

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

GRITSTONE BIO, INC.,¹

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

**MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) APPROVING PROPOSED FORM OF ADEQUATE
ASSURANCE OF PAYMENT TO UTILITY COMPANIES; (II) ESTABLISHING
PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES;
(III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING,
OR DISCONTINUING SERVICE; AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor” or “Gritstone”) files this motion (the “Motion”) for the entry of an interim order on an expedited basis, substantially in the form attached hereto as **Exhibit A** (the “Proposed Interim Order”) and, following a final hearing to be set by the Court (the “Final Hearing”), the entry of a final order, substantially in the form attached hereto as **Exhibit B** (the “Proposed Final Order”): (i) approving the Debtor’s proposed form of adequate assurance of payment to the Utility Companies (as defined below); (ii) establishing procedures for resolving objections by Utility Companies relating to the adequacy of the proposed adequate assurance provided by the Debtor; (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtor on the basis of the commencement of this Chapter 11 Case or any outstanding prepetition debts; (iv) scheduling a final hearing; and (v) granting related relief. In support of this Motion, the Debtor relies upon and refer this Court to the *Declaration of Vassiliki (“Celia”) Economides in Support of the Debtor’s Chapter 11 Petition and First Day Relief* (the “First Day Declaration”),

¹ The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.



incorporated herein by reference.² In further support of the Motion, the Debtor respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Debtor receives essential utility services from several Utility Companies. A list of the Utility Companies and, where available, the Debtor's account number with each Utility Company, is attached hereto as **Exhibit C**. By this Motion, the Debtor seeks to minimize disruption of utility services to its operations and ensure a smooth transition into bankruptcy. Specifically, the Debtor requests approval of the form of adequate assurance of payment it will provide to its utility providers, a deposit, and procedures to resolve any dispute that may arise relating to the adequate assurance. The Debtor also requests that the Court prohibit its utility providers from discontinuing or otherwise affecting the Debtor's services, subject to compliance with the proposed procedures. These measures will ensure that the Debtor maintains essential utility services to its facilities at this critical juncture in its Chapter 11 Case, prevent irreparable harm to the Debtor's estate, and ultimately provide the Debtor with an opportunity to reorganize or otherwise sell its business as a going concern.

JURISDICTION AND VENUE

2. 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 February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. The Debtor confirms its consent, pursuant to Rule 9013-1(f) of the Local Rules, to the entry of a

² A capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declaration.

final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a) and 366 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-1.

BACKGROUND

5. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor is operating its business and managing its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Case, and no committees have been appointed or designated.

6. A detailed description of the Debtor’s business and facts precipitating the filing of the Debtor’s chapter 11 proceeding is set forth in the First Day Declaration.

A. The Utility Companies and Utility Services

7. In the ordinary course of business, the Debtor obtained various essential utility services (collectively, the “Utility Services”), including electricity, water, gas, garbage, and internet/telecom services, from a number of utility companies (collectively, the “Utility Companies”). A non-exclusive list of the Utility Companies is attached hereto as **Exhibit C** (the “Utility Services List”).³

³ The inclusion of any entity on, or the omission of any entity from, the Utility Services List is not an admission by the Debtor that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtor reserves all rights with respect to any such determination.

8. The Debtor relies on the Utility Companies to provide Utility Services to its office and research and development laboratory locations in Emeryville, California and Boston, Massachusetts and its manufacturing facility in Pleasanton, California. In its locations with Utility Services, the Debtor relies on the Utility Companies to provide necessary support to its employees, vendors, and customers. Preserving the Utility Services on an uninterrupted basis is essential to the Debtor's ongoing operations, and even a brief alteration or discontinuation of service would likely cause severe disruption to the Debtor's business.

9. The Debtor has historically paid prepetition invoices provided by the Utility Companies in the ordinary course of business in a timely manner. To the best of the Debtor's knowledge, there are no defaults or arrearages of any significance for the Debtor's undisputed invoices for prepetition Utility Services, other than payment interruptions that may be caused by the commencement of the Chapter 11 Case. Based on historical averages for Utility Services, the Debtor estimates that its cost of Utility Services for the next thirty days will be approximately \$47,000.00.

B. Proposed Adequate Assurance of Payment

10. The Debtor intends to pay all postpetition obligations owed to the Utility Companies in a timely manner. To provide the Utility Companies with adequate assurance pursuant to section 366 of the Bankruptcy Code, the Debtor proposes to deposit cash in an amount equal to one-half of one month's cost of Utility Services, calculated using the historical average for such payments (the "Utility Deposit"), into a newly created, segregated bank account established and maintained by the Debtor for the benefit of the Utility Companies (the "Utility Deposit Account"). As of the Petition Date, the Debtor estimates that the total amount of the Utility Deposit will be approximately \$23,375.00.

11. The Debtor will transfer funds for the Utility Deposit into the Utility Deposit Account within twenty (20) calendar days after the Petition Date, which the Debtor will hold in the Utility Deposit Account for the benefit of the Utility Companies on the Utility Services List during the pendency of the Chapter 11 Case.

12. The Debtor may adjust the Utility Deposit if the Debtor: (i) terminates any of the Utility Services provided by a Utility Company; (ii) makes other arrangements with certain Utility Companies for adequate assurance of payment; (iii) determines that an entity listed on the Utility Services List is not a utility company as defined by section 366 of the Bankruptcy Code; or (iv) supplements the Utility Services List to include additional Utility Companies.

13. The Debtor further requests that the Utility Deposit be automatically available to the Debtor, without further Court order, upon the earlier of the effective date of a chapter 11 plan and closure of the Chapter 11 Case. Additionally, if the Debtor terminates any of the Utility Services provided by a Utility Company, the Debtor requests that it be permitted to reduce the Utility Deposit to reflect the termination of that Utility Company.

14. The Debtor submits that the Utility Deposit, in conjunction with the Debtor's ability to pay for future Utility Services in the ordinary course of business (together, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility Companies in full satisfaction of section 366 of the Bankruptcy Code.

C. Proposed Adequate Assurance Procedures

15. To balance the right of each Utility Company to evaluate the Proposed Adequate Assurance for itself and the harm to the Debtor's businesses that would result from any interruption in services provided by the Utility Companies, the Debtor proposes the following adequate

assurance procedures (the “Adequate Assurance Procedures”) in the event that any Utility Company is not satisfied with the Proposed Adequate Assurance:

- a. The Debtor will serve a copy of this Motion and the Interim Order on the Utility Companies on the Utility Services List within two (2) calendar days after entry of the Interim Order.
- b. Subject to entry of the Interim Order, the Debtor will deposit the Utility Deposit, in the aggregate amount of \$23,375.00, in the Utility Deposit Account within twenty (20) calendar days after the Petition Date.
- c. The portion of the Utility Deposit attributable to each Utility Company will be returned to the Debtor on the earlier of: (i) reconciliation and payment by the Debtor of the Utility Company’s final invoice in accordance with applicable non-bankruptcy law following the Debtor’s termination of Utility Services from such Utility Company; and (ii) the earlier of: (a) the effective date of any chapter 11 plan confirmed in the Chapter 11 Case; and (b) the closure of the Chapter 11 Case; provided that there are no outstanding disputes related to postpetition payments due to the affected Utility Companies.
- d. Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the following parties: (i) proposed counsel to the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: John W. Lucas (jlucas@pszjlaw.com), James E. O’Neill (joneill@pszjlaw.com), and Brooke E. Wilson (bwilson@pszjlaw.com); (ii) the Office of The United States Trustee, 844 King Street Suite 2207, Lockbox 35, Wilmington, DE 19801; (iii) counsel to the Prepetition Secured Lenders; and (iv) counsel for any official committee of unsecured creditors appointed in the Chapter 11 Case.
- e. The Additional Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for those location(s), and the outstanding balance for each account; (iii) explain why the Utility Company believes the Utility Deposit is not adequate assurance of payment; and (iv) certify that the Utility Company does not already hold a deposit equal to or greater than two weeks of Utility Services provided by such Utility Company.
- f. An Additional Assurance Request may be made at any time. If a Utility Company does not serve an Additional Assurance Request, the Utility Company will be: (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy

Code; and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtor on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.

- g. Upon the Debtor's receipt of an Additional Assurance Request, the Debtor will negotiate with the Utility Company to resolve the Utility Company's Additional Assurance Request.
- h. The Debtor may, without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company and, the Debtor may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including cash deposits, prepayments, and other forms of security if the Debtor believes such additional assurance is reasonable.
- i. If the Debtor and the Utility Company are not able to reach an alternative resolution within thirty (30) calendar days of receipt of the Additional Assurance Request, the Debtor will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment with respect to the particular Utility Company (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code, unless the Debtor and the Utility Company agree in writing to extend the period.
- j. Pending resolution of the Additional Assurance Request and Determination Hearing, the Utility Company making the Additional Assurance Request will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtor on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- k. Notwithstanding anything in these procedures to the contrary, the Debtor will request a hearing (the "Final Adequate Assurance Hearing") to take place no later than thirty (30) calendar days following the Petition Date to resolve outstanding objections to these procedures in the event any are timely filed.

D. Subsequent Modification of Utility Services List

16. Although the Debtor has made an extensive and good faith effort to identify all of the Utility Companies and to include them on the Utility Services List, certain Utility Companies may not be listed therein. To the extent that the Debtor identifies additional Utility Companies, the Debtor shall promptly file amendments to the Utility Services List and serve copies of the

Interim Order or Final Order, as applicable, granting this Motion on any newly identified Utility Companies. In addition, the Debtor will increase the amount of the Utility Deposit to account for any newly identified Utility Companies. The Debtor requests that the Interim Order or Final Order, as applicable, bind all Utility Companies, regardless of when the Utility Companies are added to the Utility Services List.

RELIEF REQUESTED

17. By this Motion, the Debtor requests entry of the Proposed Interim Order and Proposed Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively: (i) approving the Debtor's proposed form of adequate assurance of payment to the Utility Companies; (ii) establishing procedures for resolving objections by Utility Companies relating to the adequacy of the proposed adequate assurance provided by the Debtor; (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtor on the basis of the commencement of the Chapter 11 Case or any outstanding prepetition debts; and (iv) granting related relief. In addition, the Debtor requests that the Court schedule a final hearing within approximately thirty-five (35) calendar days of the commencement of the Chapter 11 Case to consider approval of this Motion on a final basis.

BASIS FOR RELIEF

18. The relief requested in this Motion will ensure the continuation of the Debtor's business at this critical juncture as it transitions into bankruptcy. The relief requested also provides the Utility Companies with a fair and orderly procedure for determining requests for additional adequate assurance, without which the Debtor could be forced to address multiple requests by Utility Companies in a disorganized manner when the Debtor's efforts should be more productively focused on continuing to operate its business for the benefit of all parties in interest.

A. The Proposed Adequate Assurance is More than Adequate

19. Pursuant to section 366 of the Bankruptcy Code, a utility company may not alter, refuse, or discontinue service to, or discriminate against, a debtor *solely* on the basis of the commencement of a chapter 11 case or unpaid prepetition amounts. 11 U.S.C. § 366(a). However, a utility company may alter, refuse, or discontinue service if, during the first twenty days of a bankruptcy case, the debtor does not provide adequate assurance of payment for postpetition utility services, or if, during the first thirty days of a chapter 11 case, the debtor does not provide adequate assurance of payment for postpetition utility services in a form satisfactory to the utility company. 11 U.S.C. § 366(b), (c)(2).

20. The policy underlying section 366 of the Bankruptcy Code is to protect debtors from utility service cutoffs upon the filing of a bankruptcy case and to provide utility companies⁴ with adequate assurance that debtors will in fact pay for postpetition services. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 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) (quoting *Begley v. Phila. Elec. Co.*, 760 F.2d 46, 49 (3d Cir. 1985)) (“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.’”). As set forth herein, the Proposed Adequate Assurance requested in this Motion is consistent with these policy goals.

21. Section 366(c)(1)(A) of the Bankruptcy Code defines “assurance of payment” to mean several enumerated forms of security (*e.g.*, a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other mutually agreed upon security),

⁴ “Utility” is not defined in the Bankruptcy Code. However, bankruptcy courts have generally limited this to entities that have a “special relationship” with debtors, in that they provide debtors with an essential service, for which debtors have a need for continued access. *See, e.g., Darby v. Time Warner Cable, Inc. (In re Darby)*, 470 F.3d 573 (5th Cir. 2006).

while section 366(c)(1)(B) of the Bankruptcy Code expressly excludes from such definition an administrative expense priority for a utility's claim. 11 U.S.C. § 366(c). The Bankruptcy Code does not otherwise define what makes an assurance of payment "adequate," thereby placing such determination within the reasonable discretion of the bankruptcy court. *See* 11 U.S.C. § 366(b) ("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(c)(3)(A) ("On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2)."); *accord In re Pac. Gas & Elec. Co.*, 271 B.R. 626, 644 (N.D. Cal. 2002) ("The use of the word 'may' in the second sentence [of section 366(b) of the Bankruptcy Code] clearly contemplates that the decision whether to order security lies within the discretion of the Bankruptcy Court."); *In re Steinebach*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (internal citation omitted) ("Bankruptcy courts are afforded reasonable discretion in determining what constitutes adequate assurance"). However, when determining "whether an assurance of payment is adequate," a bankruptcy court may *not* consider three specific factors: (a) whether the debtors had a prepetition deposit; (b) whether the debtors paid their utility bills on time prepetition; or (c) the administrative expense priority afforded utilities postpetition. 11 U.S.C. § 366(c)(3)(B).

22. However, nothing in section 366(c) of the Bankruptcy Code precludes a bankruptcy court from considering other factors that could minimize the amount of the deposit, including (without limitation): (a) the right of the utility to terminate service upon nonpayment (*see In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987) (internal citations omitted) ("We note, in this regard, . . . that the Court of Appeals has stated . . . that a utility is well-protected, after establishment of adequate assurance, by its remedy to disconnect service as its remedy for non-

payment without recourse to the bankruptcy court, even though . . . the debtor is provided with an additional layer of protection arising from any available state utility commission Regulations limiting a utility's termination rights.”)); (b) the chapter 11 estate's liquidity (*see In re Agrifos Fertilizer, L.P.*, No. 01-35220-H2-11, 2002 WL 32054779, at *5 (Bankr. S.D. Tex. Nov. 25, 2002) (“If a debtor demonstrates . . . evidence of post-petition liquidity, a deposit may not be necessary, *Virginia Elec. Power Co. v. Caldor, Inc.* 117 F.3d 646 (2nd Cir. 1997).”)); and (c) the estate's net worth and ability to pay postpetition obligations (*see In re Best Prods. Co.*, 203 B.R. 51, 54 (Bankr. E.D. Va. 1996) (citation omitted) (“[T]he court should consider the debtor's . . . net worth, and the debtor's present and future ability to pay post-petition obligations.”)).

23. Therefore, although section 366(c)(2) of the Bankruptcy Code allows a utility company to take action if the debtor fails to provide adequate assurance of payment that the utility company deems “satisfactory,” the bankruptcy court is the ultimate arbiter of what is “satisfactory” assurance after taking into consideration all the facts of the case, including the relationship between the debtor and the utility company. *See, e.g., In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming the bankruptcy court's decision that no utility deposits were necessary where such deposits would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already [were] reasonably protected”); *In re Heard*, 84 B.R. 454, 459 (Bankr. W.D. Tex. 1987) (holding that, because the utility had not had any difficulty with the debtors during 14 years of service, “the utility need[ed] no adequate assurance”). Courts construing section 366(b) of the Bankruptcy Code have long recognized that adequate assurance of payment does not constitute an absolute guarantee of the debtor's ability to pay. *See, e.g., In re Caldor, Inc.—NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (citations omitted) (“Section 366(b) requires the Bankruptcy Court to determine whether the circumstances are sufficient to provide a utility with

‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*—NY, 117 F.3d 646 (2d Cir. 1997) (“Caldor II”); *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008) (citation omitted) (“Adequate assurance, however, is not a guarantee of payment; rather, it is intended to guard against the utility assuming an unreasonable risk of non-payment.”); *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“In determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment . . .”).

24. Thus, there is nothing to prevent a court from deciding, on the facts of the case before it, that the amount required of a debtor to provide adequate assurance of payment to a utility company should be nominal or even zero. *See, e.g., In re Pac-West Telecomm, Inc.*, No. 07-10562 (BLS) (Bankr. D. Del. May 2, 2007) [Docket No. 39] (approving adequate assurance in the form of a one-time supplemental prepayment to each utility company equal to the prorated amount of one week’s charges).⁵ Indeed, courts consider what is “need[ed] of the utility for assurance, and . . . require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Caldor II*, 117 F.3d at 650 (emphasis in original) (quoting *In re Penn Jersey Corp.*, 72 B.R. at 985); *see also In re Penn Cent. Transp. Co.*, 467 F.2d at 103–04; *In re Magnesium Corp. of Am.*, 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002).

25. Here, the Proposed Adequate Assurance is reasonable and satisfies the requirements of section 366 of the Bankruptcy Code. As set forth above, the Debtor fully intends

⁵ Prior to the enactment of section 366(c) of the Bankruptcy Code, courts frequently made parallel rulings pursuant to section 366(b) of the Bankruptcy Code. *See Penn. Cent.*, 467 F.2d at 103-04 (affirming the bankruptcy court’s decision that no utility deposit was necessary); *Caldor II*, 117 F.3d at 650 (“Even assuming that ‘other security’ should be interpreted narrowly, we agree with the appellees that a bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security,’ provided for under § 366(b), includes the power to require no ‘deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”).

to pay all postpetition obligations owed to the Utility Providers. The Debtor has historically paid prepetition invoices provided by the Utility Companies in the ordinary course of business in a timely manner. To the best of the Debtor's knowledge, there are no material defaults or arrearages of any significance for the Debtor's undisputed invoices for prepetition Utility Services, other than payment interruptions that may be caused by the commencement of the Chapter 11 Case. Additionally, the Utility Companies are protected through the Utility Deposit that will be held in a segregated account, and the Utility Companies are afforded flexibility and an opportunity to be heard through the Adequate Assurance Procedures. Accordingly, the Proposed Adequate Assurance is reasonable and satisfies section 366 of the Bankruptcy Code. Moreover, termination of the Utility Services could result in the Debtor's inability to operate its business, to the detriment of all stakeholders. *See In re Pilgrim's Pride Corp.*, No. 08-45664 (DML), 2009 WL 7313309, 2009 Bankr. LEXIS 2, at *6 (Bankr. N.D. Tex. Jan 4, 2009) ("The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic."); *In re Monroe Well Serv., Inc.*, 83 B.R. 317, 319, 322 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors would "cease operation" and that section 366 of the Bankruptcy Code "was intended to limit the leverage held by utility companies, not increase it").

26. Although the Debtor believes that it has a credible argument for a lower deposit than the Utility Deposit proposed herein, it believes that one-half of one month's deposit is more than adequate and should be more than satisfactory under the totality of the facts and circumstances. *See, e.g., In re Best Prods. Co.*, 203 B.R. at 54.⁶ This Court has granted similar relief in other cases. *See, e.g., In re Amyris, Inc. et al.*, Case No. 23-11131 (TMH) [Docket Nos. 60, 229] (Bankr. D. Del. Aug. 11 and Sept. 11, 2023); *In re Zosano Pharma Corp.*, Case No. 22-

⁶ The court in *Best Products* further permitted the debtor to apply prepetition deposits and prepayments to the postpetition deposits required by the court's ruling. *Id.* at 54 n.2.

10506 (JKS) [Docket No. 33] (Bankr. D. Del. June 8, 2022); *In re GT Real Estate Holdings, LLC*, Case No. 22-10505 (KBO) [Docket No. 49] (Bankr. D. Del. June 6, 2022); *In re TPC Group Inc., et al.*, Case No. 22-10493 (CTG) [Docket No. 119] (Bankr. D. Del. June 2, 2022); *In re Tect Aerospace Grp. Holdings, Inc., et al.*, Case No. 21-10670 (KBO) [Docket Nos. 35, 134] (Bankr. D. Del. April 7 and May 5, 2021).

B. The Adequate Assurance Procedures are Reasonable and Appropriate

27. The proposed Adequate Assurance Procedures are reasonable because they will ensure that the essential Utility Services continue while providing a streamlined process for Utility Companies to challenge the adequacy of the Proposed Adequate Assurance or seek an alternative form of adequate assurance.

28. As explained herein and in the First Day Declaration, continued and uninterrupted utility service is critical to the Debtor's operations and the success of the Chapter 11 Case. In contrast, pursuant to the Adequate Assurance Procedures proposed herein, the Utility Companies will not be prejudiced by continuing to provide their services to the Debtor postpetition. If a Utility Company does not believe that the Proposed Adequate Assurance is "satisfactory," such Utility Company may file an objection or submit an Additional Assurance Request pursuant to the Adequate Assurance Procedures proposed herein.

29. The Court has the power to approve the Adequate Assurance Procedures pursuant to section 105(a) of the Bankruptcy Code, which provides that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). The Adequate Assurance Procedures are necessary and appropriate to carry out the provisions of the Bankruptcy Code, as they will ensure that the Utility Services are continued without prejudicing the Utility Companies.

C. The Relief is Necessary to Avoid Immediate and Irreparable Harm

30. 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 21 days after the commencement of a chapter 11 case to the extent the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Here, the relief requested is necessary to avoid immediate and irreparable harm to the Debtor and the estate, as set forth in the First Day Declaration, and is therefore appropriate under Bankruptcy Rule 6003.

31. As discussed above, the urgency of the relief requested justifies immediate relief. To ensure the relief requested is implemented immediately, the Debtor requests that the Court waive the notice requirements under Bankruptcy Rule 6004(a), if applicable, and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

32. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor’s rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. If the Court grants the relief requested in this Motion, any authorized payment is not an admission of the validity of any claim or a waiver of the Debtor’s or any other party’s right to subsequently dispute such claim. In addition, authorization to pay the claims described in this Motion will not be deemed a direction to the Debtor to pay such claims.

33. The Debtor further reserves all rights to: (a) supplement the Utility Services List if it is determined that any Utility Company has been omitted; (b) challenge the status of any entity listed on the Utility Services List as a “utility” falling within the scope of section 366 of the Bankruptcy Code; and (c) terminate any Utility Services at any time and seek an immediate refund

of any Utility Deposit without giving effect to any right of setoff or recoupment or claim asserted by a Utility Company against the Debtor.

NOTICE

34. The Debtor will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware, 19801; (b) the holders of the 20 largest unsecured claims against the Debtor; (c) counsel to the Prepetition Secured Lender; (d) the United States Attorney's Office for the District of Delaware; (e) the state attorneys general for all states in which the Debtor conducts business; (f) the Securities Exchange Commission; and (g) any party that requests service pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within two business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m).

NO PRIOR REQUEST

35. The Debtor has not made any prior request for the relief sought herein to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: October 10, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen, (*Pro Hac Vice* forthcoming)

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*Proposed Counsel to the
Debtor and Debtor in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

GRITSTONE BIO, INC.,¹

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

Related Docket No.

**INTERIM ORDER (I) APPROVING PROPOSED FORM OF ADEQUATE
ASSURANCE OF PAYMENT TO UTILITY COMPANIES; (II) ESTABLISHING
PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES;
(III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE; 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 interim order (this “Interim Order”), pursuant to sections 105(a) and 366 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004: (i) approving the proposed form of adequate assurance of payment to the Utility Companies; (ii) establishing procedures for resolving objections by Utility Companies relating to the adequacy of the proposed adequate assurance provided by the Debtor; (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtor on the basis of the commencement of the Chapter 11 Case or any outstanding prepetition debts; and (iv) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and upon the Debtor’s representation that any form of adequate assurance of payment to the Utility Companies is consistent with the Debtor’s budget; and this Court having 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

¹ The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.

² A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2024 at __:00 __.m. (Eastern Time). Any objections or responses to entry of a final order on the Motion shall be filed with the Court and served so as to be received by the Notice Parties (as defined herein) on or before _____, 2024 at 4:00 p.m. (Eastern Time). In the event that no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.
3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.
4. Subject to compliance with the procedures set forth in the Motion and this Interim Order, all utility providers that have received notice, and for whose benefit Adequate Assurance

Deposits are being made, are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtor, on account of any unpaid prepetition charges or any perceived inadequacy of the Proposed Adequate Assurance.

5. The following Adequate Assurance Procedures are hereby approved:

- a. The Debtor will serve a copy of this Motion and the Interim Order on the Utility Companies on the Utility Services List within two (2) calendar days after entry of the Interim Order.
- b. Subject to entry of the Interim Order, the Debtor will deposit the Utility Deposit, in the aggregate amount of \$23,375.00, in the Utility Deposit Account within twenty (20) calendar days after the Petition Date.
- c. The portion of the Utility Deposit attributable to each Utility Company will be returned to the Debtor on the earlier of: (i) reconciliation and payment by the Debtor of the Utility Company's final invoice in accordance with applicable non-bankruptcy law following the Debtor's termination of Utility Services from such Utility Company; and (ii) the earlier of: (a) the effective date of any chapter 11 plan confirmed in the Chapter 11 Case; and (b) the closure of the Chapter 11 Case; provided that there are no outstanding disputes related to postpetition payments due to the affected Utility Companies.
- d. Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the following parties: (i) proposed counsel to the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: John W. Lucas (jlucas@pszjlaw.com), James E. O'Neill (joneill@pszjlaw.com), and Brooke E. Wilson (bwilson@pszjlaw.com); (ii) the Office of The United States Trustee, 844 King Street Suite 2207, Lockbox 35, Wilmington, DE 19801; (iii) counsel to the Prepetition Secured Lenders; and (iv) counsel for any official committee of unsecured creditors appointed in the Chapter 11 Case.
- e. The Additional Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for those location(s), and the outstanding balance for each account; (iii) explain why the Utility Company believes the Utility Deposit is not adequate assurance of payment; and (iv) certify that the Utility Company does not already hold a deposit equal to or greater than two weeks of Utility Services provided by such Utility Company.

- f. An Additional Assurance Request may be made at any time. If a Utility Company does not serve an Additional Assurance Request, the Utility Company will be forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtor on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon the Debtor's receipt of an Additional Assurance Request, the Debtor will negotiate with the Utility Company to resolve the Utility Company's Additional Assurance Request.
- h. The Debtor may, without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company and, the Debtor may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including cash deposits, prepayments, and other forms of security if the Debtor believes such additional assurance is reasonable.
- i. If the Debtor and the Utility Company are not able to reach an alternative resolution within fourteen (14) calendar days of receipt of the Additional Assurance Request, the Debtor will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment with respect to the particular Utility Company (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code, unless the Debtor and the Utility Company agree in writing to extend the period.
- j. Pending resolution of the Additional Assurance Request and Determination Hearing, the Utility Company making the Additional Assurance Request will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtor on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- k. Notwithstanding anything in these procedures to the contrary, the Debtor will request a hearing (the "Final Adequate Assurance Hearing") to take place no later than thirty (30) calendar days following the Petition Date to resolve outstanding objections to these procedures in the event any are timely filed.

6. All utility providers that have received notice, and for whose benefit Adequate Assurance Deposits are being made, are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

7. The Adequate Assurance Deposits shall be placed into a segregated account for the benefit of each Utility Company. Notwithstanding anything to the contrary in any other Order of this Court, the interests of any party, including but not limited to the Debtor's postpetition or prepetition lenders, in, or lien on, the Adequate Assurance Deposits shall be subordinate to the Utility Companies' interest in any Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtor or as otherwise ordered by the Court.

8. The inclusion of any entity in, as well as any omission of any entity from, the Utility Services List shall not be deemed an admission by the Debtor that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtor reserves all rights and defenses with respect thereto.

9. The Debtor is authorized to amend the Utility Services List to the extent the Debtor terminates the services of any Utility Company or identifies additional Utility Companies, and this Interim Order shall apply to any Utility Company that is added to the Utility Services List upon such Utility Company being added to the Utility Services List and being served with this Interim Order. The Debtor shall serve a copy of this Interim Order upon any Utility Company added to the Utility Services List prior to the entry of a final order.

10. The Debtor shall increase the amount of the Utility Deposit if an additional Utility Company is added to the Utility Services List by an amount equal to two (2) weeks of Utility Services provided by such additional Utility Company, calculated using the historical average for such payments during the twelve (12) months prior to the Petition Date.

11. The Debtor may terminate the services of any Utility Company and amend the Utility Services List to reflect such termination. The Debtor is authorized to reduce the Utility Deposit by the amount held on account of such terminated Utility Company upon seven (7)

calendar days' notice of such reduction and having not received a response thereto by such deadline.

12. The relief granted herein is applicable to all Utility Companies who have received notice of this Order that provide Utility Services to the Debtor.

13. This Interim Order is without prejudice to any party's rights to contest any amount owed to a Utility Company. Nothing in this Interim Order or the Motion shall be deemed to constitute postpetition assumption of any agreement under section 365 of the Bankruptcy Code.

14. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtor; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtor and any third party under section 365 of the Bankruptcy Code.

15. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

16. Under the circumstances of the Chapter 11 Case, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

17. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

18. This Court retains jurisdiction to enforce and implement the terms and provisions of this Interim Order and the Adequate Assurance Procedures and retains jurisdiction over any disputes with respect thereto.

19. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

EXHIBIT B

Proposed Final Order

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

In re:

GRITSTONE BIO, INC.,¹

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

Related Docket Nos.

**FINAL ORDER (I) APPROVING PROPOSED FORM OF ADEQUATE
ASSURANCE OF PAYMENT TO UTILITY COMPANIES; (II) ESTABLISHING
PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES;
(III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING,
OR DISCONTINUING SERVICE; 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 a final order (this “Final Order”), pursuant to sections 105(a) and 366 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004: (i) approving the Debtor’s proposed form of adequate assurance of payment to the Utility Companies; (ii) establishing procedures for resolving objections by Utility Companies relating to the adequacy of the proposed adequate assurance provided by the Debtor; (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtor on the basis of the commencement of the Chapter 11 Case or any outstanding prepetition debts; and (iv) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having 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 February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court having

¹ The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.

² A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.
3. Subject to compliance with the procedures set forth in the Motion and this Final Order, the Proposed Adequate Assurance shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code for all utility providers that have received notice and for whose benefit Adequate Assurance Deposits are being made.
4. Subject to compliance with the procedures set forth in the Motion and this Final Order, all utility providers that have received notice, and for whose benefit Adequate Assurance Deposits are being made, are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtor, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtor's Proposed Adequate Assurance, and all such utility

providers are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

5. The following Adequate Assurance Procedures are hereby approved:
 - a. The Debtor will serve a copy of the Final Order on the Utility Companies on the Utility Services List within three (3) calendar days after entry of the Final Order.
 - b. The Debtor will deposit the Utility Deposit, in the aggregate amount of \$23,375.00, in the Utility Deposit Account within twenty (20) calendar days after the Petition Date.
 - c. The portion of the Utility Deposit attributable to each Utility Company will be returned to the Debtor on the earlier of: (i) reconciliation and payment by the Debtor of the Utility Company's final invoice in accordance with applicable non-bankruptcy law following the Debtor's termination of Utility Services from such Utility Company; and (ii) the earlier of: (a) the effective date of any chapter 11 plan confirmed in the Chapter 11 Case; and (b) the closure of the Chapter 11 Case; provided that there are no outstanding disputes related to postpetition payments due to the affected Utility Companies.
 - d. Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the following parties: (i) proposed counsel to the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: John W. Lucas (jlucas@pszjlaw.com), James E. O'Neill (joneill@pszjlaw.com), and Brooke E. Wilson (bwilson@pszjlaw.com); (ii) the Office of The United States Trustee, 844 King Street Suite 2207, Lockbox 35, Wilmington, DE 19801; (iii) counsel to the Prepetition Secured Lenders; and (iv) counsel for any official committee of unsecured creditors appointed in the Chapter 11 Case.
 - e. The Additional Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for those location(s), and the outstanding balance for each account; (iii) explain why the Utility Company believes the Utility Deposit is not adequate assurance of payment; and (iv) certify that the Utility Company does not already hold a deposit equal to or greater than two weeks of Utility Services provided by such Utility Company.
 - f. An Additional Assurance Request may be made at any time. If a Utility Company does not serve an Additional Assurance Request, the Utility Company will be forbidden from discontinuing, altering, or refusing Utility

Services to, or discriminating against, the Debtor on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.

- g. Upon the Debtor's receipt of an Additional Assurance Request, the Debtor will negotiate with the Utility Company to resolve the Utility Company's Additional Assurance Request.
- h. The Debtor may, without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company and, the Debtor may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including cash deposits, prepayments, and other forms of security if the Debtor believes such additional assurance is reasonable.
- i. If the Debtor and the Utility Company are not able to reach an alternative resolution within fourteen (14) calendar days of receipt of the Additional Assurance Request, the Debtor will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment with respect to the particular Utility Company (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code, unless the Debtor and the Utility Company agree in writing to extend the period.
- j. Pending resolution of the Additional Assurance Request and Determination Hearing, the Utility Company making the Additional Assurance Request will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtor on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- k. Notwithstanding anything in these procedures to the contrary, the Debtor will request a hearing (the "Final Adequate Assurance Hearing") to take place no later than thirty (30) calendar days following the Petition Date to resolve outstanding objections to these procedures in the event any are timely filed.

6. All utility providers that have received notice, and for whose benefit Adequate Assurance Deposits are being made, are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Services List shall not be deemed an admission by the Debtor that such entity is, or is not, a utility

within the meaning of section 366 of the Bankruptcy Code, and the Debtor reserves all rights and defenses with respect thereto.

8. The Debtor is authorized to amend the Utility Services List to the extent the Debtor terminates the services of any Utility Company or identify additional Utility Companies, and this Final Order shall apply to any Utility Company that is added to the Utility Services List upon such Utility Company being added to the Utility Services List and being served with this Final Order. The Debtor shall serve a copy of this Final Order upon any Utility Company added to the Utility Services List.

9. The Debtor shall increase the amount of the Utility Deposit if an additional Utility Company is added to the Utility Services List by an amount equal to two (2) weeks of Utility Services provided by such additional Utility Company, calculated using the historical average for such payments during the twelve (12) months prior to the Petition Date.

10. The Debtor may terminate the services of any Utility Company and amend the Utility Services List to reflect such termination. The Debtor is authorized to reduce the Utility Deposit by the amount held on account of such terminated Utility Company upon seven (7) days' notice of such reduction and having not received a response thereto by such deadline.

11. The relief granted herein is applicable to all Utility Companies who have received notice of this Order that provide Utility Services to the Debtor.

12. This Final Order is without prejudice to any party's rights to contest any amount owed to a Utility Company. Nothing in this Final Order or the Motion shall be deemed to constitute postpetition assumption of any agreement under section 365 of the Bankruptcy Code.

13. Nothing contained in the Motion, the Interim Order, or this Final Order, nor any payment made pursuant to the authority granted by the Interim Order or this Final Order, is

intended to be or shall be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtor; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtor and any third party under section 365 of the Bankruptcy Code.

14. Under the circumstances of the Chapter 11 Case, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

15. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

16. This Court retains jurisdiction to enforce and implement the terms and provisions of this Final Order and the Adequate Assurance Procedures and retains jurisdiction over any disputes with respect thereto.

17. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

EXHIBIT C**Utility Services List**

Location of Services	Utility Provider	Account Number(s)	Type of Service	Average Monthly Billings	Proposed Utility Deposit
4698 Willow Road Pleasanton, CA 94588	PG&E	1287076691-7	Electrical and Gas	\$26,000.00	\$13,000.00
4698 Willow Road Pleasanton, CA 94588	Pleasanton Garbage Service	23674	Garbage and Recycle	\$4,000.00	\$2,000.00
4698 Willow Road Pleasanton, CA 94588	City of Pleasanton – Water	1800	Water	\$500.00	\$250.00
4698 Willow Road Pleasanton, CA 94588	Fusion Cloud Services	906872	Phone	\$800.00	\$400.00
5959 Horton Street Suite 300 Emeryville, CA 94608	AT&T	831-001-3583 796	Internet Services	\$2,500.00	\$1,125.00
4698 Willow Road Pleasanton, CA 94588	Comcast	939776248	Internet Services	\$1,200.00	\$600.00
4698 Willow Road Pleasanton, CA 94588	Triumvirate	50092	Medical/R&D Waste Removal	\$12,000.00	\$6,000.00