

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, (II) APPROVING THE DEBTORS' PROPOSED
ADEQUATE ASSURANCE OF PAYMENT FOR POST-PETITION SERVICES, AND
(III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR
ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move the Court (the “**Motion**”), for entry of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”), substantially in the forms attached hereto as Exhibit A and Exhibit B, pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”); Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i) prohibiting Utility Providers (as defined below) from (a) altering, refusing, or discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition, or (b) drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for utility services; (ii) determining that adequate assurance of payment for post-petition utility services has been furnished to the Utility Providers providing

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

services to the Debtors; and (iii) establishing procedures for resolving future requests by any Utility Provider for additional adequate assurance of payment. In support of the Motion, the Debtors rely upon the *Declaration of Adrian Kettering in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”). In further support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Under Local Rule 9013-1(f), the Debtors consent to entry of a final order under Article III of the United States Constitution. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105 and 366, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

BACKGROUND

A. General Background

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief and electing treatment under subchapter V of chapter 11 of the Bankruptcy Code (the “**Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Cases and no committees have yet been appointed.

B. Description of Utility Services and Utility Providers

5. Historically, in conjunction with day-to-day operations, the Debtors receive traditional utility services for, among other things, telecommunications, gas, water, electricity, waste disposal, and similar utility products and services. In the past, the Debtors paid an average of approximately \$2,106.00 per month on account of utility services during 2020. As detailed in the First Day Declaration, the Debtors anticipate needing the services (collectively, the “**Utility Services**”) of all utility providers (each, a “**Utility Provider**” and collectively, the “**Utility Providers**”) which, without limitation, are set forth on the list annexed hereto as Exhibit C (the “**Utility Providers List**”) going forward.

RELIEF REQUESTED

6. Bankruptcy Code section 366 prohibits a utility company, within the first 30 days after the filing of a chapter 11 case, from altering, refusing, or discontinuing services to, or discriminating against, a debtor solely on the basis of the commencement of bankruptcy proceedings or the debtor’s failure to pay a prepetition debt. In a chapter 11 case, once the initial 30 days have expired, a utility company may discontinue services if the debtor has not provided the utility company with “adequate assurance of payment for utility service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2).

7. By this Motion, the Debtors respectfully request entry of the Interim Order and the Final Order, pursuant to Bankruptcy Code sections 105(a) and 366: (i) prohibiting Utility Providers

from (a) altering, refusing, or discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition, or (b) drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for utility services; (ii) determining that adequate assurance of payment for post-petition utility services has been furnished to the Utility Providers providing services to the Debtors; and (iii) establishing procedures for resolving future requests by any Utility Provider for additional adequate assurance of payment.

C. Proposed Adequate Assurance

8. Consistent with Bankruptcy Code section 366(c)(1)(A), which defines the phrase “assurance of payment” to include, among other things, a cash deposit, and given the *de minimis* amount of the funds required, the Debtors propose to segregate on their books, within 20 days of the Petition Date, an amount equal to the estimated cost for two (2) weeks of ongoing Utility Services (*i.e.*, approximately \$1,053.00, calculated based on 50% of the Debtors’ average monthly consumption of Utility Services) (the “**Adequate Assurance Amount**”) so that such funds are set aside and earmarked solely for the payment of the Utilities Services for the benefit of all Utility Providers. The Adequate Assurance Amount will remain on deposit in the Debtors’ existing operating account and will be earmarked for the benefit of each respective Utility Provider. Thus, to maintain uninterrupted Utility Services, the Debtors propose to deposit and/or earmark \$1,053.00 within 20 days of the Petition Date. Thereafter, the Debtors propose to adjust the earmarked amount of the Adequate Assurance Amount to reflect several factors: (a) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests (as defined below), and (b) agreements reached with Utility Providers. These adjustments will permit the Debtors to maintain the Adequate Assurance Amount in an amount that consistently

provides the Utility Providers with approximately 50% of the Debtors' average monthly consumption of the utilities on account of such services.

9. The Debtors submit that maintenance of the Adequate Assurance Amount as described above, in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business (together, the "**Proposed Adequate Assurance**"), constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of Bankruptcy Code section 366. However, if any Utility Provider believes additional assurance is required, they may request such assurance pursuant to the procedures described below.

D. Proposed Adequate Assurance Procedures

10. In light of the severe consequences to the Debtors of any interruption in services by the Utility Providers, but recognizing the right of each Utility Provider to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors request that the Court approve, and allow the Debtors to implement, the following procedures (the "**Adequate Assurance Procedures**") by which a Utility Provider not satisfied with the Proposed Adequate Assurance may request additional adequate assurance (an "**Additional Assurance Request**"):

- 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 in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon: (i) proposed counsel to the Debtors, Polsinelli PC, Attn: Shanti M. Katona (skatona@polsinelli.com); and (ii) proposed financial advisor to the Debtors, Wyse Advisors LLC, Attn: Josh Gatlin (jgatlin@wyseadvisorsllc.com) (together, 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 Debtors' 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 promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request;
- e. The Debtors may, in their discretion, resolve an Additional Assurance Request by 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, including, but not limited to, cash deposits, prepayments, letters of credit, and/or other forms of security, without further order of the Court to the extent that the Debtors believe such additional assurance is reasonable in the exercise of its business judgment and the Debtors may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Amount by an amount not exceeding the requesting Utility Provider's estimated two-week utility expense;
- f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Provider within 30 days of the date the Additional Assurance Request was made, or such later date to which the Debtors and the applicable Utility Provider agree, the Debtors shall, upon reasonable notice, calendar the matter (the "**Adequate Assurance Dispute**") for the next regularly scheduled omnibus hearing, or, if no omnibus hearing is set, for a date that provides sufficient notice to the applicable Utility Provider(s), 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, any such 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 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- h. Upon the termination of Utility Services, the Debtors may, in their discretion and upon 14 days' notice to the parties in interest and all affected Utility Providers, reduce the Adequate Assurance Amount by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (a) the estimated two-week utility expense for such Utility Services and (b) the amount of the Adequate Assurance Amount then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postposition amounts due.

E. Subsequent Modification of the Utility Providers List

11. The Debtors request that they be allowed, without further order of the Court, to supplement the Utility Providers List if any Utility Provider or new account from an existing Utility Provider has been inadvertently omitted therefrom (each an “**Additional Utility Provider**”). If the Debtors determine that the Utility Providers List should be supplemented, the Debtors will, as soon as practicable, file with the Court a supplement to Exhibit C adding the name of any Additional Utility Provider to the Utility Providers List. The Debtors will then serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of a Utility Provider, by First Class Mail) a copy of this Motion and the signed Interim or Final Order, as applicable, on any Additional Utility Provider.

F. Request for a Final Hearing

12. The Debtors request that a final hearing on this Motion be held within 30 days of the Petition Date to ensure that, if a Utility Provider argues it may unilaterally refuse service to the Debtors on the 31st day after the Petition Date, the Debtors will have an opportunity, to the extent necessary, to request that the Court make such modifications to the Adequate Assurance Procedures in time to avoid any potential termination of Utility Services.

BASIS FOR RELIEF

A. Bankruptcy Code Section 366 Grants the Court Discretion to Determine the Adequacy of the Debtors’ Proposed Adequate Assurance

13. Congress enacted Bankruptcy Code section 366 to protect a debtor from immediate termination of utility services after filing for bankruptcy, while at the same time providing the utility companies with adequate assurance of payment for post-petition utility services. *See* H. R. Rep. No. 95-595, at 350 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Bankruptcy Code Section 366 defines “assurance of payment” to mean several forms of security, including cash

deposits, letters of credit, and prepayment of utility services. 11 U.S.C. § 366(c)(1)(A). Bankruptcy Code Section 366(c)(1)(B) explicitly excludes, however, offering administrative expense priority as adequate assurance of payment. Further, Bankruptcy Code section 366(c) restricts the factors that a court may consider when determining whether the “assurance of payment” is, in fact, adequate. Specifically, courts may no longer rely on (a) the absence of a security deposit before the debtor’s petition date, (b) the debtor’s history of timely payments, or (c) the availability of an administrative expense priority when determining the amount of a deposit. *See Id.* § 366(c)(3)(B).

14. While Bankruptcy Code section 366(c) sets forth what constitutes adequate assurance of payment, the bankruptcy court nonetheless retains discretion to determine what, if any, adequate assurance is necessary to satisfy section 366’s requirement that assurance of payment must only be “adequate.” *See In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“The bankruptcy courts are in agreement that section 366(b) vests in the bankruptcy court the exclusive responsibility for determining the appropriate security which a debtor must provide to his utilities to preclude termination of service for nonpayment of prepetition utility bills.”); *In re Begley*, 41 B.R. 402, 405-06 (E.D. Pa. 1984), *aff’d*, 760 F.2d 46 (3d Cir. 1985). Accordingly, a court is not required to give the utility companies an “absolute guarantee of payment,” or require that the adequate assurance take the form of a deposit, bond, letter of credit, or similar security. *In re Caldor, Inc. -N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997); *In re Great Atl. & Pac. Tea Co.*, 2011 WL 5546954, at *5 (Bankr. S.D.N.Y. 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”).

15. Rather, in considering the facts and circumstances of each case, the Court must ensure only that the utility is not subject to an unreasonable risk of non-payment for post-petition services. *See In re Adelpia*, 280 B.R. at 80; *Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981). The Court, therefore, must strike a balance between satisfying the utility company's need for adequate assurance and ensuring that the debtor gives no more than what is adequate, as the debtor has a conflicting need to conserve financial resources. *See In re Magnesium Corp. of Am.*, 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002) (holding that to require the debtor to allocate valuable liquidity to provide further "adequate assurance" to satisfy a utility's obligations before its amount has been fixed would prejudice the entirety of the debtor's unsecured creditor body for the benefit of a single one).

16. In determining whether a utility is subject to an unreasonable risk of nonpayment, the Court may consider whether the utility would seek the same additional security from a non-bankruptcy customer. *See In re Caldor, Inc.-N.Y.*, 199 B.R. at 3 (finding that the utility companies were not seeking additional security for an adequate assurance of future payment, but solely because their monopoly position permitted them to capitalize on the debtor bankruptcy filing); *Whittaker v. Phila. Elec. Co. (In re Whittaker)*, 84 B.R. 934, 937, 941-42 (Bankr. E D. Pa. 1988), *aff'd*, 882 F.2d 791 (3d Cir. 1989) (finding utility company violated Bankruptcy Code section 366 when it refused to restore debtor's electric service, upon notice of bankruptcy filing, without prepayment of deposit as adequate assurance of future payment).

B. The Debtors' Proposed Adequate Assurance is Routinely Upheld as Adequate by Courts in this District

17. Because this Court is afforded the discretion to determine the assurance necessary to satisfy the Utility Providers' needs, the Debtors submit that the Proposed Adequate Assurance is more than adequate to ensure that the Debtors will meet their ongoing post-petition utility

obligations. The Debtors' proposal comports with numerous orders entered by this and other bankruptcy courts in this District.

18. As detailed in the Debtors' First Day Declaration, the Debtors' receipt of uninterrupted Utility Services is vital to the Debtors' continued business operations and, consequently, to the success of the Cases. Accordingly, the relief requested herein is necessary and in the best interests of the Debtors, their estates, and their creditors. Such relief ensures that the Debtors' business operations will not be disrupted and provides Utility Companies and the Debtors with an orderly and fair procedure for determining "adequate assurance."

19. Based upon the foregoing, the Debtors submit that the relief requested herein should be granted.

C. Bankruptcy Rule 6003 Has Been Satisfied and Bankruptcy Rule 6004 Should Be Waived

20. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein demonstrate the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate and preserve the value of their estates. The Debtors thus submit that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

CONSENT TO JURISDICTION

21. Pursuant to Local Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

RESERVATION OF RIGHTS

22. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors’ rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve rights to contest any invoice or claim of any Utility Provider under applicable law and to assume or reject any agreements with Utility Providers in accordance with the applicable provisions of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

NOTICE

23. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Subchapter V Trustee (to be appointed by the U.S. Trustee); (c) the parties included on the Debtors’ consolidated list of twenty (20) largest unsecured creditors; (d) any banking or financial institutions that hold Debtors’ accounts; (e) any party that has requested notice pursuant to Bankruptcy Rule 2002; (f) the Utility Providers; and (g) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

24. As this Motion is seeking “first-day” relief, within two (2) business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered with respect to this Motion pursuant to Local Rule 9013-1(m).

NO PRIOR REQUEST

25. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an Interim Order and a Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: September 30, 2021
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

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-and-

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

Re: Docket No. ____

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

Upon the motion (the “**Motion**”)² of the Debtors for interim and final orders, pursuant to Bankruptcy Code sections 105(a) and 366; Bankruptcy Rules 6003 and 6004; and Local Rule 9013-1(m): (i) prohibiting Utility Providers from altering, refusing or discontinuing service; (ii) approving the Debtors’ Proposed Adequate Assurance of payment for post-petition services; and (iii) establishing procedures for resolving requests for additional adequate assurance of payment; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

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

venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, 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 maintain an adequate assurance deposit for all Utility Providers by earmarking \$1,053.00, which is equal to approximately 50% of the Debtors' historical, average monthly consumption of Utility Services (the "**Adequate Assurance Amount**"). The Adequate Assurance Amount will be maintained in the Debtors' operating bank account.
4. Notwithstanding anything to contrary in the Motion, the Debtors may not consider any prepetition security deposit held by a Utility Company when determining the allocable part of the Adequate Assurance Amount to be made on behalf of such Utility Company. Additionally, the rights of Utility Companies with respect to prepetition security deposits under 11 U.S.C. § 366(c)(4) are not impaired or otherwise affected by this Order.
5. Subject to the Assurance Procedures set forth below or, alternatively, modification of the amount of the utility deposit for one/more Utility Companies pursuant to 11 U.S.C. § 366(c)(3), the Proposed Adequate Assurance comprises the Adequate Assurance Amount and the Debtors' ability to pay for future utility services in the ordinary course of business and constitutes

sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of Bankruptcy Code section 366.

6. Subject to the Assurance Procedures set forth below or, alternatively, modification of the amount of the utility deposit for one/more Utility Companies pursuant to 11 U.S.C. § 366(c)(3), 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 Cases or on account of any unpaid prepetition charges; or (b) 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 in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon: (i) proposed counsel to the Debtors, Polsinelli PC, Attn: Shanti M. Katona (skatona@polsinelli.com); and (ii) proposed financial advisor to the Debtors, Wyse Advisors LLC, Attn: Josh Gatlin (jgatlin@wyseadvisorsllc.com) (together, 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 Debtors’ 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 promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request;
- e. The Debtors may, in their discretion, resolve an Additional Assurance Request by 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, including, but not limited to, cash deposits, prepayments, letters of credit, and/or other forms of security, without further order of the Court to the extent that the Debtors believe such additional assurance is reasonable in the exercise of its business judgment and the Debtors may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Amount by an amount not exceeding the requesting Utility Provider's estimated two-week utility expense;

- f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Provider within 30 days of the date the Additional Assurance Request was made, or such later date to which the Debtors and the applicable Utility Provider agree, the Debtors shall, upon reasonable notice, calendar the matter (the "**Adequate Assurance Dispute**") for the next regularly scheduled omnibus hearing, or, if no omnibus hearing is set, for a date that provides sufficient notice to the applicable Utility Provider(s), 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 or, alternatively, modification of the amount of the utility deposit for one/more Utility Companies pursuant to 11 U.S.C. § 366(c)(3), any such 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 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- h. Upon the termination of Utility Services, the Debtors may, in their discretion and upon 14 days' notice to the parties in interest and all affected Utility Providers, reduce the Adequate Assurance Amount by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (a) the estimated two-week utility expense for such Utility Services and (b) the amount of the Adequate Assurance Amount then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postposition amounts due.

8. The Debtors may 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 A annexed hereto³ that adds the name of any Additional Utility Provider to the Utility Providers List. The Debtors will then serve by email or by facsimile

³ Exhibit C to the Motion.

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. The Debtors will also supplement the Adequate Assurance Amount in an amount equal to 50% of the Debtors' historical, average monthly utility consumption (over the course of 12 months) for an added Utility Provider.

9. The Debtors may amend the Utility Service List to delete a Utility Provider, or may seek to terminate a Utility Provider, upon 14 days' notice to the parties in interest and all affected Utility Providers and only if the Debtors have not received any objection from such Utility Provider or any other parties in interest. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree. The Debtors shall not deduct from the Utility Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from Exhibit A unless and until the two-week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company or any parties in interest, or until any such objection has been resolved consensually or by order of this Court.

10. All monies earmarked as the Adequate Assurance Amount must be maintained as such except (a) by mutual agreement of the Debtors and the applicable Utility Provider or (b) by further order of the Court. If the Debtors fail to pay for any legitimate post-petition Utility Services when due, a Utility Provider may access only that portion of the Adequate Assurance Amount attributable to it.

11. The Debtors shall administer the Adequate Assurance Amount in accordance with the terms of this Interim Order, pending entry of a Final Order.

12. 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.

13. 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.

14. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims 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.

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

16. Notwithstanding anything to the contrary herein, nothing in this Order authorizes the use of cash collateral.

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

18. 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.

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

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

21. 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 _____, 2021, at ____:____m. Prevailing Eastern Time.

22. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on, no later than seven (7) days prior to the commencement of the final hearing, (a) MECTA Corporation, 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062 (Attn: Adrian Kettering); (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (c) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov); and (d) the Subchapter V Trustee (to be appointed by the U.S. Trustee).

23. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: _____, 2021
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

Re: Docket No. ____

FINAL ORDER (I) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, (II) APPROVING THE DEBTORS' PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR POST-PETITION SERVICES, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT

Upon the motion (the “**Motion**”)² of the Debtors for interim and final orders, pursuant to Bankruptcy Code sections 105(a) and 366; Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m): (i) prohibiting Utility Providers from altering, refusing or discontinuing service; (ii) approving the Debtors’ Proposed Adequate Assurance of payment for post-petition services; and (iii) establishing procedures for resolving requests for additional adequate assurance of payment; and the Court having reviewed the Motion and the First Day Declaration, and the Interim Order dated _____, 2021; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C.

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

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

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

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein on a final 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. To the extent not otherwise already done, the Debtors shall maintain an adequate assurance fund for all Utility Providers by earmarking \$1,053.00, which is equal to approximately 50% of the Debtors' historical, average monthly consumption of Utility Services (the "**Adequate Assurance Amount**"). The Adequate Assurance Amount will be maintained in the Debtors' operating bank account.
4. Notwithstanding anything to contrary in the Motion, the Debtors may not consider any prepetition security deposit held by a Utility Company when determining the allocable part of the Adequate Assurance Amount to be made on behalf of such Utility Company. Additionally, the rights of Utility Companies with respect to prepetition security deposits under 11 U.S.C. § 366(c)(4) are not impaired or otherwise affected by this Order.
5. Subject to the Assurance Procedures set forth below or, alternatively, modification of the amount of the utility deposit for one/more Utility Companies pursuant to 11 U.S.C. §

366(c)(3), the Proposed Adequate Assurance comprises the Adequate Assurance Amount and the Debtors' ability to pay for future utility services in the ordinary course of business and constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of Bankruptcy Code section 366.

6. Subject to the Assurance Procedures set forth below or, alternatively, modification of the amount of the utility deposit for one/more Utility Companies pursuant to 11 U.S.C. § 366(c)(3), 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 Cases or on account of any unpaid prepetition charges; or (b) 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 in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an Additional Assurance Request upon: (i) proposed counsel to the Debtors, Polsinelli PC, Attn: Shanti M. Katona (skatona@polsinelli.com); and (ii) proposed financial advisor to the Debtors, Wyse Advisors LLC, Attn: Josh Gatlin (jgatlin@wyseadvisorsllc.com) (together, 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 Debtors' 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 promptly negotiate

with such Utility Provider to resolve such Utility Provider's Additional Assurance Request;

- e. The Debtors may, in their discretion, resolve an Additional Assurance Request by 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, including, but not limited to, cash deposits, prepayments, letters of credit, and/or other forms of security, without further order of the Court to the extent that the Debtors believe such additional assurance is reasonable in the exercise of its business judgment and the Debtors may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Amount by an amount not exceeding the requesting Utility Provider's estimated two-week utility expense;
- f. If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Provider within 30 days of the date the Additional Assurance Request was made, or such later date to which the Debtors and the applicable Utility Provider agree, the Debtors shall, upon reasonable notice, calendar the matter (the "**Adequate Assurance Dispute**") for the next regularly scheduled omnibus hearing, or, if no omnibus hearing is set, for a date that provides sufficient notice to the applicable Utility Provider(s), 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 or, alternatively, modification of the amount of the utility deposit for one/more Utility Companies pursuant to 11 U.S.C. § 366(c)(3), any such 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 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- h. Upon the termination of Utility Services, the Debtors may, in their discretion and upon 14 days' notice to the parties in interest and all affected Utility Providers, reduce the Adequate Assurance Amount by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (a) the estimated two-week utility expense for such Utility Services and (b) the amount of the Adequate Assurance Amount then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postposition amounts due.

7. The Debtors may 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 A annexed hereto³ that adds the name of any Additional Utility Provider to the Utility Providers List. The Debtors will then 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 signed Final Order on any Additional Utility Provider. The Debtors will also supplement the Adequate Assurance Amount in an amount equal to 50% of the Debtors' historical, average monthly utility consumption (over the course of 12 months) for an added Utility Provider.

8. The Debtors may amend the Utility Service List to delete a Utility Provider, or may seek to terminate a Utility Provider, upon 14 days' notice to the parties in interest and all affected Utility Providers and only if the Debtors have not received any objection from such Utility Provider or any other parties in interest. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Provider may agree. The Debtors shall not deduct from the Utility Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from Exhibit A unless and until the two-week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company or any parties in interest, or until any such objection has been resolved consensually or by order of this Court.

9. All monies earmarked as the Adequate Assurance Amount must be maintained as such except (a) by mutual agreement of the Debtors and the applicable Utility Provider or (b) by further order of the Court. If the Debtors fail to pay for any legitimate post-petition Utility Services when due, a Utility Provider may access only that portion of the Adequate Assurance Amount attributable to it.

³ Exhibit C to the Motion.

10. The Debtors shall administer the Adequate Assurance Amount in accordance with the terms of this Final Order.

11. 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.

12. Within two (2) business days of the date of this Final Order, the Debtors shall serve a copy of this Final Order 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 Final Order and the Motion on any Additional Utility Provider.

13. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final 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 (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.

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

15. Notwithstanding anything to the contrary herein, nothing in this Order authorizes the use of cash collateral.

16. 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.

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

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

19. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Dated: _____, 2021
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Utility Providers List

ONGOING UTILITY PROVIDERS TO RECEIVE ADEQUATE ASSURANCE

Utility Provider Name	Utility Provider Address	Utility Type	Adequate Assurance
NW Natural Gas	PO Box 6017 Portland, Oregon 97228-6017	Gas	\$233.00
Portland General Electric	PO Box 4438 Portland, Oregon 97208-4438	Electric	\$415.00
Republic Services	10239 NE Marx Street Portland, Oregon 97220	Waste Disposal	\$93.00
Frontier	PO Box 740407 Cincinnati, Ohio 45274-0407	Telecommunications	\$313.00