

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
) CASE NO. 18-07762-JJG-11
FAYETTE MEMORIAL HOSPITAL)
ASSOCIATION, INC. d/b/a FAYETTE)
REGIONAL HEALTH SYSTEMS)
DEBTOR)

**MID-AMERICA ELEVATOR CO., INC. APPLICATION FOR ADMINISTRATIVE
PRIORITY CLAIM PURSUANT TO 11 U.S.C. § 503(b)(1)**

Creditor Mid-America Elevator Co., Inc. ("Mid-America") hereby submits its Application pursuant to Section 503(b)(1) of Title 11 of the United States Code ("the Bankruptcy Code") and Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure for allowance of an administrative expense for post-petition services provided to the Debtor:

1. Mid-America is a party to an unexpired service agreement with Debtor whereby Mid-America provided elevator service and maintenance. A copy of the Elevator Full Maintenance Agreement ("Agreement") is attached hereto as Exhibit "A".

2. The Debtor has filed a motion to reject unexpired executory contracts and one of those to be rejected is the Agreement with Mid-America.

3. The Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code on October 10, 2018 and has been operating as a Debtor in Possession ever since.

4. Mid-America is entitled to an administrative expense claim under section 503(b)(1) of the Bankruptcy Code for amounts that became due while the Debtor made beneficial use of the property.

5. Section 503(b) permits an administrative priority claim for the "actual, necessary costs and expenses of preserving the estate." In the Seventh Circuit, a claim is entitled to administrative priority if it (1) arises from a transaction with the debtor-in-

possession and (2) is beneficial to the debtor-in-possession.” *In re Jartran, Inc.*, 732 F.2d 584, 586 (7th Cir. 1984).

6. There is no dispute that the Mid-America provided elevator maintenance and services to the Debtor post-petition. These services during the post-petition period allowed the Debtor to use their facilities in this Chapter 11 case and attempt reorganization. Amounts accruing after the petition date, through the effective date of rejection are entitled to administrative priority. *See In re Sportsman's Warehouse, Inc.*, 436 B.R. 308, 312 (Bankr. D. Del. 2009); *In re Goody's Family Clothing, Inc.*, 392 B.R. 604, 614 (Bankr. D. Del. 2008), *aff'd*, 401 B.R. 656 (D. Del. 2009) 627 (3d Cir. 1990)). Because the Debtor enjoyed the benefit of Mid-America's services post-petition the amount of the monthly service invoice which remains unpaid post-petition is entitled to be paid as an administrative priority claim.

7. Mid-America is entitled to an administrative expense priority claim from the time since filing of the Petition and the rejection of the Executory Contract as follows:

4/1/2019	Monthly Contract Billing	\$2,280.65
5/1/2019	Monthly Contract Billing	\$2,280.65
6/1/2019	Monthly Contract Billing	\$2,280.65
7/1/2019	Monthly Contract Billing	\$2,280.65
	TOTAL	\$9,122.60

8. Accordingly, based on the foregoing, Mid-America is entitled to an administrative priority claim under section 503(b) in the sum of \$9,122.60.

WHEREFORE, Mid-America Elevator Co., Inc. requests that the Court enter an order allowing Mid-America Elevator Co., Inc. an administrative priority claim against the Debtor's estates in the amount of \$9,122.60, and for such other relief as the Court deems just and proper.

Respectfully submitted,
HESTER BAKER KREBS LLC
Attorneys for Creditor

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 29, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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The undersigned further certifies that on July 29, 2019, a copy of the foregoing was sent to the following by: (a) mailed by first-class U.S. mail, postage prepaid, and properly addressed:

BMC Group
PO Box 90100
Los Angeles, CA 90009

Connersville Primary Care Physicians
Attn: Shiv S. Kapoor
1728 Virginia Avenue
Connersville, IN 47331

Cynet Health Inc
21000 Atlantic Blvd
Suite 740
Sterling, VA 20166

Fayette Memorial Hospital Association, Inc.
1941 Virginia Ave.
Connersville, IN 47331

Shannon Russell
Horizon Mental Health Management, LLC
1965 Lakepointe Dr., Ste. 100
Lewisville, TX 75057

/s/ Christopher E. Baker
Christopher E. Baker



Mid-America Elevator Co., Inc.

1116 East Market Street, Indianapolis, Indiana 46202-3829
(317) 635-5500, Fax (317) 635-3392

Elevator Full Maintenance Agreement

Date: June 18, 2013

To: Ms. Jennie Wellman
Fayette Regional Health System
1941 Virginia Avenue
Connersville, In 47331

Equipment Location:

Fayette Regional Health System
1941 Virginia Avenue
Connersville, IN, 47331

Equipment Description:

Seven (7) Hydraulic Elevators - State #'s 47400, 47397, 47398, 47399, 47396,
34394 and 34393

One (1) Traction Elevator - State #27579

MID-AMERICA MAINTENANCE

We agree to furnish our "Comprehensive Full Maintenance Program" Intended to protect your investment, prolong the life of your equipment, and provide a high level of performance and reliability on the elevator equipment described above.

Mid-America Elevator will use highly trained elevator technicians directly employed and supervised by us. Our elevator technicians receive ongoing training with the latest technology and tools available.

COVERAGE

We will regularly and systematically service, adjust, lubricate, clean, and, if conditions or usage warrant, repair or replace the following:

- **Machine (traction):** worm and gear, thrust bearings, drive sheave, drive sheave shaft bearings, brake including brake pulley, brake coil, brake contact, linings and component parts.
- **Machine (hydraulic):** pump unit, valves, gears, thrust bearings, valve magnet coils, V-belts, seals, packing and drive motors.
- **Motor and Motor-Generator:** auxiliary rotating systems (tachometer and regulator), motor windings, rotating elements, commutator, brushes, brush holders and bearings.
- **Governor:** governor sheave and shaft assembly, bearings, contacts and jaws.
- **Controllers:** relays, resistors, solid state components, contacts, leads, coils, timing devices, fuses, transformers, dashpots, transducers, and condensers.
- **Dispatching Equipment:** relays, resistors, coils, contacts, fuses, transformers, solid state components, and timing devices.
- **Selector Components:** selector drive (tape, wire or cable) and all mechanical and electrical drive components.
- **Holstway:** holstway door interlocks and hangers, bottom door guides, auxiliary closer, deflector sheave, secondary sheaves, compensating sheave assemblies, buffers, top and bottom limit switches, governor tension assemblies, traveling cables, elevator machine room and holstway wiring, guiderails, counterweight guiderails, counterweight guide shoes, rollers and gibs.
- **Car:** door operators, car door hangers, door protective devices, load weighing devices, car door contacts, car safety devices, car guide shoes, gibs and rollers.
- **Fixtures:** car and hall buttons stations, control indicator panels and all signal fixtures including buttons, contacts, lamps and sockets (re-lamping during regularly scheduled visits only).
- **Ropes:** replace steel wire hoist, compensating and governor ropes as often as necessary to maintain adequate safety factor and equalize tension on hoisting ropes as necessary.
- **Escalators:** handrails, handrail drive chains, handrail brush guards, handrail guide rollers, alignment devices, steps, step treads, step wheels, step chains, step axle bushings, comb plates, floor plates, tracks, external gearing, drive chains, upper drives, upper drive bearings, tension sprocket bearings, upper newel bearings and lower newel bearings, demarcation lights, and comb lights.

We will use original manufacturer's replacement parts for all maintenance and repair work performed on your elevators, or parts of equal quality.

We will furnish lubricants, which are recommended and/or specified by the original equipment manufacturer, or lubricants of equal quality.

SAFETY TESTS

- ☒ If marked, we will conduct the annual no load safety test(s).
- ☒ If marked, we will conduct the full load five-year safety test(s) if required.
- ☒ If marked, we will perform the monthly firefighters' service Phase I & II test(s) as required by code. We will also keep the appropriate records of such testing on-site (if required).

You agree to perform all smoke and/or heat detector(s), fire alarm and emergency power testing.

It is expressly understood and agreed that safety tests may impose greater stress on the equipment and the building structure than experienced in day-to-day operation. We shall not be liable for damage and/or failure to the elevator equipment and building structure resulting from the performance of safety tests.



Mid-America Elevator Co., Inc.

FM 09/12

EXHIBIT A

HOURS OF SERVICE

We will visit your elevators on a regularly scheduled basis. These visits will be performed during normal business hours, Monday through Friday, 8:00 a.m. to 4:30 p.m. (except scheduled holidays).

24 HOUR EMERGENCY SERVICE

We will provide you with 24 hour, year round, emergency service. In the event of a malfunction between regular examinations, we will, at your request, dispatch a Mid-America technician to perform emergency minor adjustment callback service.

CALLBACKS

Callbacks are defined as minor adjustments or repairs. We will respond to callbacks during our regular hours of service at no extra charge. On callbacks outside of normal business hours, we will absorb the worked hours at straight time rates and you will be charged for the overtime premium portion only, including travel time and expenses at our normal billing rates.

SHARED RESPONSIBILITIES

You agree to provide Mid-America Elevator Co., Inc. with current straight line and field wiring diagrams that reflect all changes; parts catalogs, configuration files and maintenance instructions for the equipment covered by this agreement. These diagrams shall remain your property, but Mid-America Elevator Co., Inc. shall be responsible for maintaining these diagrams in current and up-to-date order.

You agree to instruct or warn passengers in the proper use of the equipment and to keep the equipment under continued surveillance by competent personnel to detect irregularities between elevator examinations. You agree to report immediately any condition that may indicate the need for correction before the next regular examination. You agree to shut down the equipment immediately upon manifestation of any irregularities in operation or appearance of the equipment, notify us at once, and keep the equipment shut down until the completion of any repairs. You agree to give us verbal notice immediately and written notice within ten (10) days after any occurrence or accident in or about the elevator.

You agree to provide our personnel a safe place in which to work. We reserve the right to discontinue work in the building whenever, in our sole opinion, our personnel do not have a safe place in which to work. You agree to provide a suitable machine room including secured doors, waterproofing, lighting, ventilation and heat to maintain the room at a temperature of 50°F minimum to 90°F maximum. You also agree to maintain the elevator pit in a dry condition at all times and free of stored materials and debris. Should water or other liquids become present, you will contract with others for removal and the proper handling of such liquids.

Escalator units are designed only for transporting passengers. For escalator units, you agree to take all necessary measures to prevent other items from being conveyed, so that features designed to protect passengers and prevent property damage are not damaged.

CLARIFICATIONS

This contract does not cover car enclosures (including but not limited to, wall panels, door panels, car gates, hung ceilings, lighting diffusers, light tubes or bulbs, exhaust fan, handrails, mirrors and floor coverings), rail alignment when affected by building compression or shifting, hoistway enclosures, hoistway gates, hoistway inserts and brackets, mainline disconnect switches, doors, door frames, sills, swing door hinges, closing devices, below ground or unexposed hydraulic cylinders and pistons, buried or unexposed piping, flexible hoses, tank heaters, machine roomless (MRL) gearless machines and permanent magnet motors, coated steel belts, emergency power plant and associated contactors,



Mid-America Elevator Co., Inc.

FI 09/12

emergency car lighting and all batteries including those for emergency lowering, escalator balustrades, escalator lighting, wedge guards, telephones, intercommunication and music systems, smoke and fire sensors, cover plates, security systems and all component parts of the elevator which are proprietary and/or obsolete and no parts are available from regular sources and/or have to be re-manufactured or re-fabricated.

It is agreed, should the term be changed from the elevator industry standard 60 month term, on Page 2 under Coverage: Machine, motor and motor generators, controller (solid state components), ropes and escalators, as well as the five year full load testing shall be prorated for 60 months to be paid by you or a contract addendum shall be signed extending the term as originally stated in this contract.

It is agreed that we do not assume possession or control of the equipment, that such equipment remain yours solely as owner and operator, lessee, or agent of the owner or lessee, and that you are solely responsible for all requirements imposed by any federal, state, or local law, code, ordinance or regulation.

You agree that we shall not be required to install at our expense any new attachments or apparatuses on the equipment whether or not recommended or directed by an insurance company or governmental authority. You agree that we shall not be required to test or improve the equipment or operation from those conditions existing as of the effective date of this agreement regardless of future code and state law changes. You agree not to permit others to make alterations, additions, adjustments, repairs, or replace any component or part of the equipment during the term of this agreement. You agree to accept our judgment as to the means and methods to be employed for any corrective work under this agreement. Further, we shall not be responsible for service calls or repairs due to any cause beyond our control or damage caused by personnel other than Mid-America employees and agents, such as accidents, vandalism, negligence or misuse of the equipment.

It is understood, in consideration of our performance of the service enumerated herein at the price stated, that nothing in this agreement shall be construed to mean that we assume any liability on account of accidents to persons or property except those directly due to negligent acts of Mid-America Elevator Co., Inc. or its employees, and that your own responsibility for accidents to persons or properties while riding on or being about the aforesaid equipment referred to, is in no way affected by this agreement.

We shall not be held responsible for any loss, damage, detention or delay caused by accidents, strikes, lockouts, fire, flood explosion, acts of God, malicious mischief, misuse, theft, acts of civil military authorities, insurrection, riot or any other cause which is unavoidable or beyond our control, or in any event for consequential damages.

In the event of the sale, lease or other transfer of the elevator(s) or equipment described herein, or the premises in which they are located, you agree to see that such successor is made aware of this agreement and assumes and agrees to be bound by the terms hereof for the balance of the agreement, and subject to termination as herein provided, or otherwise be liable for the full unpaid balance due for the full unexpired term of the agreement.

CONTRACT TERMS

This agreement is effective for five (5) years starting September 1, 2013. To ensure continuous service, this agreement will be automatically renewed for successive five (5) year periods, unless either party timely serves written notice upon the other party of its intention to cancel at least ninety (90) days prior to the end of the initial five (5) year period, or ninety (90) days prior to the end of any subsequent five (5) year renewal period.

If for any reason you become dissatisfied with our service, a written notice including explanation shall be given at which time allowing us thirty (30) days to correct the problem to your satisfaction. If not then satisfied, you may cancel this agreement within 24 hours.



Mid-America Elevator Co., Inc.

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CONTRACT PRICE

The price for the services stated in this agreement shall be \$2,060.62 (Two Thousand Sixty Dollars and Sixty Two Cents) payable monthly in advance upon presentation of an invoice and shall remain in effect for a period of one year. You shall pay, as an addition to the price herein, the amount of any sales, use, excise or other tax, which may now, or hereafter, be applicable to the service to be performed under this agreement.

A service charge calculated at the rate of one and one-half percent (1.5%) per month or highest legal contract rate, whichever is less, shall be applicable to delinquent payments, together with all costs (including, but not limited to, attorneys' fees) incurred to collect overdue amounts. Further delinquent payment by you of charges provided herein shall constitute a breach of this agreement and we may, at our option, terminate the agreement for such breach. We shall give you at least thirty (30) days prior written notice before such termination.

ADVANCED PAYMENT DISCOUNTS (Optional)

Beginning on the effective date, payments will be made at the frequency selected below and an advanced payment discount will be applied to the net billing amount:

<u>Frequency</u>	<u>Discount</u>	<u>Selection</u>
Quarterly	1.5%	<input type="checkbox"/>
Semi-Annual	3%	<input type="checkbox"/>
Annual	5%	<input type="checkbox"/>

Payments are due on or before the last day of the month prior to the billing period. If full payment is not received by the due date, the advanced payment discount will not be available and you will be obligated to pay us the full contract price. Advance payment discount percentages are subject to change annually.

PRICE ADJUSTMENT

The contract price shall be subject to an annual adjustment. Each adjustment shall be made as follows:

- A. Twenty (20%) percent of the contract price shall be increased or decreased by the percentage of increase or decrease shown by the Index of "Wholesale Commodity Price for Metal and Metal Products" published by the U.S. Department of Labor, Bureau of Statistics as compared with the annual index effective April, 2012 which was 226.10.
- B. Eighty (80%) percent of the contract price shall be increased or decreased by the percentage of increase or decrease in the straight time hourly labor cost of elevator contractors, plus fringe benefits, which include, but are not limited to, pensions, vacations, paid holiday, sickness, group life insurance, accident insurance, and hospital insurance in the locality where the equipment is to be maintained, for the month within which falls the anniversary of the commencement of the service as compared with such straight time labor cost on January, 2012 which was \$65.510.

SPECIAL PROVISIONS

Due to limited use, Elevator #7 (visitor- middle) does not have full maintenance coverage. Elevator #7 (visitor-middle) will receive monthly, cleaning, adjustment, lubrication and the annual no load safety test. Parts and call backs are not included.



Mid-America Elevator Co., Inc.

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ACCEPTANCE

Your acceptance of this agreement and its approval by an authorized representative of Mid-America Elevator Co., Inc. will constitute exclusively and entirely the agreement for the services herein described. All other prior representations or agreements, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. Should your acceptance be in the form of a purchase order or other similar document, the provisions of this agreement will govern in the event of a conflict. This proposal is hereby accepted in its entirety and shall constitute the entire agreement as contemplated by you and us.

Respectfully submitted:

By: Brian Selke

Brian Selke, President

Signed and Accepted in Duplicate

CUSTOMER

Approved by Authorized Representative

Date: 7-23-13Signed: [Signature]Print Name: ANDREW WHITETitle: CEOCompany: Florida Regional Health System**MID-AMERICA ELEVATOR CO., INC.**

Approved by Authorized Representative

Date: 8-12-13Signed: [Signature]Print Name: BRIAN SELKETitle: President

- ☐ Principal, Owner or Authorized Representative of Principal or Owner
☐ Agent _____ (Name of Principal or Owner)



Mid-America Elevator Co., Inc.

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	
)	CASE NO. 18-07762-JJG-11
FAYETTE MEMORIAL HOSPITAL)	
ASSOCIATION, INC. d/b/a FAYETTE)	
REGIONAL HEALTH SYSTEMS)	
DEBTOR)	

AFFIDAVIT IN SUPPORT OF ADMINISTRATIVE PRIORITY CLAIM

Angie Brown, being first duly sworn, states as follows:

1. Your affiant is the Accounting Supervisor of Mid-America Elevator Co., Inc. ("Mid-America"), the plaintiff herein, is over the age of eighteen (18), has personal knowledge of the following facts, or supervises individuals with personal knowledge of the following facts and is competent to testify hereto.

2. Mid-America entered into an Elevator Full Maintenance Agreement with the Debtor on June 18, 2013.

3. Since that date, Mid-America provided the services required under the Agreement. These services were provided until the time the Debtor rejected the executory contract.

4. According to the books and records of Mid-America, the Debtor is indebted to Mid-America for services provided post-petition and for which it has not been paid in the sum of \$9,122.60.

I affirm under the penalties of perjury that the foregoing representations of fact are true.

FURTHER AFFIANT SAITH NOT.

MID-AMERICA ELEVATOR CO., INC.

By:

Angie Brown
Angie Brown, Accounting Supervisor

STATE OF INDIANA)

) SS:

COUNTY OF Marion)

SUBSCRIBED AND SWORN to before me, a Notary Public in and for said County and State, this 29th day of July, 2019.

Jennifer Ruyter
Notary Public

Jennifer Ruyter
Printed

Commission No.

My Commission Expires:

3-25-2020

Resident of Marion County

Christopher E. Baker
HESTER BAKER KREBS LLC
Regions Tower, Suite 1600
One Indiana Square
Indianapolis, IN 46204
(317) 833-3030; Fax: (317) 833-3031



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
) CASE NO. 18-07762-JJG-11
FAYETTE MEMORIAL HOSPITAL)
ASSOCIATION, INC. d/b/a FAYETTE)
REGIONAL HEALTH SYSTEMS)
DEBTOR)

**NOTICE OF APPLICATION FOR ADMINISTRATIVE
PRIORITY CLAIM AND OBJECTION DEADLINE**

PLEASE TAKE NOTICE that on July 30, 2019, Creditor, Mid-America Elevator Co., Inc. ("Mid-America") filed its Application for Administrative Priority Claim Pursuant to 11 U.S.C. §503(b)(1) (the "Application").

As described in more detail in the Application, Mid-America seeks entry of an order allowing Mid-America an administrative priority claim against the estate of Debtor, Fayette Memorial Hospital Association, Inc. d/b/a Fayette Regional Health Systems ("Fayette") in the amount of \$9,122.60 pursuant to section 503(b)(1) of Title 11 of the United States Code.

PLEASE TAKE FURTHER NOTICE that your rights may be affected. You should read this Notice carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that, if you do not want the Court to enter an order granting the Application, or if you want the Court to consider your views on the Application, then, on or before **21 days from the date of this Notice** you or your attorney must file with the Court a written objection explaining your position. If you mail your response or objection to the Court, you must mail it early enough so the Court will receive it on or before the date stated herein.

Those not permitted to file papers with the Court electronically must deliver any objection by U.S. Mail, courier, overnight/express mail, or in person to the United States Bankruptcy Court Clerk's Office, 116 U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204. The court's website is www.insb.uscourts.gov.

If you have not received a copy of the Application, you may get one by contacting the person who signed this Notice or at the Clerk's Office.

PLEASE TAKE FURTHER NOTICE THAT, IF AN OBJECTION IS TIMELY FILED, A HEARING ON THE APPLICATION WILL BE SCHEDULED AT A LATER DATE.

PLEASE TAKE FURTHER NOTICE that, if an objection is not timely filed, the Court may grant the relief requested in the Application **without a hearing**.

Respectfully submitted,
HESTER BAKER KREBS LLC
Attorneys for Creditor

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 30, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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