

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

In re:	)	Chapter 11
	)	
AVADIM HEALTH, INC., et al., <sup>1</sup>	)	Case No. 21-10883 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS (A) APPROVING THE DEBTORS’ PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, (B) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES, (C) APPROVING THE DEBTORS’ PROPOSED PROCEDURES FOR RESOLVING ADEQUATE ASSURANCE REQUESTS, AND (D) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby file this motion (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) approving the Debtors’ Proposed Adequate Assurance (as defined herein) of payment for future utility services, (b) prohibiting Utility Companies (as defined herein) from altering, refusing, or discontinuing services, (c) approving the Debtors’ proposed procedures for resolving Adequate Assurance Requests (as defined herein), and (d) granting related relief. In support of this Motion, the Debtors respectfully state as follows.

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<sup>1</sup> The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors’ business address is 81 Thompson Street, Asheville, NC 28803.

**Jurisdiction and Venue**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter 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 matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent 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”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a) and 366 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended (the “Bankruptcy Code”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-1(m).

**Background**

4. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and

1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

5. Founded in 2007, Avadim Health, Inc. (collectively referred to herein with its Debtor affiliates as the “Company”) is a vertically integrated healthcare and wellness company that sells topical products that improve neuromuscular health and skin barrier health, and are a key element of hospital infection prevention bundles. Avadim has commercialized a number of products primarily under two brand families: Theraworx Protect, which targets institutional care and community health, and Theraworx Relief, marketed through retail pharmacies. As of the end of 2019, the Company’s products were used in approximately 300 acute care hospitals, 850 nursing homes and other long-term care facilities, and were available in more than 49,000 pharmacy locations worldwide. The Company maintains its own research and development, manufacturing and commercialization infrastructure, and is strategically positioned to take advantage of several emerging trends in healthcare: antibiotic stewardship, negativity around opioids, consumerization of healthcare and growth in self-care. The Company’s products are designed to take advantage of the increasing desire for easily accessible, self-directed care, with options that are safe and easy to use.

6. The factual background regarding the Debtors, including their current and historical business operations and the events precipitating the chapter 11 filing, is set forth in detail in the *Declaration of Keith Daniels, Chief Restructuring Officer of the Debtors, in Support of the*

*Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") filed concurrently herewith and fully incorporated herein by reference<sup>2</sup>.

7. By this Motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively: (a) approving the Debtors' Proposed Adequate Assurance (as defined herein) of payment for future utility services; (b) prohibiting Utility Companies (as defined herein) from altering, refusing, or discontinuing services; (c) approving the Debtors' proposed procedures for resolving Adequate Assurance Requests (as defined herein); and (d) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

#### **The Utility Services and Utility Companies**

8. In connection with the operation of their businesses and management of their properties, the Debtors obtain electricity, natural gas, telephone, water, waste disposal, and other similar services (collectively, the "Utility Services") from a number of utility companies or brokers (collectively, the "Utility Companies"). A nonexclusive list of the Utility Companies and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the "Utility Services List") is attached hereto as **Exhibit C**.<sup>3</sup> The relief requested herein is requested with respect to all Utility Companies providing Utility Services to the Debtors.

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

<sup>3</sup> The inclusion of any entity on, or the omission of any entity from, the Utility Services List is not 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 with respect to any such determination.

9. Uninterrupted Utility Services are essential to the Debtors' ongoing business operations. The Debtors' operations require electricity and gas for lighting, heating, trash, sewer services, and air conditioning. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations could be severely disrupted, and such disruption would jeopardize the Debtors' ability to operate their business. Accordingly, it is essential that the Utility Services continue uninterrupted during the chapter 11 cases.

10. On average, the Debtors collectively pay approximately \$14,047.75, in the aggregate, each month for third-party Utility Services, calculated as a historical average of payments for the twelve months preceding the Petition Date. The Debtors' Facilities have similar requirements for Utility Services due to the similarity of the operations among the Facilities. However, because of the differing locations of the Debtors' Facilities and the particular needs of each, the Debtors contract separately for Utility Services for each of the Facilities.

11. To the best of the Debtors' knowledge, the Debtors do not have any existing prepayments with respect to any Utility Companies. Further, certain of the Debtors may have provided prepetition deposits to certain Utility Companies in the ordinary course, but deposits were likely previously applied by the applicable Utility Company prepetition such that the Debtors do not believe that any Utility Company holds any prepetition deposit amounts.

**Proposed Adequate Assurance of Payment**

12. The Debtors intend to pay postpetition obligations owed to the Utility Companies in a timely manner.

13. To provide additional assurance of payment, the Debtors propose to deposit the aggregate amount of \$7,023.88 (the “Adequate Assurance Deposit”), into a segregated account held by Debtors.

14. The Adequate Assurance Deposit represents an amount equal to approximately one-half of the Debtors’ average monthly cost of Utility Services, excluding any prepaid amounts or prepetition deposits held by the Utility Companies, as detailed in Exhibit C. The Adequate Assurance Deposit will be held in a segregated account for the duration of these chapter 11 cases. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors’ ability to pay for future utility services in accordance with prepetition practice (collectively, the “Proposed Adequate Assurance”), constitutes sufficient adequate assurance to the Utility Companies in full satisfaction of section 366 of the Bankruptcy Code.

15. The Debtors propose that the Adequate Assurance Deposit may be adjusted and/or reduced by the Debtors, to account for any of the following: (i) the extent to which any Adequate Assurance Deposit includes any amount on account of a company the Debtors subsequently determine is not a “utility” within the meaning of section 366 of the Bankruptcy Code, (ii) the termination of a Utility Service by any Utility Company by a Debtor regardless of any Additional Adequate Assurance Request (as such term is defined herein below), (iii) the closure of a utility account with a Utility Company for which funds have been contributed for the applicable Adequate Assurance Deposit, or (iv) any other arrangements with respect to adequate assurance of future payment reached by a Debtor with individual Utility Companies; *provided*, that with respect to the Debtors’ termination of a Utility Service or closure of a utility account with

a Utility Company, the Debtors may adjust and/or amend the balance of the applicable Adequate Assurance Deposit upon reconciliation and payment by the Debtors of any such Utility Company's final invoice in accordance with applicable nonbankruptcy law, to the extent that there are no outstanding disputes related to postpetition payments due.

**The Adequate Assurance Procedures**

16. Any Utility Company that is not satisfied with the Proposed Adequate Assurance may make a request for additional or different adequate assurance of future payment (each an "Adequate Assurance Request") pursuant to the adequate assurance procedures set forth below (the "Adequate Assurance Procedures"):

a. Any Utility Company that objects to the Debtors' Proposed Adequate Assurance must either file an objection to the Motion with this Court or, alternatively, serve the Adequate Assurance Request on: (i) the Debtors, c/o of Carl Marks Advisors, 900 Third Avenue, 33<sup>rd</sup> Floor, New York, NY 10022, Attn: Keith Daniels (kdaniels@carlmarks.com); (ii) proposed counsel for the Debtors, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, NY 10020, Attn: Larry Halperin (halperin@chapman.com), and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801) Attn: Laura Davis Jones (ljones@pszjlaw.com); (iii) counsel to the Debtors' prepetition and postpetition secured lender, (a) Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: David Griffiths, Esq. (david.griffiths@weil.com) and Bryan R. Podzius, Esq. (bryan.podzius@weil.com) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Zachary I. Shapiro

(shapiro@rlf.com) (iv) counsel to any statutory committee appointed in these cases; and (v) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Richard Schepacarter, Esq. (Richard.Schepacarter@usdoj.gov) (collectively, the “Notice Parties”).

b. Any Adequate Assurance Request must: (i) be made in writing; (ii) identify the location for which Utility Services are provided; (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any deposits or other prepetition security provided; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

c. The Debtors are authorized to resolve, in consultation with the DIP Agent, any Adequate Assurance Request by mutual agreement with a Utility Company and without further order of the Court and, in connection with any such agreement, in consultation with the DIP Agent, to provide a Utility Company with alternative adequate assurance of payment, including cash deposits, payments of prepetition balances, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable.

d. If the Debtors are unable to consensually resolve an Adequate Assurance Request by mutual agreement within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors will seek a hearing with the Court (the “Determination Hearing”) to determine the appropriate amount of adequate assurance required with respect to such Adequate Assurance Request. Pending resolution of such Adequate Assurance Request

at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

e. Subject to the Adequate Assurance Procedures and the rights of the Utility Companies to seek modification of the amount of the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy Code, the Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

f. All Utility Companies who do not file an objection to this Motion or serve an Adequate Assurance Request shall, subject to their rights to seek modification of the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy Code, be: (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

17. The Debtors may add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the applicable Adequate Assurance Deposit an amount equal to one-half of the Debtors’ average monthly cost for each subsequently-added or removed Utility Company as soon as practicable. For Utility Companies that are added to the Utility Services List, the Debtors will cause a copy of the order granting this Motion,

including the Adequate Assurance Procedures, to be served on such subsequently added Utility Company as soon as reasonably practicable under the circumstances. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures.

18. The Debtors submit that the Adequate Assurance Procedures set forth a streamlined process for Utility Companies to address potential concerns with respect to the Proposed Adequate Assurance, while at the same time allowing the Debtors to continue their business operations uninterrupted. More specifically, the Adequate Assurance Procedures permit a Utility Company to object to the Proposed Adequate Assurance by filing and serving an Adequate Assurance Request upon certain notice parties. The Debtors may then resolve any Adequate Assurance Request by mutual agreement with the Utility Company, and in consultation with the DIP Agent, without further order of the Court. If the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Adequate Assurance Request.

#### **Basis for Relief**

19. As discussed above, section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility company within thirty days of the petition, or the utility company may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code provides a non-

exhaustive list of examples for what constitutes “assurance of payment.” 11 U.S.C. § 366 (c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtors’ ability to pay. *See, e.g., In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338, 2011 WL 5546954, at \*5 (Bankr. S.D.N.Y. Nov. 14, 2011) (finding that “[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 Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires . . . ‘adequate assurance’ of payment. The statute does not require an absolute guarantee of payment.” (citation omitted)), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997).

20. When considering whether a given assurance of payment is “adequate,” the Court should examine the totality of the circumstances to make an informed decision as to whether the Utility Company will be subject to an unreasonable risk of nonpayment. *See In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002). In determining the level of adequate assurance, however, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)).

21. Here, the Utility Companies are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit, and the Debtors’ ongoing

ability to meet obligations as they come due in the ordinary course, provides assurance of the Debtors' payment of their future obligations. Moreover, termination of the Utility Services could result in the Debtors' inability to operate their business to the detriment of all stakeholders. *Cf. In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

22. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores Inc.*, No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “[t]he plain language of §366 of the Bankruptcy Code allows the court to adopt the Procedures set forth in the Utility Order”). Such procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that the Debtors' Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Companies believe they have under sections 366(b) and (c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at \*5–6. The Utility Companies still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at \*6. The Adequate Assurance Procedures, however, avoid a haphazard and chaotic process whereby each Utility Company could make an extortionate, last-minute demand

for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. *See id.* at \*5.

23. Because the Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, the Court should grant the relief requested herein. Indeed, similar procedures have been approved by courts in this district. *See, e.g., In re CarbonLite Holdings, LLC*, No. 21-10527 (JTD) (Bankr. D. Del. Apr. 8, 2021) (approving adequate assurance deposit equal to one half of debtor's monthly utility expenses on a final basis) *In re RTI Holding Company, LLC*, No. 20-12456 (JTD) (Bankr. D. Del. Nov. 17, 2020) (same); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 21, 2020) (same); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019) (approving adequate assurance deposit equal to one half of debtor's monthly utility expenses on an interim basis); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 12, 2019) (approving adequate assurance deposit equal to one half of debtor's monthly utility expenses on a final basis); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 1, 2019) (same); *In re PES Holdings LLC*, No. 19-11626 (KG) (Bankr. D. Del. Aug. 21, 2019) (same); *In re iPic-Gold Class Entertainment, LLC*, No. 19-11739 (LSS) (Bankr. D. Del. Sept. 11, 2019) (same).

24. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions on the Bankruptcy Code, particularly section 366 thereof. Accordingly, the Court should exercise

its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

**The Requirements of Bankruptcy Rule 6003 are Satisfied**

25. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, prohibiting Utility Companies from altering or discontinuing services, authorizing the Debtors to deposit the Proposed Adequate Assurance and utilize the Adequate Assurance Procedures, and granting the other relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Reservation of Rights**

26. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim

related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Bankruptcy Rules 6004(a) and 6004(h)**

27. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

28. Notice of this Motion shall be given to the following parties: (a) the Office of the United States Trustee; (b) counsel to the Debtors' prepetition and postpetition secured lenders; (c) the Utility Companies; and (d) the Debtors' thirty-five largest unsecured creditors on a consolidated basis. As the Motion is seeking "first day" relief, within two business days after the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion as required by Del. Bankr. LR 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

29. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: May 31, 2021

PACHULSKI STANG ZIEHL & JONES LLP

*/s/ Laura Davis Jones*

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*Proposed Counsel for the Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

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

In re:	)	Chapter 11
	)	
AVADIM HEALTH, INC., et al., <sup>1</sup>	)	Case No. 21-10883 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**INTERIM ORDER (A) APPROVING THE DEBTORS’ PROPOSED  
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES,  
(B) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING,  
OR DISCONTINUING SERVICES, (C) APPROVING THE DEBTORS’  
PROPOSED PROCEDURES FOR RESOLVING ADEQUATE  
ASSURANCE REQUESTS, AND (D) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) approving the Debtors’ Proposed Adequate Assurance of payment for future utility services, (b) prohibiting Utility Companies from altering, refusing, or discontinuing services, (c) approving the Debtors’ proposed procedures for resolving Adequate Assurance Requests, (d) granting related relief, and (e) scheduling a final hearing to consider approval of the Motion on a final basis; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C.

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<sup>1</sup> The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors’ business address is 81 Thompson Street, Asheville, NC 28803.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

§ 157(b)(2); and this Court having found 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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. Subject to the Adequate Assurance Procedures, the Motion is granted on an interim basis as set forth herein.

2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2021, at \_\_:\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2021, and shall be served on (i) the Debtors, c/o of Carl Marks Advisors, 900 Third Avenue, 33<sup>rd</sup> Floor, New York, NY 10022, Attn: Keith Daniels (kdaniels@carlmarks.com); (ii) proposed counsel for the Debtors, Chapman and Cutler LLP, 1270 Avenue of the Americas,

New York, NY 10020, Attn: Larry Halperin (halperin@chapman.com), and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801) Attn: Laura Davis Jones (ljones@pszjlaw.com); (iii) counsel to the Debtors' prepetition and postpetition secured lenders, (a) Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: David Griffiths, Esq. (david.griffiths@weil.com) and Bryan R. Podzius, Esq. (bryan.podzius@weil.com) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Zachary I. Shapiro (shapiro@rlf.com); (iv) counsel to any statutory committee appointed in these cases; and (v) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Richard Schepacarter, Esq. (Richard.Schepacarter@usdoj.gov) (collectively, the "Notice Parties"). In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors shall serve a copy of the Motion and this Interim Order on each Utility Company listed on the Utility Services List no later than two (2) business days after the date this Interim Order is entered.

4. No later than fifteen (15) days after the date this Interim Order is entered, the Debtors shall cause the Adequate Assurance Deposit to be deposited into segregated accounts and held during the pendency of these chapter 11 cases.

5. Subject to entry of a final order on the Motion or, alternatively, modification of the amount of the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy

Code, the Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

6. Until such time as the Court enters a final order on the Motion or a request to modify the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy Code, all Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

7. The following Adequate Assurance Procedures are hereby approved on an interim basis:

a. Any Utility Company that objects to the Debtors' Proposed Adequate Assurance must either file an objection to the Motion with this Court or, alternatively, serve the Adequate Assurance Request on the Notice Parties.

b. Any Adequate Assurance Request must: (i) be made in writing; (ii) identify the location for which Utility Services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

c. The Debtors are authorized to resolve, in consultation with the DIP Agent, any Adequate Assurance Request by mutual agreement with a Utility Company

and without further order of the Court and, in connection with any such agreement, in consultation with the DIP Agent, to provide a Utility Company with alternative adequate assurance of payment, including cash deposits, payments of prepetition balances, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable.

d. If the Debtors are unable to consensually resolve an Adequate Assurance Request by mutual agreement within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors will seek a hearing with the Court (the “Determination Hearing”) to determine the appropriate amount of adequate assurance required with respect to such Adequate Assurance Request. Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

e. Subject to the procedures described in this Interim Order and the rights of the Utility Companies to seek modification of the amount of the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy Code, the Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

f. All Utility Companies who do not file an objection to the Motion or serve an Adequate Assurance Request shall, subject to their rights to seek modification of the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy Code, be: (a)

deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

8. The Debtors may add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the applicable Adequate Assurance Deposit an amount equal to one-half of the Debtors’ average monthly cost for each subsequently-added or removed Utility Company as soon as practicable. For Utility Companies that are added to the Utility Services List, the Debtors will cause a copy of this Interim Order, including the Adequate Assurance Procedures, to be served on such subsequently added Utility Company as soon as reasonably practicable under the circumstances. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures.

9. The Debtors may amend the Utility Services List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days’ advance notice to such Utility Company, and have not received an objection from such Utility Company. If an objection is received by a Utility Company with respect thereto, the Debtors shall request a hearing before this Court at the next omnibus hearing date or such other date as the Debtors and the Utility Company may agree. The Debtors shall not deduct from the applicable Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Services List unless and until the fourteen days’ notice period has passed and the Debtors have not received any objection from the Utility

Company to the termination or deletion, or until such an objection has been resolved consensually or by the Court.

10. Any deposit provided to a Utility Provider by the Debtors prior to the Petition Date must be returned to the Debtors within twenty-one days of receiving a notice that the services provided to the Debtors by such Utility Provider will no longer be needed; provided that the foregoing does not limit or prejudice the Utility Provider's right to apply such deposit to an outstanding pre-petition balance due and owing prior to the expiration of the twenty-one (21) day period.

11. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

12. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that each such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

13. The Debtors are authorized, but not directed, to pay on a timely basis in accordance with past practice, all undisputed invoices with respect to postpetition Utility Services rendered to the Debtors. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, with any limitation, any penalties or interest.

14. All payments authorized by this Interim Order may be made solely to the extent in compliance with the Approved Budget (as defined in the interim or final order authorizing the Debtors to obtain postpetition senior secured financing and related relief (the “DIP Order”)) then in effect. To the extent there is any inconsistency between the terms of this Interim Order and the DIP Order, the DIP Order shall control.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors’ or any other party in interest’s rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

17. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

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

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

20. The 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

In re:	)	Chapter 11
	)	
AVADIM HEALTH, INC., et al., <sup>1</sup>	)	Case No. 21-10883 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**FINAL ORDER (A) APPROVING THE DEBTORS’ PROPOSED  
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY  
SERVICES, (B) PROHIBITING UTILITY COMPANIES FROM ALTERING,  
REFUSING, OR DISCONTINUING SERVICES, (C) APPROVING THE  
DEBTORS’ PROPOSED PROCEDURES FOR RESOLVING ADEQUATE  
ASSURANCE REQUESTS, AND (D) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) approving the Debtors’ Proposed Adequate Assurance of payment for future utility services, (b) prohibiting Utility Companies from altering, refusing, or discontinuing services, (c) approving the Debtors’ proposed procedures for resolving Adequate Assurance Requests, and (d) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter 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; 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

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<sup>1</sup> The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Avadim Health, Inc. (8411); Avadim Health IP, Inc. (7594); Bionome Properties Corp. (6483); Quality Assurance Associates, Inc. (5613); and Relion Manufacturing, Inc. (0430). The Debtors’ business address is 81 Thompson Street, Asheville, NC 28803.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at hearings before this Court (the "Hearings"); and the Court having entered an interim order on the Motion [Docket No. \_\_\_\_]; and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearings establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. Subject to the Adequate Assurance Procedures, the Motion is granted on a final basis as set forth herein.
2. The Debtors shall cause a copy of the Motion and this Final Order to be served on each Utility Company listed on the Utility Services List no later than two (2) business days after the date this Final Order is entered.
3. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in segregated accounts during the pendency of these chapter 11 cases.
4. The Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance

Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

5. All Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

6. The following adequate assurance procedures (the “Adequate Assurance Procedures”) are hereby approved:

a. Any Utility Company that objects to the Debtors’ Proposed Adequate Assurance must either file an objection to the Motion with this Court or, alternatively, serve the Adequate Assurance Request on: (i) the Debtors, c/o of Carl Marks Advisors, 900 Third Avenue, 33<sup>rd</sup> Floor, New York, NY 10022, Attn: Keith Daniels (kdaniels@carlmarks.com); (ii) proposed counsel for the Debtors, Chapman and Cutler LLP, 1270 Avenue of the Americas, New York, NY 10020, Attn: Larry Halperin (halperin@chapman.com), and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801) Attn: Laura Davis Jones (ljones@pszjlaw.com); (iii) counsel to the counsel to the Debtors’ prepetition and postpetition secured lenders, (a) Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: David Griffiths, Esq. (david.griffiths@weil.com) and Bryan R. Podzius, Esq. (bryan.podzius@weil.com) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Zachary I. Shapiro (shapiro@rlf.com); (iv) counsel to any statutory committee appointed in these cases; and (vii) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE

19801, Attn: Richard Schepacarter, Esq. (Richard.Schepacarter@usdoj.gov) (collectively, the “Notice Parties”).

b. Any Adequate Assurance Request must: (i) be made in writing; (ii) identify the location for which Utility Services are provided; (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any deposits or other security already provided by the Debtors; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

c. The Debtors are authorized to resolve, in consultation with the DIP Agent, any Adequate Assurance Request by mutual agreement with a Utility Company and without further order of the Court and, in connection with any such agreement, in consultation with the DIP Agent, to provide a Utility Company with alternative adequate assurance of payment, including cash deposits, payments of prepetition balances, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable.

d. If the Debtors are unable to consensually resolve an Adequate Assurance Request by mutual agreement within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors will seek a hearing with the Court (the “Determination Hearing”) to determine the appropriate amount of adequate assurance required with respect to such Adequate Assurance Request. Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

e. Subject to the procedures described in this Final Order and the rights of the Utility Companies to seek modification of the amount of the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy Code, the Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

f. All Utility Companies who do not file an objection or serve an Adequate Assurance Request shall, subject to their rights to seek modification of the Adequate Assurance Deposit pursuant to section 366(c)(3) of the Bankruptcy Code, be: (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.

7. The Debtors may add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the applicable Adequate Assurance Deposit an amount equal to one-half of the Debtors’ average monthly cost for each subsequently-added or removed Utility Company as soon as practicable. For Utility Companies that are added to the Utility Services List, the Debtors will cause a copy of this Final Order, including the Adequate Assurance Procedures, to be served on such subsequently added Utility Company as soon as reasonably practicable under the circumstances. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures.

8. The Debtors may amend the Utility Services List to delete a Utility Company, or may seek to terminate a Utility Company, only if the Debtors have provided fourteen days' advance notice to such Utility Company, and have not received an objection from such Utility Company. If an objection is received by a Utility Company with respect thereto, the Debtors shall request a hearing before this Court at the next omnibus hearing date or such other date as the Debtors and the Utility Company may agree. The Debtors shall not deduct from the applicable Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Services List unless and until the fourteen days' notice period has passed and the Debtors have not received any objection from the Utility Company to the termination or deletion, or until such an objection has been resolved consensually or by the Court.

9. Any deposit provided to a Utility Provider by the Debtors prior to the Petition Date must be returned to the Debtors within twenty-one days of receiving a notice that the services provided to the Debtors by such Utility Provider will no longer be needed; provided that the foregoing does not limit or prejudice the Utility Provider's right to apply such deposit to an outstanding pre-petition balance due and owing prior to the expiration of the twenty-one (21) day period.

10. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

11. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that each such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

12. The Debtors are authorized, but not directed, to pay on a timely basis in accordance with past practice, all undisputed invoices with respect to postpetition Utility Services rendered to the Debtors. The Utility Companies are hereby prohibited from unilaterally applying any such postpetition payments to any amounts due on account of prepetition Utility Services, including, with any limitation, any penalties or interest.

13. All payments authorized by this Final Order may be made solely to the extent in compliance with the Approved Budget (as defined in the interim or final order authorizing the Debtors to obtain postpetition senior secured financing and related relief (the "DIP Order")) then in effect. To the extent there is any inconsistency between the terms of this Final Order and the DIP Order, the DIP Order shall control.

14. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' or any party in interests' rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

15. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

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

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

18. The 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 Services List**

<b>Debtor</b>	<b>Utility Provider</b>	<b>Type of Service</b>	<b>Average Monthly Billings</b>	<b>Proposed Adequate Assurance Deposit</b>
Avadim Health, Inc.	City of Asheville P.O. Box 733 Asheville, NC 28802-0733	Water/Sewer	\$830.00	\$415.00
Avadim Health, Inc.	Waste Pro 138 Travistock Rd. Arden, NC 28704	Trash/Waste	\$675.00	\$337.50
Avadim Health, Inc.	Duke Energy PO Box 1090 Charlotte, NC 28201-1090	Electric	\$2,300.00	\$1,150.00
Avadim Health, Inc.	Dominion Energy PO Box 100256 Columbia, SC 29202-3256	Gas	\$590.00	\$295.00
Relion Manufacturing, Inc.	Curbside Management PO Box 18722 Asheville, NC 28814	Recycling	\$280.00	\$140.00
Relion Manufacturing, Inc.	Blossman Propane Gas & Appliance 170 Sweeten Creek Rd. Asheville, NC 28803	Gas	\$225.00	\$112.50
Relion Manufacturing, Inc.	Carolina Water Consultants PO Box 1469 Arden, NC 28704-1469	Water Conditioning	\$42.75	\$21.38
Relion Manufacturing, Inc.	City of Asheville P.O. Box 733 Asheville, NC 28802-0733	Water/Sewer	\$1,025.00	\$512.50

<b>Debtor</b>	<b>Utility Provider</b>	<b>Type of Service</b>	<b>Average Monthly Billings</b>	<b>Proposed Adequate Assurance Deposit</b>
Relion Manufacturing, Inc.	Dominion Energy PO Box 100256 Columbia, SC 29202-3256	Gas	\$2,400.00	\$1,200.00
Relion Manufacturing, Inc.	Duke Energy PO Box 1090 Charlotte, NC 28201-1090	Electric	\$2,900.00	\$1,450.00
Relion Manufacturing, Inc.	McCollum Water Contitioning PO Box 570 Blountville, TN 37617-0570	Water Conditioning	\$1,800.00	\$900.00
Relion Manufacturing, Inc.	Waste Pro 138 Travistock Rd. Arden, NC 28704	Trash/Waste	\$980.00	\$490.00
<b>Totals</b>			<b>\$14,047.75</b>	<b>\$7,023.88</b>