

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
STARRY GROUP HOLDINGS, INC., *et al.*,¹ : Case No. 23-10219 (___)
: :
Debtors. : (Joint Administration Requested)
: :
----- X

**MOTION OF DEBTORS FOR ENTRY OF
INTERIM AND FINAL ORDERS (I) PROHIBITING
UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, (II) APPROVING PROPOSED
ADEQUATE ASSURANCE OF PAYMENT, (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL
ASSURANCE OF PAYMENT, AND (IV) GRANTING RELATED RELIEF**

Starry Group Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (this “**Motion**”):

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Interim Order**”) and **Exhibit B** (the “**Proposed Final Order**”) and, together with the Proposed Interim Order, the “**Proposed Orders**”): (a) prohibiting the Utility Providers (as defined below) from altering, refusing, or discontinuing utility service on account of any outstanding amounts for services rendered prepetition; (b) determining that adequate assurance of payment for postpetition Utility

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.



Services (as defined below) has been furnished to the Utility Providers; (c) establishing procedures for resolving future requests by Utility Providers for additional assurance of payment; and (d) granting related relief.

JURISDICTION AND VENUE

2. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein 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**”).

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

BACKGROUND

5. On the date hereof (the “**Petition Date**”), the Debtors commenced with the Court voluntary cases (the “**Chapter 11 Cases**”) under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

6. Contemporaneously with the filing of this Motion, the Debtors have filed with the Court a motion requesting joint administration of the Chapter 11 Cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

7. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the circumstances leading to the commencement of the Chapter 11 Cases is set forth in detail in the *Declaration of Chaitanya Kanojia In Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),² filed contemporaneously herewith, and is incorporated herein by reference.³

UTILITY PROVIDERS

8. To operate their business in the ordinary course and manage their headquarters and other office locations, the Debtors obtain electricity, internet, telecommunications services, waste services, and similar utility services (collectively, the “**Utility Services**”) from a number of different utility providers (collectively, the “**Utility Providers**”), including the entities listed on **Exhibit C** attached hereto (the “**Utility Provider List**”). As used herein, the Utility Providers do not include any utility provider the Debtors pay indirectly through rent payments.

9. Historically, the Debtors have maintained a satisfactory payment history with the Utility Providers and payments have been made on a regular and timely basis. To the best of the Debtors’ knowledge, there are no defaults or arrearages of any significance for the Debtors’ undisputed invoices for prepetition Utility Services as of the Petition Date. Based on their monthly

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the First Day Declaration.

³ The First Day Declaration and other relevant case information is available on the following website maintained by the Debtors’ proposed claims and noticing agent, Kurtzman Carson Consultants LLC: <http://www.kccllc.net/Starry>.

average cost for the 12-month period before the Petition Date, the Debtors estimate that their cost of Utility Services for the next 30 days will be approximately \$8,805.28.

10. Uninterrupted Utility Services are essential to the Debtors' ongoing operations and, therefore, the success of the Chapter 11 Cases. The Debtors require the Utility Services to run their operations, including, among other things, to provide their wireless broadband internet services to their customers. Accordingly, the Debtors require uninterrupted access to Utility Services. Any disruption to the Utility Services, even for a brief period of time, would seriously interfere with the Debtors' operations and their ability to service their customers, and could result in a temporary cessation of operations. Any interference or cessation of the Debtors' operations would jeopardize the Debtors' ability to maintain stability in their operations at a critical juncture of the Chapter 11 Cases, and would interfere with their ability to achieve their objectives in the Chapter 11 Cases. Accordingly, it is critical that the Utility Services continue on an uninterrupted basis throughout the Chapter 11 Cases.

PROPOSED ADEQUATE ASSURANCE

11. The Debtors intend to pay postpetition obligations owed to the Utility Providers in a timely manner. The Debtors expect that their cash on hand, plus cash flows from operations as well as their proposed use of cash collateral and debtor-in-possession financing will be sufficient to pay postpetition obligations related to the Utility Services in the ordinary course of business.

12. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility provider may alter, refuse, or discontinue a debtor's utility service if the utility provider does not receive "adequate assurance of payment" for postpetition utility services from the debtor within 30 days after the commencement of the debtor's chapter 11 case. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code defines "assurance of payment" of postpetition charges as "(i) a cash deposit, (ii) a letter of credit, (iii) a certificate of deposit, (iv) a surety bond, (v) a prepayment of utility

consumption, or (vi) another form of security that is mutually agreed on between the utility provider and the debtor or the trustee.” 11 U.S.C. § 366(c)(1).

13. As noted above, the Debtors intend to pay all postpetition obligations owed to the Utility Providers in a timely manner and have sufficient funds to do so. Nevertheless, to provide the Utility Providers with adequate assurance pursuant to section 366 of the Bankruptcy Code, the Debtors propose depositing cash in an amount of \$4,402.64 (the “**Adequate Assurance Deposit**”) into a segregated account (the “**Adequate Assurance Account**”), within 20 days of the Petition Date, for the benefit of the Utility Providers. The Adequate Assurance Deposit is in an amount equal to approximately two weeks’ payment for Utility Services, calculated using the historical average for such payments over the full 12-month period before the Petition Date.

14. The Adequate Assurance Deposit will be held by the Debtors in the Adequate Assurance Account for the benefit of the Utility Providers identified on the Utility Provider List during the pendency of the Chapter 11 Cases. The Debtors request authority to adjust the Adequate Assurance Deposit if the Debtors terminate any of the Utility Services provided by a Utility Provider, make alternative arrangements with a Utility Provider for adequate assurance of payment, determine that an entity listed on the Utility Provider List is not a “utility” within the meaning of section 366 of the Bankruptcy Code, or supplement the Utility Provider List to include additional Utility Providers. The Debtors further request authority to cause the Adequate Assurance Deposit and any funds held in the Adequate Assurance Account to be returned to the Debtors, (a) as provided pursuant to, or consistent with, any further order of the Court, or (b) without further order of the Court, upon the earlier of the effective date of a chapter 11 plan or such other time as the Chapter 11 Cases may be closed.

15. The Debtors submit that the Adequate Assurance Deposit, in conjunction with cash on hand, cash flow from operations, and the proposed use of cash collateral and debtor-in-possession financing, demonstrate their ability to pay for future Utility Services in the ordinary course of business (together, the “**Proposed Adequate Assurance**”) and constitutes sufficient adequate assurance to the Utility Providers.

PROPOSED ADEQUATE ASSURANCE PROCEDURES

16. If any Utility Provider believes it is entitled to additional or different adequate assurance based on individualized circumstances, it may follow the procedures described below and set forth in more detail in the Proposed Orders (the “**Adequate Assurance Procedures**”):⁴

- a. The Debtors will email or otherwise expeditiously cause a copy of the Proposed Interim Order or Proposed Final Order, as applicable, each of which include the proposed Adequate Assurance Procedures, to be served on each Utility Provider within 48 hours after entry of the applicable Proposed Order.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within 20 calendar days after the Petition Date; *provided* that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
- c. Any Utility Provider seeking additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is actually received by the following parties (collectively, the “**Adequate Assurance Notice Parties**”): (i) Starry Group Holdings, Inc. (Attn.: Courtney Norton (cnorton@starry.com)); (ii) proposed counsel to the Debtors (1) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)), and (2) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street,

⁴ To the extent that there are any inconsistencies or discrepancies between the summary of the Adequate Assurance Procedures in this Motion and the Adequate Assurance Procedures set forth in the Proposed Orders, the Proposed Orders control in all respects.

Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (iii) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, (1) Sheppard, Mullin, Richter & Hampton LLP, (A) 333 South Hope Street, 43rd Floor, Los Angeles, California 90071 (Attn: Kyle J. Matthews (KMatthews@sheppardmullin.com) and (B) 321 North Clark Street, 32nd Floor, Chicago, Illinois 60654 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), Bryan V. Uelk (BUelk@sheppardmullin.com), and Catherine Jun (CJun@sheppardmullin.com)), and (2) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com)); (iv) counsel to any statutory committee appointed in the Chapter 11 Cases; and (v) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov).

- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location and account number(s) for which Utility Services are provided, (iii) identify any applicable security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. Any Additional Assurance Request must be made and actually received by the Debtors. If a Utility Provider fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request in accordance with the Adequate Assurance Procedures, such Utility Provider will be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- f. Upon receipt of any Additional Assurance Request as provided herein, the Debtors shall have the greater of (i) 20 days after receipt of such Additional Assurance Request, and (ii) 30 days after entry of the order granting the relief requested by this Motion (the “**Resolution Period**”), or such greater period as may be agreed to by the Debtors and the relevant Utility Provider to resolve its Additional Assurance Request.
- g. The Debtors may, without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include, but will not be limited to, cash deposits, prepayments, or other forms of security, in each case, without further order of the Court.

- h. If the Debtors are not able to promptly reach a resolution with a Utility Provider that has submitted an Additional Assurance Request, the Debtors will request a hearing before the Court to determine the adequacy of assurance of payment with respect to the Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider will be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services provided to any of the Debtors by the Utility Provider, or any objections to the Proposed Adequate Assurance.
- j. Except as provided by the Adequate Assurance Procedures and the terms of the applicable Proposed Order, the Debtors’ Utility Providers are prohibited from (i) altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid charges for prepetition services provided to any of the Debtors or on account of any objections to the Adequate Assurance Deposit or (ii) requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.

17. The Debtors request a final hearing on this Motion to be held within 30 days after the Petition Date to ensure that, if a Utility Provider argues that the Adequate Assurance Deposit or the Adequate Assurance Procedures are not satisfactory and that the Utility Provider is entitled to unilaterally alter, refuse, or discontinue Utility Services to the Debtors immediately following the 30th day after the Petition Date, the Debtors will have the opportunity to address these assertions in time to avoid any potential termination of Utility Services.

SUBSEQUENT MODIFICATIONS TO UTILITY PROVIDER LIST

18. The Debtors have made a good faith effort to identify the Utility Providers and include them on the Utility Provider List. Nonetheless, the Debtors seek authority, to amend the Utility Provider List to add or remove any Utility Provider before or after entry of the Proposed Orders by the Court. Any such amended Utility Provider List will be filed with the Court. The Debtors further request that the Proposed Orders be deemed to apply to any such subsequently

identified Utility Provider, regardless of when such Utility Provider is added to the Utility Provider List. The Debtors will cause a copy of this Motion and the applicable Proposed Order to be served on any such Utility Provider subsequently added to the Utility Provider List and will deposit two weeks' worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with any such subsequently added Utility Provider that exceed outstanding prepetition amounts). Subsequently added Utility Providers will make Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

BASIS FOR RELIEF REQUESTED

19. The Debtors respectfully submit that the Utility Providers will be adequately assured of payment for future services by the relief requested herein. Congress enacted section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while providing utility companies with adequate assurance that the debtors would 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. Accordingly, section 366 of the Bankruptcy Code prohibits utilities from altering, refusing, or discontinuing services to a debtor solely on account of unpaid prepetition amounts for a period of 30 days after a chapter 11 filing.

20. Section 366(c) requires only that a utility's assurance of payment be "adequate." Courts recognize that adequate assurance of performance does not constitute an absolute guarantee of a debtor's ability to pay. *See, e.g., In re Steinebach*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance . . . 'a Bankruptcy Court is not required to give a utility company the equivalent of a guarantee of payment, but must only determine that the utility is not subject to any unreasonable risk of nonpayment for postpetition services.'") (quoting *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002)); *see also In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (section 366(b) "does not require an

‘absolute guarantee of payment’”) (citation omitted), *aff’d sub nom. Va. Elec. & Power Co., v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997).

21. In this analysis, Courts have recognized that, in determining the requisite level of adequate assurance, bankruptcy courts should “focus ‘upon the need of the utility for assurance, and to 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 (emphasis in original) (quoting *In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972)) (affirming bankruptcy court’s ruling that utility deposits were not 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”). Indeed, “[c]ourts 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 The Great Atl. & Pac. Tea Co.*, No. 11-CV-1338 (CS), 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 2011) (citations omitted). In fact, there is nothing to prevent a court from deciding that, on the facts of the case before it, the amount required of the debtor to provide adequate assurance of payment to a utility company should be nominal or even zero. *See, e.g., In re Pac-West Telecomm., Inc.*, No. 07-10562 (BLS) (Bankr. D. Del. May 2, 2007) [Docket No. 39] (approving adequate assurance in the form of one-time supplemental prepayment to each utility company equal to prorated amount of one week’s charge).

22. Based upon the foregoing, the Debtors believe that most, if not all, of their Utility Providers have adequate assurance of payment even without recourse to the Adequate Assurance Deposit. The Debtors anticipate having sufficient resources to pay, and intend to pay, all valid postpetition obligations for Utility Services in a timely manner. In addition, the Debtors’ reliance

on the Utility Services for the operation of their business and preservation of the value of their assets provides them with a powerful incentive to stay current on their utility obligations. These factors, which the Court may consider when determining the amount of any adequate assurance payments, justify finding that the Debtors are not required to make any additional adequate assurance payments in the Chapter 11 Cases. In light of the foregoing, the Debtors respectfully submit that the Proposed Adequate Assurance, together with the Adequate Assurance Deposit, is more than sufficient to assure the Utility Providers of future payment.

23. Absent approval of the Adequate Assurance Procedures, Utility Providers could discontinue service, without warning, 30 days after the Petition Date, if they claim they have not yet received a “satisfactory” adequate assurance payment. Under the Adequate Assurance Procedures, however, any Utility Provider that fails to submit to the Adequate Assurance Notice Parties an Additional Assurance Request will be deemed to consent to the Adequate Assurance Procedures and will be bound by the Proposed Orders. *See In re Syroco, Inc.*, 374 B.R. 60, 62 (Bankr. D. P.R. Aug. 22, 2007) (holding that a utility provider’s lack of objection, response, or counter-demand after receiving notice of hearing on a utilities motion, notice of interim order and notice of final hearing constitutes tacit acceptance of the debtor’s proposed two-week cash deposit as adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code).

24. The Adequate Assurance Procedures are necessary for the Debtors to effectuate their chapter 11 strategy without unnecessary and costly disruptions on account of discontinued Utility Services. If the Adequate Assurance Procedures are not approved, the Debtors likely will be confronted with and forced to address numerous requests by their Utility Providers at a critical time for their business. Moreover, the Debtors could be blindsided by a Utility Provider unilaterally deciding—on or after the 30th day following the Petition Date—that it is not

adequately protected and, therefore, either is entitled to make an exorbitant demand for payment to continue providing service or discontinue providing service to the Debtors altogether. Such an outcome could seriously jeopardize the Debtors' operations and their ability to maximize the value of their estates.

25. Accordingly, under the circumstances of the Chapter 11 Cases, the Debtors believe that the establishment of a cash reserve in the form of the Adequate Assurance Deposit constitutes adequate assurance of payment under section 366(c) of the Bankruptcy Code.

**DEBTORS' BANKS SHOULD BE AUTHORIZED TO
HONOR CHECKS AND ELECTRONIC FUNDS TRANSFERS**

26. The Debtors further request that the Court (a) authorize all applicable financial institutions (collectively, the "**Banks**") to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the relief sought herein to the extent that the Debtors have sufficient funds on deposit in their accounts with the Banks, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and (b) authorize the Banks to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion without any duty of further inquiry and without liability for following the Debtors' instructions. The Debtors anticipate having sufficient funds to pay the amounts described herein. In addition, under the Debtors' existing cash management system, the Debtors can readily identify whether checks or wire transfer requests are payments authorized by the relief requested herein. Accordingly, the Debtors believe that checks, direct debits, or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

27. Certain aspects of the relief requested herein may, if granted, be 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 such relief 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.

28. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the 14-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve the value of their estates. Accordingly, the Debtors submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the 14-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

29. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party

subject to the Proposed Orders once entered. Nothing contained in the Proposed Orders will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

30. Notice of this Motion will be provided to (a) the U.S. Trustee (Attn: Benjamin Hackman); (b) the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, Sheppard, Mullin, Richter & Hampton LLP (Attn: Justin Bernbrock, Kyle J. Mathews, Bryan V. Uelk, and Catherine Jun), and (ii) Potter Anderson & Corroon LLP (Attn: L. Katherine Good); (d) the Utility Providers; (e) the Banks; (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013-1(m). The Debtors believe that no further notice is required.

[Remainder of page left intentionally blank]

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: February 20, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Joseph M. Mulvihill

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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

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

----- X
:
In re: : Chapter 11
:
STARRY GROUP HOLDINGS, INC., *et al.*,¹ : Case No. 23-10219 (___)
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Debtors. : (Jointly Administered)
:
----- X **Re: Docket No.**

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

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (a) prohibiting the Utility Providers from altering, refusing, or discontinuing utility service on account of any outstanding amounts for services rendered prepetition, (b) determining that adequate assurance of payment for postpetition Utility Services has been furnished to the Utility Providers, (c) establishing procedures for resolving future requests by Utility Providers for additional assurance of payment, and (d) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

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

February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the Final Hearing (as defined below); and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Interim Order, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted on an interim basis, as set forth herein.
2. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. Absent compliance with the procedures set forth in the Motion and this Interim Order, the Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or unpaid prepetition charges and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
4. Funds held in the Adequate Assurance Account and any Adequate Assurance Deposit shall be returned to the Debtors, (a) as provided pursuant to, or consistent with, any further order of this Court, or (b) without further order of this Court, upon the earlier of the effective date of a chapter 11 plan or such other time as the Chapter 11 Cases may be closed; provided that there are no outstanding disputes related to postpetition payments due.

5. The Adequate Assurance Deposit, in conjunction with the Debtors' cash on hand, cash flow from operations, and their proposed use of cash collateral and debtor-in-possession financing, demonstrate the Debtors' ability to pay for future Utility Services in the ordinary course of business (together, the "**Proposed Adequate Assurance**") and constitute sufficient adequate assurance to the Utility Providers.

6. The following Adequate Assurance Procedures are hereby approved in the entirety on an interim basis:

- a. The Debtors will email or otherwise expeditiously cause a copy of this Interim Order, which includes the Adequate Assurance Procedures, to be served on each Utility Provider within 48 hours after entry hereof.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within 20 calendar days after the Petition Date; *provided* that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors, may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
- c. Any Utility Provider seeking additional assurance of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an "**Additional Assurance Request**") so that it is actually received by the following parties (collectively, the "**Adequate Assurance Notice Parties**"): (i) Starry Group Holdings, Inc. (Attn.: Courtney Norton (cnorton@starry.com)); (ii) proposed counsel to the Debtors (1) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)), and (2) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (iii) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, (1) Sheppard, Mullin, Richter & Hampton LLP, (A) 333 South Hope Street, 43rd Floor, Los Angeles, California 90071 (Attn: Kyle J. Matthews (KMatthews@sheppardmullin.com) and (B) 321 North Clark Street, 32nd Floor, Chicago, Illinois 60654 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), Bryan V Uelk (BUelk@sheppardmullin.com), and Catherine Jun

(CJun@sheppardmullin.com)), and (2) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com)); (iv) counsel to any statutory committee appointed in the Chapter 11 Cases; and (v) the U.S. Trustee (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov)).

- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location and account number(s) for which Utility Services are provided, (iii) identify any applicable security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. Any Additional Assurance Request must be made and actually received by the Debtors. If a Utility Provider fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request in accordance with the Adequate Assurance Procedures, such Utility Provider shall be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- f. Upon receipt of any Additional Assurance Request as provided herein, the Debtors shall have the greater of (i) 20 days after receipt of such Additional Assurance Request, and (ii) 30 days after entry of the order granting the relief requested by the Motion (the “**Resolution Period**”), or such greater period as may be agreed to by the Debtors and the relevant Utility Provider to resolve its Additional Assurance Request.
- g. The Debtors may, upon prior written notice to ArrowMark Agency Services LLC, in its capacity as DIP Agent, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include, but is not limited to, cash deposits, prepayments, or other forms of security, in each case, without further order of this Court.
- h. If the Debtors are not able to promptly reach a resolution with a Utility Provider that has submitted an Additional Assurance Request, the Debtors will request a hearing before this Court to determine the adequacy of assurance of payment with respect to the Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider is prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of the

Chapter 11 Cases, any unpaid charges for prepetition services provided to any of the Debtors by the Utility Provider, or any objections to the Adequate Assurance.

- j. Except as provided by the Adequate Assurance Procedures and the terms of this Interim Order, the Debtors' Utility Providers are prohibited from (i) altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid charges for prepetition services provided to any of the Debtors or on account of any objections to the Adequate Assurance Deposit or (ii) requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.

7. The Debtors are authorized to amend the Utility Provider List attached as **Exhibit C** to the Motion to add or delete any Utility Provider, and this Interim Order shall apply to any Utility Provider that is subsequently added to the Utility Provider List. Any such amended Utility Provider List shall be filed with this Court.

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

9. For those Utility Providers that are subsequently added to the Utility Provider List, the Debtors will serve a copy of this Interim Order on the subsequently added Utility Provider and deposit two weeks' worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with any such Utility Provider that have not been applied to outstanding prepetition amounts), and any such subsequently added entities shall make an Additional Assurance Request in accordance with the Adequate Assurance Procedures.

10. The Debtors may terminate the services of any Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such

terminated Utility Provider; *provided* that there is no pending dispute regarding the provision of postpetition Utility Services.

11. The Banks shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

12. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Interim Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

13. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of Utility Services as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of the Chapter 11 Cases.

14. Nothing in the Motion or this Interim Order, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the

Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

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

16. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

18. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

19. The final hearing (the “**Final Hearing**”) on the Motion shall be held on _____, 2023, at _____, prevailing Eastern Time. On or before _____, prevailing Eastern Time, on _____, 2023, any objections or responses to entry of a final order on the Motion (a “**Final Order**”) shall be filed with this Court, and served on: (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, (1) 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)) and (2) 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611 (Attn: Jason B. Gott (jason.gott@lw.com)), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (b) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, (i) Sheppard, Mullin, Richter & Hampton LLP, (1) 333 South Hope Street, 43rd

Floor, Los Angeles, California 90071 (Attn: Kyle J. Matthews (KMatthews@sheppardmullin.com)) and (2) 321 North Clark Street, 32nd Floor, Chicago, Illinois 60654 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), Bryan V. Uelk (BUelk@sheppardmullin.com), and Catherine Jun (CJun@sheppardmullin.com)), and (ii) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com)); (c) counsel to any statutory committee appointed in the Chapter 11 Cases; and (d) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov)). In the event that no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

EXHIBIT B

Proposed Final Order

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

	x	
	:	
In re:	:	Chapter 11
	:	
STARRY GROUP HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 23-10219 (___)
	:	
Debtors.	:	(Jointly Administered)
	:	
	x	Re: Docket Nos.

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

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of orders (a) prohibiting the Utility Providers from altering, refusing, or discontinuing utility service on account of any outstanding amounts for services rendered prepetition; (b) determining that adequate assurance of payment for postpetition Utility Services has been furnished to the Utility Providers; (c) establishing procedures for resolving future requests by Utility Providers for additional assurance of payment; and (d) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order, as approved by this Court; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

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

Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Final Order, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. Absent compliance with the procedures set forth in the Motion and this Final Order, the Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
4. Funds held in the Adequate Assurance Account and any Adequate Assurance Deposit shall be returned to the Debtors, (a) as provided pursuant to, or consistent with, any further order of this Court, or (b) without further order of this Court, upon the earlier of the effective date of a chapter 11 plan for the Debtors or such other time as the Chapter 11 Cases may be closed; provided that there are no outstanding disputes related to postpetition payments due.

5. The Adequate Assurance Deposit, in conjunction with the Debtors' cash on hand, cash flow from operations, and their proposed use of cash collateral and debtor-in-possession financing, demonstrate the Debtors' ability to pay for future Utility Services in the ordinary course of business (together, the "**Proposed Adequate Assurance**") and constitute sufficient adequate assurance to the Utility Providers.

6. The following Adequate Assurance Procedures are hereby approved in the entirety:

- a. The Debtors will email or otherwise expeditiously cause a copy of this Final Order, which includes the Adequate Assurance Procedures, to be served on each Utility Provider within 48 hours after entry hereof.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within 20 calendar days after the Petition Date; *provided* that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce, the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
- c. Any Utility Provider seeking additional assurance of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an "**Additional Assurance Request**") so that it is actually received by the following parties (collectively, the "**Adequate Assurance Notice Parties**"): (i) Starry Group Holdings, Inc. (Attn.: Courtney Norton (cnorton@starry.com)); (ii) proposed counsel to the Debtors (1) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)), and (2) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (iii) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, (1) Sheppard, Mullin, Richter & Hampton LLP, (A) 333 South Hope Street, 43rd Floor, Los Angeles, California 90071 (Attn: Kyle J. Matthews (KMatthews@sheppardmullin.com) and (B) 321 North Clark Street, 32nd Floor, Chicago, Illinois 60654 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), Bryan V. Uelk (BUelk@sheppardmullin.com), and Catherine Jun (CJun@sheppardmullin.com)), and (2) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951,

Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com)); (iv) counsel to any statutory committee appointed in the Chapter 11 Cases; and (v) the U.S. Trustee (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov)).

- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location and account number(s) for which Utility Services are provided, (iii) identify any applicable security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. Any Additional Assurance Request must be made and actually received by the Debtors. If a Utility Provider fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request in accordance with the Adequate Assurance Procedures, such Utility Provider shall be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- f. Upon receipt of any Additional Assurance Request as provided herein, the Debtors shall have the greater of (i) 20 days after receipt of such Additional Assurance Request, and (ii) 30 days after entry of the order granting the relief requested by the Motion (the “**Resolution Period**”), or such greater period as may be agreed to by the Debtors and the relevant Utility Provider to resolve its Additional Assurance Request.
- g. The Debtors may, upon written notice to ArrowMark Agency Services LLC, in its capacity as DIP Agent, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include, but is not limited to, cash deposits, prepayments, or other forms of security, in each case, without further order of this Court.
- h. If the Debtors are not able to promptly reach a resolution with a Utility Provider that has submitted an Additional Assurance Request, the Debtors will request a hearing before this Court to determine the adequacy of assurance of payment with respect to the Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider is prohibited from discontinuing, altering or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services provided to

any of the Debtors by the Utility Provider, or any objections to the Adequate Assurance.

- j. Except as provided by the Adequate Assurance Procedures and the terms of this Final Order, the Debtors' Utility Providers are prohibited from (i) altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid charges for prepetition services provided to any of the Debtors or on account of any objections to the Adequate Assurance Deposit or (ii) requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.

7. The Debtors are authorized, to amend the Utility Provider List attached as **Exhibit C** to the Motion to add or delete any Utility Provider, and this Final Order shall apply to any Utility Provider that is subsequently added to the Utility Provider List. Any such amended Utility Provider List shall be filed with this Court.

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

9. For those Utility Providers that are subsequently added to the Utility Provider List, the Debtors will serve a copy of this Final Order on the subsequently added Utility Provider and deposit two weeks' worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with any such Utility Provider that have not been applied to outstanding prepetition amounts), and any such subsequently added entities shall make an Additional Assurance Request in accordance with the Adequate Assurance Procedures.

10. The Debtors, may terminate the services of any Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account

of such terminated Utility Provider; *provided* that there is no pending dispute regarding the provision of postpetition Utility Services.

11. The Banks shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

12. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Final Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

13. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of Utility Services as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of the Chapter 11 Cases.

14. Nothing in the Motion or this Final Order, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the

Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

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

16. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

17. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT C

Utility Provider List

Utility Provider	Address	Description of Utility Services	Account Number	Adequate Assurance Deposit (\$)
Allegro Sanitation Corp	278 Secaucus Rd. Secaucus, NJ 07094 PO Box 2615, Secaucus, NJ 07096	Waste	396500	\$209.93
AT&T	208 S. Akard St. Dallas, TX 75202 PO Box 5014, Carol Stream, IL 60197	Internet Service Provider	3178236243	\$87.78
Comcast Business	1701 John F Kennedy Blvd. #300 Comcast Center Philadelphia, PA 19103 PO Box 70219, Philadelphia, PA 19176	Internet Service Provider	8773103141061010 8773103221949902 8299610253262462 8499053390218014 8497202701698834	\$1,192.81
Cox Business	6205-B Peachtree Dunwoody Rd. Atlanta, GA 30328 PO Box 53262, Phoenix, AZ 85072	Internet Service Provider	476-088337804	\$137.21
Eversource	247 Station Dr. Westwood, MA 02090 PO Box 56007, Boston, MA 02205	Electric	26672371072 26672381063 26669661071	\$2,416.00
Local Waste Services LTD	1300 S. Columbus Airport Rd., Columbus, OH 43207	Waste	01-0157587	\$289.40
Spectrum Business	12405 Powerscourt Dr. Saint Louis, MO 63131	Internet Service Provider	8362200482142842	\$69.52