251

City Of Pearl  
P.O. Box 54195  
Pearl, Ms 39288-4195

City Of Rio Rancho  
Water & Wastewater Service, P.O. Box 27228  
Albuquerque, Nm 871257228

City Of Round Rock  
Utility Billing, 221 E. Main  
Round Rock, Tx 78664-5299

City Of Southaven (Water)  
5813 Pepperchase Dr.  
Southaven, Ms 38671  
City Of Springdale  
Business License Div, 201 Spring Street  
Springdale, Ar 72764

Cobb Emc  
P.O. Box 369  
Marietta, Ga 30061-0369

Comcast  
P.O. Box 105257  
Atlanta, Ga 30348-5257

Communigroup  
P.O. Box 940  
Jackson, Ms 39205-0940

Emergence Telecom Group, Inc.  
P.O. Box 81623  
Austin, Tx 78708-1623

Entergy  
P.O. Box 61825  
New Orleans, La 70161-1825

Fulton County Finance Department  
P.O. Box 105300  
Atlanta, Ga 30348

Georgia Power  
96 Annex  
Atlanta, Ga 30396-0001

Mci (856053)  
P.O. Box 856053  
Louisville, Ky 40285-6053

Merit Littlefield I, L.P.  
101 W. 6th Street, Suite 340  
Austin, Tx 78701

Mississippi Valley Gas Company  
P.O. Box 619785  
Dallas, Tx 75261-9785

Pedernales Electric Co  
P.O. Box 1  
Johnson City, Tx 78636

Pnm Electric & Gas Services  
Alvarado Square  
Albuquerque, Nm 87158

Qwest - (29060)  
P.O. Box 29060  
Phoenix, Az 850389060

Qwest (Denver)  
P.O. Box 173821  
Denver, Co 80217-3821

Reliant Energy  
P.O. Box 4932  
Houston, Tx 77210-4932

Rreef America Reit Ii Portfoli  
75 Remittance Drive # 1845  
Chicago, Il 60675-1845

Sbc (630047)  
P.O. Box 630047  
Dallas, Tx 75263-0047

Southern Union Gas  
P.O. Box 66831  
St. Louis, Mo 63166-6831

Southwestern Bell (630047)  
P.O. Box 630047  
Dallas, Tx 75263-0047

Southwestern Bell (650502)  
P.O. Box 650502  
Dallas, Tx 75265-0502

Sprint (219505)  
P.O. Box 219505  
Kansas City, Mo 64121-9505

Sprint (6419)  
P.O. Box 6419  
Carol Stream, Il 60197-6419

Sprint (650270)  
P.O. Box 650270  
Dallas, Tx 75265-0270

Texas Gas Service  
P.O. Box 269042  
Oklahoma City, Ok 73126-9042

TXU Energy  
P.O. Box 100001  
Dallas, Tx 75310-0001

TXU Gas  
P.O. Box 650654  
Dallas, Tx 75265-0654

Verizon Southwest  
P.O. Box 920041  
Dallas, Tx 75392-0041