

So Ordered.

Signed this 20 day of December, 2019.



Robert E. Littlefield, Jr.
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In re:

**GOOD SAMARITAN LUTHERAN HEALTH
CARE CENTER, INC. d/b/a BETHLEHEM
COMMONS CARE CENTER, et al.¹,**

Debtors.

:
: **Case No. 19-12215 (REL)**
: **Chapter 11 (Main Case)**
: **Case No. 19-12216 (REL)**
:
:
: **Jointly Administered**

**INTERIM ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICE; (II) APPROVING THE DEBTORS’
PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION
SERVICES; AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an Order (this “**Order**”)

- (i) prohibiting Utility Providers from altering, refusing or discontinuing service;
- (ii) approving the Debtors’ Proposed Adequate Assurance of payment for postpetition services; and
- (iii) establishing procedures for resolving requests for additional adequate assurance of payment;

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Good Samaritan Lutheran Health Care Center, Inc. d/b/a Bethlehem Commons Care Center (0663) and Kenwood Manor, Inc. (8178).

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

the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b); and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; 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 good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis.
2. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Providers to the Debtors after the Petition Date.
3. The Debtors shall provide an Adequate Assurance Deposit equal in amount to the cost of two (2) weeks of utility service, calculated on the basis of the historical average of the Debtors' actual usage over the past twelve (12) months, to the Utility Providers listed on Exhibit C to the Motion.
4. If the Debtors fail to timely make any payment to a Utility Provider for postpetition services, such Utility Provider may draw from the Adequate Assurance Deposit or the Prepetition Deposit to remedy any such non-payment upon three (3) business days prior notice to the Debtors.

5. The Proposed Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business, satisfies the requirements of Bankruptcy Code section 366.

6. Pending entry of the Final Order, the Utility Providers are prohibited from (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges; (b) drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for utility services; or (c) requiring additional adequate assurance of payment other than the Proposed Adequate Assurance, as a condition of the Debtors continuing to receive Utility Services.

7. The following Adequate Assurance Procedures are approved:

a. Within two (2) business days of the date the Interim Order is docketed; the Debtors will mail a copy of the Interim Order to the Utility Providers on the Utility Providers List;

b. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment, it must serve an Additional Assurance Request upon proposed counsel to the Debtors, (i) Stradley Ronon Stevens and Young, LLP (Attn: Deborah A. Reperowitz and Mischa S. Wheat, counsels to the Debtors) and (ii) the Office of the United States Trustee for Region 2 at 11A Clinton Avenue, Room 620, Albany, New York 12207) (Attn: Amy Ginsberg) (the "**Notice Parties**");

c. Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which utility services are provided and the relevant account number(s); (iii) include a summary of the Debtor's payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Provider; and (v) identify and explain the basis of the Utility Provider's proposed adequate assurance requirement under Bankruptcy Code section 366(c)(2);

d. Upon the Notice Parties' receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall negotiate promptly with such Utility Provider in an effort to resolve such Utility Provider's Additional Assurance Request;

e. The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party-in-interest, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, without further order of the Court to the extent the Debtor believes such additional assurance is reasonable in the exercise of its business judgment and the Debtors may, by mutual agreement with a Utility Provider and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Provider's estimated two-week utility expense;

f. If the Debtors determine that a received Additional Assurance Request is not reasonable and are unable to reach a resolution of the Additional Assurance Request with the applicable Utility Provider, the Debtors shall, upon reasonable notice, calendar the matter (the "**Adequate Assurance Dispute**") for a hearing to determine the adequacy of assurance of payment pursuant to Bankruptcy Code section 366(c)(3);

g. Pending resolution of any such Adequate Assurance Dispute, the requesting Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;

h. Upon the termination of Utility Services, the Utility Providers shall return to the Debtors the Adequate Assurance Deposit, provided there are no outstanding disputes related to postposition amounts due.

8. The Debtors are authorized to supplement the Utility Providers List without further order of the Court with Additional Utility Providers if such Additional Utility Providers were inadvertently omitted from the Utility Providers List, and the Debtors will file as soon as

practicable with the Court a supplement to Exhibit C annexed to the Motion, adding the name of any Additional Utility Provider to the Utility Providers List. The Debtors will serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of an Additional Utility Provider, by First Class Mail) a copy of the Motion and this Interim Order on any Additional Utility Provider.

9. Nothing contained herein constitutes a finding that any entity is or is not a Utility Provider hereunder or under Bankruptcy Code section 366, whether or not such entity is listed on the Utility Providers List.

10. Within two (2) business days of the date of this Interim Order, the Debtors shall serve a copy of this Interim Order and the Motion on each Utility Provider identified on the Utility Providers List. Within two (2) business days of filing a supplement to the Utility Providers List, as applicable, the Debtors shall serve a copy of this Interim Order and the Motion on any applicable Additional Utility Provider.

11. Nothing in the Motion or this Interim Order, nor any payments made by the Debtors pursuant to this Interim Order, shall be deemed or construed as: (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors' rights to dispute any claim or lien; (c) a waiver of a Utility Provider's rights with regard to assertion of any claim or interest; (d) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (e) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise; or (f) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Utility Provider.

12. Nothing in this Order authorizes the Debtors to pay prepetition claims without further order of the Court.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

15. Notwithstanding any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Local Bankruptcy Rule that might otherwise delay the effectiveness of this Order, the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order.

17. The final hearing (the “**Final Hearing**”) to consider the entry of a final order granting the relief requested in the Motion shall be held on January 23, 2020, at 1:30 p.m. Prevailing Eastern Time.

18. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served, no later than seven (7) days prior to the commencement of the Final Hearing upon: (a) the Debtors; (b) the Office of the United States Trustee for the Northern District of New York; (c) the Office of the Attorney General of the State of New York; (d) the New York Department of Health; (e) the twenty largest unsecured creditors of each Debtor; (f) counsel to Amalgamated Bank; (g) The Lutheran Care Network; (h) the Internal Revenue Service; (i) the Department of Medicaid, Department of Health, and

Division of Health Services Regulation in the State of New York; and (j) each Utility Provider listed on Exhibit C to the Motion

19. This Court shall retain jurisdiction over all matters arising from the interpretation, implementation, or enforcement of this Interim Order.

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