

Vickie L. Driver
State Bar No. 24026886
Christina W. Stephenson
State Bar No. 24049535
Christopher M. Staine
State Bar No. 24104576
CROWE & DUNLEVY, P.C.
Spaces McKinney Avenue
1919 McKinney Avenue, Suite 100
Dallas, TX 75201
Telephone: 214.420.2163
Facsimile: 214.736.1762
Email: vickie.driver@crowedunlevy.com
Email: crissie.stephenson@crowedunlevy.com
E-mail: christopher.staine@crowedunlevy.com

PROPOSED COUNSEL FOR THE DEBTORS

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § **Chapter 11**
§
THE LASALLE GROUP, INC., et al.,¹ § **Case No. 19-31484-sgj-11**
§
Debtors. § **(Jointly Administered)**

**DEBTORS’ EMERGENCY MOTION FOR ORDER UNDER 11 U.S.C.
§§ 105(A) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM
ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF
PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS
ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS BY UTILITY
COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

The above-captioned debtors (the “Debtors”), debtors-in-possession in the above-referenced chapter 11 cases, file this *Debtors’ Emergency Motion for an Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account as Adequate Assurance of*

¹ A list of the Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto as Schedule 1. The Debtors’ mailing address is 545 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062.

Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Adequate Assurance of Payment (the “Motion”) and in support thereof, respectfully represents as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion 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 pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

2. On May 2, 2019 (the “Petition Date”), the Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their business as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has not been appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

4. A more detailed description of the Debtors and their business, the facts and circumstances leading up to the filing of the Debtors Chapter 11 Cases, and the facts supporting the Motion are set forth in greater detail in the *Declaration of Karen G. Nicolaou in Support of First Day Motions* (the “First Day Declaration”), which is incorporated by reference in this Motion.

5. As more fully described in the First Day Declaration, LaSalle directly and indirectly owns interests in forty (40) memory care assisted living communities located in Texas, Illinois, Georgia, Florida, Kansas, Missouri, Oklahoma, South Carolina, and Wisconsin. The Memory Care Facilities are home to approximately fourteen hundred (1400) individuals (collectively, the “Residents”).

6. In the normal course of their business operations, the Debtors have relationships with many different utility companies and other providers (each a “Utility Company” and, collectively, the “Utility Companies”) for the provision of electric, water, sewer, natural gas, trash removal, alarm, telephone, cellular telephone, internet services, and similar utility products and services (collectively, the “Utility Services”) at their various locations. The Utility Companies include, without limitation, the entities set forth on the list attached hereto as **Exhibit A**.²

7. The average monthly amount owed to the Utility Companies is approximately \$21,900.00. The Debtors have also placed deposits totaling approximately \$2,074.00 with certain Utility Companies (each an “Existing Utility Deposit” and together the “Existing Utility Deposits”). The Debtors owe certain amounts to Utility Companies as of the Petition Date for prepetition Utility Services. Due to the timing of the Petition Date in relationship to the Utility Companies’ billing cycles, the Debtors are also aware of Utility Services that have been invoiced

² While the Debtors have used their best efforts to list their Utility Companies in Exhibit A, the Debtors may have inadvertently omitted certain Utility Companies from Exhibit A. Accordingly, the Debtors request that they be authorized, without further order of the Court, to amend Exhibit A to add any Utility Companies that were omitted therefrom and that the relief requested herein apply to all such entities added to Exhibit A. In addition, the Debtors reserve the right to argue that (a) any of the entities now or hereafter listed in Exhibit A is not a “utility” within the meaning of Bankruptcy Code § 366, and (b) any such entity is compelled by contractual obligation, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the filing of the Chapter 11 Cases.

to the Debtors for which payment is not yet due and Utility Services that have been provided since the end of the last billing cycle but not yet invoiced to the Debtors.

III. RELIEF REQUESTED

8. The Debtors respectfully request, pursuant to Bankruptcy Code §§ 105(a) and 366, the entry of an interim order (i) prohibiting the Utility Companies from altering or discontinuing service on account of unpaid prepetition invoices, (ii) establishing the Procedures (as defined below) for resolving any disputes regarding requests for adequate assurance of payment, and (iii) scheduling a final hearing on the Motion (the “Final Hearing”) within thirty (30) days of the Petition Date.

9. Uninterrupted Utility Services are essential to the continued operations of the Debtors’ businesses. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted and the Residents of the various facilities would be left at risk. If such disruption occurred, the impact on the Debtors’ business and revenue would be extremely harmful and would jeopardize the Debtors’ efforts to undertake an orderly liquidation and transfer process. It is critical that Utility Services continue uninterrupted and that the relief in this Motion be granted.

10. By this Motion, the Debtors seek to respect the protections that the Utility Companies have under the Bankruptcy Code, while affording the Debtors an opportunity to provide and negotiate adequate assurance without facing the threat of imminent termination of Utility Services. In particular, the Debtors request approval of certain procedures that balance the protections afforded the Utility Companies under Bankruptcy Code § 366 and the Debtors’ need for continuous and uninterrupted Utility Services.

A. Proposed Adequate Assurance

11. The Debtors anticipate that the cash flow from their ongoing business operations will be sufficient to allow the Debtors to pay postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional adequate assurance of payment for future Utility Services, the Debtors will deposit **\$10,120.00**, a sum equal to nearly 50% of the Debtors' estimated monthly cost of its Utility Services, into a separate, segregated, interest-bearing account, that will be established and funded within thirty business days after the Petition Date (the "Utility Deposit Account"). The Debtors will maintain the Utility Deposit Account with a minimum balance equal to approximately 50% of the Debtors' estimated monthly cost of Utility Services from Utility Companies without an Existing Utility Deposit Account, which may be adjusted by the Debtors to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with individual Utility Companies. The Debtors will also maintain all of their Existing Utility Deposits.

12. The Debtors further propose that to the extent the Debtors become delinquent with respect to postpetition payment for Utility Services from a Utility Company, such Utility Company may file a notice of delinquency (a "Delinquency Notice") with the Court and serve such Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) counsel to the official committee of unsecured creditors, if one is appointed, and (d) the United States Trustee for the Northern District of Texas (each, a "Party in Interest"). The Debtors propose that if such delinquency is not cured and no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then, with respect to Utility Companies

that do not have an Existing Utility Deposit the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company's account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company. With respect to Utility Companies that have an Existing Utility Deposit, (i) the Utility Company will be permitted to draw down on the Existing Utility Deposit up to the amount of the postpetition charges claimed as delinquent, and (ii) the Debtors shall replenish the Existing Utility Deposit the amount drawn down by the Utility Company to cover the delinquent postpetition charges.

13. The Debtors represent that the Utility Deposit Account and the Existing Utility Deposits, together with the Debtors' ability to pay for future Utility Services in the ordinary course of business, provides sufficient adequate assurance to the Utility Companies.

B. The Additional Adequate Assurance Procedures

14. Notwithstanding the foregoing proposed adequate assurance, the Debtors anticipate that certain Utility Companies may not find the Utility Deposit Account and the Existing Utility Deposits, together with the Debtors' ability to pay for future Utility Services in the ordinary course of business satisfactory and, thus, may request additional adequate assurance of payment pursuant to Bankruptcy Code § 366(c)(2). Accordingly, the Debtors propose the following procedures (the "Procedures") for the Utility Company to make additional requests for adequate assurance:

- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each

account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors' payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an "Objection").

- (b) The Court has scheduled a final hearing on the Motion on _____ at ____m. (Central) (the "Hearing Date") for the purpose of considering any Objections;
- (c) Any Objection by a Utility Company listed on Exhibit A must be served upon, and actually received by, (i) the Debtors' counsel, Crowe & Dunlevy, P.C., Spaces at McKinney, 1919 McKinney Ave., Suite 100, Dallas, TX 75201, Attn: Vickie Driver, Christina Stephenson and Christopher Staine, by no later than five (5) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.
- (d) Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving a timely Objection, if the Debtors in their discretion determine that the Objection is reasonable.
- (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit A, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit A which supplement shall identify the Utility Company and either the amount of the existing security deposit held by the Utility Company or the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of this Interim Order.
- (f) In the event that a Utility Company not listed on Exhibit A objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Interim Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.
- (g) All Utility Companies will be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code § 366, without the need for an additional deposit or other security, until this Court enters an order to the contrary. Any Utility Company that fails to make a timely Objection shall be deemed to be satisfied that the Utility Deposit Account provides adequate

assurance of payment for future services within the meaning of Bankruptcy Code § 366(c)(2).

15. The Procedures provide a fair, reasonable, and orderly mechanism for the Utility Companies to seek additional adequate assurance, while temporarily maintaining the status quo for the benefit of all stakeholders.

IV. BASIS FOR RELIEF REQUESTED

16. Bankruptcy Code § 366 provides that:

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.

11 U.S.C. § 366(a).

17. Congress intended Bankruptcy Code § 366 to protect debtors from utility service cutoffs upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate assurance that the debtor will pay for postpetition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306; *see also Jones v. Boston Gas Co. (In re Jones)*, 369 B.R. 745, 748 (B.A.P. 1st Cir. 2007) (“The purpose of § 366 is ‘to prevent the threat of termination from being used to collect pre-petition debts while not forcing the utility to provide services for which it may never be paid.’”) (quoting *Begley v. Phila. Elec. Co. (In re Begley)*, 760 F.2d 46, 49 (3d Cir. 1985)). The relief requested in this Motion is consistent with this policy.

18. Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), courts, commentators, and legislative history had all confirmed that Bankruptcy Code § 366 does not require, in every case, that the debtor provide a

deposit or other security to its utilities as adequate assurance of payment. *In Virginia Electric & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 647 (2d. Cir. 1997), the United States Court of Appeals for the Second Circuit affirmed the bankruptcy court's ruling that the debtor's prepetition payment history, its postpetition liquidity, and the administrative expenses afforded postpetition invoices constituted adequate assurance of future performance. The court rejected the argument that Bankruptcy Code § 366(b) nevertheless requires a "deposit or other security."

19. A bankruptcy court's authority to "modify" the level of the "deposit or other security," provided for under Bankruptcy Code § 366(b) includes the power to require no "deposit or other security" where none is necessary to provide a utility with "adequate assurance of payment." *Id.* at 650; *see also Shirey v. Phila. Elec. Co. (In re Shirey)*, 25 B.R. 247, 249 (Bankr E.D. Pa. 1982) ("[S]ection 366(b). . . does not permit a utility to request adequate assurance of payment for continued service unless there has been a default by the debtor on a prepetition debt owed for services rendered").

20. In BAPCPA, Congress added Bankruptcy Code § 366(c). Bankruptcy Code § 366(c) provides that in a Chapter 11 case, a utility company may alter, refuse, or discontinue utility service if, within thirty (30) days after commencement of the Chapter 11 case, the utility company does not receive adequate assurance in a form "satisfactory" to the utility company, subject to the Court's ability to modify the amount of adequate assurance. In making a determination of whether an assurance of payment is adequate, the Court may no longer consider (i) the absence of security before the petition date, (ii) the debtor's history of timely payments or (iii) the availability of an administrative expense priority.

21. While the form of adequate assurance may be limited under Bankruptcy Code § 366(c), the amount of the deposit or other form of security remains fully within the reasonable discretion of the Bankruptcy Court, and Bankruptcy Code § 366(c) does not require a guarantee of payment. In *In re Adelpia Business Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D. N.Y. 2002), the Bankruptcy Court for the Southern District of New York stated that “[i]n determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment, but must only determine that the utility is not subject to an unreasonable risk of nonpayment for postpetition services.” The essence of the Court’s inquiry is an examination of the totality of the circumstances in making an informed judgment as to whether utilities will be subject to an unreasonable risk of nonpayment. *Id.* at 82-83; see *In re Anchor Glass Container Corp.*, 342 B.R. 872, 875 (Bankr. M.D. Fla. 2005).

22. The Utility Deposit Account and the Existing Utility Deposits provide the Utility Companies with ample adequate assurance of future payment under Bankruptcy Code § 366(c). In addition, the Debtors have significant incentives to stay current on its Utility Service obligations as they come due because of its reliance on the Utility Services for the operation of their businesses. These factors, which the Court may – and should – consider when determining the amount of any adequate assurance provided, justify a finding that the Utility Deposit Account and the Existing Utility Deposits are more than sufficient to assure the Utility Companies of future payments.

23. Despite the adequate assurance of future payment described above, the Debtors propose to protect the Utility Companies further by establishing the Procedures for requesting additional adequate assurance. Separate negotiations with each of the Utility Companies would

be time-consuming and unnecessarily divert the Debtors' personnel from other critical tasks related to the operation of their businesses and the restructuring. This is especially true given the fact that the Debtors operates at multiple locations, all of which have separate utility arrangements. During the first days of the Chapter 11 Cases, it would be incredibly difficult, costly, and would divert the Debtors' limited personnel resources to engage in separate negotiations with each potential Utility Company. Further, if individual negotiations were required and the Debtors were to fail to reach early agreements with each Utility Company, they would likely have to file further motions seeking expedited determinations as to adequate assurance or risk service termination.

24. The relief requested in the Motion preserves the status quo and ensures continued Utility Services, while providing a prompt forum for the resolution of any dispute as to adequate assurance. Bankruptcy Code § 105(a) authorizes the Bankruptcy court to enter "any order . . . that is necessary or appropriate to carry out the provisions of this title." Because the proposed Procedures protect the Debtors without materially prejudicing the Utility Companies, the Procedures are fully consistent with the requirements of Bankruptcy Code § 366 and appropriate under Bankruptcy Code § 105(a).

25. Courts in this and other jurisdictions have granted similar relief in Chapter 11 cases following the enactment of BAPCPA. See e.g. In re *SAS Healthcare, Inc.*, Case No. 19-40401 (MXM) (Bankr. N.D. Tex. Feb. 6, 2019) (approving adequate assurance in the form of a deposit equal to two weeks' estimated utility costs); In re *Senior Care Centers, LLC*, Case No. 18-33967 (BJH) (Bankr. N.D. Tex. December 28, 2018) (approving adequate assurance in the form of a deposit equal to two weeks' estimated utility costs); In re *Preferred Care Inc.*, Case

No. 17-44642 (MXM) (Bankr. N.D. Tex. Dec. 4, 2017) (approving adequate assurance in the form of a deposit equal to the combined average monthly bill for the last 3 months); In re *Erickson Incorporated*, Case No. 16-34393 (HDH) (Bankr. N.D. Tex. Dec. 5, 2016) (approving adequate assurance in the form of a deposit of \$100,000 to be adjusted to maintain a minimum balance equal to 50% of estimated monthly utility costs); and In re *Forest Park Medical Center at Southlake, LLC*, Case No. 16-40273 (RFN) (approving adequate assurance in the form of a deposit of \$35,030 to be adjusted to maintain a minimum balance equal to 50% of estimated monthly utility costs). The present circumstances warrant similar relief in these Chapter 11 Cases.

V. REQUEST FOR WAIVER OF STAY

26. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of the estates.

WHEREFORE the Debtors respectfully request that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 14th day of May 2019.

CROWE & DUNLEVY, P.C.

By: /s/ Christina W. Stephenson

Vickie L. Driver

State Bar No. 24026886

Christina W. Stephenson

State Bar No. 24049535

Christopher M. Staine

State Bar No. 24104576

Spaces McKinney Avenue

1919 McKinney Avenue, Suite 100

Dallas, TX 7501

Telephone: 214.420.2163

Facsimile: 214.736.1762

Email: vickie.driver@crowedunlevy.com

Email: crissie.stephenson@crowedunlevy.com

Email: christopher.staine@crowedunlevy.com

PROPOSED ATTORNEYS FOR DEBTORS

CERTIFICATE OF CONFERENCE

I hereby certify that on May 14, 2019, I conferred via email with Stephen McKitt for the U.S. Trustee's Office regarding the relief requested herein and Mr. McKitt confirmed the U.S. Trustee's office is not opposed to the relief requested herein.

/s/ Christina W. Stephenson

Christina W. Stephenson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon the parties listed on the Limited Service List via e-mail, U.S. Mail, overnight delivery, and/or electronic transmission via the Court's ECF noticing system on this 14th day of May, 2019.

/s/ Christina W. Stephenson
Christina W. Stephenson

Schedule 1**List of Debtors**

#	Debtor Name	Case No.	EIN
1	The LaSalle Group, Inc.	19-31484	0143
2	West Houston Memory Care, LLC	19-31485	2760
3	Cinco Ranch Memory Care, LLC	19-31486	2716
4	Pearland Memory Care, LLC	19-31488	5311
5	Riverstone Memory Care, LLC	19-31493	5407

Exhibit A

Utility Companies

The LaSalle Group, Inc, et al.
Proposed Utility Deposits

Debtor	Utility Provider	Service	Account #	Avg Monthly	Prepetition Deposit	Proposed Deposit
Cinco Ranch	Center Point	Gas	██████████547-9	\$ 420.00	\$ 495.00	\$ -
Cinco Ranch	Cinco Mud 12	Water	██████████3600	\$ 840.00		\$ 420.00
Cinco Ranch	Consolidated	Internet	██████████3500	\$ 90.00		\$ 45.00
Cinco Ranch	Entouch	Telecommunications	██████████569/0	\$ 670.00		\$ 335.00
Cinco Ranch	TXU Energy	Electric	██████████912	\$ 2,170.00		\$ 1,085.00
LaSalle	Comcast	Phone - Houston Office	██████████1961	\$ 30.00		\$ 15.00
LaSalle	Cox Communications	Internet - Florida	██████████6172	\$ -		\$ -
LaSalle	Level3 - Century Link	Phone Service	██████████3501	\$ 360.00		\$ 180.00
LaSalle	Time Warner	Cable	██████████CQHG	\$ 80.00		\$ 40.00
LaSalle	Verizon	Cell Phones	██████████9090	\$ 320.00		\$ 160.00
Pearland	Center Point	Gas	██████████0001	\$ 870.00	\$ 1,249.00	\$ -
Pearland	City of Pearland Water Dept	Water	██████████068-3	\$ 1,990.00		\$ 995.00
Pearland	Comcast	Telecommunications	██████████071-7	\$ 610.00		\$ 305.00
Pearland	Direct TV	Cable	██████████0234	\$ 120.00		\$ 60.00
Pearland	TXU Energy	Electric	██████████6787	\$ 2,310.00		\$ 1,155.00
Riverstone	Entouch	Telecommunications	██████████6109	\$ 600.00		\$ 300.00
Riverstone	Fort Bend Co Mud 115	Water	██████████925	\$ 1,120.00		\$ 560.00
Riverstone	SiEnergy	Gas	██████████8400	\$ 1,170.00		\$ 585.00
Riverstone	TXU Energy	Electric	██████████7700	\$ 1,920.00		\$ 960.00
West Houston	Birch	Phone	██████████3401	\$ 520.00		\$ 260.00
West Houston	Center Point	Gas	██████████2147	\$ 370.00	\$ 330.00	\$ -
West Houston	City of Houston	Water	██████████5643	\$ 1,290.00		\$ 645.00
West Houston	Direct TV	Cable	██████████4018	\$ 130.00		\$ 65.00
West Houston	Reliant	Electric	██████████9636	\$ 3,900.00		\$ 1,950.00
				\$ 21,900.00	\$ 2,074.00	\$ 10,120.00

Exhibit B

Proposed Order

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § **Chapter 11**
§
THE LASALLE GROUP, INC., et al.,¹ § **Case No. 19-31484-sgj-11**
§
Debtors. § **(Jointly Administered)**

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ORDER UNDER 11
U.S.C. §§ 105(A) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM
ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION
INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF
PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

On _____, 2019, the Court conducted a hearing to consider the *Debtors'*
Emergency Motion for an Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility
Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II)

¹ A list of the Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto as Schedule 1. The Debtors' mailing address is 545 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062.

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(A)
AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING
SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS
ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR
RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

Approving Deposit Account as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Adequate Assurance of Payment (the “Motion”),² filed by the above-captioned debtors (the “Debtors”). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors; (iv) proper and adequate notice of the Motion has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis.
2. Except in accordance with the procedures set forth below, absent further order of the Court, each Utility Company is prohibited from (a) altering, refusing, or discontinuing service to, or discriminating against the Debtors solely on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid invoice for services provided before the Petition Date; and (b) requiring the payment of a deposit or other security in connection with the Utility Companies’ continued provision of Utility Services, other than the establishment of the Utility Deposit Account.
3. The Debtors are authorized and directed to establish the Utility Deposit Account and shall deposit \$10,120.00 into the Utility Deposit Account for the purpose of providing Utility

² Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to such terms in the Motion.

Companies without an Existing Utility Deposit adequate assurance of payment for postpetition Utility Services provided to the Debtors. The Debtors shall maintain the Utility Deposit Account with a minimum balance equal to 50% of the Debtors' estimated monthly cost of Utility Services, which the Debtors may adjust to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with any Utility Company.

4. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall file a Delinquency Notice with the Court and serve such Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) counsel to the Debtors' secured lender, (d) counsel to the official committee of unsecured creditors, if one is appointed, and (e) the United States Trustee for the Northern District of Texas (each, a "Party in Interest"). If the Debtors have not cured such delinquency or no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then, with respect to Utility Companies that do not have an Existing Utility Deposit, the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company's account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company. With respect to Utility Companies that have an Existing Utility Deposit, (i) the Utility Company will be permitted to draw down on the Existing Utility Deposit up to the amount of the postpetition charges claimed as delinquent, and (ii) the Debtors shall replenish the Existing Utility Deposit the amount drawn down by the Utility Company to cover the delinquent postpetition charges.

5. The following procedures are hereby approved:
- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors' payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an "Objection").
 - (b) The Court has scheduled a final hearing on the Motion on _____ at _____ .m. (Central) (the "Hearing Date") for the purpose of considering any Objections;
 - (c) Any Objection by a Utility Company listed on Exhibit A must be served upon, and actually received by, (i) the Debtors' counsel, Crowe & Dunlevy, P.C., Spaces at McKinney, 1919 McKinney Ave., Suite 100, Dallas, TX 75201, Attn: Vickie Driver, Christina Stephenson and Christopher Staine, by no later than five (5) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.
 - (d) Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company, whether or not such Utility Company has filed an Objection, if the Debtors in their discretion determine that there is a reasonable basis for providing such additional adequate assurance.
 - (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit A to the Motion, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit A to the Motion which supplement shall identify the Utility Company either the amount of the existing security deposit held by the Utility Company or the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of this Interim Order.
 - (f) In the event that a Utility Company not listed on Exhibit A to the Motion objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Interim Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The

ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(A) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT

Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.

- (g) All Utility Companies will be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code § 366, without the need for an additional deposit or other security, until this Court enters an order to the contrary. Any Utility Company that fails to make a timely Objection shall be deemed to be satisfied that the Utility Deposit Account provides adequate assurance of payment for future services within the meaning of Bankruptcy Code § 366(c)(2).

6. In the event that no timely Objections are filed, this Interim Order shall be deemed a Final Order and immediately effective as a Final Order, without further notice or hearing on the Motion.

7. The Debtors shall serve this Interim Order upon each of the Utility Companies listed on Exhibit A to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, promptly after the entry of this Order.

8. The inclusion or exclusion of any entity on or from Exhibit A to the Motion or on or from any amended Exhibit A shall not constitute an admission that such entity is or is not a “utility” within the meaning of Bankruptcy Code § 366. This Order specifically reserves the Debtors’ right to argue that (a) any of the entities listed on Exhibit A to the Motion or any amended Exhibit A is not a “utility” within the meaning of Bankruptcy Code § 366, and (b) any such entity is compelled by contractual obligation, federal, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the Debtors’ filing of the Chapter 11 Cases.

9. Nothing in this Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by Bankruptcy

Code §§ 362 and 365 or other applicable law and nothing herein or in the Motion shall constitute postpetition assumption or adoption of any agreement pursuant to Bankruptcy Code § 365. Nothing in this Order shall be deemed a waiver by the Debtors or any other party of any right with respect to the assumption or rejection of an executory contract.

10. The Debtors are authorized to pay on a timely basis in accordance with their prepetition practices all undisputed invoices in respect of prepetition and postpetition Utility Services rendered by the Utility Companies to the Debtors.

11. Notwithstanding anything else in this Order to the contrary, any payments authorized to be made by this Order shall be subject to the terms, conditions, limitations, and restrictions set forth in that certain *Interim Order Authorizing Use of Cash Collateral and Granting Adequate Protection* [Docket No. 33], or as otherwise approved by the Debtors' prepetition lenders, and any further cash collateral orders entered by this Court (collectively, the "Cash Collateral Orders"), including, without limitation, the requirement that any payments authorized by this Order may only be made as permitted under the Budget approved in connection with such Cash Collateral Orders.

12. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

14. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

END OF ORDER

Submitted by:

/s/ Vickie L. Driver

Vickie L. Driver

State Bar No. 24026886

Christina W. Stephenson

State Bar No. 24049535

Christopher M. Staine

State Bar No. 24104576

CROWE & DUNLEVY, P.C.

Spaces McKinney Avenue

1919 McKinney Avenue, Suite 100

Dallas, TX 75201

Telephone: 214.420.2163

Facsimile: 214.736.1762

Email: vickie.driver@crowedunlevy.com

Email: crissie.stephenson@crowedunlevy.com

E-mail: christopher.staine@crowedunlevy.com

PROPOSED COUNSEL FOR THE DEBTORS

ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(A) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT