

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

In re:)
) Chapter 11
NOVAN, INC., *et al.*,¹)
) Case No. 23-10937 (LSS)
 Debtors.)
) (Joint Administration Requested)
)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS,
PURSUANT TO SECTIONS 105(a) AND 366 OF THE BANKRUPTCY CODE,
(I) APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF
PAYMENT, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS
AND REQUESTS FOR ADDITIONAL ASSURANCE FROM UTILITY COMPANIES,
(III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order”), respectively: (a) approving the Debtors’ proposed form of adequate assurance of postpetition payment to the Utility Companies (as defined below), (b) establishing procedures for resolving any objections or requests for additional assurance from the Utility Companies relating to the Proposed Adequate Assurance (as defined below), and (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 these chapter 11 cases (the “Chapter 11 Cases”), 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 Debtors’ Proposed Adequate Assurance. In support of this Motion, the Debtors rely upon, and incorporate by reference, the *Declaration of Paula Brown*

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.



Stafford in Support of Debtors' Chapter 11 Petitions and First Day Motions (the "First Day Declaration"),² filed contemporaneously with this Motion. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Chapter 11 Cases, the Debtors and their estates and this matter under 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 is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are sections 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 9013-1(m).

BACKGROUND

5. On the date hereof (the "Petition Date"), the Debtors each filed with the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

² Capitalized terms used but not otherwise defined in this Motion shall have the meaning ascribed to them in the First Day Declaration.

6. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in these Chapter 11 Cases.

7. Additional factual background regarding the Debtors, including their business operations, capital structure, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration, which is fully incorporated into this Motion by reference.

I. The Utility Services

8. In the ordinary course, the Debtors obtain various utility services, such as electricity, internet, water and sewer, and/or other services (each, a “Utility Service” and collectively, the “Utility Services”) from “utility companies” as that term is used in section 366 of the Bankruptcy Code (each a “Utility Company” and collectively, the “Utility Companies”). The Utility Companies include, without limitation, the entities identified on the list attached to this motion as **Exhibit C** (the “Utility Company List”).³

9. Prior to the Petition Date, the Debtors spent an average of approximately \$30,130.00 each month on account of Utility Services. Uninterrupted Utility Services are essential to the Debtors’ business operations during the pendency of these Chapter 11 Cases. Should any Utility Company alter, refuse, or discontinue service, even for a brief period, the Debtors’ business

³ The Debtors reserve the right to argue that any of the entities now or hereafter included on the Utility Service List are not “utilities” within the meaning of section 366(a) of the Bankruptcy Code. The Debtors have endeavored to identify all of the Utility Companies and list them on **Exhibit C** hereto. However, inadvertent omissions may have occurred, and the omission from the Utility Company List of any entity providing utility services to the Debtors shall not be construed as an admission, waiver, acknowledgment, or consent that section 366 of the Bankruptcy Code does not apply to such entity. If the Debtors identify any entity that inadvertently excluded from the Utility Company List (each, an “Additional Utility Company”), the Debtors will promptly provide such entity with a copy of this Motion and either the (i) interim order or (ii), if entered, the final order.

operations could be severely disrupted, and such disruption would jeopardize the Debtors' proposed asset sales. Accordingly, the Debtors seek to establish an orderly process for providing adequate assurance to their Utility Companies without jeopardizing the Debtors' proposed sale process.

RELIEF REQUESTED

10. By this Motion, the Debtors seek the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, pursuant to sections 105(a) and 366 of the Bankruptcy Code, (a) approving the Debtors' proposed form of adequate assurance of postpetition payment to the Utility Companies of a deposit in an amount equal to 50% of the Debtors' estimated aggregate monthly utility expenses for Utility Companies based on the Debtors' average payments during the twelve month period prior to the Petition Date (the "Estimated Utility Expense"), for each Utility Company for a total of approximately \$15,065.00 into a newly created, segregated account under the Debtors' control; (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 these 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 pending entry of the Final Order; and (d) setting the final hearing on this Motion within approximately twenty-five days of the Petition Date.

I. Adequate Assurance

A. The Proposed Adequate Assurance

11. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor

“adequate assurance of payment” within 30 days of the commencement of a debtor’s chapter 11 case. See 11 U.S.C. § 366(c)(2). Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase “assurance of payment” to mean, among other things, a cash deposit. *See* 11 U.S.C. § 366(c)(1)(A).

12. The Debtors fully intend to pay all undisputed postpetition obligations owed to the Utility Companies in a timely manner. Additionally, the Debtors propose to provide “assurance of payment” to Utility Companies within twenty (20) days after the Petition Date by placing a cash deposit (the “Adequate Assurance Deposit”) equal, on an aggregate basis, to the Estimated Utility Expense for each Utility Company into a newly created, segregated account of the Debtors (the “Utility Deposit Account”) under the Debtors’ control for the benefit of any Utility Company, unless any such Utility Company agrees in writing to a lesser amount. The Debtors estimate that the total amount of such Adequate Assurance Deposit would be approximately \$15,065.00. No creditor of any of the Debtors shall have any interest in or lien on the Adequate Assurance Deposit or the Utility Deposit Account. Currently, none of the Debtors’ Utility Companies holds a security deposit.

13. The Debtors propose that the Utility Deposit Account be maintained until the earlier of (a) entry of an order of the Court authorizing or directing the return of the Adequate Assurance Deposit to the Debtors, (b) entry of an order authorizing the rejection of a lease for a location closing (only if the Debtors maintain their only account with the relevant utility at such closing location); or (c) the effective date of any chapter 11 plan in the Debtors’ Chapter 11 Cases. In addition, the Debtors seek authority to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of a Utility Company that the Debtors subsequently determine should be removed from the Utility Services List.

14. The Debtors submit that the availability of the Adequate Assurance Deposit, together with the Debtors' ability to pay for future Utility Services during these Chapter 11 Cases in the ordinary course of business (collectively, the "Proposed Adequate Assurance"), constitute adequate assurance of payment to the Utility Companies for purposes of section 366 of the Bankruptcy Code.

15. Accordingly, the Debtors believe that no other or further assurance of payment is necessary. If a Utility Company believes that additional or alternative assurance of payment is necessary, however, the Debtors submit that the Utility Company must request such additional or alternative assurance of payment by the procedures described below (the "Adequate Assurance Procedures").

B. Additional Adequate Assurance Procedures

16. To address the right of any Utility Company under section 366(c)(2) of the Bankruptcy Code to seek additional adequate assurance satisfactory to it, the Debtors propose that the following procedures (the "Adequate Assurance Procedures") be adopted:

- i. Any Utility Company that objects to the Adequate Assurance must serve a request (an "Adequate Assurance Request") on: (i) the Debtors, Novan, Inc., 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703 (Attn: John M. Gay (jgay@novan.com)); (ii) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.com)); (iii) counsel to Ligand Pharmaceuticals, Incorporated (the "DIP Lender"), Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com) Jason R. Alderson (jason.alderson@morganlewis.com), and David K. Shim (david.shim@morganlewis.com)); (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); and (v) counsel to

any official committee of unsecured creditors appointed in the Chapter 11 Cases (collectively, the “Notice Parties”).

- ii. Any Adequate Assurance Request must be served on the Notice Parties and must: (a) be made in writing; (b) identify the location for which Utility Services are provided and relevant account number(s); and (c) explain why the Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- iii. Upon the Debtors’ receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.
- iv. The Debtors are authorized to resolve any Adequate Assurance Request by mutual agreement with a Utility Company in consultation with the DIP Lender and without further order of the Court and, in connection with any such agreement, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable.
- v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the “Determination Hearing”). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.
- vi. Upon the termination of Utility Services independent thereof, the Debtors may, without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) 50% of the estimated monthly cost for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Company; *provided* that for any Utility Company for which the Adequate Assurance Deposit is

reduced, the Debtors shall provide the affected Utility Company fourteen (14) days' notice of their intent to reduce the Adequate Assurance Deposit and shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.

II. Subsequent Modifications of Utility Company List and Procedures for Subsequently Identified Utility Companies

17. It is possible that, despite the Debtors' diligent efforts, certain Utility Companies have not yet been identified by the Debtors or included on the Utility Service List (each, an "Additional Utility Company" and, collectively, the "Additional Utility Companies"). Thus, promptly upon the discovery of an Additional Utility Company, the Debtors will increase the Adequate Assurance Deposit by an amount equal to approximately 50% of the Estimated Utility Expense for each Additional Utility Company, unless such Additional Utility Company agrees in writing to a lesser amount or is paid in advance for Utility Services. In addition, the Debtors request that the Court provide that the Additional Utility Companies are subject to the terms of the Interim Order and any Final Order, including the Adequate Assurance Procedures.

18. Further, it is possible that during the course of these Chapter 11 Cases, the Debtors may cease doing business in the ordinary course with certain Utilities for which funds have been contributed to the Adequate Assurance Deposit (each, a "Closed Account" and collectively, the "Closed Accounts"). The Debtors seek authority in such circumstances to decrease the amount of the Adequate Assurance Deposit by withdrawing from the Utility Deposit Account the amount deposited with respect to such Closed Account, solely to the extent no known dispute regarding postpetition payments exists.

19. The Debtors submit that the relief requested in this Motion strikes a fair balance between protecting the rights of the Utility Companies, 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 their businesses 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.

III. Prohibition on Altering, Refusing, or Discontinuing Service

20. Pending the entry of interim and final orders with respect to this Motion and pending resolution of any Additional Assurance Request, objection, or Determination Hearing, the Debtors request that the Utility Companies, including the Additional Utility Companies, shall be prohibited from (i) discriminating against the Debtors, (ii) altering, refusing, or discontinuing service to the Debtor, or (iii) requiring payment of a deposit or receipt or any other security for continued service other than the Adequate Assurance Deposit, as a result of the Debtors' bankruptcy filings or any outstanding prepetition invoices.

BASIS FOR RELIEF

21. This Court has the authority to grant the relief requested herein pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that a court "may 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).

22. In addition, section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide "adequate assurance" of payment for postpetition services in a form "satisfactory" to the utility provider within thirty days of the petition date, or the utility provider may alter, refuse, or discontinue service. 11 U.S.C. 366(c)(2). Section 366(c)(1) of the Bankruptcy Code enumerates what constitutes "assurance of payment." 11 U.S.C. § 366(c)(1). Although assurance of payment must be

“adequate,” it need not constitute an absolute guarantee of the debtor’s ability to pay. *See, e.g., In re Great Ad & Pac. Tea Co.*, No. 11-CV-1338, 2011 WI, 5546954, at *5 (Bankr. S.D.N.Y. Nov. 14, 2011) (“Courts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full”); *In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires . . . adequate assurance of payment. The statute does not require an absolute guarantee of payment.”) (internal quotation and citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997). A utility does not have greater rights simply because a debtor filed a bankruptcy case. *See In re Begley*, 41 B.R. 402 (E.D. Pa. 1984), *aff’d sub nom. Begley, v. Philadelphia Elec. Co.*, 760 F.2d 46 (3d Cir. 1985).

23. When considering whether a given assurance of payment is “adequate,” the Court should examine the totality of the circumstances to determine whether the Utility Provider will be subject to an unreasonable risk of nonpayment. *See Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 82-83 (Bankr. S.D.N.Y. 2002). Courts have recognized that, in determining the requisite level of adequate assurance, bankruptcy courts must focus upon the need 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.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn. Cent. Tramp. Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably

protected”); *In re Buffets Holdings, Inc.*, Case No. 0810141 (MFW), 2009 WL 453112, at *1 (D. Del. Feb. 24, 2009) (recognizing the bankruptcy court’s approval of an approximately 50% deposit). Accordingly, demands by a utility provider for a guarantee of payment should be refused when the debtor’s specific circumstances already afford adequate assurance of payment.

24. Here, the Utility Providers are adequately assured against the risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provides assurance of the Debtors’ payment of their future obligations. Moreover, termination of any Utility Services could result in the Debtors’ inability to operate their business to the detriment of their stakeholders. *In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321-22 (Bankr. E.D. Pa. 1988) (noting that without utility service, the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

25. Courts are permitted to fashion reasonable procedures, such as the Debtors’ proposed Adequate Assurance Procedures, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores Inc.*, No. 08-35653, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009) (“The plain language of § 366 of the Bankruptcy Code allows the court to adopt the Procedures set forth in the Utility Order.”). Such procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in a disorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that the Debtors’ Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at *5-6. The Utility Providers still may choose, in

accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at *6. However, the Adequate Assurance Procedures will avoid a disorganized process whereby each Utility Provider could make a last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. *See id.* at *5.

26. Without the protections afforded by the Adequate Assurance Procedures, the Debtors could be forced to address *ad hoc* requests by Utility Companies in a disorganized manner in the initial, critical stages of their proposed sale process, when their efforts should be focused on the sale process, maximizing value for all of their stakeholders, and preparing for the wind down process. The orderly process contemplated by the Adequate Assurance Procedures is necessary for a smooth transition by the Debtors into chapter 11 and will aid in their proposed sale efforts. Moreover, the Adequate Assurance Procedures will establish a fair process that will ensure all parties act in good faith.

27. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, 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). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366. Accordingly, the Debtors submit that the Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003(b) ARE SATISFIED

28. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date.

Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(h)

29. For the successful implementation of the foregoing, the Debtors seek a waiver of the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As set forth above, and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors. Specifically, taking the required steps to maintain the Utility Services is essential to prevent potentially irreparable damage to the Debtors' Chapter 11 Cases and ability to preserve, generate, and recover value for the benefit of their estates. Accordingly, ample cause exists to justify the waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

RESERVATION OF RIGHTS

30. Nothing contained herein is intended or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Likewise, if the Court grants the relief sought

herein, any payment made pursuant to the Interim or Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

31. Notice of this Motion will be provided to: (a) the Office of the United States Trustee (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); (b) counsel to the Debtors' proposed debtor in possession financing lender; (c) the Internal Revenue Service; (d) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (e) the United States Attorney for the District of Delaware; (f) the state attorneys general in states where the Debtors are authorized to do business; (g) the Utility Companies; (h) the Securities and Exchange Commission; and (i) all parties entitled to notice pursuant to Bankruptcy Rule 2002-1. Notice of this Motion and any order entered in connection with this Motion will be served on all parties in accordance with Local Rule 9013-1(m). The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice of this Motion is required.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court: (i) enter the Interim Order, substantially in the form attached hereto as **Exhibit A** granting the relief requested in this Motion, including scheduling a final hearing on this Motion; (ii) thereafter enter the Final Order substantially in the form attached hereto as **Exhibit B**; and (iii) grant such other and further relief as the Court may deem proper.

Dated: July 17, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Derek C. Abbott

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:)	
)	Chapter 11
NOVAN, INC., <i>et al.</i> , ¹)	
)	Case No. 23-10937 (LSS)
Debtors.)	
)	(Joint Administration Requested)
)	
)	Re: D.I. __
)	

**INTERIM ORDER (I) APPROVING DEBTORS’ PROPOSED FORM OF
ADEQUATE ASSURANCE OF PAYMENT, (II) ESTABLISHING PROCEDURES
FOR RESOLVING OBJECTIONS AND REQUESTS FOR ADDITIONAL
ASSURANCE FROM UTILITY COMPANIES, (III) PROHIBITING UTILITY
COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING
SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the *Motion of Debtors for Entry of Interim and Final Orders (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance From Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* (the “Motion”),² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry an interim order (this “Interim Order”), (i) approving the Debtors’ proposed form of adequate assurance of postpetition payment to the Utility Companies, (ii) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance, and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

² Capitalized terms used but not otherwise defined in this Interim Order shall have the meanings ascribed to them in the Motion.

Debtors solely on the basis of the commencement of these 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, all as further described in the Motion; and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 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, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Interim Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; 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 _____, **2023, at __:00 .m. (EST)**. Any objections or responses to entry of a final order on the Motion (each, an "Objection") shall be filed on or before **4:00 p.m. (EST) on _____, 2023**, and served on the following parties: (i) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C.

Abbott, Esq. (dabbott@morrisnichols.com)); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); (iii) counsel to Ligand Pharmaceutical, Incorporated (the “DIP Lender”), Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com) Jason A. Alderson (Jason.alderson@morganlewis.com), and David K. Shim (David.shim@morganlewis.com)); and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases. In the event 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. Subject to the procedures described below, each Utility Company shall not (a) alter, refuse, terminate, and/or discontinue utility services to or discriminate against the Debtors on the basis of the commencement of these Chapter 11 Cases or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Adequate Assurance Deposit, as a condition to the Debtors receiving such utility services.

4. Subject to the terms of this Interim Order, as adequate assurance for the payment of Utility Services, the Debtors shall make a cash deposit in an amount of \$15,065.00, which satisfies, on an aggregate basis, the estimated costs for Utility Services provided by each Utility Company on the Utility Company List for 50% of one month, calculated based on the Debtors’ estimated average payments over the twelve month period prior to the Petition Date (the “Adequate Assurance Deposit”), into a newly created, segregated account of the Debtors (the “Utility Deposit Account”) under the Debtors’ control for the benefit of Utility Companies, except those Utility Companies that agree in writing to a lesser amount, or are paid in advance for Utility Services.

5. Notwithstanding anything to the contrary in any other order of this Court, including any debtor in possession financing order, no creditor, including the debtor in possession financing lender, shall have any interest in or lien on the Adequate Assurance Deposit or the Utility Deposit Account.

6. The Adequate Assurance Deposit attributable to each Utility Company shall be maintained until the earlier of (a) entry of an order of this Court authorizing or directing the return of the Adequate Assurance Deposit to the Debtors; (b) subject to the requirements of paragraph 6(vi) below, entry of an order authorizing the rejection of a lease for a location closing (only if the Debtors maintain their only account with the relevant utility at such closing location); or (c) the effective date of any chapter 11 plan filed in the Debtors' Chapter 11 Cases.

7. Subject to the entry of the Final Order and the Adequate Assurance Procedures set forth below, the Adequate Assurance Deposit attributable to each Utility Company constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code (the "Proposed Adequate Assurance") and no Utility Company shall discontinue Utility Services without complying with the following Adequate Assurance Procedures:

- i. Any Utility Company that objects to the Adequate Assurance must serve a request (an "Adequate Assurance Request") on: (i) the Debtors, Novan, Inc., 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703 (Attn: John M. Gay (jgay@novan.com)); (ii) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.com)); (iii) counsel to the DIP Lender, Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com), Jason R. Alderson (jason.alderson@morganlewis.com), and David K. Shim (david.shim@morganlewis.com)); (iv) the Office of the

United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); and (v) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases (collectively, the “Notice Parties”).

- ii. Any Adequate Assurance Request must be served on the Notice Parties and must: (a) be made in writing; (b) identify the location for which Utility Services are provided and relevant account number(s); and (c) explain why the Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- iii. Upon the Debtors’ receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.
- iv. The Debtors are authorized to resolve any Adequate Assurance Request by mutual agreement with a Utility Company in consultation with the DIP Lender and without further order of the Court and, in connection with any such agreement, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable.
- v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the “Determination Hearing”). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.
- vi. Upon the termination of Utility Services independent thereof, including on account of a Closed Account, the Debtors may, without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the amount of the Adequate Assurance Deposit then attributable

to the applicable terminated Utility Services; *provided* that for any Utility Company for which the Adequate Assurance Deposit is reduced, the Debtors shall provide the affected Utility Company fourteen (14) days' notice of their intent to reduce the Adequate Assurance Deposit and shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.

8. The Debtors shall, as necessary, provide a copy of this Interim Order, and any final order approving the relief requested in the Motion (when and if entered) (such order, the "Final Order") to any Utility Company not listed on the Utility Service List (each, an "Additional Utility Company" and, collectively, the "Additional Utility Companies"), as such Utility Companies are identified. Promptly upon their discovery of an Additional Utility Company, the Debtors shall increase the Adequate Assurance Deposit by an amount equal to approximately 50% of the Estimated Utility Expense for each Additional Utility Company, unless such Additional Utility Company agrees in writing to a lesser amount or is paid in advance for Utility Services. The Additional Utility Companies shall be subject to the terms of this Interim Order, including the Adequate Assurance Procedures.

9. The Debtors are authorized to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of a Utility Company that the Debtors subsequently determine should be removed from the Utility Company List upon either: (a) obtaining the affected Utility Company's consent to reduce the Adequate Assurance Deposit or (b) providing such affected Utility Company with fourteen (14) days' notice of their intent to reduce the Adequate Assurance Deposit and receiving no response thereto. For the avoidance of doubt, there are no current disputes between the Debtors and any Utility Company.

10. Nothing in this Interim Order constitutes a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Company List.

11. The Debtors' service of the Motion or this Interim Order upon the Utility Companies shall not constitute an admission or concession that any such entity is a utility company within the meaning of section 366 of the Bankruptcy Code, and all rights and defenses of the Debtors are reserved with respect thereto.

12. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

13. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

14. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Interim Order.

16. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Interim Order.

EXHIBIT B

Proposed Final Order

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

In re:)	
)	Chapter 11
NOVAN, INC., <i>et al.</i> , ¹)	
)	Case No. 23-10937 (LSS)
Debtors.)	
)	(Jointly Administered)
)	
)	Re: D.I. __
)	

**FINAL ORDER (I) APPROVING DEBTORS’ PROPOSED FORM OF
ADEQUATE ASSURANCE OF PAYMENT, (II) ESTABLISHING PROCEDURES
FOR RESOLVING OBJECTIONS AND REQUESTS FOR ADDITIONAL
ASSURANCE FROM UTILITY COMPANIES, (III) PROHIBITING UTILITY
COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING
SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the *Motion of Debtors for Entry of Interim and Final Orders (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance From Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* (the “Motion”),² for entry of a final order (this “Final Order”), (i) approving the Debtors’ proposed form of adequate assurance of postpetition payment to the Utility Companies; (ii) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance; 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 these cases, a debt that is owed by the Debtors

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

² Capitalized terms used but not otherwise defined in this Final Order shall have the meanings ascribed to them in this Motion.

for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtors' Proposed Adequate Assurance, all as further described in the Motion; and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 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, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, as applicable; this Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at the interim hearing; and this Court having granted the interim relief requested in the Motion [D.I. ___]; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Final Order; and any objections to the requested relief having been withdrawn or overruled;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, on a final basis, as set forth herein.
2. All Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services to the Debtors, or otherwise discriminating against the Debtors on account of the Debtors' bankruptcy filings or any outstanding prepetition invoices.
3. Any Utility Company that is paid in advance for Utility Services or to which the Debtors already provided a deposit equal to approximately 50% of one month of Utility Services,

as reflected on Schedule 1 attached to this Final Order, shall be deemed to have received adequate assurance of payment as required by section 366 of the Bankruptcy Code.

4. Notwithstanding anything to the contrary in any other order of this Court, including any debtor in possession financing order, no creditor, including the debtor in possession financing lender, shall have any interest in or lien on the Adequate Assurance Deposit or the Utility Deposit Account.

5. The Adequate Assurance Deposit attributable to each Utility Company shall be maintained until the earlier of (a) entry of an order of this Court authorizing or directing the return of the Adequate Assurance Deposit to the Debtors; (b) subject to the requirements of paragraph 7(vi) below, entry of an order authorizing the rejection of a lease for a location closing (only if the Debtors maintain their only account with the relevant utility at such closing location); or (c) the effective date of any chapter 11 plan in the Debtors' Chapter 11 Cases.

6. The Debtors are authorized to amend, as necessary, the Utility Company List by adding or deleting a Utility Company, which amendment shall be accompanied by filing with this Court a notice of such amendment and serving such amendment on the affected Utility Company.

7. Subject to the Adequate Assurance Procedures set forth below, the Adequate Assurance Deposit attributable to each Utility Company constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code (the "Proposed Adequate Assurance") and no Utility Company shall discontinue Utility Services without complying with the following Adequate Assurance Procedures:

- i. Any Utility Company that objects to the Adequate Assurance must serve a request (an "Adequate Assurance Request") on: (i) the Debtors, Novan, Inc., 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703 (Attn: John M. Gay (jgay@novan.com)); (ii) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201

Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.com)); (iii) counsel to Ligand Pharmaceuticals, Incorporated (the “DIP Lender”), Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com), Jason R. Alderson (jason.alderson@morganlewis.com), and David K. Shim (david.shim@morganlewis.com)); (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); and (v) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Cases (collectively, the “Notice Parties”).

- ii. Any Adequate Assurance Request must be served on the Notice Parties and must: (a) be made in writing; (b) identify the location for which Utility Services are provided and relevant account number(s); and (c) explain why the Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- iii. Upon the Debtors’ receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.
- iv. The Debtors are authorized to resolve any Adequate Assurance Request by mutual agreement with a Utility Company in consultation with the DIP Lender and without further order of the Court and, in connection with any such agreement, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable.
- v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the “Determination Hearing”). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account

of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.

- vi. Upon the termination of Utility Services independent thereof, including on account of a Closed Account, the Debtors may, without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the amount of the Adequate Assurance Deposit then attributable to the applicable terminated Utility Services; *provided* that for any Utility Company for which the Adequate Assurance Deposit is reduced, the Debtors shall provide the affected Utility Company fourteen (14) days' notice of their intent to reduce the Adequate Assurance Deposit and shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.

8. The Debtors shall, as necessary, provide a copy of this Final Order to any Utility Company not listed on the Utility Service List (each, an "Additional Utility Company" and, collectively, the "Additional Utility Companies"), as such Utility Companies are identified. Promptly upon their discovery of an Additional Utility Company, the Debtors shall increase the Adequate Assurance Deposit by an amount equal to approximately 50% of the Estimated Utility Expense for each Additional Utility Company, unless such Additional Utility Company agrees in writing to a lesser amount or is paid in advance for Utility Services. The Additional Utility Companies shall be subject to the terms of this Interim Order, including the Adequate Assurance Procedures.

9. A Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors agree to an alternative assurance of payment; or (b) this Court enters an order after a Determination Hearing requiring that additional adequate assurance of payment be provided to the Utility Company.

10. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any obligations relating to the Utility Companies on

any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

11. The Debtors are authorized to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of a Utility Company that the Debtors subsequently determine should be removed from the Utility Company List upon either: (a) obtaining the affected Utility Company's consent to reduce the Adequate Assurance Deposit or (b) providing such affected Utility Company with fourteen (14) days' notice of their intent to reduce the Adequate Assurance Deposit and receiving no response thereto.

12. If any undisputed amount relating to postpetition Utility Services provided by a Utility Company is unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Utility Deposit Account by giving written notice to the Notice Parties.

13. Notwithstanding the relief granted in this Final Order or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Utility Company.

14. The Debtors' service of the Motion, the Interim Order, or this Final Order upon the Utility Companies shall not constitute an admission or concession that any such entity is a utility company within the meaning of section 366 of the Bankruptcy Code, and all rights and defenses of the Debtors are reserved with respect thereto.

15. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute

any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

17. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

18. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Final Order.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Order.

Schedule 1

(Utility Company List)

Utility Company	Corporate Address	Service	Account Nos. (if available)	Proposed Adequate Assurance
CallTower Inc.	10701 S River Front Pkwy., Ste 450, South Jordan, UT 84095	Phone	8888274462	\$275
City of Durham	101 City Hall Plaza, Durham, NC 27701	Water and sewer	210159605242	\$125
Clean Harbors	42 Longwater Drive, Norwell, MA 02061	Hazardous Waste Disposal	NO30690	\$3,400
Dominion Energy North Carolina	P.O. Box 100256, Columbia, SC 29202-3256	Gas	5-2101-2817-8123	\$3,100
Duke Energy	P.O. Box 70516, Charlotte, NC 28272	Electric	9100 9428 3716	\$4,250
Level 3 Communications, LLC	1025 Eldorado Blvd., Broomfield, CO 80021	Internet	5-HTLTYDQ6	\$355
Republic Services	5111 Chin Page Road, Durham, NC 27703-840505	Trash	309390033526	\$275
Segra	P.O. Box 1068, Waynesboro, VA 22980-0774	Internet	5251108	\$300
Segra	P.O. Box 1068, Waynesboro, VA 22980-0774	Phone	5172703	\$550
Spectrum	4145 S. Falkenburg Rd, Riverview, FL 33578	Cable		\$85
vCom	12657 Alcosta Blvd., Ste 418, San Ramon, CA 94585	Internet	001084-00003	\$130
Verizon Wireless	500 Technology Drive, Suite 550, Weldon Spring, MO 63304	Cellphone	442467760-00001	\$1,220
Worksmart	100 Meredith Drive, Ste 200, Durham, NC 27713	Internet		\$1,000