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PROPOSED ATTORNEYS FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al., ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Joint Administration Requested

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

Vista Proppants and Logistics, LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the "Debtors") hereby file this *Debtors' Emergency Motion for an Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies From Altering or Discontinuing Service on Account of Prepetition Invoices,*

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.



(II) *Approving Deposit Account as Adequate Assurance of Payment*, and (III) *Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On June 9, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

4. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Motion and the Debtors’ Chapter 11 Cases are set forth in greater detail in the *Declaration of Kristin Whitley in Support of the Debtors’ Chapter 11 Petitions and*

First Day Motions and the *Declaration of Gary Barton in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (collectively, the “First Day Declarations”), which were filed on the Petition Date and are incorporated by reference in this Motion.

5. In the normal conduct of their business operations, the Debtors have relationships with many different utility companies and other providers (each a “Utility Company” and, collectively, the “Utility Companies”) for the provision of electric, water, sewer, natural gas, trash removal, telephone, cellular telephone, internet services, and similar utility products and services (collectively, the “Utility Services”) at their corporate headquarters as well as at their various mine and lease locations. The Utility Companies include, without limitation, the entities set forth on the list attached to the Proposed Order (defined below) as **Exhibit 1**.²

6. The historical average monthly amount owed to the Utility Companies in the aggregate is approximately \$668,000. The Debtors owe certain amounts to Utility Companies as of the Petition Date for prepetition Utility Services. Due to the timing of the Petition Date in relationship to the Utility Companies’ billing cycles, certain Utility Services have been invoiced but not yet paid and other Utility Services have been provided but not yet invoiced.

Relief Requested

7. The Debtors request the entry of an order, substantially in the form attached to the Motion as **Exhibit A** (the “Proposed Order”) (i) prohibiting the Utility Companies from altering or discontinuing service on account of unpaid prepetition invoices, (ii) establishing the Procedures (as defined below) for resolving any disputes regarding requests for adequate

² While the Debtors have used their best efforts to list their Utility Companies in Exhibit 1 of the Proposed Order, the Debtors may have inadvertently omitted certain Utility Companies. Accordingly, the Debtors request that they be authorized, without further order of the Court, to amend Exhibit 1 to add any Utility Companies that were omitted therefrom and that the relief requested herein apply to all such entities added to Exhibit 1. In addition, the Debtors reserve the right to argue that (a) any of the entities now or hereafter listed in Exhibit 1 is not a “utility” within the meaning of Bankruptcy Code Section 366, and (b) any such entity is compelled by contractual obligation, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the filing of the Chapter 11 Cases.

assurance of payment, and (iii) scheduling a final hearing on this Motion (the “Final Hearing”) within thirty (30) days of the Petition Date.

8. Uninterrupted Utility Services are essential to the Debtors’ businesses. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted. If such disruption occurred, the impact on the Debtors’ business and revenue would be extremely harmful and would jeopardize the Debtors’ reorganization efforts. It is critical that Utility Services continue uninterrupted and that the relief in this Motion be granted.

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

A. Proposed Adequate Assurance

10. The Debtors anticipate their access to cash collateral and proposed debtor-in-possession financing will be sufficient to allow them to satisfy all administrative expenses, and the Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional adequate assurance of payment for future Utility Services, the Debtors propose to deposit **\$333,900**, a sum equal to approximately fifty percent of the Debtors’ historical monthly cost of their Utility Services, into a separate, segregated, interest-bearing account, that will be established and funded within twenty (20) business days after the Petition Date (the “Utility Deposit Account”), subject to the terms and conditions of any cash

collateral and debtor-in-possession financing orders that may be entered in the Chapter 11 Cases. The Debtors propose to maintain the Utility Deposit Account with a minimum balance equal to 50% of the Debtors' historical monthly cost of Utility Services from Utility Companies, which may be adjusted by the Debtors to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with individual Utility Companies.

11. The Debtors further propose that to the extent the Debtors become delinquent with respect to postpetition payment for Utility Services from a Utility Company, such Utility Company may file a notice of delinquency (a "Delinquency Notice") with the Court and serve such Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) counsel to Ares Capital Corporation; (d) the official committee of unsecured creditors, if one is appointed, and (e) the United States Trustee for the Northern District of Texas (each, a "Party in Interest"). The Debtors propose that if such delinquency is not cured and no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then, the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company's account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company.

12. The Debtors represent that the Utility Deposit Account, together with the Debtors' anticipated access to cash collateral and debtor-in-possession financing, provides protection well in excess of that required to grant adequate assurance to the Utility Companies. As set forth in the First Day Declarations, the Debtors have substantially reduced their business operations in the wake of the global pandemic and the global oil price crash. Given the current reduction in

business operations, the Debtors anticipate a corresponding reduction in utility costs of fifty percent or more compared to historical costs. Therefore, the Debtors are confident that the Utility Deposit Account combined with the Debtors anticipated access to cash collateral and debtor-in-possession financing will be sufficient to ensure that Utility Companies are paid in full for post-petition Utility Services.

B. The Additional Adequate Assurance Procedures

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

- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors' payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an "Objection").
- (b) The Court has scheduled a final hearing on this Motion on _____, 2020 at __.m. (Central) (the "Hearing Date") for the purpose of considering any Objections.
- (c) Any Objection by a Utility Company listed on Exhibit 1 must be served upon, and actually received by, (i) the Debtors' counsel, Haynes and Boone, LLP, Attn: Steve Pezanosky, steve.pezanosky@haynesboone.com; Ian Peck, ian.peck@haynesboone.com; and David Staab, david.staab@haynesboone.com; (ii) counsel for Ares Capital Corporation; (iii) counsel to the official committee of unsecured creditors, if one is appointed; and (iv) the United States Trustee for the Northern District of Texas, by no later than seven (7) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.

- (d) Without further order of the Court, but subject to the terms and conditions of any cash collateral or debtor-in-possession financing orders entered by the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving a timely Objection, if the Debtors in their discretion determine that the Objection is reasonable.
- (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit 1, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit 1 which supplement shall identify the Utility Company and the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of the Order.
- (f) In the event that a Utility Company not listed on Exhibit 1 objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors and Ares Capital Corporation an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.
- (g) All Utility Companies will be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code Section 366, without the need for an additional deposit or other security, until this Court enters an order to the contrary. Any Utility Company that fails to make a timely Objection shall be deemed to be satisfied that the Utility Deposit Account provides adequate assurance of payment for future services within the meaning of Bankruptcy Code Section 366(c)(2).

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

Basis for Relief Requested

15. Bankruptcy Code Section 366(a) provides that:

Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

11 U.S.C. § 366(a).

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

17. Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), courts, commentators, and legislative history had all confirmed that Bankruptcy Code Section 366 does not require, in every case, that the Debtors provide a deposit or other security to their utilities as adequate assurance of payment. In *Virginia Elec. & Power Co. v. Caldor, Inc.-N.Y.*, 117 F.3d 646, 647 (2d. Cir. 1997), the United States Court of Appeals for the Second Circuit affirmed the bankruptcy court’s ruling that the Debtors’ prepetition payment history, their postpetition liquidity, and the administrative expenses afforded postpetition invoices constituted adequate assurance of future performance. The court rejected the argument that Bankruptcy Code Section 366(b) nevertheless requires a “deposit or other security.”

18. A bankruptcy court’s authority to “modify” the level of the “deposit or other security,” provided for under Bankruptcy Code Section 366(b) includes the power to require no “deposit or other security” where none is necessary to provide a utility with “adequate assurance of payment.” *Id.* at 650; *see also Shirey v. Phila. Elec. Co. (In re Shirey)*, 25 B.R. 247, 249

(Bankr. E.D. Pa. 1982) (“[S]ection 366(b) . . . does not permit a utility to request adequate assurance of payment for continued service unless there has been a default by the Debtors on a prepetition debt owed for services rendered”).

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

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

21. The Utility Deposit Account provides the Utility Companies with ample adequate assurance of future payment under section 366(c). Further, the Debtors' anticipated access to cash collateral and debtor-in-possession financing will provide the Debtors with sufficient resources to pay all valid postpetition obligations for Utility Services in a timely manner. These factors, which the Court may—and should—consider when determining the amount of any adequate assurance provided, justify a finding that the Utility Deposit Account together with the Debtors' anticipated access to cash collateral and debtor-in-possession financing is more than sufficient to assure the Utility Companies of future payments.

22. Despite the adequate assurance of future payment described above, the Debtors propose to protect the Utility Companies further by establishing the Procedures for requesting additional adequate assurance. Separate negotiations with each of the Utility Companies would be time-consuming and unnecessarily divert the Debtors' personnel from other critical tasks related to the operation of their business and the restructuring. This is especially true given the fact that the Debtors operate at several different locations, many of which have separate utility arrangements. During the first days of the Chapter 11 Cases it would be incredibly difficult, costly, and would divert the Debtors' limited personnel resources to engage in separate negotiations with each potential Utility Company. Further, if individual negotiations were required and the Debtors were to fail to reach early agreement with each Utility Company, the Debtors would likely have to file further motions seeking expedited determinations as to adequate assurance or risk service termination.

23. The relief requested in this Motion preserves the status quo and ensures continued Utility Services, while providing a prompt forum for the resolution of any dispute as to adequate assurance. Bankruptcy Code Section 105(a) authorizes the Bankruptcy court to enter “any order

. . . that is necessary or appropriate to carry out the provisions of this title.” § 105(a). Because the proposed Procedures protect the Debtors without materially prejudicing the Utility Companies, the Procedures are fully consistent with the requirements of section 366 and appropriate under section 105(a).

24. Courts in this and other jurisdictions have granted similar relief in chapter 11 cases following the enactment of BAPCPA. *See e.g., In re The LaSalle Group, Inc.*, Case No. 19-31484 (SGJ) (Bankr. N.D. Tex. June 17, 2019) (approving adequate assurance in the form of a deposit equal to one-half the average monthly utility costs); *In re PHI, Inc.*, Case No. 19-30923 (HDH) (Bankr. N.D. Tex. May 10, 2019) (approving adequate assurance in the form of a deposit equal to one-half the average monthly utility costs); *In re SAS Healthcare, Inc.*, Case No. 19-40401 (MXM) (Bankr. N.D. Tex. Feb. 6, 2019) (approving adequate assurance in the form of a deposit equal to one-half the average monthly utility costs); *In re Erickson Incorporated*, Case No. 16-34393 (HDH) (Bankr. N.D. Tex. Dec. 5, 2016) (approving adequate assurance in the form of a deposit equal to one-half the average monthly utility costs); *In re Forest Park Med. Ctr. at Southlake, LLC*, Case No. 16-40273 (RFN) (Bankr. N.D. Tex. Feb. 2, 2016) (approving adequate assurance in the form of a deposit equal to one-half the average monthly utility costs). The present circumstances warrant similar relief in these Chapter 11 Cases.

Notice

25. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Debtors’ secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for Ares Capital Corporation; (vi) counsel for any official committees appointed by this Court; (vii) the 20

largest unsecured creditors of each of the Debtors; and (viii) all governmental agencies having a regulatory or statutory interest in these cases (collectively, the “Notice Parties”). Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

Conclusion

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

RESPECTFULLY SUBMITTED this 9th day of June, 2020.

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Vista Proppants and Logistics, LLC, et al., ¹	§	Case No. 20-42002-ELM-11
	§	
Debtors.	§	Jointly Administered

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

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Vista Proppants and Logistics, LLC (7817) ("Vista OpCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

Upon the *Debtors' Emergency Motion for an Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* (the "Motion")² of Vista Proppants and Logistics, LLC, *et al.* (collectively, the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, Miscellaneous Rule No. 33 (N.D. Tex. August 3, 1984) (Woodward, H.O.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Except in accordance with the procedures set forth below, absent further order of the Court, each Utility Company is prohibited from (a) altering, refusing, or discontinuing service to, or discriminating against the Debtors solely on the basis of the commencement of the

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

Chapter 11 Cases or on account of any unpaid invoice for services provided before the Petition Date and (b) requiring the payment of a deposit or other security in connection with the Utility Companies' continued provision of Utility Services, other than the establishment of the Utility Deposit Account.

3. The Debtors are authorized and directed to establish the Utility Deposit Account and shall deposit **\$333,900** into the Utility Deposit Account for the purpose of providing Utility Companies adequate assurance of payment for postpetition Utility Services provided to the Debtors. The Debtors shall maintain the Utility Deposit Account with a minimum balance equal to 50% of the Debtors' historical monthly cost of Utility Services, which the Debtors may adjust to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with any Utility Company.

4. To the extent the Debtors become delinquent with respect to postpetition payment for Utility Services from a Utility Company, such Utility Company may file a notice of delinquency (a "Delinquency Notice") with the Court and serve such Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) counsel to Ares Capital Corporation; (d) the official committee of unsecured creditors, if one is appointed, and (e) the United States Trustee for the Northern District of Texas (each, a "Party in Interest"). The Debtors propose that if such delinquency is not cured and no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then, the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company's account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company.

5. The following procedures are hereby approved:
- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors' payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an "Objection").
 - (b) The Court has scheduled a final hearing on this Motion on _____, 2020 at __.m. (Central) (the "Hearing Date") for the purpose of considering any Objections.
 - (c) Any Objection by a Utility Company listed on Exhibit 1 must be served upon, and actually received by, (i) the Debtors' counsel, Haynes and Boone, LLP, Attn: Steve Pezanosky, steve.pezanosky@haynesboone.com; Ian Peck, ian.peck@haynesboone.com; David Staab, david.staab@haynesboone.com; (ii) counsel for Ares Capital Corporation; (iii) counsel to the official committee of unsecured creditors, if one is appointed; and (iv) the United States Trustee for the Northern District of Texas, by no later than seven (7) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.
 - (d) Without further order of the Court, but subject to the terms and conditions of any cash collateral or debtor-in-possession financing orders entered by this Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving a timely Objection, if the Debtors in their discretion determine that the Objection is reasonable.
 - (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit 1, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit 1 which supplement shall identify the Utility Company and the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of the Order.
 - (f) In the event that a Utility Company not listed on Exhibit 1 objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors and Ares Capital Corporation an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.

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

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

7. The Debtors shall serve this Order upon each of the Utility Companies listed on Exhibit 1 of this Order, at the addresses listed thereon, by first-class mail, postage prepaid, promptly after the entry of this Order.

8. The inclusion or exclusion of any entity on or from Exhibit 1 of this Order or on or from any amended Exhibit 1 shall not constitute an admission that such entity is or is not a “utility” within the meaning of Bankruptcy Code Section 366. This Order specifically reserves the Debtors’ rights to argue that (a) any of the entities listed on Exhibit 1 of this Order or any amended Exhibit 1 is not a “utility” within the meaning of Bankruptcy Code Section 366, and (b) any such entity is compelled by contractual obligation, federal, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the Debtors’ filing of the Chapter 11 Cases.

9. Nothing in this Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by Bankruptcy Code Sections 362 and 365 or other applicable law, and nothing herein or in the Motion shall constitute postpetition assumption or adoption of any agreement pursuant to Bankruptcy Code Section 365. Nothing in this Order shall be deemed a waiver by the Debtors or any other party of any right with respect to the assumption or rejection of an executory contract.

10. Notwithstanding anything in this Order to the contrary, (a) payments authorized by, and any authorizations contained in, this Order are subject to the terms, conditions, limitations, and requirements of any cash collateral or DIP financing orders entered in these Chapter 11 Cases (together with any approved budgets in connection therewith, the “DIP Financing Orders”) and (b) to the extent there is any inconsistency between the terms of such DIP Financing Orders and any action taken or proposed to be taken hereunder, the terms of such DIP Financing Orders shall control.

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

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

END OF ORDER

Submitted by:

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

Exhibit 1

Utility Companies

Utility Name	Serviced Entity	Serviced Address	Account Number	Service Provided	Provider Address	Adequate Assurance
AT&T	Multiple	Vista Headquarters 4413 Carey St. Fort Worth, TX 76119	831-000-0735 314 287256678439 81744668897171 831-000-7129-064 831-000-7177-126 831-000-6921 141 8003-110-4617 831-000-6061 623 8003-104-2635 831-000-7220-792 831-000-5120 990	Internet/ Telephone	P.O. Box 5001 Carol Stream, IL 60197-5001	\$33,800.00
AT&T Long Distance	Maalt Specialized Bulk	Vista Headquarters 4413 Carey St. Fort Worth, TX 76119	861422641	Internet/ Telephone	PO Box 5017 Carol Stream, IL 60197-5017	\$300.00
AT&T Mobility	Multiple	Vista Headquarters 4413 Carey St. Fort Worth, TX 76119	825044668 287260641286	Internet/ Telephone	PO Box 6463 Carol Stream, IL 60197-6463	\$17,800.00
AT&T U-Verse	Maalt Specialized Bulk	Vista Headquarters 4413 Carey St. Fort Worth, TX 76119	136916988	Internet/ Telephone	PO Box 5014 Carol Stream, IL 60197-5014	\$100.00
City of Big Lake	MAALT, LP	814 S. Railroad St. Big Lake, TX 76932	01-0001-0280	Water	P.O. Box 310 Big Lake, TX 76932	\$700.00
City of Dilley	Maalt Specialized Bulk	1415 S. B I-35 Dilley, TX 78017	01-0192-01	Water	P.O. Box 230 Dilley, TX 78017	\$300.00
City of Enid	MAALT, LP	1801 N. 16th St. Enid, OK 73701	570630.02	Water	P.O. Box 1768 Enid, OK 73702-1768	\$100.00
City of Fort Stockton	MAALT, LP	1569 N. Urias St. Fort Stockton, TX 79735	01-3503-02	Water	121 W 2nd P.O. Box 1000 Fort Stockton, TX 79735-1000	\$100.00
Fort Worth Water Department	MAALT, LP	2000 S. Main St. Fort Worth, TX 76110	1268001-632304	Water	P.O. Box 961003 Fort Worth, TX 76161	\$400.00
Guadalupe Valley Electric Coop	MAALT, LP	1045 CR 284 Gonzales, TX 78629	223696002	Electric	825 E. Sarah De Witt Drive P.O. Box 118 Gonzales, TX 78629	\$100.00
Hernandez Sanitation	MAALT, LP	1569 N. Urias St. Fort Stockton, TX 79735	MAALT LP	Waste/ Sanitation	P.O. Box 551 Fort Stockton, TX 79735	\$600.00
Hughes Network Systems, Inc.	Lonestar Prospects, Ltd.	10422 CR 404 Kermit, TX 79745	SME66151	Internet/ Telephone	P.O. Box 96874 Chicago, IL 60693-6874	\$300.00
Legacy Disposal & Sanitation	MAALT, LP	1045 CR 284 Gonzales, TX 78629	01-3184 4	Waste/ Sanitation	P.O. Box 527 Yoakum, TX 77995	\$100.00
Marabou Energy Management, LLC	Lonestar Prospects, Ltd.	2700 N Cresson Hwy Cresson, TX 76035	Marabou-Granbury Marabou-Tolar Marabou-Winkler	Natural Gas	450 Gears Rd., Suite 850 Houston, TX 77067	\$124,800.00
Medina Electric Cooperative	MAALT, LP	1415 S. Business I-35 Dilley, TX 78017	12764001	Electric	P.O. Box 33850 San Antonio, Texas 78265	\$2,200.00
NextLink	Lonestar Prospects, Ltd.	7400 Friendship Rd Tolar, TX 76476	125090675	Internet/ Telephone	95 Parker Oaks Lane Hudson Oaks, TX 76087-1265	\$100.00
Oklahoma Gas & Electric	MAALT, LP	1801 N. 16th St. Enid, OK 73701	129193672-0 129272105-5	Electric	P.O. Box 24990 Oklahoma City, Oklahoma 73124	\$1,600.00
Reliant, Dept. 0954	MAALT, LP	814 S. Railroad St. Big Lake, TX 76932	15 245 025-0 15 257 375-4 15 257 376-2 15 257 365-5 15 222 139-6 15 251 877-5 15 244 516-9 15 244 517-7 15 067 237-6 15 242 080-8	Electric	P.O. Box 120954 Dallas, TX 75312-0954	\$3,400.00

Utility Name	Serviced Entity	Serviced Address	Account Number	Service Provided	Provider Address	Adequate Assurance
Republic Services #688	Maalt Specialized Bulk	1415 S. B. I-35 Dilley, TX 78017	3-0688-1011646	Waste	P.O. Box 78829 Phoenix, AZ 85062-8829	\$700.00
Republic Services #859	MAALT, LP	18 CR 408 Pecos, TX 79772	3-0859-5302528	Waste	P.O. Box 78829 Phoenix, AZ 85062-8829	\$100.00
Rural Texas Broadband	MAALT, LP	18 CR 408 Pecos, TX 79772	1221060	Internet/ Telephone	P.O. Box 760185 San Antonio, TX 78245	\$200.00
Southwest Texas Electric	MAALT, LP	1045 CR 284 Gonzales, TX 78629	7103001	Electric	P.O. Box 677 Eldorado, TX 76936	\$200.00
Stream Energy	MAALT, LP	1569 N. Urias St. Fort Stockton, TX 79735	1171465992	Electric	P.O. Box 650261 Dallas, TX 75265	\$100.00
Tara Energy	MAALT, LP	Dilley Railyard 1415 S. B. I-35 Dilley, TX 78017	9191285467 1212170002	Electric	P.O. Box 301438 Dallas, TX 75303-1410	\$1,200.00
TXU Energy	Lonestar Prospects, Ltd.	10422 CR 404 Kermit, TX 79745	10433720000295700 100062488615	Electric	P.O. Box 650638 Dallas, TX 75265-0638	\$62,400.00
United Cooperative Services	Lonestar Prospects, Ltd.	3549 Monroe Highway Granbury, TX 76049	213782-001 213782-002 213782-003 213782-009 213782-010 213782-011 213782-012 213782-013 213782-014 213782-015 213782-016 213782-018 213782-019 213782-021 213782-023 213782-024 213782-025 213782-026 213782-027 213782-028 213782-029 213782-030 213782-031 213782-032 213782-035 213782-036 213782-037 213782-038 213782-039 213782-040 213782-041 213782-042 213782-043 213782-044 213782-045 213782-046 213782-047 213782-048 213782-049 213782-050 213782-051	Electric	P.O. Box 290 Stephenville, TX 76401	\$74,400.00
Verizon Wireless	Maalt Specialized Bulk	Vista Headquarters 4413 Carey St. Fort Worth, TX 76119	723620826-00014 723620826-00001	Internet/ Telephone	P.O. Box 15124 Albany, NY 12212	\$10,500.00
Vonage Business	Lonestar Prospects, Ltd.	3549 Monroe Highway Granbury, TX 76049	903270	Internet/ Telephone	Dept #3151 PO Box 123151 Dallas, TX 75312-3151	\$3,100.00
Waste Connections	Lonestar Prospects, Ltd.	Vista Headquarters 4413 Carey St. Fort Worth, TX 76119	5193-070049210-001	Waste/ Sanitation	P.O. Box 679859 Dallas, TX 75267-9859	\$3,300.00