

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---------------------------------------|
| | § | |
| In re: | § | Chapter 11 |
| | § | |
| NEIGHBORS LEGACY HOLDINGS, INC., | § | Case No. 18-33836 (MI) |
| <i>et al.,</i> | § | |
| | § | (Joint Administration Pending) |
| Debtors.¹ | § | (Emergency Hearing Requested) |

DEBTORS' EMERGENCY MOTION FOR AN ORDER (I) APPROVING ADEQUATE ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II) ESTABLISHING PROCEDURES TO RESOLVE OBJECTIONS, AND (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 13, 2018, AT 10:30 A.M. IN COURTROOM 404, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002.

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors' principal place of business and the Debtors' service address is: 10800 Richmond Avenue, Houston, Texas 77042.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

Neighbors Legacy Holdings, Inc. (“NLH”) and certain of its affiliates and subsidiaries, as debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (the “Motion”) this Court for entry of an order under sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) approving the Debtors’ proposed form of adequate assurance of post-petition payment to the Utility Companies (as defined below); (ii) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance (as defined below); and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors solely on the basis of the commencement of the Chapter 11 Cases (as defined below), a debt that is owed by the Debtors for services rendered prior to the Petition Date (as defined below), or on account of any perceived inadequacy of the Proposed Adequate Assurance. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Chad J. Shandler in Support of Chapter 11 Petitions and First Day Pleadings (the “First Day Declaration”), filed with the Court concurrently herewith. In further support of the Motion, the Debtors, by and through their proposed undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. § 1408.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a) and 366 and Bankruptcy Rules 6003 and 6004.

EMERGENCY CONSIDERATION

3. Pursuant to Bankruptcy Local Rule 9013-1(i) and Bankruptcy Rule 6003, the Debtors request emergency consideration of this Motion. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003. As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Failure to receive the applicable relief during the first 21 days of the Chapter 11 Cases would thus severely disrupt the Debtors’ operations at this critical juncture. Particularly, the Debtors require immediate consideration of this Motion to prevent the Utility Companies from unilaterally altering, refusing, or discontinuing Utility Services. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

BACKGROUND

4. On July 12, 2018 (the “Petition Date”), the Debtors each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

5. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. To date, no creditors' committee has been appointed in the Chapter 11 Cases by the Office of the United States Trustee for the Southern District of Texas (the "United States Trustee"). No trustee or examiner has been appointed in the Chapter 11 Cases.

7. The Debtors currently operate 22 freestanding emergency centers (the "Emergency Centers") throughout the State of Texas, including in South Texas, El Paso, the Golden Triangle, the Permian Basin, the Panhandle, and the greater Houston area. The Debtors' Emergency Centers are designed to offer an attractive alternative to traditional hospital emergency rooms by reducing wait times, providing better working conditions for physicians and staff, and giving patient care the highest possible priority.

8. The Debtors' original parent was founded in 2008, and the first Neighbors emergency center opened in 2009. At their peak, the Debtors operated 33 Emergency Centers across three states. In recent years, the Debtors have experienced financial difficulties caused in large part by increased competition, less favorable insurance payor conditions, declining revenues, and disproportionate overhead costs as compared to their operational income. These challenges have caused significant strain on the Debtors' liquidity and threatened their ability to continue operating as a going concern. Prepetition, the Debtors engaged professionals and explored various out-of-court solutions, including closing unprofitable Emergency Centers and downsizing their corporate overhead. Ultimately, the Debtors' out-of-court restructuring efforts were unsuccessful and the Debtors elected to commence these Chapter 11 Cases.

9. Additional background information regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the Chapter 11 Cases, is set forth in detail in the First Day Declaration.

RELIEF REQUESTED

10. In connection with the operation of their businesses and the management of their properties, the Debtors obtain water, sewer, electricity, gas, telecommunications, internet, and similar utility products and services (collectively, the “Utility Services”).

11. By the Motion, pursuant to Bankruptcy Code sections 105(a) and 366, the Debtors seek entry of an order: (a) approving the Debtors’ proposed form of adequate assurance of post-petition payment to its utilities, as that term is used in Bankruptcy Code section 366 (the “Utility Companies”); (b) approving procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance (as defined below); (c) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against the Debtors solely on the basis of the commencement of the Chapter 11 Cases, a debt that is owed by the Debtors for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance.

12. A nonexclusive list of the Utility Companies is set forth on **Exhibit A** (the “Utility Company List”).² The relief requested herein pertains to all of the Utility Companies providing Utility Services to the Debtors and is not limited to those listed on the Utility Company List (as defined herein). On average, prior to the Petition Date, the Debtors spent approximately \$250,000 each month for Utility Services. The Debtors estimate that their monthly costs going forward will be substantially similar for the initial stages of the Chapter 11 Cases, but may be reduced as part of the Debtors’ cost-saving measures.

13. Uninterrupted Utility Services are essential to the Debtors’ continued operations. Should any Utility Company alter, refuse, or discontinue service, even for a brief period, the

² The Debtors reserve the right to argue that any of the entities now or hereafter listed on the Utility Company List are not “utilities” within the meaning of Bankruptcy Code section 366(a).

Debtors' business operations could be severely disrupted, jeopardizing the Debtors' reorganization efforts. It is therefore essential that the Utility Services continue uninterrupted.

A. The Proposed Adequate Assurance Payment

14. As an initial matter, the Debtors fully intend to timely pay all undisputed post-petition obligations owed to the Utility Companies in the ordinary course of business. To provide additional assurance of payment in conjunction with Bankruptcy Code Section 366, within seven (7) business days after entry of the Order, the Debtors will maintain a deposit of \$125,000 in the Debtors' bank accounts (any such account where the Debtors maintain the \$125,000 the "Utility Deposit Account") in the Utility Deposit Account, which is equal to approximately one half (1/2) of one month of Utility Services for all of the Utility Companies that do not already have deposits in place (the "Utility Deposit").

15. The Utility Deposit will be held by the Debtors for the benefit of the Utility Companies for the duration of the Chapter 11 Cases and may be applied to any post-petition defaults in payments to the Utility Companies.³ In the event that the Debtors fail to make a post-petition payment to a Utility Provider, it shall have a claim against the funds in the Utilities Account.

16. In addition, the Debtors seek authority to reduce the amount in the Utility Deposit Account by an amount equal to the cost of one half (1/2) of one month of Utility Services provided by any Utility Company (i) on account of a Utility Company that the Debtors subsequently determine, in their sole discretion, should be removed from the Utility Company List or (ii) on account of a Utility Company that already holds a sufficient deposit or prepayment.

³ The Debtors request that their obligation to maintain the Utility Deposit terminate upon the effective date of any chapter 11 plan confirmed in the Chapter 11 Cases.

B. Adequacy of Proposed Adequate Assurance

17. The Debtors submit that the Utility Deposit to be held in the Utility Deposit Account constitutes adequate assurance to the Utility Companies (the “Proposed Adequate Assurance”).

18. Accordingly, upon entry of the Order, any Utility Company that fails to serve upon the Adequate Assurance Notice Parties (as defined below) an Additional Assurance Request (as defined below) or file an objection to the Motion, shall be deemed to have been provided with adequate assurance of payment as required by Bankruptcy Code section 366 and shall be prohibited from altering, refusing, or discontinuing Utility Services, including as a result of unpaid charges for prepetition Utility Services.

19. In addition, such Utility Company will further be deemed to have waived any right to seek additional adequate assurance during the course of the Chapter 11 Cases, except as provided in Bankruptcy Code section 366(c)(3). If, however, a Utility Company believes adequate assurance beyond that proposed is necessary, the Debtors submit that the Utility Company must make an Additional Assurance Request pursuant to the procedures described below (the “Adequate Assurance Procedures”).

C. The Adequate Assurance Procedures

20. Given the acute harm any disruption in Utility Services would cause, but recognizing the right of the Utility Companies to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors propose the following Adequate Assurance Procedures to resolve Adequate Assurance Requests in an orderly and fair manner:

21. If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional adequate assurance of payment, it must serve a request for additional adequate assurance (an “Additional Assurance Request”) upon (i) the Debtors, c/o of the Debtors’

proposed CRO, Attn: Chad J. Shandler, CohnReznick LLP, 1301 Avenue of the Americas, New York, New York 10019, chad.shandler@cohnreznick.com; (ii) the Debtors' proposed counsel, Attn: John F. Higgins, Esq., jhiggins@porterhedges.com, and Eric M. English, Esq., eenglish@porterhedges.com, Porter Hedges LLP, 1000 South Main, 36th Floor, Houston, Texas 77002; and (iii) counsel to KeyBank National Association in its capacity as lender under the proposed postpetition credit agreement, Attn: Matthew E. Tashman, mtashman@reedsmith.com, Reed Smith LLP, Three Logan Square, 1717 Arch Street, Suite 3100, Philadelphia, PA 19103 (collectively, the "Adequate Assurance Notice Parties"), so that it is received no later than 14 (fourteen) days after entry of the order granting the relief requested herein.

22. Each Additional Assurance Request must: (i) be made in writing; (ii) set forth the amount and form of additional assurance of payment requested; (iii) set forth the type of Utility Services, any account numbers, and the location for which Utility Services are provided; (iv) include a summary of the Debtors' payment history to such Utility Company, including whether the Utility Company holds any deposits or other security, and if so, in what amount; and (v) set forth why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of payment.

23. Upon a Debtors' receipt of an Additional Assurance Request, the Debtors will have the greater of (i) fourteen (14) days from the receipt of such Additional Assurance Request or (ii) thirty (30) days from the entry of the order granting the relief requested in this Motion (the "Resolution Period") to negotiate with the requesting Utility Company and resolve the Additional Assurance Request. To facilitate negotiations, the Debtors and any Utility Company may, without notice or further order of the Court, extend the Resolution Period by such additional period as they shall mutually agree.

24. Should the Debtors be unable to reach a mutual resolution with respect to an Additional Assurance Request within the Resolution Period, the Debtors shall file a motion with the Court seeking a hearing to determine the adequacy of assurance of payment with respect to a particular Utility Company (the “Determination Motion”) and, if the Determination Motion is not withdrawn, the Court will determine the adequacy of the Proposed Adequate Assurance with respect to that Utility Company. The Debtors request that any Utility Company that makes an Additional Assurance Request be prohibited from altering, refusing, or discontinuing service, including as a result of unpaid charges for prepetition services, pending resolution of such Additional Assurance Request by agreement or Court order.

25. The Debtors may resolve any Additional Assurance Request, objection, or Determination Motion by mutual agreement with the Utility Company and may, in connection with any such agreement, modify the Utility Deposit contributed to the Utility Deposit Account for the benefit of such Utility Company and/or provide the Utility Company with an alternative form of adequate assurance of payment, without further order of this Court, if the Debtors believe such additional assurance is reasonable; provided, however, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to any official committee appointed in these cases and the United States Trustee upon demand.

26. The Debtors request that all Utility Companies who do not timely file an objection or make an Additional Assurance Request pursuant to the Adequate Assurance Procedures be deemed to consent to the Proposed Adequate Assurance and be bound by any order entered by this Court granting the Motion.

27. The Debtors request that any entered orders relating to the Motion be binding on all Utility Companies, regardless of when such Utility Company was added to the Utility Company List; provided, however, that if additional parties are added (any such party, a “Subsequently Identified Utility Company”), the Debtors may increase the amount of the Utility Deposit Account by an amount equal to the cost of one half (1/2) of one month of Utility Services provided by such Subsequently Identified Utility Company to the Debtors, based on the three immediate prior invoices received from such Utility Company prior to the Petition Date.

28. In addition, any Subsequently Identified Utility Company shall have the right to make an Additional Assurance Request on the Adequate Assurance Notice Parties within fourteen (14) days from the receipt of such Additional Assurance Request (the “Additional Assurance Request Deadline”). Any such request must be actually received by the Adequate Assurance Notice Parties by the Additional Assurance Request Deadline. If no timely Additional Assurance Request is filed, the provisions of the Order, shall apply to the Subsequently Identified Utility Company. Should any Subsequently Identified Utility Company make an Additional Assurance Request, the Debtors request that such Subsequently Identified Utility Company be prohibited from discontinuing, altering, or refusing service to the Debtors, including as a result of unpaid charges for prepetition services, pending resolution of such request.

D. Prohibition on Altering, Refusing, or Discontinuing Service

29. Pending the entry of the Order with respect to the Motion and pending resolution of any Additional Assurance Request, objection, or Determination Motion, the Debtors respectfully request that the Utility Companies, including the Subsequently Identified Utility Companies, be prohibited from (i) discriminating against the Debtors, (ii) altering, refusing, or discontinuing service to the Debtors, or (iii) requiring payment of a deposit or receipt or any

other security for continued service other than the Utility Deposit, as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices.

30. The Debtors maintain that the relief requested herein strikes a fair balance between protecting the rights of the Utility Companies and the rights of the Debtors under the Bankruptcy Code and the need for the Debtors to continue to receive, for the benefit of their estates, the Utility Services upon which the Debtors depend. The Debtors do not believe that the Utility Companies will be prejudiced by the Proposed Adequate Assurance, the requirement to provide the Debtors with uninterrupted access to Utility Services, or the procedures for resolving objections to the Proposed Adequate Assurance.

BASIS FOR RELIEF

A. The Proposed Adequate Assurance Provides Utility Companies with Adequate Assurance of Payment.

31. Bankruptcy Code section 366(a) provides:

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). Bankruptcy Code section 366(c)(2) goes on to provide, however, that a utility may alter, refuse, or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor or the trustee adequate "assurance of payment" within thirty days of the commencement of the debtor's chapter 11 cases.⁴

⁴ There is an apparent discrepancy between Bankruptcy Code subsections (b) and (c) because these two subsections set forth different time periods during which a utility is prohibited from altering, refusing, or discontinuing utility service. Specifically, Bankruptcy Code section 366(b) allows a utility to alter, refuse, or discontinue service "if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment," while section 366(c)(2) allows a utility in "a case filed under chapter 11" to alter, refuse, or discontinue service to a chapter 11 debtor "if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service . . ." Under the statutory construction canon that the specific language controls over the general, the language of Bankruptcy

32. The policy underlying Bankruptcy Code section 366 is 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 post-petition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306; *see also 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. Philadelphia Elec. Co.*, 760 F.2d 46, 49 (3d Cir. 1985)). As set forth herein, the relief requested in the Motion is consistent with the Bankruptcy Code’s policy goals.

33. Bankruptcy Code section 366(c)(1)(A) defines “assurance of payment” to include, among other things, “a cash deposit.” 11 U.S.C. § 366(c)(1)(A)(i). Here, the Debtors propose to place a deposit equal to one half (1/2) of one month of Utility Services into the Utility Deposit Account for the benefit of any Utility Company that requests a Utility Deposit. Additionally, the Debtors propose procedures that will permit the Utility Companies to seek greater or different security. Thus, the Proposed Adequate Assurance provides the Utility Companies with adequate assurance of payment consistent with the requirements of Bankruptcy Code section 366(c)(1)(A)(i).

34. Similar relief to that requested herein has been granted in this and other jurisdictions. *See, e.g., In re Emas Chiyoda Subsea Ltd.*, Case No. 17-31146 (MI), Docket No. 48 (Bankr. S.D. Tex. Mar. 1, 2017); *In re Stone Energy Corp.*, No. 16-36390 (MI), Docket No. 79 (Bankr. S.D. Tex. Dec. 16, 2016); *In re Linn Energy LLC*, Case No. 16-60040 (DRJ), Docket

Code section 366(c)(2) controls here because the Debtors are chapter 11 debtors. *See* 3 COLLIER ON BANKRUPTCY ¶ 366.03[2] (Alan N. Resnick & Henry J. Summer eds., 16th ed.) (“It is unclear how the 30-day period [in Bankruptcy Code section 366(c)(2)] meshes with the normal 20-day period in section 366(b). The better view is that, because section 366(c) is more specifically applicable to chapter 11 cases, the 30-day period, rather than the 20-day period in section 366(b), should apply.”).

No. 85 (Bankr. S.D. Tex. May 13, 2016); *In re Goodrich Petroleum Corp.*, Case No. 16-31975 (MI), Docket No. 129 (Bankr. S.D. Tex. May 4, 2016) (approving adequate assurance deposit equal to one-half of debtor's monthly utility expenses); *In re Ultra Petroleum Corp.*, Case No. 16-32202 (MI), Docket No. 72 (Bankr. S.D. Tex. May 3, 2016); *In re Midstates Petroleum Co.*, No. 16-32237 (DRJ), Docket No. 72 (Bankr. S.D. Tex. May 2, 2016); *In re Southcross Holdings LP*, Case No. 16-20111 (MT), Docket No. 186 (Bankr. S.D. Tex. April 11, 2016); *In re Sherwin Alumina Co.*, Case No. 16-20012 (DRJ), Docket No. 243 (Bankr. S.D. Tex. Feb 10, 2016).

B. The Debtors' Proposed Adequate Assurance Procedures Properly Balance the Interests of the Utility Companies and those of the Debtors and Their Estates.

35. The Court should also approve the Debtors' proposed Adequate Assurance Procedures because they provide the Utility Companies with a fair and orderly process for seeking modification of the Proposed Adequate Assurance while protecting the Debtors from being forced to address numerous additional assurance requests in a disorganized manner and at a time when the Debtors' efforts could be more productively focused on the seamless continuation of the Debtors' operations in chapter 11.

36. In fact, the Adequate Assurance Procedures are merely a practical manifestation of the policy goal embodied in Bankruptcy Code section 366. Congress enacted section 366 to protect a debtor from utility service cutoffs upon a bankruptcy filing while, at the same time, providing utility companies with adequate assurance that the debtor will pay for post-petition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Thus, section 366 protects a debtor by enjoining utilities from altering, refusing, or discontinuing services solely on account of unpaid prepetition amounts for a period of thirty (30) days after the bankruptcy filing, and it protects utility companies by permitting them to alter, refuse, or

discontinue service after thirty (30) days if the debtors have not furnished “adequate assurance” of payment.

37. Here, notwithstanding a determination that the Debtors’ Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Companies believe they have under sections 366(b) and (c)(2) are wholly preserved under the Adequate Assurance Procedures. *See In re Circuit City Stores, Inc.*, No. 08-35653, 2009 WL 484553, at *6 (Bankr. E.D. Va. Jan. 14, 2009) (adopting similar adequate assurance procedures and holding that “notwithstanding [a] determination on an interim basis that the adequate assurance proposed by the [d]ebtors constitute[d] sufficient adequate assurance under 366(b), [the] utility companies . . . [could still] exercise their rights under 366(c)(2) in accordance with the [p]rocedures established by the [c]ourt”). The Utility Companies still may choose, in accordance with the established Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at *6. On the other hand, the Adequate Assurance Procedures avoid a haphazard and chaotic process whereby each of the Utility Companies could make an extortionate, last-minute demand for adequate assurance which the Debtors would be pressured to pay under the threat of losing critical Utility Services. *See id.*

38. In short, the Adequate Assurance Procedures ensure all parties act in good faith when exercising their rights under Bankruptcy Code section 366. Therefore, because the Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366, the Court should grant the relief requested here.

39. Further, the Court possesses the power, under Bankruptcy Code section 105(a) to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions

of this title.” 11 U.S.C. § 105(a).⁵ The Proposed Adequate Assurance and the Adequate Assurance Procedures are necessary and appropriate to carry out the provisions of the Bankruptcy Code and they will ensure that the Utility Services are continued without prejudicing the Utility Companies.

40. For the reasons set forth above, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, creditors, stakeholders, and other parties in interest and, therefore, should be granted.

RESERVATION OF RIGHTS

41. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; (e) otherwise affect the Debtors’ rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Motion; or (f) nothing herein shall be considered an admission that any party qualifies as a utility under Bankruptcy Code section 366.

⁵ Courts are permitted, under Bankruptcy Code section 105, to fashion reasonable procedures to implement the protections afforded under Bankruptcy Code section 366. *See, e.g., Circuit City*, 2009 WL 484553, at *5 (“The plain language of section 366 of the Bankruptcy Code allows the court to adopt the procedures set forth in the Utility Order.”).

NOTICE

42. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Debtors' 50 largest unsecured creditors on a consolidated basis; (c) Reed Smith LLP, Three Logan Square, 1717 Arch Street, Suite 3100, Philadelphia, PA 19103 (Attn: Matthew E. Tashman), and via email to mtashman@reedsmith.com, counsel to KeyBank National Association in its capacity as Agent and DIP Agent; (d) the Utility Companies; (e) the United States Attorney's Office for the Southern District of Texas; (f) the Internal Revenue Service; (g) any party that has requested notice pursuant to Bankruptcy Rule 2002 as of the time of service; and (h) any party required to be served under Bankruptcy Local Rule 9013-1(d). Due to the nature of the relief requested herein, the Debtors submit that no other or further notice need be provided

CONCLUSION

The Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, granting the relief requested in the Motion, and such other and further relief as may be just and proper.

Dated: July 12, 2018

PORTER HEDGES LLP

By: /s/ John F. Higgins

John F. Higgins

State Bar No. 09597500

Eric M. English

State Bar No. 24062714

Genevieve M. Graham

State Bar No. 24085340

1000 Main Street, 36th Floor

Houston, Texas 77002

Telephone: (713) 226-6000

Fax: (713) 226-6248

**PROPOSED COUNSEL FOR DEBTORS
AND DEBTORS IN POSSESSION**

CERTIFICATE OF SERVICE

I certify that on July 12, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System to all registered ECF users in this case in the United States Bankruptcy Court for the Southern District of Texas.

/s/ John F. Higgins

John F. Higgins

EXHIBIT A

Utility Company List

| | Pearland | NEC Pearland Emergency Center, LP | FRONTIER UTILIT | Frontier Utilities | Electric | Attn: Frontier Utilities Revenue Management | | | | (866) 296-8192 Ext. 0000 | 0417839 & 0417837 | Utilities | 3,582.11 | 3,757.65 | 3,977.61 | \$3,772.46 |
|-------|----------|-----------------------------------|--------------------------------------|--------------------|---|--|----------------------------|-------------------------------|-------------|--------------------------|-------------------|---|----------|----------|----------|------------|
| Solid | 4005 | Pearland | NEC Pearland Emergency Center, LP | WASTE MANAGEMENT | Waste Management of Texas, Inc. | Waste Disposal | PO Box 660345 | Pasadena | Dallas | TX | 75266 | (800) 800-5804 Ext. 0000 | | | | |
| Solid | 4016 | Port Arthur | NEC Port Arthur Emergency Center, LP | AT&T | AT&T | Communications | C/O Bankruptcy | 4331 Communications Dr, Flr W | Dallas | TX | 75211 | (800) 559-7928 Ext. 0000 | | | | |
| Solid | 4016 | Port Arthur | NEC Port Arthur Emergency Center, LP | CITY OF PORT AR | City of Port Arthur | Sewer | Attn: Cashiers | P.O. Box 1089 | Port Arthur | TX | 77641-1089 | (409)-983-8230 | | | | |
| Solid | 4016 | Port Arthur | NEC Port Arthur Emergency Center, LP | ENTERGY | Entergy Texas, Inc. | Electric | PO Box 8104 | | Baton Rouge | LA | 70888 | (877) 387-2499 Ext. 0000 | | | | |
| Solid | 4016 | Port Arthur | NEC Port Arthur Emergency Center, LP | ONE GAS TEXAS PR | Texas Gas Service A Division of One Gas | Gas | P.O. Box 219913 | | Kansas City | MO | 64121-9913 | 1-800-700-2443 | | | | |
| Solid | 4021 | Porter | NEC Porter Emergency Center, LP | CPENERGY | Center Point Energy | Gas | PO Box 4981 | | Houston | TX | 77210-4981 | (713) 659-2111 Ext. 0000 | | | | |
| Solid | 4021 | Porter | NEC Porter Emergency Center, LP | CENTURYLINK | CenturyLink | Phone | PO Box 2961 | | Phoenix | AZ | 85062-2961 | (512) 936-7120 Ext. 0000/1-866-712-1996 | | | | |
| Solid | 4021 | Porter | NEC Porter Emergency Center, LP | COMCAST CABLE | Comcast Business | Cable Tv, Internet and Phone | Attn: Franny Lambricht | PO Box 660618 | Dallas | TX | 75266-0618 | (800)-391-3000 | | | | |
| Solid | 4021 | Porter | NEC Porter Emergency Center, LP | ENTERGY | Entergy Texas, Inc. | Electric | PO Box 8104 | | Baton Rouge | LA | 70888 | (877) 387-2499 Ext. 0000 | | | | |
| Solid | 4021 | Porter | NEC Porter Emergency Center, LP | VALLEY RANCH MU | Valley Ranch Mud #1 | Water | PO Box 684000 | | Houston | TX | 77268-4000 | (281) 579-2400 | | | | |
| Solid | 4021 | Porter | NEC Porter Emergency Center, LP | WASTE MANAGEMEN | Waste Management of Texas, Inc. | Waste Disposal | PO Box 660345 | Conroe | Dallas | TX | 75266 | (800) 800-5804 Ext. 0000 | | | | |
| Solid | 4026 | Texarkana | NEC Texarkana Emergency Center, LP | CABLE ONE, INC. | Cable One Business | Cable TV, Phone and Internet | PO Box 7800 | | Phoenix | AZ | 85062-8000 | (877)-570-0500 Ext. 0000 | | | | |
| Solid | 4026 | Texarkana | NEC Texarkana Emergency Center, LP | CPENERGY | Center Point Energy | Gas | PO Box 4981 | | Houston | TX | 77210-4981 | (713) 659-2111 Ext. 0000 | | | | |
| Solid | 4026 | Texarkana | NEC Texarkana Emergency Center, LP | AEP | Southwestern Electric Power | Electric | PO Box 24422 | | Canton | OH | 44701-4422 | (877)-446-7211 | | | | |
| Solid | 4026 | Texarkana | NEC Texarkana Emergency Center, LP | TEXARKANA WATER | Texarkana Water Utilities | Water | PO Box 2008 | | Texarkana | TX | 75504-2008 | (903) 798-3800 | | | | |
| Solid | 4026 | Texarkana | NEC Texarkana Emergency Center, LP | WASTE MANAGEMENT | Waste Management of Texas, Inc. | Waste Disposal | PO Box 660345 | Texarkana Hauling | Dallas | TX | 75266 | (800) 800-5804 Ext. 0000 | | | | |
| Solid | 4009 | Yorktown | NEC Yorktown Emergency Center, LP | AT&T | AT&T | Communications | C/O Bankruptcy | 4331 Communications Dr, Flr W | Dallas | TX | 75211 | (800) 559-7928 Ext. 0000 | | | | |
| Solid | 4009 | Yorktown | NEC Yorktown Emergency Center, LP | CPENERGY | Center Point Energy | Gas | PO Box 4981 | | Houston | TX | 77210-4981 | (713) 659-2111 Ext. 0000 | | | | |
| Solid | 4009 | Yorktown | NEC Yorktown Emergency Center, LP | COMCAST CABLE | Comcast Business | Cable Tv, Internet and Phone | Attn: Franny Lambricht | PO Box 660618 | Dallas | TX | 75266-0618 | (800)-391-3000 | | | | |
| Solid | 4009 | Yorktown | NEC Yorktown Emergency Center, LP | HARRIS COUNTY M | Harris County Mud #276 | Water | P.O. Box 684000 | | Houston | TX | 77268-4000 | (281) 479-4500 | | | | |
| Solid | 4009 | Yorktown | NEC Yorktown Emergency Center, LP | RELIANT ENERGY | Reliant Energy Retail Services, LLC | Electric | PO Box 650475 | | Dallas | TX | 75265-0475 | (713) 537-5162 Ext. 0000 | | | | |
| Solid | 4009 | Yorktown | NEC Yorktown Emergency Center, LP | WASTE MANAGEMEN | Waste Management of Texas, Inc. | Waste Disposal | PO Box 660345 | Houston Metro | Dallas | TX | 75266 | (800) 800-5804 Ext. 0000 | | | | |
| Corp | 6000 | Corporate | EDMG, LLC | VENTUS NETWORKS | Ventus Wireless, LLC | Vendor-Utility-Internet | 10 Norden Place Mailbox #8 | | Norwalk | CT | 06855 | (203) 642-2800 Ext. 0000 | | | | |
| Corp | | Corporate | Neighbors Legacy Holdings, Inc | Comcast | Comcast | Ethernet Network Services | Attn: Franny Lambricht | PO Box 660618 | Dallas | TX | 75266-0618 | (800)-391-3000 | | | | |

\$251,584.65

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|--|----------------------------|---|
| In re: NEIGHBORS LEGACY HOLDINGS, INC., et al., <p style="text-align: center;">Debtors.¹</p> | § § § § § § | Chapter 11 Case No. 18 -33836 (Joint Administration Pending) (Emergency Hearing Requested) |
|--|----------------------------|---|

ORDER (I) APPROVING DEBTORS’ ADEQUATE ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS, AND (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICE

[Relates To Doc. No. ____]

The above-referenced debtors and debtors-in-possession (collectively, the “Debtors”) filed their motion (the “Motion”)² under sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”) to (i) approve the Debtors’ proposed form of adequate assurance of post-petition payment to the Utility Companies; (ii) establish procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance; and (iii) prohibit the Utility Companies from 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 the basis of a debt that is owed by the Debtors for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance, all as more fully described in the Motion. The Court has jurisdiction over the Motion and the relief requested in the Motion pursuant to 28 U.S.C. § 1334 and venue is proper in this

¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/neighbors. The location of Debtors’ principal place of business and the Debtors’ service address is: 10800 Richmond Avenue, Houston, Texas 77042.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

District pursuant to 11 U.S.C. § 1408. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order on the Motion. The relief requested by the Motion is in the best interests of the Debtors, their estates, creditors, stakeholders, and other parties in interest and the Debtors' gave sufficient and proper notice of the Motion and related hearings. Upon consideration of the Motion and First Day Declaration and after hearing statements in support of the Motion during proceedings before this Court, the Court finds that good cause exists to grant the requested relief.

It is therefore **ORDERED THAT**

1. The Debtors shall serve a copy of this Order on the Utility Companies within 48 (forty-eight) hours after entry hereof.
2. The Proposed Adequate Assurance constitutes "adequate assurance of payment" for purposes of Bankruptcy Code section 366.
3. Within seven (7) business days after entry of this Order, the Debtors will maintain a deposit of \$125,000 in the Debtors' bank accounts (any such account where the Debtors maintain the \$125,000 the "Utility Deposit Account"), which is equal to approximately one half (1/2) of one month of Utility Services for all of the Utility Companies that do not already have deposits in place (the "Utility Deposit"), provided, however, that no Utility Deposit shall be made for any Utility Company that already holds a deposit or prepayment equal to or greater than one half (1/2) of one month of Utility Services provided by that Utility Company.
4. Except as the amount may be reduced by application of the provisions of this Order, the amount of \$125,000 shall be deposited in the Utility Deposit Account on account of the Utility Deposits within seven (7) business days after the entry of this Order and shall be held

for the purpose of providing adequate assurance of payment to each Utility Company for its post-petition Utility Services to the Debtors.

5. The Debtors may reduce the Utility Deposit to the extent that it includes an amount (i) on account of a Utility Company that the Debtors subsequently determine, in their sole discretion, should be removed from the Utility Company List or (ii) that is already held by a Utility Company as a deposit or prepayment.

6. The Debtors' obligation to maintain the Utility Deposit Account shall terminate upon the effective date of any chapter 11 plan approved in the Chapter 11 Cases.

7. The following procedures (the "Adequate Assurance Procedures") for any Utility Company not satisfied with the Proposed Adequate Assurance to request additional adequate assurance (an "Additional Assurance Request") are approved:

(a) If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional adequate assurance of payment, it must serve an Additional Assurance Request upon (i) the Debtors, c/o of the Debtors' proposed CRO, Attn: Chad J. Shandler, CohnReznick LLP, 1301 Avenue of the Americas, New York, New York 10019, chad.shandler@cohnreznick.com; (ii) the Debtors' proposed counsel, Attn: John F. Higgins, Esq., jhiggins@porterhedges.com, and Eric M. English, Esq., eenglish@porterhedges.com, Porter Hedges LLP, 1000 South Main, 36th Floor, Houston, Texas 77002; and (iii) counsel to KeyBank National Association in its capacity as lender under the proposed postpetition credit agreement, Attn: Matthew E. Tashman, mtashman@reedsmith.com, Reed Smith LLP, Three Logan Square, 1717 Arch Street, Suite 3100, Philadelphia, PA 19103 (collectively, the "Adequate Assurance Notice Parties") so that it is received no later than 14 days after entry of the order granting the relief requested herein.

(b) Each Additional Assurance Request must (i) be made in writing; (ii) set forth the amount and form of additional assurance of payment requested; (iii) set forth the type of Utility Services, any account numbers, and the location for which Utility Services are provided; (iv) include a summary of the Debtors' payment history to such Utility Company, including whether the Utility Company holds any deposits or other security, and if so, in what amount; and (v) set forth why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of payment.

(c) Upon a Debtors' receipt of an Additional Assurance Request, the Debtors will have the greater of (i) fourteen (14) days from the receipt of such Additional Assurance Request or (ii) thirty (30) days from the entry of the order granting the relief requested in this Motion (the "Resolution Period") to negotiate with the requesting Utility Company and resolve the Additional Assurance Request. To facilitate negotiations, the Debtors and any Utility Company may, without notice or further order of the Court, extend the Resolution Period by such additional period as they shall mutually agree.

(d) Should the Debtors be unable to reach a mutual resolution with respect to an Additional Assurance Request within the Resolution Period, the Debtors shall file a motion with the Court seeking a hearing to determine the adequacy of assurance of payment with respect to a particular Utility Company (the "Determination Motion") with the Court and, if the Determination Motion is not withdrawn, the Court will determine the adequacy of the Proposed Adequate Assurance with respect to that Utility Company. Pending a resolution of such Determination Motion, the relevant Utility Company shall not discontinue, alter or refuse service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

(e) The Debtors may resolve any Additional Assurance Request, objection, or Determination Motion by mutual agreement with the Utility Company and may, in connection with any such agreement, modify the Utility Deposit contributed to the Utility Deposit Account for the benefit of such Utility Company and/or provide the Utility Company with an alternative form of adequate assurance of payment, without further order of this Court, if the Debtors believe such additional assurance is reasonable; provided, however, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to any official committee appointed in these cases and the United States Trustee upon demand.

8. The Utility Companies identified on Exhibit A attached to this Order (the "Utility Company List"), including Subsequently Identified Utility Companies, are prohibited from (i) discriminating against the Debtors, (ii) altering, refusing, or discontinuing service to the Debtors, or (iii) requiring payment of a deposit or receipt or any other security for continued service other than the Utility Deposit, as a result of the Debtors' bankruptcy filing or any outstanding prepetition invoices, or requiring the Debtors to pay a deposit or other security in connection with the provision of post-petition Utility Services, other than in accordance with the Adequate Assurance Procedures contained herein.

9. If an amount relating to post-petition Utility Services provided by a Utility Company is unpaid beyond any applicable grace period, such Utility Company may request in writing a disbursement from the Utility Deposit Account (a “Disbursement Request”), in no case to exceed the amount of the Utility Deposit contributed to the Utility Deposit Account for the benefit of such Utility Company, by giving notice to (i) the Debtors, c/o of the Debtors’ proposed CRO, Attn: Chad J. Shandler, CohnReznick LLP, 1301 Avenue of the Americas, New York, New York 10019, chad.shandler@cohnreznick.com; (ii) the Debtors’ proposed counsel, Attn: John F. Higgins, Esq., jhiggins@porterhedges.com, and Eric M. English, Esq., eenglish@porterhedges.com, Porter Hedges LLP, 1000 South Main, 36th Floor, Houston, Texas 77002; and (iii) counsel to KeyBank National Association in its capacity as lender under the proposed postpetition credit agreement, Attn: Matthew E. Tashman, mtashman@reedsmith.com, Reed Smith LLP, Three Logan Square, 1717 Arch Street, Suite 3100, Philadelphia, PA 19103. A Disbursement Request shall only be honored on the date that is five (5) business days after the date of the Disbursement Request.

10. Any Utility Company that fails to submit an Additional Assurance Request or file an objection as set forth in this Order shall be deemed to have adequate assurance of payment that is satisfactory to it within the meaning of Bankruptcy Code section 366 and shall be forbidden from altering, refusing, or discontinuing service to the Debtors on account of any prepetition charges, subject to the Utility Company’s rights to seek a modification of adequate assurance under section 366(c)(3) of the Bankruptcy Code.

11. The Debtors are authorized in their discretion to amend the Utility Company List hereto to add or delete any Utility Company, and this Order shall apply to any such Subsequently Identified Utility Company that is added to such schedule. Any Utility Company added to the

Utility Company List subsequent to the date of the Motion shall have the right to make an Additional Assurance Request in compliance with the Adequate Assurance Procedures as set forth in this Order. For those Utility Companies that are subsequently added to **Exhibit A**, the Debtors shall serve a copy of this Motion and this Order on such Utility Company, along with an amended **Exhibit A** that includes such Utility Company.

12. This Order shall be binding on all Utility Companies providing Utility Services to the Debtors, regardless of when or if such Utility Company was added to the Utility Company List; provided, however, that if additional parties are added, the Debtors may increase the amount of the Utility Deposit by an amount equal to the cost of one half (1/2) of one month of Utility Services provided by such Subsequently Identified Utility Company to the Debtors.

13. Nothing herein constitutes a finding that any entity is or is not a Utility Company hereunder or under Bankruptcy Code section 366, whether or not such entity is listed on **Exhibit A** attached hereto.

14. This Order is without prejudice to the Debtors' rights to contest the amounts of any amounts owed to a Utility Company. Nothing in this Order or the Motion shall be deemed to constitute post-petition assumption or adoption of any agreement under Bankruptcy Code section 365.

15. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to subsequently dispute such obligation on any ground that applicable law permits.

16. Nothing in this Order or the Motion shall be deemed to constitute post-petition assumption or adoption of any agreement under Bankruptcy Code section 365. Notwithstanding

the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

17. The requirements set forth in Bankruptcy Local Rule 9013-1(b) and (i) are satisfied by the contents of the Motion.

18. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

19. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof.

20. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

21. To the extent there is any inconsistency between the terms of the interim or final order approving the Debtors' proposed post-petition financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed post-petition financing, as applicable, shall govern. Without limiting the generality of the foregoing, any payment authorized pursuant to this Order may be made only as permitted in the Debtors' proposed post-petition financing documents and any order approving the same.

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: July 13, 2018

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

Exhibit A
Utility Company List

