

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

Chapter 11

CARDINAL HOMES, INC.,

Case No. 19-36275-KRH

Debtor.<sup>1</sup>

**MOTION FOR ENTRY OF AN ORDER UNDER SECTION 366 OF THE  
BANKRUPTCY CODE (A) PROHIBITING UTILITY PROVIDERS FROM ALTERING,  
REFUSING OR DISCONTINUING SERVICE, (B) DEEMING UTILITY PROVIDERS  
ADEQUATELY ASSURED OF FUTURE PAYMENT, AND (C) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

The above captioned debtor and debtor in possession (the “Debtor”), hereby moves the Court (the “Motion”) for entry of an order, the proposed form of which is attached hereto as **Exhibit A** (the “Order”), pursuant to sections 105(a), and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) (a) prohibiting the Utility Providers (defined below) from altering, refusing or discontinuing service; (b) deeming the Utility Providers adequately assured of future performance; and (c) establishing procedures for determining additional adequate assurance of future payment. In support of the Motion, the Debtor relies on the *Declaration of Bret*

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<sup>1</sup> The Debtor in this Chapter 11 Case and the last four digits of its taxpayer identification number are as follows: Cardinal Homes, Inc. (9112). The Debtor’s headquarters are located at 525 Barnesville Highway, Wylliesburg, VA 23976.

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*Proposed Counsel for the Debtor and  
Debtor in Possession*

*A. Berneche, President and Chief Executive Officer of Cardinal Homes, Inc., In Support of Chapter 11 Petition and First Day Motions* (the “First Day Declaration”)<sup>2</sup> filed concurrently herewith. In further support of this Motion, the Debtor respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), and 366 of the Bankruptcy Code.

### **BACKGROUND**

3. On November 20, 2019, Alouette Holdings, Inc., the Debtor’s parent company, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, commencing Case No. 19-36126-KRH.

4. On December 2, 2019 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or an examiner in this case, and no official committee has yet been appointed by the Office of the United States Trustee.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed in the First Day Declaration.

7. In the normal course of business, the Debtor has relationships with various utility companies and other providers (each a “Utility Provider” and, collectively, the “Utility Providers”) for the provision of electricity, propane and related services (the “Utility Services”). The Utility Providers, include, without limitation, the entities set forth on the list attached hereto as **Exhibit B**.<sup>3</sup> The Debtor estimates that its average monthly payments at this time of year to the Utility Providers aggregate approximately \$7,300. As of the Petition Date, the Debtor has a \$5,800 obligation for two months of service from Mecklenburg Electric Cooperative and a \$5,191 pre-petition obligation to Amerigas for delivered propane.

### **RELIEF REQUESTED**

8. The Debtor, by this Motion and pursuant to sections 105(a) and 366 of the Bankruptcy Code, seeks the entry of an order: (a) prohibiting the Utility Providers from altering, refusing or discontinuing services; (b) deeming Utility Providers adequately assured of future performance; and (c) establishing procedures for determining adequate assurance of future payment.

9. In order to provide adequate assurance of payment for future services to the Utility Providers, the Debtor proposes to provide a deposit (a “Utility Deposit”) equal to two weeks of the Debtor’s estimated cost of its monthly utility consumption, to each Utility Provider that requests such a deposit in writing as set forth below.

10. As a condition of accepting a Utility Deposit or any portion thereof, the Debtor propose that such Utility Provider shall be deemed to have stipulated that the Utility Deposit constitutes adequate assurance of payment to such Utility Provider within the meaning of section

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<sup>3</sup> The Debtor has made an extensive and good faith effort to identify all of the Utility Providers that provide Utility Services and to include them on Exhibit B. Nonetheless, the Debtor reserves the right to supplement Exhibit B by filing a notice (a “Supplemental Notice”) at a later date with the Court if necessary.

366 of the Bankruptcy Code, and shall be prohibited from challenging or opting out of the Procedures (as defined below) or requesting any additional adequate assurance of payment of any kind at any time, notwithstanding any attempt by such Utility Provider to reserve a right to seek any such relief.

11. In addition, the Debtor seeks to establish reasonable procedures (the “Procedures”) by which a Utility Provider may request additional adequate assurance of future payment, in the event that such Utility Provider believes that its Utility Deposit does not provide it with satisfactory adequate assurance. Such Procedures, in particular, would provide that:

- a. Any Utility Provider requesting payment of a Utility Deposit equal to the amount proposed in this motion must send to the Debtor, Cardinal Homes, Inc., 525 Barnesville Highway, Wylliesburg, VA 23976, Attn: Bret A. Berneche and (ii) proposed counsel for the Debtor, Whiteford, Taylor & Preston, LLP, Two James Center, 1021 E. Cary St., Suite 1700, Richmond, VA 23219, Attn: Michael E. Hastings, Esq. (together, the “Request Parties”) a written request (a “Deposit Request”) that names the Utility Provider and includes payment instructions for the two-week Utility Deposit, so that it is received on or before the date that is 21 days after entry of the Order granting the relief sought by this Motion (the “Deposit Request Deadline”).
- b. Upon receipt of a Deposit Request, the Debtor shall provide the requesting Utility Provider with the corresponding Utility Deposit.
- c. Any Utility Provider desiring additional adequate assurance in the form of a deposit, prepayment or form otherwise different from the proposed Utility Deposit must, on or prior to the Deposit Request Deadline, serve on the Request Parties a request (an “Additional Assurance Request”), which must be in writing and set forth (i) the amount and form of additional adequate assurance payment requested, (ii) the locations for which the Utility Services are provided and the relevant account numbers, (iii) the Debtor’s payment history for the most recent 12 months, (iv) a list of any deposits, prepayments or other security currently held by the Utility Provider on account of the Debtor, (v) a description of any prior material payment delinquency or irregularity and (vi) an explanation of why the Utility Provider believes the proposed Utility Deposit is not sufficient adequate assurance of payment.

- d. If any Additional Assurance Requests are timely submitted, the Debtor shall have 21 days from the Deposit Request Deadline to negotiate with any such Utility Provider to resolve such Utility Provider's request for additional assurance of payment.
- e. The Debtor may, in its discretion, resolve and settle any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court. The Debtor shall not be required to provide a Utility Provider that submits an Additional Assurance Request with an adequate assurance deposit until such Additional Assurance Request is resolved.
- f. For any Utility Provider that timely submits an Additional Assurance Request for which the Debtor is unable to reach a consensual resolution, the Debtor will request a hearing to determine the adequacy of assurance of payment with respect to such Utility Provider, pursuant to section 366(c)(3) of the Bankruptcy Code.
- g. Pending a resolution of the a Utility Provider's Additional Assurance Request by the Court, such Utility Provider shall be prohibited from discontinuing, altering or refusing service to the Debtor.
- h. Any Utility Provider that does not submit a Deposit Request or file an Additional Assurance Request shall be deemed to have been provided with adequate assurance of payment as required by section 366 of the Bankruptcy Code, shall have waived any and all rights to seek additional or different adequate assurance during the course of this chapter 11 cases and shall be prohibited from discontinuing, altering or refusing to provide Utility Services, including on account of unpaid charges for prepetition Utility Services during the pending of this proceeding.

12. A Utility Provider shall be deemed to have adequate assurance of payment unless and until (a) the Debtor, in its sole discretion, agree to a Deposit Request or an Additional Assurance Request or agree to alternative assurance of payment with the Utility Provider or (b) this Court enters an order requiring that additional adequate assurance of payment be provided.

13. Finally, the Order provides that the Debtor may terminate the services of any Utility Provider by providing written notice (a "Termination Notice"). Upon receipt of a Termination Notice by a Utility Provider, pursuant to the relief requested by the Debtor herein, the Utility Provider shall immediately refund any Utility Deposit to the Debtor, without giving effect to any

rights of setoff or any claims the Utility Provider may assert against the Debtor. The Debtor believes that the immediate refund of a Utility Deposit by a Utility Provider whose services are terminated is fair and appropriate under the circumstances because the Utility Provider would no longer require adequate assurance of future performance by the Debtor.

14. Pursuant to Rule 6003(b) of the Federal Rules of Bankruptcy Procedure, “a motion to pay all or part of a claim that arose before the filing of the petition” shall not be granted by the Court within 21 days of the Petition Date “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm . . . .” Fed. R. Bankr. P. 6003(b). Because the Utility Providers may attempt to terminate the Debtor’s post-petition utility services within the period set forth in section 366(c)(2) of the Bankruptcy Code, and for the reasons set forth in the First Day Declaration, the Debtor submits that the requirements of Rule 6003 have been met and that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate

#### **BASIS FOR RELIEF**

15. Congress enacted section 366 of the Bankruptcy Code to protect a debtor from utility service cutoffs upon a bankruptcy filing while, at the same time, to provide utility companies with adequate assurance that the debtor will pay for post-petition services. See H.R. Rep No. 95-595, at 350 (1978) reprinted in 1978 U.S.C.C.A.N. 5963, 6306. Accordingly, section 366 protects a debtor by enjoining utilities from altering, refusing or discontinuing services solely on account of unpaid prepetition amounts for a period of thirty (30) days after the bankruptcy filing. And it protects utilities by permitting them to alter, refuse or discontinue service after thirty (30) days if the debtor has not furnished “adequate assurance” of payment.

16. Section 366(c), which was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “2005 Act”), significantly modified the existing statutory framework. It has two primary purposes. First, it permits a utility to alter, refuse or discontinue utility service if a debtor has not provided "satisfactory" adequate assurance within thirty (30) days of its bankruptcy filings, subject to the court's ability to modify the amount of adequate assurance. Second, it also restricts the factors that a court can consider when determining whether an adequate assurance payment is, in fact, adequate. Specifically, courts may no longer consider (i) the absence of a security deposit before the debtor’s petition date, (ii) the debtor’s history of timely payments, or (iii) the availability of an administrative expense priority when determining the amount of a deposit. Notwithstanding these changes, it does not appear that Congress intended to— or did— abrogate the bankruptcy court's right to determine the amount of adequate assurance necessary or change the fundamental requirement that assurance of payment must simply be “adequate.”

17. First, while section 366(c) does limit the factors a court can consider when determining whether a debtor has provided adequate assurance of payment, it does not limit the court's ability to determine the amount of payment necessary, if any, to provide such adequate assurance. Instead, section 366(c) gives courts the same discretion in determining the amount of payment necessary for adequate assurance as they previously had under section 366(b). Compare 11 U.S.C. § 366(b) (2005) (“On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance”) with 11 U.S.C. § 366(c)(3)(A) (2005) (“On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance payment under paragraph (2)”); see also Richard Levin & Alesia Ranney-Marinelli, The Creeping Repeal of Chapter 11: The Significant Business Provisions of the Bankruptcy Abuse

Protection and Consumer Protection Act of 2005, 79 Am. Bankr. L.J. 603, 608-09 (2005) (stating that courts would likely continue to determine the amount and form of adequate protection after the implementation of the 2005 Act). Further, it is well established that section 366(b) permits a court to find that no adequate assurance payment at all is necessary to provide a utility with adequate assurance of payment. See In re Caldor, 117 F.3d 646, 650 (2d Cir. 1997) (“Even assuming that ‘other security’ should be interpreted narrowly, . . . a bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security’ provided for under § 366(b) includes the power to require ‘no deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment’”). This may be particularly true in cases where the debtor has made prepetition deposits or prepayments for services that utilities will ultimately render post-petition. 11 U.S.C. § 366(c)(1)(A)(v) (recognizing a prepayment for post-petition services as adequate assurance). Accordingly, courts continue to have discretion to determine the amount and form of adequate assurance payments.

18. Additionally, section 366(c), like section 366(b), simply requires that a utility's assurance of payment be “adequate.” Courts have long recognized that adequate assurance of performance does not constitute an absolute guarantee of a debtor's ability to pay. 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’”); In re Adelpia Bus. Solutions, Inc., 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (accord); In re Steinbach, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Adequate assurance of payment is not, however, absolute assurance... all § 366(b) requires is that a utility receive only such assurance of payment as is necessary to protect its interests given the facts of the debtor’s financial circumstances”). Courts have also recognized that in determining the amount of adequate assurance, bankruptcy courts should focus “on the need of the utility for assurance, and to require



that the debtors supply no more than that, since the debtors almost perforce have a conflicting need to conserve scarce financial resources.” In re Caldor, Inc., 117 F.3d at 650.

19. The essence of the Court's inquiry in determining whether a given assurance of payment is in fact “adequate” 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 also In re Magnesium Corp. of Am., 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002) (“In deciding what constitutes adequate assurance in a given case, a bankruptcy court must 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.”)

20. Here, the Debtor proposes to provide Utility Deposits to any Utility Provider that request such a deposit in writing in accordance with the Procedures in order to provide adequate assurance to its Utility Providers. Under the circumstances of this case, the Debtor believes that the proposed Utility Deposits constitute adequate assurance of payment under section 366(c) of the Bankruptcy Code. Moreover, the Debtor proposes to protect the Utility Providers further by establishing the Procedures provided for herein, whereby any Utility Provider can request additional adequate assurance in the event that it believes there are facts and circumstances with respect to its providing post-petition services to the Debtor that would merit greater protection.

21. The Debtor cannot continue to operate without continued Utility Services. If any of the Utility Providers alter, refuse or discontinue service, even for a brief period, the Debtor's business operations would be severely disrupted. In contrast, the Utility Providers will not be prejudiced by the continuation of their services and will be paid all post-petition utility charges. It is therefore critical that Utility Services continue uninterrupted.

22. Additionally, this Court has the authority to grant the relief requested herein pursuant to section 105(a) of the Bankruptcy Code which provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) is “to assure the bankruptcy courts [sic] power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy 105.01, at 105-5 to 105-6 (15th rev. ed. 2001). Because the proposed Procedures protect the Debtor without materially prejudicing the Utility Providers, they carry out section 366 in a manner fully consistent therewith and are an appropriate exercise of this Court’s authority under section 105(a) of the Bankruptcy Code.

**IMMEDIATE RELIEF IS NECESSARY**

23. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As set forth throughout this Motion, any disruption of the Utility Services would substantially diminish or impair the Debtor’s efforts in this Case to preserve and maximize the value of its estate.

24. For this reason and those set forth above, the Debtor respectfully submits that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

**WAIVER OF ANY APPLICABLE STAY**

25. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its business without interruption and to

preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

### **NOTICE**

26. Notice of this Motion will be given to: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney for the Eastern District of Virginia, (iii) Internal Revenue Service, (iv) counsel for DIP Lender; (v) the Debtor's twenty (20) largest unsecured creditors; (vi) the Debtor's pre-petition secured lenders and its counsel, if known; (vii) all parties that have filed a financing statement asserting a lien in any of the Debtor's assets; (viii) any party that has filed a request for notice with the Court; and (ix) the Utility Providers set forth on the list attached hereto as **Exhibit B**. The Debtor submits that, under the circumstances, no other or further notice of the Motion is required.

### **NO PRIOR REQUEST**

27. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtor respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: December 2, 2019

CARDINAL HOMES, INC.

/s/ Michael E. Hastings

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*Proposed Counsel for the Debtor and  
Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re: Chapter 11

CARDINAL HOMES, INC., Case No. 19-36275-KRH

Debtor.<sup>1</sup>

**ORDER (A) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING OR DISCONTINUING SERVICE, (B) DEEMING UTILITY PROVIDERS ADEQUATELY ASSURED OF FUTURE PAYMENT, AND (C) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the Motion (the “Motion”)<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the “Debtor”) for, among other things, entry of an order pursuant to sections 105(a), and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) (a) prohibiting the Utility Providers (defined below) from altering, refusing or discontinuing service; (b) deeming the Utility Providers adequately assured of future performance; and (c) establishing procedures for determining additional adequate assurance of future payment; and notice of the Motion having been given to: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney for the Eastern District of Virginia, (iii) Internal Revenue

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<sup>1</sup> The Debtor in this Chapter 11 Case and the last four digits of its taxpayer identification number are as follows: Cardinal Homes, Inc. (9112). The Debtor’s headquarters are located at 525 Barnesville Highway, Wylliesburg, VA 23976.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

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*Proposed Counsel for the Debtor and  
Debtor in Possession*

Service, (iv) counsel for DIP Lender; (v) the Debtor's twenty (20) largest unsecured creditors; (vi) the Debtor's pre-petition secured lenders and its counsel, if known; (vii) all parties that have filed a financing statement asserting a lien in any of the Debtor's assets; (viii) any party that has filed a request for notice with the Court, and (ix) the Utility Providers set forth on the list attached as Exhibit B to the Motion; and the Court having conducted a hearing on December 3, 2019, to consider the relief requested in the Motion (the "First Day Hearing"); and it appearing that granting the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor, and is otherwise fair and reasonable and in the best interest of the Debtor, its estate and its creditors, and is essential for the preservation of the value of the Debtor's assets; and all objections, if any, to the entry of this Order having been withdrawn, resolved or overruled by the Court; and upon the entire record of this case, including any evidence presented or statements of counsel at the First Day Hearing; and after due deliberation thereon; and good and sufficient cause appearing therefor;

It is accordingly hereby **ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is **GRANTED**, stated herein, on an interim basis pending a final hearing thereon, which is hereby scheduled for December \_\_, 2019 at \_:00 p.m. in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 E. Broad Street, Courtroom 5000, Richmond, Virginia 23219 (the "Final Hearing"), with any objections to be filed and served so as to be received on or before December \_\_, 2019. If no objections are filed and served in accordance with this Order, no Final Hearing will be held and the Motion is approved by this Order becoming final, and no further order approving the Motion will be required.

2. The Debtor is authorized to pay on a timely basis, in accordance with its pre-petition practices, all undisputed invoices for Utility Services rendered by Utility Providers to the Debtor after the Petition Date.

3. The Debtor shall provide a deposit (the “Utility Deposit”) in an amount equal to two weeks of the Debtor’s estimated cost of its monthly utility consumption, to each Utility Provider that requests such a deposit in writing in accordance with the Procedures, as defined herein.

4. The Utility Providers, including but not limited to the Utility Providers identified on Exhibit B to the Motion, as may be supplemented by the Debtor from time to time by filing a notice with the Court (the “Supplemental Notice”), are prohibited from discontinuing, altering or refusing service to, or discriminating against, the Debtor, or requiring additional adequate assurance of payment other than that Utility Deposit (and, in conjunction with the Debtor’s ability to pay for Utility Services in the ordinary course of business, the “Proposed Adequate Assurance”), except in compliance with the following procedures (the “Procedures”):

- a. Any Utility Provider requesting payment of a Utility Deposit must send to the Debtor, Cardinal Homes, Inc., 525 Barnesville Highway, Wylliesburg, VA 23976, Attn: Bret A. Berneche and (ii) proposed counsel for the Debtor, Whiteford, Taylor & Preston, LLP, Two James Center, 1021 E. Cary St., Suite 1700, Richmond, VA 23219, Attn: Michael E. Hastings, Esq. (together, the “Request Parties”) a written request (a “Deposit Request”) that names the Utility Provider and includes payment instructions for the Utility Deposit, so that it is received on or before the date that is 21 days after entry of the Order granting the relief sought by this Motion (the “Deposit Request Deadline”).
- b. Upon receipt of a Deposit Request, the Debtor shall provide the requesting Utility Provider with the corresponding Utility Deposit.
- c. Any Utility Provider desiring additional adequate assurance in the form of a deposit, prepayment or form otherwise different from the proposed Utility Deposit must, on or prior to the Deposit Request Deadline, serve on the Request Parties a request (an “Additional Assurance Request”), which must be in writing and set forth (i) the amount and form of additional adequate assurance payment requested, (ii) the locations for which the Utility Services are provided and the relevant account numbers, (iii) the

Debtor's payment history for the most recent 12 months, (iv) a list of any deposits, prepayments or other security currently held by the Utility Provider on account of the Debtor, (v) a description of any prior material payment delinquency or irregularity and (vi) an explanation of why the Utility Provider believes the proposed Utility Deposit is not sufficient adequate assurance of payment.

- d. If any Additional Assurance Requests are timely submitted, the Debtor shall have 21 days from the Deposit Request Deadline to negotiate with any such Utility Provider to resolve such Utility Provider's request for additional assurance of payment.
- e. The Debtor may, in its discretion, resolve and settle any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court. The Debtor shall not be required to provide a Utility Provider that submits an Additional Assurance Request with an adequate assurance deposit until such Additional Assurance Request is resolved.
- f. For any Utility Provider that timely submits an Additional Assurance Request for which the Debtor is unable to reach a consensual resolution, the Debtor will request a hearing to determine the adequacy of assurance of payment with respect to such Utility Provider, pursuant to section 366(c)(3) of the Bankruptcy Code.
- g. Pending a resolution of the Utility Provider's Additional Assurance Request by the Court, such Utility Provider shall be prohibited from discontinuing, altering or refusing service to the Debtor.
- h. Any Utility Provider that does not submit a Deposit Request or file an Additional Assurance Request shall be deemed to have been provided with adequate assurance of payment as required by section 366 of the Bankruptcy Code, shall have waived any and all rights to seek additional or different adequate assurance during the course of this chapter 11 case and shall be prohibited from discontinuing, altering or refusing to provide Utility Services, including on account of unpaid charges for prepetition Utility Services during the pending of this proceeding.

5. This Order shall be binding on all Utility Providers, regardless of whether or when a Utility Provider was added by Supplemental Notice; provided however, that the Deposit Request Deadline shall be extended for any Utility Provider first listed in such Supplemental Notice to the date that is 21 days from the date that such Supplemental Notice is filed, and the Resolution Period with respect to such Additional Assurance Request will be 21 days after receipt of such Additional Assurance Request.



6. Each Utility Provider shall be deemed to have adequate assurance of payment unless and until (a) the Debtor, in its sole discretion, agrees to a Deposit Request or an Additional Assurance Request or agrees to alternative assurance of payment with the Utility Provider or (b) this Court enters an order requiring that additional adequate assurance of payment be provided.

7. Nothing herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is included on Exhibit B to the Motion or any Supplemental Notice.

8. The Debtor may terminate the services of any Utility Provider by providing written notice (a "Termination Notice"). Upon receipt of a Termination Notice by a Utility Provider, the Utility Provider shall immediately refund any Utility Deposit to the Debtor, without giving effect to any rights of setoff or any claims the Utility Provider may assert against the Debtor with respect to the Utility Deposit. The Debtor's rights to oppose any such setoff or claims of the Utility Providers are reserved.

9. Within two (2) business days following entry of this Order, the Debtor shall serve, by United States mail, first-class postage prepaid, a copy of this Order on: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney for the Eastern District of Virginia, (iii) Internal Revenue Service, (iv) counsel for the DIP Lender; (v) the Debtor's twenty (20) largest unsecured creditors; (vi) all parties that have filed a financing statement asserting a lien in any of the Debtor's assets; (vii) all parties that have filed a request for notice with the Court. and (ix) the Utility Providers set forth on the list attached as Exhibit B to the Motion.

10. The requirement under Local Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

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

Dated: \_\_\_\_\_

\_\_\_\_\_

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket \_\_\_\_\_

WE ASK FOR THIS:

/s/ Michael E. Hastings  
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*Proposed Counsel for the Debtor and Debtor in Possession*

Local Rule 9022-1(C) Certification

The foregoing Order was endorsed by and/or served upon all necessary parties pursuant to Local Rule 9022-1(C).

/s/ Michael E. Hastings  
Michael E. Hastings

Cardinal Homes, Inc.  
 Utility Providers

| Utility Provider  | Account No(s).           | Type of Service | Average Monthly Invoice [a] | Suggested Deposit [b] |
|---|--------------------------|-----------------|-----------------------------|-----------------------|
| Mecklenburg Electric Cooperative<br>P. O. Box 2451<br>Chase City, VA 23924-2451<br><br><u>Registered Agent:</u><br>Mecklenburg Electric Cooperative<br>Attn: E. Warren Matthews, Registered Agent<br>115 West Danville Street<br>South Hill, VA 23970 | 5191200700<br>5191200900 | Electric        | \$ 4,634.04                 | \$ 2,317.02           |
| AmeriGas Propane, Inc<br>1110 W Danville Street<br>South Hill, VA 23970-3502<br><br><u>Registered Agent:</u><br>AmeriGas Propane, Inc.<br>Attn: Beverley L. Crump, Registered Agent<br>100 Shockoe Slip, 2nd Floor<br>Richmond, VA 23219              | 201662102                | Propane         | \$ 2,696.49                 | \$ 1,348.24           |

[a] Average monthly invoice is based upon three month period November 2018 - January 2019.

[b] Suggested deposit represents 2 weeks of service.