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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

LONG BEACH MEDICAL CENTER, et al.¹

Chapter 11
Case No. 14- _____ ()

Debtors.

(Joint Administration Pending)
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**DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105 AND
366 OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER
(A) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR
DISCONTINUING SERVICE TO, OR DISCRIMINATING AGAINST
THE DEBTORS; (B) DETERMINING UTILITIES ARE ADEQUATELY
ASSURED OF PAYMENT, AND (C) ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR ADEQUATE ASSURANCE OF PAYMENT**

Long Beach Medical Center ("LBMC") and Long Beach Memorial Nursing Home, Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine ("Komanoff", each a "Debtor" and collectively the "Debtors"), as debtors and debtors-in-possession in the above captioned chapter 11 cases (the "Chapter 11 Cases"), by and through their proposed attorneys, Garfunkel Wild, P.C., hereby move (the "Motion") for entry of an order: (a) prohibiting the Utility Providers (as hereinafter defined) from altering, refusing or discontinuing services to, or discriminating against, the Debtors; (b) determining that the Utility Providers have been

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: Long Beach Medical Center (5084) and Long Beach Memorial Nursing Home, Inc. dba The Komanoff Center for Geriatric and Rehabilitative Medicine (3422).

provided with adequate assurance of payment; and (c) approving the Debtors' proposed procedures for determining the Utility Providers' requests for additional or different adequate assurance. In support of the Motion, the Debtors rely upon the Affidavit of Douglas Melzer Pursuant to Local Bankruptcy Rule 1007-4 and in Support of First Day Motions and Applications, dated as of February 19, 2014 (the "Melzer Affidavit"), and respectfully represent as follows:

SUMMARY OF RELIEF REQUESTED

1. By this Motion, the Debtors seeks entry of an Order pursuant to Sections 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code"), (a) prohibiting the Utility Providers (as hereinafter defined) from altering, refusing or discontinuing services to, or discriminating against, the Debtors; (b) determining that the Utility Providers have been provided with adequate assurance of payment; and (c) approving the Debtors' proposed procedures for determining Utility Providers' requests for additional or different adequate assurance.

2. Uninterrupted utility services are critical to the Debtors' ongoing operations and necessary for the proper provision of patient care. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations could be severely disrupted, which could pose life threatening hazards and consequences for the Debtors' patient population. Additionally, the impact on the Debtors' business operations and revenue would be extremely harmful and could jeopardize the Debtors' ability to successfully consummate the proposed sale of their assets. It is therefore critical that utility services continue without interruption.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

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

5. The statutory predicates for the relief requested herein are sections 105(a), and 366 of the Bankruptcy Code, Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 9013-1 of the Local Bankruptcy Rules for Eastern District of New York (the "**Local Rules**").

BACKGROUND

6. On the date hereof, (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Contemporaneously herewith, the Debtors have requested that the Chapter 11 Cases be jointly administered for procedural purposes only.

7. The Debtors are operating their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. A detailed description of the Debtors' business and the reasons for the filing of these Chapter 11 Cases is set forth in the Melzer Affidavit, filed simultaneously herewith and incorporated herein by reference.

8. No trustee, examiner, or official committee of unsecured creditors has yet been appointed.

THE UTILITY PROVIDERS

9. In connection with the operation of their businesses and management of their properties, the Debtors obtain water, heat, natural gas, oil, electricity, trash removal, telephone and other similar services (collectively, "**Utility Services**") at the Debtors' facilities, which are

provided by approximately 6 different providers or their brokers (collectively, the “**Utility Providers**”), including those listed on Exhibit B hereto (the “**Utility Service List**”). In the past twelve (12) months, the Debtor paid an average of approximately \$48,000 per month on account of Utility Services. As of the Petition Date, the Debtors believe they are current on their utility costs.

10. Uninterrupted utility service is vital to maintaining on-going patient care and safety at the Debtors’ nursing home facility during the sale process. Any interference with Utility Services would compromise the Debtors’ remaining operations and jeopardize patient health and safety. The value of the Debtors’ on-going services would also be negatively impacted. Accordingly, the uninterrupted provision of Utility Services is essential to the Debtors’ continued operations and successful consummation of the sale of the Debtors’ assets. The Debtors intend to pay all postpetition obligations to Utility Providers in a timely manner. To that end, the Debtors have developed a postpetition budget that contemplates full payment of their utility obligations. For each of these reasons, and as further detailed below, the relief requested herein is necessary, fair to the Utility Providers, and in the best interests of the Debtors’ estates and creditors.

RELIEF REQUESTED

11. By this Motion, pursuant to sections 105(a) and 366 of the Bankruptcy Code, the Debtors seek entry of an order (the “**Interim Procedures Order**”): (a) prohibiting the Utility Providers from altering, refusing or discontinuing services to, or discriminating against the Debtors; (b) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; and (c) approving the

Debtors' proposed procedures governing Utility Providers' requests for additional or different adequate assurance.

The Adequate Assurance

12. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility provider may alter, refuse or discontinue a debtor's utility service if the utility provider does not receive adequate "assurance of payment" within 30 days of the commencement of a debtor's Chapter 11 case.

13. Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase "assurance of payment" to mean, among other things, a cash deposit. Accordingly, the Debtors propose to deposit, as adequate assurance, \$24,000 into a newly created, segregated escrow account (the "Utility Reserve") for the benefit of utilities providing services to the Debtors within 20 days of the Petition Date. The Utility Reserve equals approximately 15 days of the Debtors' estimated aggregate postpetition utility expenses for their facilities, based upon average monthly usage for the last 12 months. Upon closure or disposition of any property or healthcare services where a Utility Provider provides utility services, the Debtors will reduce the Utility Reserve by an appropriate corresponding amount.

14. The Debtors submit that the Utility Reserve, in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility Providers. Nonetheless, if any Utility Provider believes additional assurance is required, the Debtors propose that such Utility Provider be required to adhere to the procedures described below. Furthermore, out of an abundance of caution, the Debtors request approval of the Proposed Adequate Assurance pursuant to Bankruptcy Rule 6003 to prevent the immediate and

irreparable harm that could result if any discontinuation or termination of utility services occurred.

THE PROPOSED ADDITIONAL ADEQUATE ASSURANCE PROCEDURES

15. In light of the severe consequences to the Debtors and their patients in the event of any interruption in services by the Utility Providers, and in recognition of the right of the Utility Providers to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors propose that the Court approve and adopt the following procedures (the “**Adequate Assurance Procedures**”) which will allow the Debtors to work with the Utility Providers to consensually resolve any adequate adequate assurance issues. If the Debtors and a Utility Provider cannot consensually resolve such issues, the Court should determine first whether an additional adequate assurance payment is necessary and, if so, the amount necessary, before the Utility Provider may cease providing Utility Services for failure of adequate assurance. The procedures the Debtors propose are as follows (the “**Additional Adequate Assurance Procedures**”):

- a. A Utility Provider desiring additional assurance of payment in excess of the Utility Reserve must serve a request (an “**Additional Assurance Request**”) so that it is received by the Debtors no later than 30 days after the Petition Date (the “**Request Deadline**”) at the following addresses: (i) Long Beach Medical Center, 455 E. Bay Drive, Long Beach, New York 11561, Attn: Douglas Melzer; (ii) counsel to the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York, Attn: Burton S. Weston, Esq. and (iii) the Office of the United States Trustee for the Eastern District of New York, Alfonse D’Amato Federal Courthouse, 560 Federal Plaza, Central Islip, New York 11722-4456, Attn: Christine H. Black, Esq., Assistant U.S. Trustee (collectively, the “**Service Parties**”).
- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider; (iii) set forth the location(s) for which utility services are provided; (iv) include a summary of the Debtors’ payment history relevant to the affected account(s), including a description

of any deposits, prepayments, or other security held by the Utility Provider; and (v) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment. Any Utility Provider that fails to submit an Additional Adequate Assurance Request shall be deemed to have been provided with adequate assurance of payment as required by section 366 of the Bankruptcy Code and shall be prohibited from discontinuing, altering or refusing to provide Utility Services, including on account of unpaid charges for prepetition Utility Services.

- c. The Debtors shall have fourteen (14) days from the receipt of an Additional Assurance Request (the "**Resolution Period**") to reach a consensual agreement with such Utility Provider resolving such Utility Provider's Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Provider,
- d. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable.
- e. If the Debtors determine that the Additional Assurance Request is unreasonable and cannot reach a resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "**Determination Hearing**") pursuant to section 366(c)(3) of the Bankruptcy Code.
- f. Pending resolution of any Additional Assurance Request at the Determination Hearing or by mutual agreement between the Debtors and the Utility Provider, such particular Utility Provider shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or any objections to the Proposed Adequate Assurance.
- g. Absent compliance with the procedures set forth herein, the Utility Companies are forbidden to discontinue, alter or refuse service, including on account of any unpaid prepetition charges, or if they require additional adequate assurance of payment other than the Proposed Adequate Assurance.

MODIFICATIONS OF UTILITY PROVIDERS LIST

16. Although the Debtors have made an extensive and good-faith effort to identify all the Utility Providers, certain Utility Providers that currently provide Utility Services to the Debtors may not be listed on Exhibit B. To the extent the Debtors identify additional Utility Providers (the “**Additional Providers**”), the Debtors will promptly file amendments to the Utility Service List, and shall serve copies of the Procedures Order on such newly-identified Utility Providers.² With respect to any Additional Utility Provider, the period to file an Additional Assurance Request shall be 20 days after the date of service of the Procedures Order on such Additional Utility Provider.

BASIS FOR RELIEF REQUESTED

17. The relief requested herein will ensure that the Debtors’ operations and patient safety will not be disrupted. If a disruption occurred, the impact on the Debtors’ business operations and revenue, and more importantly, the Debtors’ patients, could be extraordinary and irreparable. As detailed in the Melzer Affidavit, the Debtors have already suffered a significant financial set-back as a result of Superstorm Sandy and simply cannot afford a further decline in revenue which would likely result in the event their operations are interrupted. Furthermore, the relief requested provides the Utility Companies with a fair and orderly procedure for determining requests for additional or different adequate assurance. Without the Adequate Assurance Procedures, the Debtors could be forced to address numerous requests by Utility Companies in a disorganized manner at a critical period in these chapter 11 cases and during a time when the Debtor’s efforts could be more productively focused on the continuation of the Debtor’s operations for the benefit of all parties in interest.

² Accordingly, if a Utility Provider is added to the Utility Service List any time after 16 days after the Petition Date, the Resolution Period will be the 14-day period set forth in the Adequate Assurance Procedures

18. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination of utility services after commencing its case. Under that section, a utility company may not, during the first thirty (30) days of a chapter 11 case, alter, refuse, or discontinue services to a debtor solely because of unpaid prepetition amounts. A utility company may, however, do so if, following such thirty (30) day period, the debtor does not provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility. Indeed, Congress enacted section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while, at the same time, providing utility companies with “adequate assurance” that debtors will pay for postpetition services. See H.R. REP. NO. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Section 366 (c)(1) of the Bankruptcy Code, as modified in October 2005, defines “assurance of payment” to mean several enumerated forms of security (e.g., cash deposits, letters of credit, prepayment for utility service) while excluding certain forms of security (e.g., administrative expense priority for a utility’s claim). In addition, section 366(c)(3)(B) of the Bankruptcy Code bars a court from considering certain facts (e.g., a debtor’s prepetition history of making timely payments to a utility) in making a determination of adequate assurance of payment.

19. Section 366(c) of the Bankruptcy Code restricts the factors that a court can consider when determining whether an adequate assurance payment is, in fact, adequate. Specifically, courts no longer may consider (a) the absence of a security deposit before a debtor’s petition date, (b) a debtor’s history of timely payments, or (c) the availability of an administrative expense priority when determining the amount of a deposit. Notwithstanding these changes, it does not appear that Congress intended to — or did — abrogate the bankruptcy

court's ability to determine the amount of adequate assurance necessary or change the fundamental requirement that assurance of payment must simply be "adequate."

20. However, while section 366(c) of the Bankruptcy Code limits the factors a court can consider when determining whether a debtor has provided adequate assurance of payment, it does not limit the court's ability to determine the amount of payment, if any, necessary to provide such adequate assurance. Instead, section 366(c) of the Bankruptcy Code gives courts the same discretion in determining the amount of payment necessary for adequate assurance as they previously had under section 366(b) of the Bankruptcy Code. Thus, a court may find that no additional deposit or payment at all is necessary to provide a utility with adequate assurance of payment. See Virginia Elec. & Power Co. v. Caldor, Inc., 117 F.3d 646, 650 (2d Cir. 1997) ("Even assuming that 'other security' should be interpreted narrowly, we agree with the appellees that a bankruptcy court's authority to 'modify' the level of the 'deposit or other security,' provided for under § 366(b), includes the power to require no 'deposit or other security' where none is necessary to provide a utility supplier with 'adequate assurance of payment.'"); In re Penn Jersey Corp., 72 B.R. 981, 986 (Bankr. E.D. Pa. 1987) (noting that utility provider's request for additional security would be denied when debtor had never been delinquent prior to bankruptcy). This is particularly true in cases where the debtor has made prepetition deposits or prepayments for services that utilities will ultimately render postpetition. 11 U.S.C. § 366(c)(1)(A)(v) (recognizing a prepayment for postpetition services as adequate assurance).

21. Additionally, section 366(c) of the Bankruptcy Code, like section 366(b), simply requires that a utility's assurance of payment be "adequate," and does not require an absolute guarantee of a debtor's ability to pay. See, e.g., Steinbach v. Tucson Elec. Power Co. (In re

Steinbach), 303 B.R. 634, 640–41 (Bankr. D. Ariz. 2004) (“No definition is provided in the Bankruptcy Code for what constitutes ‘adequate assurance’ . . . Adequate assurance of payment is not, however, absolute assurance. The key to achieving the balance required by section 366 is not to confuse adequate assurance with adequate protection, which must be provided to a creditor under 11 U.S.C. § 361”); In re Adelpia Bus. Solutions, Inc., 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“In determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment, but must only determine that the utility is not subject to an unreasonable risk of nonpayment for postpetition services.”); see also In re Caldor, Inc.-N.Y., 199 B.R. 1, 3 (Bankr. S.D.N.Y. 1996) (section 366(b) “does not require an ‘absolute guarantee of payment’”), aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc. N.Y., 117 F.3d at 650.

22. Accordingly, in computing the appropriate amount of adequate assurance, bankruptcy courts instead focus “upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” Virginia Elec. & Power Co., 117 F.3d at 650 (quoting In re Penn Jersey Corp, 72 B.R. at 985); see also In re Penn Cent. Transp. Co., 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits would likely “jeopardize the continuing operating of the [debtor] merely to give further security to suppliers who are already reasonably protected”).

23. Based on the foregoing standards, entry of the proposed Order meets all applicable requirements of section 366 of the Bankruptcy Code. Far from depriving Utility Providers of adequate assurance of payment, the Debtors propose to provide the Utility Providers with (a) significant cash reserves and (b) procedures pursuant to which the Utility Providers can

seek greater or different security. Moreover, the Debtors have a powerful incentive to stay current on their utility obligations. Not only does interruption of utility services threaten the Debtors' services, but more importantly, it threatens the lives and health of their patients. In these circumstances, the procedures the Debtors have proposed significantly alleviate — if they do not eliminate altogether — any reasonable concern about non-payment on the part of the Utility Providers, and is thus clearly “adequate.”

24. If the Utility Providers disagree with the Debtors' analysis, however, the procedures proposed in this Motion will enable the parties to negotiate and, if necessary, seek Court intervention, without jeopardizing the Debtors' continuing operations. The Debtors seek authorization of the proposed procedures under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

25. The proposed procedures are necessary for the Debtors' orderly liquidation. If the Court does not approve the proposed procedures, the Debtors could be forced to address numerous requests by their Utility Providers in a disorganized manner at a critical point in their Chapter 11 Cases. Courts have recognized the importance of implementing procedures to provide an orderly process to determine whether a debtor's proposed assurance of future payment is adequate under section 366 of the Bankruptcy Code in order to prevent cutoff of utility services at a critical point in these cases. See, e.g., In re Circuit City Stores, Inc., Case No. 08-35653, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009) (recognizing that without such procedures “debtors could be forced to address numerous requests by utility companies in an unorganized manner” and that an orderly process is necessary for a smooth transition into

chapter 11); see also In re Syroco, Inc., 374 B.R. 60 (Bankr. D.P.R. 2007) (noting that prohibiting the use of reasonable procedures to implement the protections afforded under

26. Moreover, the Debtors and their patients could be blindsided by a Utility Provider unilaterally deciding that it is not adequately protected and discontinuing service or making an exorbitant demand for payment to continue service. Failure to reach agreement could result in termination of utility services and, potentially, endanger patient lives. As set forth above, discontinuation of Utility Services, especially electricity, would essentially halt the Debtors' services and medical operations, putting the Debtors' Chapter 11 Cases in extreme jeopardy and, far more drastically, patient well-being in harm's way.

27. The proposed procedures set forth a fair process that will enable all parties to negotiate their respective positions and, where necessary, seek Court intervention without jeopardizing the Debtors' reorganization efforts. In fact, Courts in this district have previously approved the same or substantially similar relief as requested herein. See, e.g., See, e.g., In re Metro Fuel Oil Corp., Case No. 12-46913 (ESS) (Bankr. E.D.N.Y. Oct. 23, 2012) (providing for two weeks adequate assurance); In re Global Aviation Holdings Inc., Case No. 12-40783 (CEC) (Bankr. E.D.N.Y. Mar. 5, 2012); (same) In re The Brown Publ'g Co., Case No. 10-73295 (DTE) (Bankr. E.D.N.Y. June 8, 2010) (same); In re Sonix Med. Res., Inc., Case No. 09-77781 (DTE) (Bankr. E.D.N.Y. Oct. 23, 2009) (same); In re Old TIC LLC (f/k/a The Innovative Cos. LLC), Case No. 09-72669 (DTE) (Bankr. E.D.N.Y. May 29, 2009) (same); In re Caritas Health Care, Inc., Case No. 09-40901 (CEC) (Bankr. E.D.N.Y. Mar. 6, 2009) (same).

28. Further, pursuant to section 105(a) of the Bankruptcy Code, the Court possesses the power to issue any order necessary or appropriate to carry out the provisions of the

Bankruptcy Code. 11 U.S.C. § 105(a). The procedures contemplated herein will ensure the Debtor's continued Utility Services without prejudicing the Utility Providers.

29. Based on the foregoing, it is respectfully submitted that the relief requested herein is necessary and appropriate and in the best interests of the Debtors' estates and their creditors. Accordingly, the Motion should be granted in all respects.

REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY

30. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtors seek (a) immediate entry of an order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may allow the Debtors to pay all or part of a claim that arose before the Petition Date prior to the twenty-first day following the Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

31. As set forth above, immediate payment for Utility Services is necessary to prevent immediate and potentially irreparable damage to the Debtors' services and patient care and to maximize the value of the Debtors' assets available to stakeholders. Accordingly, the Debtors submit that ample cause exists to justify (a) the immediate entry of an order granting the relief

sought herein pursuant to Bankruptcy Rule 6003(b) and (b) a waiver of the 14 day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

MOTION PRACTICE

32. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this motion. Moreover, in addition to all entities otherwise entitled to receive notice, the Debtors have given notice of this motion to all entities believed to have or be claiming an interest in the subject matter of the proposed order or who, it is believed, otherwise would be affected by the proposed order. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1.

NOTICE

33. As of the filing of this Motion, no trustee, examiner or creditors' committee has been appointed in this Chapter 11 case. Notice of this Motion has been given to: (a) United States Trustee; (b) the Debtors' material prepetition and postpetition secured lenders or any agent therefore; (c) the holders of the 30 largest unsecured claims on a consolidated basis; (d) the following state and local taxing and regulatory authorities: (i) the Centers for Medicare and Medicaid Services, (ii) the New York State Department of Health, (iii) the United States Attorney for the Eastern District of New York, (iv) the Attorney General of the State of New York; (v) the Nassau County Attorney; (vi) Corporation Counsel for the City of Long Beach, (vii) the Internal Revenue Service; (viii) the New York State Department of Taxation and Finance; (e) counsel to South Nassau Communities Hospital; (f) the United States Department of Justice; (g) the United States Department of Health and Human Services, and (h) International Union of Operating Engineers, Local 30; (i) 1199 SEIU Healthcare Workers East; and (j) all

parties in interest who have requested notice pursuant to Bankruptcy Rule 2002 (the “Notice Parties”). The Debtors submit that no other notice need be given.

NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully requests that the Court enter an order substantially in the form annexed hereto as Exhibit A granting the relief requested herein, and such other and further relief as may be just and proper.

Dated: February 19, 2014
Great Neck, New York

GARFUNKEL WILD, P.C.

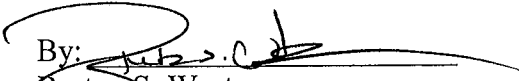
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EXHIBIT A

Form of Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

LONG BEACH MEDICAL CENTER, et al.

Case No. 14- _____ ()

Debtors.

-----X

**ORDER PURSUANT TO SECTIONS 105(A) AND 366
OF THE BANKRUPTCY CODE (A) PROHIBITING UTILITIES
FROM ALTERING, REFUSING OR DISCONTINUING SERVICE,
(B) DEEMING UTILITIES ADEQUATELY ASSURED OF FUTURE
PERFORMANCE, AND (C) ESTABLISHING PROCEDURES FOR
DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion, dated February 19, 2014, (the "Motion")³ of Long Beach Medical Center ("LBMC") and Long Beach Memorial Nursing Home, Inc. d/b/a The Komanoff Center for Geriatric and Rehabilitative Medicine ("Komanoff"), each a "Debtor" and collectively the "Debtors", as debtors and debtors-in-possession in the above captioned chapter 11 cases (the "Chapter 11 Cases"), for an order pursuant to sections 105(a) and 366 of title 11 of the United States Code (the "Bankruptcy Code") (a) prohibiting the Utility Providers (as hereinafter defined) from altering, refusing or discontinuing services to, or discriminating against, the Debtors; (b) determining that the Utility Providers have been provided with adequate assurance of payment; and (c) approving the Debtors' proposed procedures for determining Utility Providers' requests for additional or different adequate assurance; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to sections 28 U.S.C. §§ 157(a) and 1334(b); and consideration of the Motion and the relief requested therein being a

³ Capitalized terms, not herein defined, shall have the meaning ascribed to them in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided as set forth in the Motion, including to the Utility Providers; and it appearing that no other or further notice being necessary except as expressly provided herein; and there being no objections to the relief granted herein; and upon the record of the hearing held by the Court on the Motion on _____, 2014 (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion, the Melzer Affidavit and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Subject to the procedures described below, no Utility Provider may (i) alter, refuse, terminate, or discontinue utility services to, or discriminate against, the Debtors on the basis of the commencement of these Chapter 11 Cases or on account of outstanding prepetition invoices or (ii) require additional assurance of payment, other than the Proposed Adequate Assurance provided for in the next paragraph, as a condition to the Debtors receiving such utility services.
3. With respect to all Utility Providers, the Debtors shall, if not already deposited, immediately deposit the amount of \$24,000 into a segregated account for the sole purpose of providing adequate assurance of payment (the "**Proposed Adequate Assurance**") to the Utility

Providers in respect of unpaid post petition utility bills during the course of these chapter 11 cases (the “**Utility Reserve**”). The Utility Providers shall have an undivided interest in the Utility Reserve subject to the Additional Adequate Assurance Procedures set forth herein.

4. The Debtors are authorized to reduce the Utility Reserve to the extent any Utility Provider receives any value from the Debtors from another source under section 366 of the Bankruptcy Code, on account of adequate assurance. Upon closure or disposition of property or healthcare services where a Utility Provider provides utility services, the Debtors are authorized to reduce the Utility Reserve by an amount corresponding to such Utility Provider’s *pro rata* share of the Utility Reserve; provided that such Utility Provider has no outstanding post-petition utility bills.

5. The Utility Reserve, with the Additional Adequate Assurance Procedures, constitute sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code.

6. The following Additional Adequate Assurance Procedures are approved in full and in all respects, and all Utility Providers and the Debtors must abide by them:

- a. A Utility Provider desiring additional assurance of payment in excess of the Utility Reserve must serve a request (an “**Additional Assurance Request**”) so that it is received by the Debtors no later than 30 days after the Petition Date (the “**Request Deadline**”) at the following addresses: (i) Long Beach Medical Center, 455 E. Bay Drive, Long Beach, New York 11561, Attn: Douglas Melzer; (ii) counsel to the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York, Attn: Burton S. Weston, Esq. and (iii) the Office of the United States Trustee for the Eastern District of New York, Alfonse D’Amato Federal Courthouse, 560 Federal Plaza, Central Islip, New York 11722-4456, Attn: Christine H. Black, Esq., Assistant U.S. Trustee (collectively, the “**Service Parties**”).

- b. Any Additional Assurance Request must: (i) be made in writing; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider; (iii) set forth the location(s) for which utility services are provided; (iv) include a summary of the Debtors' payment history relevant to the affected account(s), including a description of any deposits, prepayments, or other security held by the Utility Provider; and (v) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment. Any Utility Provider that fails to submit an Additional Adequate Assurance Request shall be deemed to have been provided with adequate assurance of payment as required by section 366 of the Bankruptcy Code and shall be prohibited from discontinuing, altering or refusing to provide Utility Services, including on account of unpaid charges for prepetition Utility Services.
- c. The Debtors shall have fourteen (14) days from the receipt of an Additional Assurance Request (the "**Resolution Period**") to reach a consensual agreement with such Utility Provider resolving such Utility Provider's Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Provider,
- d. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable.
- e. If the Debtors determine that the Additional Assurance Request is unreasonable and cannot reach a resolution with the Utility Provider during the Resolution Period, the Debtors or the Utility Provider, during or immediately after the Resolution Period, will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "**Determination Hearing**") pursuant to section 366(c)(3) of the Bankruptcy Code; provided, that nothing herein shall restrict any party's right to request expedited notice and a hearing under the Local Bankruptcy Rules and the Case Management Order.
- f. Pending resolution of any Additional Assurance Request at the Determination Hearing or by mutual agreement between the Debtors and the Utility Provider, such particular Utility Provider shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or any objections to the Proposed Adequate Assurance.

- g. Absent compliance with the procedures set forth herein, the Utility Providers are forbidden to discontinue, alter or refuse service, including on account of any unpaid prepetition charges, or if they require additional adequate assurance of payment other than the Proposed Adequate Assurance.

7. Each Utility Provider shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until (a) the Debtors, in their discretion, agree to (i) an Additional Assurance Request or (ii) an alternative assurance of payment with the Utility Provider during the Resolution Period; or (b) this Court enters an order requiring the Debtors to provide additional adequate assurance of payment.

8. The Debtors are authorized, in their discretion, to amend and supplement, as necessary, the Utility Providers listed on Exhibit B to the Motion (the “Utility Service List”), and this Order shall apply to any such Utility Company that is subsequently added to the Utility Service List; provided, that, with respect to any Additional Utility Provider, the period to file an Additional Assurance Request shall be 20 days after the date that the Debtors serve this Order on such Additional Utility Provider. Any Additional Assurance Request by such Additional Utility Provider must otherwise comply with the requirements set forth in this Order or shall be deemed an invalid Additional Assurance Request.

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

10. Any payment or transfer made or service rendered by the Debtors pursuant to this Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation, a waiver of any rights the Debtors may have to dispute such obligation or waiver of

any other rights or remedies of the Debtors, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.

13. Nothing in this Order or the Motion shall be deemed to constitute the postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

14. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry pursuant to Bankruptcy Rule 6004(h).

15. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

Dated: _____, 2014

Central Islip, New York

By: _____
HONORABLE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Utility Providers

UTILITY PROVIDERS

Utility Provider	Address	Type of Service	Average Monthly Charge
PSEG	PSEG: 15 Park Drive Melville, NY 11746	Electric	13,000
National Grid	National Grid: PO BOX 9037 Hicksville, NY 11802-9037	Gas	8,000
City of Long Beach- Water/Sewer Admin.	1 West Chester St., Room 302 Long Beach, NY 11561	Water/Sewage	6,000
Jamaica Ash	172 School Street P.O. Box 833 Westbury, NY 11590	Garbage	8,000
Verizon -	P.O. Box 15124 Albany, NY 12212	Phone	6,500
Lightpath	P.O. Box 360111 Pittsburgh, PA 15251	Internet	6,500