

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

In re:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(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 POSTPETITION 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 this Court (the “**Motion**”), pursuant to sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (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**”), for entry of interim and final orders substantially in the forms annexed hereto as Exhibit A and Exhibit B (the “**Interim Order**” and the “**Final Order**”) respectively, (i) prohibiting Utility Providers (as defined below) from altering, refusing, or

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition; (ii) determining that adequate assurance of payment for postpetition 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. In support of the Motion, the Debtors rely upon the *Declaration of Todd Topliff, President of Debtors, 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 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). In accordance with Local Rule 9013-1(f), the Debtors consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties. 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(a) 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 under chapter 11 of the Bankruptcy Code (the “**Chapter 11 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 Chapter 11 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 Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. 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 these Chapter 11 Cases and no committees have yet been appointed.

b) Description of Utility Services and Utility Providers

5. Historically, in conjunction with its day-to-day operations, the Debtors received traditional utility services from over fifty (50) unique utility providers 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 \$220,000 per month on account of utility services during the last year. As detailed in the First Day Declaration, going forward, the Debtors anticipate needing the services (collectively, the “**Utility Services**”) of 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 thirty (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 thirty (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: (a) prohibiting Utility Providers from altering, refusing, or discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition; (b) determining that adequate assurance of payment for postpetition utility services has been furnished to the Utility Providers providing services to the Debtors; and (c) establishing procedures for resolving future requests by any Utility Provider for additional adequate assurance of payment.

a) Proposed Adequate Assurance

8. Bankruptcy Code section 366(c)(1)(A) defines the phrase “assurance of payment” to include, among other things, a cash deposit. As adequate assurance of payment, the Debtors propose to segregate on their books and records, within twenty (20) days after the Petition Date, an amount equal to the estimated cost for two (2) weeks (net of deposits and surety bonds) of ongoing Utility Services (*i.e.*, approximately \$121,000.00), calculated based on 50% of the Debtors’ average monthly consumption of Utility Services (the “**Adequate Assurance Deposit**”). Such amount shall be placed into one segregated bank account designated for the Adequate Assurance Deposit (the “**Adequate Assurance Deposit Account**”) for the benefit of all Utility Providers. Thereafter, the Debtors propose to adjust the amount in the Adequate Assurance Deposit Account 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 Deposit Account with an amount that consistently provides the Utility Providers with approximately 50%

(net of deposits and surety bonds) of the Debtors' average monthly consumption of the utilities on account of such services.

9. The Debtors submit that the Adequate Assurance Deposit and maintenance of the Adequate Assurance Deposit Account as described above, in conjunction with the Debtors' ability to pay for future Utility Services in the ordinary course of business as provided for in the Debtors' motion for authorization to use cash collateral filed contemporaneously herewith (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.

b) 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 three (3) 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) the Debtors, c/o FTI Consulting, Inc., 1166 Avenue of the Americas, 15th Floor, New York, NY 10036, Attn: Jacob Baltaytis (jacob.baltaytis@fticonsulting.com); (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (iii) counsel to Bond Trustee and Master Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 3rd Avenue, New York, NY

10017, Attn: Nathan F. Coco (nfcoco@mintz.com) and Megan M. Preusker (mpreusker@mintz.com); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (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. Any Utility Provider who does not file an Additional Assurance Request shall be, subject to the Utility Provider’s rights to seek modification of the amount of the Adequate Assurance Deposit pursuant to 11 U.S.C. § 366(c)(3), (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider 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;
- e. 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;
- f. The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest (except that notice shall be provided to counsel to the Bond Trustee and Master Trustee, to the extent such agreement involves the use of cash collateral), 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 their 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 Deposit by an amount not exceeding the requesting Utility Provider’s estimated two-week utility expense;
- g. 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 thirty (30) days of the date the Additional Adequate 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 to determine the adequacy of assurance of payment pursuant to Bankruptcy Code section 366(c)(3);

- h. Pending resolution of any such Adequate Assurance Dispute or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers 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 Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- i. Upon the termination of Utility Services, the Debtors may, in their discretion and upon fourteen (14) days' notice to the Notice Parties and all affected Utility Providers, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postpetition amounts due;
- j. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Adequate Assurance" on the Utility Providers List;
- k. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) or any portion thereof, shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases and the Utility Provider's final invoice for pre-effective date Utility Services is paid, or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced and the Utility Provider's final invoice for Utility Services provided to the Debtors is paid.

c) 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 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.

d) Request for a Final Hearing

12. The Debtors request that a final hearing on this Motion be held within thirty (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 postpetition 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 postpetition 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 postpetition 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, including the health and safety of their residents, and, consequently, to the success of these Chapter 11 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 Providers 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.

21. 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.

NOTICE

22. Notice of this Motion has been or will be provided to: (a) the United States Trustee for the District of Delaware; (b) the holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the Bond Trustee and Master Trustee; (d) the Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) the Office of the United States Attorney for the District of Delaware; (g) the Utility Providers; (h) any banking or financial institution that holds Debtors’ accounts; (i) the United States Centers for

Medicare & Medicaid Services; and (j) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

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

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WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the 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 the Court deems appropriate.

Dated: January 14, 2022
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Shanti M. Katona

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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:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Jointly Administered)

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 POSTPETITION
SERVICES; AND (III) ESTABLISHING PROCEDURES FOR RESOLVING
REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”)² of the Debtors for an interim order, 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 postpetition 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.

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

§§ 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 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. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. 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.
4. The Debtors shall provide an adequate assurance deposit for all Utility Providers by depositing \$121,000.00, which is equal to approximately 50% of the Debtors' average monthly consumption of Utility Services (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be deposited into a separate bank account with a bank that has signed a uniform deposit agreement with the United States Trustee's office for the District of Delaware (the "**Adequate Assurance Deposit Account**").
5. Notwithstanding anything to contrary in the Motion, the Debtors may not consider any prepetition security deposit held by a Utility Provider when determining the allocable part of

the Adequate Assurance Deposit to be made on behalf of such Utility Provider. Additionally, the rights of Utility Providers with respect to prepetition security deposits under 11 U.S.C. § 366(c)(4) are not impaired or otherwise affected by this Order.

6. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Proposed Adequate Assurance comprises the Adequate Assurance Deposit 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.

7. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers 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 Chapter 11 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.

8. The following Adequate Assurance Procedures are approved:

- a) Within three (3) 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) the Debtors, c/o FTI Consulting, Inc., 1166 Avenue of the Americas, 15th Floor, New York, NY 10036, Attn: Jacob Baltaytis (jacob.baltaytis@fticonsulting.com); (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (iii) counsel to Bond Trustee and Master Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 3rd Avenue, New York, NY

10017, Attn: Nathan F. Coco (nfcoco@mintz.com) and Megan M. Preusker (mpreusker@mintz.com); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (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) Any Utility Provider who does not file an Additional Assurance Request shall be, subject to the Utility Provider’s rights to seek modification of the amount of the Adequate Assurance Deposit pursuant to 11 U.S.C. § 366(c)(3), (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider 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;
- e) 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;
- f) The Debtors may, in their discretion, resolve an Additional Assurance Request by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest (except that notice shall be provided to counsel to the Bond Trustee and Master Trustee, to the extent such agreement involves the use of cash collateral), 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 Deposit by an amount not exceeding the requesting Utility Provider’s estimated two-week utility expense;
- g) 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 thirty (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

to determine the adequacy of assurance of payment pursuant to Bankruptcy Code section 366(c)(3);

- h) Pending resolution of any such Adequate Assurance Dispute or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Provider(s) 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 Chapter 11 Cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- i) Upon the termination of Utility Services, the Debtors may, in their discretion and upon fourteen (14) days' notice to the Notice Parties and all affected Utility Providers, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postpetition amounts due;
- j) Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Adequate Assurance" on the Utility Providers List;
- k) The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) or any portion thereof, shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases and the Utility Provider's final invoice for pre-effective date Utility Services is paid, or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced and the Utility Provider's final invoice for Utility Services provided to the Debtors is paid.

9. 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 Deposit in an amount equal to 50% (net of surety bonds and deposits) of the Debtors' average monthly utility consumption for an added Utility Provider.

10. The Debtors may amend the Utility Service List to delete a Utility Provider, or may seek to terminate a Utility Provider, upon fourteen (14) days' notice to the Notice Parties 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 Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from Exhibit A unless and until the two (2) week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Provider or any parties in interest, or until any such objection has been resolved consensually or by order of the Court.

11. No money may be withdrawn from the Adequate Assurance Deposit Account except (a) in compliance with the Adequate Assurance Procedures, (b) by mutual agreement of the Debtors and the applicable Utility Provider, or (c) by further order of the Court. If the Debtors fail to pay for any legitimate postpetition Utility Services when due, a Utility Provider may access only that portion of the Adequate Assurance Deposit attributable to it in the Adequate Assurance Deposit Account.

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

13. 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.

14. Within three (3) business days after 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 three (3) 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.

15. 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.

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

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

18. Notice of the Motion as provided therein satisfies the requirements of the Bankruptcy Rules and the Local Rules.

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 _____, 2022, 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) the Debtors, c/o FTI Consulting, Inc., 1166 Avenue of the Americas, 15th Floor, New York, NY 10036, Attn: Jacob Baltaytis (jacob.baltaytis@fticonsulting.com); (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (c) counsel to Bond Trustee and Master Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 3rd Avenue, New York, NY 10017, Attn: Nathan F. Coco (nfcoco@mintz.com) and Megan M. Preusker (mpreusker@mintz.com); (d) counsel to the official committee of unsecured creditors, if one is appointed; and (e) 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).

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: _____, 2022
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

In re:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Jointly Administered)

Re: Docket Nos. ____

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

Upon the motion (the “**Motion**”)² of the Debtors for 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 postpetition 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 _____, 2022; and the Court having jurisdiction to consider the Motion and the relief

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

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

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 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. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. 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.
4. To the extent not otherwise already done, the Debtors shall provide an adequate assurance deposit for all Utility Providers by depositing \$121,000.00, which is equal to approximately 50% of the Debtors' average monthly consumption for Utility Services (the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit will be deposited into a separate bank account with a bank that has signed a uniform deposit agreement with the United States Trustee's office for the District of Delaware (the "**Adequate Assurance Deposit Account**").

5. Notwithstanding anything to contrary in the Motion, the Debtors may not consider any prepetition security deposit held by a Utility Provider when determining the allocable part of the Adequate Assurance Deposit to be made on behalf of such Utility Provider. Additionally, the rights of Utility Providers with respect to prepetition security deposits under 11 U.S.C. § 366(c)(4) are not impaired or otherwise affected by this Order.

6. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers pursuant to 11 U.S.C. § 366(c)(3), the Proposed Adequate Assurance comprises the Adequate Assurance Deposit 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.

7. Subject to the Adequate Assurance Procedures set forth below or, alternatively, modification of the amount of the Adequate Assurance Deposit for one/more Utility Providers 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 Chapter 11 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.

8. The following Adequate Assurance Procedures are approved:

- a. 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) the Debtors, c/o FTI Consulting, Inc., 1166 Avenue of the Americas, 15th Floor, New York, NY 10036, Attn: Jacob Baltaytis (jacob.baltaytis@fticonsulting.com); (ii) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (iii) counsel to Bond Trustee and Master Trustee, Mintz,

Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 3rd Avenue, New York, NY 10017, Attn: Nathan F. Coco (nfcoco@mintz.com) and Megan M. Preusker (mpreusker@mintz.com); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (together, the “**Notice Parties**”);

- b. 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);
- c. Any Utility Provider who does not file an Additional Assurance Request shall be, subject to the Utility Provider’s rights to seek modification of the amount of the Adequate Assurance Deposit pursuant to 11 U.S.C. § 366(c)(3), (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider 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;
- 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 mutual agreement with the requesting Utility Provider without further notice to the Court or any other party in interest (except that notice shall be provided to counsel to the Bond Trustee and Master Trustee, to the extent such agreement involves the use of cash collateral), 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 Deposit 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 thirty (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

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 Adequate Assurance Deposit for one/more Utility Providers 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 Chapter 11 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 fourteen (14) days' notice to the Notice Parties and all affected Utility Providers, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider, provided that there are no outstanding disputes related to postpetition amounts due;
- i. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Adequate Assurance" on the Utility Providers List;
- j. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider) or any portion thereof, shall be returned to the Debtors, less any amounts owed on account of unpaid, postpetition Utility Services, by no later than five business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases and the Utility Provider's final invoice for pre-effective date Utility Services is paid, or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced and the Utility Provider's final invoice for Utility Services provided to the Debtors is paid.

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 hereto 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 Deposit in an amount equal to 50% of the Debtors' average monthly utility consumption 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 fourteen (14) days' notice to the Notice Parties 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 Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from Exhibit A unless and until the two (2) week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Provider or any parties in interest, or until any such objection has been resolved consensually or by order of the Court.

9. No money may be withdrawn from the Adequate Assurance Deposit Account except (a) in compliance with the Adequate Assurance Procedures, (b) by mutual agreements of the Debtors and the applicable Utility Provider, or (c) by further order of the Court. If the Debtors fail to pay for any legitimate postpetition Utility Services when due, a Utility Provider may access only that portion of the Adequate Assurance Deposit attributable to it in the Adequate Assurance Deposit Account.

10. The Debtors shall administer the Adequate Assurance Deposit Account 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 three (3) business days after 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 three (3) 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 this Final Order authorizes the Debtors to pay prepetition claims without further order of the Court.

14. 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.

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

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

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

Dated: _____, 2022
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Utility Providers List

ONGOING UTILITY PROVIDERS TO RECEIVE ADEQUATE ASSURANCE

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
American Eagle Island Lake LLC, d/b/a Aldea Green	Republic Services	18500 N Allied Way Suite 300 Phoenix, AZ 85054	3-0696-0035672	Trash Removal	\$902.41
American Eagle Island Lake LLC, d/b/a Aldea Green	Shred-it USA	28883 Network Place Chicago, IL 60673- 1288 US	13335669	Trash Removal	\$85.45
American Eagle Island Lake LLC, d/b/a Aldea Green	Spectrum	400 Atlantic St., Stamford, CT 06901	0033323771-01	Cable TV	\$1,137.58
American Eagle Island Lake LLC, d/b/a Aldea Green	Teco Tampa Electric Company	702 N Franklin St Tampa, FL 33602	211013225076	Electricity	\$1,561.27
American Eagle Island Lake LLC, d/b/a Aldea Green	Windstream	4001 Rodney Parham Rd Little Rock, AR 72212	5287194	Telephone & Internet Communications	\$535.89
American Eagle Island Lake LLC, d/b/a Aldea Green	Granite	100 Newport Ave. Ext Quincy, MA 02171	4059212	Telephone & Internet Communications	\$108.07
American Eagle Island Lake LLC, d/b/a Aldea Green	Aureon Communications	7760 Office Plaza Drive South, West Des Moines, IA 50266-2336 US	7890006923	Telephone & Internet Communications	\$254.72
American Eagle Island Lake LLC, d/b/a Cascade Heights	Waste Management	800 Capitol Street Suite 3000 Houston, TX 77002	21-48833-93009	Trash Removal	\$1,375.68
American Eagle Island Lake LLC, d/b/a Cascade Heights	Spectrum	400 Atlantic St., Stamford, CT 06901	0031938966-01	Cable TV	\$3,162.86
American Eagle Island Lake LLC, d/b/a Cascade Heights	Duke Energy/1004	550 S Tyron St. Charlotte, NC 28202	8214143547	Electricity	\$15,217.51
American Eagle Island Lake LLC, d/b/a Cascade Heights	Teco: Peoples Gas	702 N Franklin St Tampa, FL 33602	211001489171	Gas	\$926.84
American Eagle Island Lake LLC, d/b/a Cascade Heights	City of Longwood, FL	907 E State Rd 434 Longwood, FL 32750	75875	Water	\$1,096.34
American Eagle Island Lake LLC, d/b/a Cascade Heights	Utilities Inc of Florida	200 Weathersfield Ave Altamonte, FL 32714-4099	4555100000; 7235100000; 8030700000	Sewer	\$3,439.40
American Eagle Island Lake LLC, d/b/a Cascade Heights	Granite	100 Newport Ave. Ext Quincy, MA 02171	4059268	Telephone & Internet Communications	\$409.78

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
American Eagle Island Lake LLC, d/b/a Cascade Heights	Mix Networks Inc.	608 Robin Road Lakeland, FL 33803 US	1516100	Telephone & Internet Communications	\$5,387.27
American Eagle Titusville LLC, d/b/a Crescent Wood	Waste Management Inc. of Florida	2700 Wiles Rd Coconut Creek, FL 33073	21-80625-93004	Trash Removal	\$91.90
American Eagle Titusville LLC, d/b/a Crescent Wood	City of Titusville, FL	555 S Washington Avenue Titusville, FL 32796	50820	Trash Removal	\$710.21
American Eagle Titusville LLC, d/b/a Crescent Wood	Spectrum	400 Atlantic St., Stamford, CT 06901	0032333416-01*	Cable TV	\$1,496.95
American Eagle Titusville LLC, d/b/a Crescent Wood	Florida Power & Light Company (FPL)	General Mail Facility Miami FL 33188-0001	01340-40435	Electricity	\$3,943.43
American Eagle Titusville LLC, d/b/a Crescent Wood	Florida City Gas/22614	4045 NW 9th Ave Doral, FL 3317	1023394	Gas	\$1,460.20
American Eagle Titusville LLC, d/b/a Crescent Wood	Granite	100 Newport Ave. Ext Quincy, MA 02171	4084898	Telephone & Internet Communications	\$1,101.93
American Eagle Titusville LLC, d/b/a Crescent Wood	Senior Living Communications, LLC	5711 Yeats Manor Drive Suite 302 Tampa, FL 33616	BR1906	Telephone & Internet Communications	\$1,799.50
American Eagle Titusville LLC, d/b/a Crescent Wood	City of Titusville, FL	555 S Washington Avenue Titusville, FL 32796	50820	Water & Sewer	\$2,813.84
American Eagle Eau Gallie LLC, d/b/a Greenwood Place	Spectrum	400 Atlantic St., Stamford, CT 06901	0032433123-01*	Cable TV	\$870.66
American Eagle Eau Gallie LLC, d/b/a Greenwood Place	Florida Power & Light Company (FPL)	General Mail Facility Miami FL 33188-0001	40416-27367	Electricity	\$2,012.71
American Eagle Eau Gallie LLC, d/b/a Greenwood Place	Florida City Gas/22614	4045 NW 9th Ave Doral, FL 3317	1126134	Gas	\$325.65
American Eagle Eau Gallie LLC, d/b/a Greenwood Place	City of Melbourne, FL	900 E. Strawbridge Ave. Melbourne, FL 32901	139377-194617	Water & Sewer	\$1,403.49

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
American Eagle Eau Gallie LLC, d/b/a Greenwood Place	Granite	100 Newport Ave. Ext Quincy, MA 02171	4076301	Telephone & Internet Communications	\$2,392.89
American Eagle Newark LLC, d/b/a Hearth Brook	Waste Management	800 Capitol Street Suite 3000 Houston, TX 77002	21-87807-43000	Trash Removal	\$143.84
American Eagle Newark LLC, d/b/a Hearth Brook	Spectrum Business	400 Atlantic St., Stamford, CT 06901	10202-329000701-7001*	Cable TV	\$58.10
American Eagle Newark LLC, d/b/a Hearth Brook	American Electric Power/24002	1 Riverside Plaza Columbus, Ohio 43215-2372	079-897-911-1-1	Electricity	\$1,222.23
American Eagle Newark LLC, d/b/a Hearth Brook	The Energy Cooperative	790 B Windmill Drive Pickerington, OH 43147	9914217901	Gas	\$376.01
American Eagle Newark LLC, d/b/a Hearth Brook	Newark Water Office	34 S. Fifth St. Newark, OH 43055	61741	Water & Sewer	\$503.64
American Eagle Newark LLC, d/b/a Hearth Brook	Granite	100 Newport Ave. Ext Quincy, MA 02171	4130521	Telephone & Internet Communications	\$314.68
American Eagle Palmer Park LLC, d/b/a Lark Springs	WM Corporate Services as Payment Agent	1001 Fannin St Houston, TX 77002	23-09764-13007	Trash Removal	\$301.78
American Eagle Palmer Park LLC, d/b/a Lark Springs	Colorado Springs Utilities	111 South Cascade Ave Colorado Springs, CO 80903	0013 9597 01	Electricity	\$2,686.31
American Eagle Palmer Park LLC, d/b/a Lark Springs	Granite	100 Newport Ave. Ext Quincy, MA 02171	4154409	Telephone & Internet Communications	\$191.65
American Eagle Palmer Park LLC, d/b/a Lark Springs	Allstream	18110 SE 34TH ST Bldg One, Ste 100 Vancouver, WA 98683	1237786	Telephone & Internet Communications	\$188.78
American Eagle Palmer Park LLC, d/b/a Lark Springs	Colorado Springs Utilities	111 South Cascade Ave Colorado Springs, CO 80903	0013 9597 01	Water & Sewer	\$984.41
American Eagle Palmer Park LLC, d/b/a Lark Springs	Colorado Springs Utilities	111 South Cascade Ave Colorado Springs, CO 80903	0013 9597 01	Gas	\$675.34
American Eagle Venice Island LLC, d/b/a Maris Pointe	City of Venice, FL	401 West Venice Avenue Venice, FL 34285	37616-4274	Trash Removal	\$247.37
American Eagle Venice Island LLC, d/b/a Maris Pointe	City of Venice, FL	401 West Venice Avenue Venice, FL 34285	37616-4274	Water & Sewer	\$2,173.88
American Eagle Venice Island LLC, d/b/a Maris Pointe	Comcast	1701 JFK Blvd. Philadelphia, PA 19103	8540000000000000	Cable TV	\$47.40

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
American Eagle Venice Island LLC, d/b/a Maris Pointe	Florida Power & Light Company (FPL)	General Mail Facility Miami FL 33188-0001	38743-76480	Electricity	\$1,102.39
American Eagle Venice Island LLC, d/b/a Maris Pointe	Ferrellgas/MO-Liberty #40	Lighton Tower 7500 College Blvd 1000 Overland Park, KS 66210	52254605	Gas	\$651.28
American Eagle Venice Island LLC, d/b/a Maris Pointe	Granite	100 Newport Ave. Ext Quincy, MA 02171	4084879	Telephone & Internet Communications	\$459.79
American Eagle Hanceville LLC, d/b/a Monarch Place	Cullman Electric Cooperative	1749 Eva Road NE Cullman, AL 35056	1000014667	Trash Removal	\$120.72
American Eagle Hanceville LLC, d/b/a Monarch Place	Cullman Electric Cooperative	1749 Eva Road NE Cullman, AL 35056	1000014667	Electricity	\$1,718.41
American Eagle Hanceville LLC, d/b/a Monarch Place	Spectrum	400 Atlantic St., Stamford, CT 06901	8781141320004670	Cable TV	\$550.89
American Eagle Hanceville LLC, d/b/a Monarch Place	Cullman-Jefferson Counties Gas District	1550 Co Rd 715 Hanceville, AL 35077	43197	Gas	\$196.47
American Eagle Hanceville LLC, d/b/a Monarch Place	W&S Board of the City of Hanceville	203 Main Street NW Hanceville AL 35077	1020930000	Water & Sewer	\$844.94
American Eagle Hanceville LLC, d/b/a Monarch Place	Granite	100 Newport Ave. Ext Quincy, MA 02171	4154417	Telephone & Internet Communications	\$1,034.75
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Waste Pro	1400 S. Orange Blossom Trail Orlando, FL 32806	766, 033	Trash Removal	\$341.81
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Spectrum	400 Atlantic St., Stamford, CT 06901	0031832237-01	Cable TV	\$754.05
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Duke Energy/1004	550 S Tyron St. Charlotte, NC 28202	77196 33429	Electricity	\$1,751.56
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Teco: Peoples Gas	702 N Franklin St Tampa, FL 33602	211003660472	Gas	\$140.81

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Gas South	3625 Cumberland Blvd Se, Ste 1100 Atlanta, GA 30339	2234792487	Gas	\$125.70
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Seminole County, FL	1101 East First Street Sanford, FL 32771	105785-210348	Water & Sewer	\$2,616.48
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Granite	100 Newport Ave. Ext Quincy, MA 02171	04059239-	Telephone & Internet Communications	\$223.60
American Eagle Tuskawilla LLC, d/b/a Palmetto Landing	Windstream	4001 Rodney Parham Rd Little Rock, AR 72212	204994318	Telephone & Internet Communications	\$420.79
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Waste Management	800 Capitol Street Suite 3000 Houston, TX 77002	22-97058-53000	Trash Removal	\$631.05
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Earth Savers	1116 Ordway Place Nashville TN 37206	GV029	Trash Removal	\$487.50
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Comcast	1701 JFK Blvd. Philadelphia, PA 19103	8400000000000000	Cable TV	\$13.30
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Comcast	1701 JFK Blvd. Philadelphia, PA 19103	8400000000000000	Telephone & Internet Communications	\$42.48
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Nashville Electric Service	1214 Church Street Nashville, TN 37246	0687454-0139220	Electricity	\$6,498.66
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Piedmont Natural Gas	4720 Piedmont Row Dr, Ste 100 Charlotte, NC 28210-4294	9002537930002	Gas	\$213.71
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Hendersonville Utility District	125 Indian Lake Road Hendersonville, TN 37075	00054019-03108056	Water & Sewer	\$2,941.52
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Granite	100 Newport Ave. Ext Quincy, MA 02171	4154403	Telephone & Internet Communications	\$635.87
American Eagle Hendersonville LLC, d/b/a Red Cedar Glen	Senior Living Communications, LLC	5711 Yeats Manor Drive Suite 302 Tampa, FL 33616	BR1903	Telephone & Internet Communications	\$3,599.23

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	Green For Life Environmental	100 New Park Place Suite 500 Vaughan, ON L4K 0H9 Canada	U8-140575	Trash Removal	\$460.09
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	Spectrum Business	400 Atlantic St., Stamford, CT 06901	10404-710008201-5001	Cable TV	\$166.97
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	WE Energies/Wisconsin Electric/Gas	231 W Michigan St Milwaukee, WI 53202	0719045884-00001	Electricity	\$4,444.57
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	WE Energies/Wisconsin Electric/Gas	231 W Michigan St Milwaukee, WI 53202	0719045884-00001	Gas	\$306.65
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	Pleasant Prairie Utilities	9915 39th Ave Pleasant Prairie WI 53158	27012-53221	Water & Sewer	\$592.42
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	Granite	100 Newport Ave. Ext Quincy, MA 02171	4120160	Telephone & Internet Communications	\$1,156.22
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	Windstream	4001 Rodney Parham Rd Little Rock, AR 72212	5786644	Telephone & Internet Communications	\$294.68
American Eagle Pleasant Prairie LLC, d/b/a Robin Way	AT&T	C/O AT&T Services Inc Attn Karen Cavagnaro, Lead Paralegal One AT&T Way, Room 3A104 Bedminster, NJ 07921	262 697-8680 697 2	Telephone & Internet Communications	\$286.35
American Eagle Kingston LLC, d/b/a Sycamore Trace	Shred-it USA	28883 Network Place, Chicago, IL 60673-1288 US	12454983	Trash Removal	\$53.58
American Eagle Kingston LLC, d/b/a Sycamore Trace	Waste Management of Tenn-Knoxville	1010 Jericho Dr Kingsport, TN 37663-3966	21-68988-33003	Trash Removal	\$214.65
American Eagle Kingston LLC, d/b/a Sycamore Trace	Comcast	1701 JFK Blvd. Philadelphia, PA 19103	8396500360007570	Cable TV	\$634.69
American Eagle Kingston LLC, d/b/a Sycamore Trace	Rockwood Electric Utility	341 W. Rockwood St. Rockwood, TN 37854	208976-109053	Electricity	\$2,318.47
American Eagle Kingston LLC,	Kingston Water Department, TN	900 Waterford Place Kingston TN 37763	012-07975-02	Water & Sewer	\$551.06

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
d/b/a Sycamore Trace					
American Eagle Kingston LLC, d/b/a Sycamore Trace	Granite	100 Newport Ave. Ext Quincy, MA 02171	4093204	Telephone & Internet Communications	\$1,146.38
American Eagle Kingston LLC, d/b/a Sycamore Trace	Exclaimer Ltd.	445 Park Avenue New York, NY 10022 US	84840244	Telephone & Internet Communications	\$39.40
American Eagle Owatonna AL LLC, d/b/a Timberdale Trace	Waste Management	800 Capitol Street Suite 3000 Houston, TX 77002	21-92920-63007	Trash Removal	\$779.23
American Eagle Owatonna AL LLC, d/b/a Timberdale Trace	Skjeveland Enterprises	665 Northwest 32nd Avenue, Owatonna, MN, 55060 US	No account numbers	Trash Removal	\$53.82
American Eagle Owatonna AL LLC, d/b/a Timberdale Trace	Shred-it USA	28883 Network Place, Chicago, IL 60673-1288 US	12441421	Trash Removal	\$25.00
American Eagle Owatonna AL LLC, d/b/a Timberdale Trace	Owatonna Public Utilities	208 Walnut Avenue Owatonna, MN 55060	710288	Electricity	\$1,159.86
American Eagle Owatonna AL LLC, d/b/a Timberdale Trace	Owatonna Public Utilities	208 Walnut Avenue Owatonna, MN 55060	710288	Gas	\$613.26
American Eagle Owatonna AL LLC, d/b/a Timberdale Trace	Owatonna Public Utilities	208 Walnut Avenue Owatonna, MN 55060	710288	Water & Sewer	\$461.14
American Eagle Owatonna AL LLC, d/b/a Timberdale Trace	Granite	100 Newport Ave. Ext Quincy, MA 02171	4154280; 04154284	Telephone & Internet Communications	\$861.28
American Eagle Leesburg LLC, d/b/a Vista Lake	City of Leesburg, FL	501 West Meadow Street Leesburg, FL 34748	628305-572190; 626995-599050	Electricity	\$2,136.03
American Eagle Leesburg LLC, d/b/a Vista Lake	City of Leesburg, FL	501 West Meadow Street Leesburg, FL 34748	626995-599050; 628305-572190	Trash Removal	\$434.76
American Eagle Leesburg LLC, d/b/a Vista Lake	City of Leesburg, FL	501 West Meadow Street Leesburg, FL 34748	626995-599050	Gas	\$407.29
American Eagle Leesburg LLC, d/b/a Vista Lake	City of Leesburg, FL	501 West Meadow Street Leesburg, FL 34748	626995-599050; 628305-572190	Water & Sewer	\$1,009.30
American Eagle Leesburg LLC, d/b/a Vista Lake	Comcast	1701 JFK Blvd. Philadelphia, PA 19103	8535 10 114 0342224	Cable TV	\$547.07

Debtor	Utility Provider Name	Utility Provider Address	Account Number(s)	Utility Type	Adequate Assurance
American Eagle Leesburg LLC, d/b/a Vista Lake	Granite	100 Newport Ave. Ext Quincy, MA 02171	4059353	Telephone & Internet Communications	\$1,119.81
American Eagle Ravenna LLC, d/b/a Vista Veranda	Waste Management of Ohio, Inc	1700 N Broad St Fairborn, OH, 45324-9747	21-87795-63009	Trash Removal	\$278.74
American Eagle Ravenna LLC, d/b/a Vista Veranda	Spectrum	400 Atlantic St., Stamford, CT 06901	01080-021057501-3001	Cable TV	\$186.18
American Eagle Ravenna LLC, d/b/a Vista Veranda	Ohio Edison	76 South Main Street Akron, OH 44308-1890	110 010 858 931	Electricity	\$1,716.37
American Eagle Ravenna LLC, d/b/a Vista Veranda	Dominion Energy Ohio/26785	120 Tredegar St Richmond, VA 23219-4306	6 5000 1519 1392	Gas	\$612.02
American Eagle Ravenna LLC, d/b/a Vista Veranda	City of Ravenna, OH	530 N Freedom St Ravenna OH 44266-2404	99.2960.1	Water & Sewer	\$827.61
American Eagle Ravenna LLC, d/b/a Vista Veranda	Granite	100 Newport Ave. Ext Quincy, MA 02171	4137224	Telephone & Internet Communications	\$425.97
American Eagle Ravenna LLC, d/b/a Vista Veranda	Windstream	4001 Rodney Parham Rd Little Rock, AR 72212	7175162	Telephone & Internet Communications	\$394.70