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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.

Chapter 11
Case No. 13-_____ (____)

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**

Sound Shore Medical Center of Westchester ("SSMC") and certain of its debtor affiliates, as debtors and debtors-in-possession (each a "Debtor" and collectively the "Debtors")¹ 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 interim and final orders: (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; (c) approving the

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

Debtors' proposed procedures for determining the Utility Providers' requests for additional or different adequate assurance; and (d) scheduling a final hearing on the Motion (the "**Final Hearing**"). In support of the Motion, the Debtors rely upon the Affidavit of John Spicer Pursuant to Local Bankruptcy Rule 1007-2 and in Support of First Day Motions and Applications (the "**Spicer Affidavit**"), and respectfully represent as follows:

SUMMARY OF RELIEF REQUESTED

1. By this Motion, the Debtors seeks entry of an interim and final 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; (c) approving the Debtors' proposed procedures for determining Utility Providers' requests for additional or different adequate assurance; and (d) scheduling a Final Hearing on the Motion.

2. Uninterrupted utility services are critical to the Debtors' ongoing operations, and necessary for the 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 populations. 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, and Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy 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 Spicer Affidavit, filed simultaneously herewith and incorporated herein by reference.

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

DEBTORS HISTORY AND BUSINESS

9. A significant portion of the Debtors’ core business is focused around Sound Shore Medical Center of Westchester (“**SSMC**”). SSMC is a not-for-profit 252-bed, community-based teaching hospital offering primary, acute, emergency and long-term health care to the working

class residents of southern Westchester. Founded in 1892 and located in New Rochelle, New York, SSMC is a teaching affiliate of New York Medical College. SSMC is home to a comprehensive orthopedic program and stroke and bariatric centers of recognized excellence and boasts the only trauma center in southern Westchester as well as a reputable level 3 perinatal hospital.

10. SSMC's affiliate, Mount Vernon Hospital ("MVH"), is a voluntary, not-for-profit, 196-bed hospital located in Mount Vernon, New York. MVH also operates the Dorothea Hopfer School of Nursing, chartered by New York State since 1901. Since its founding in 1891, MVH has housed a full range of diagnostic and therapeutic medical and surgical services, specialty programs and ambulatory clinics. MVH also offers comprehensive inpatient and outpatient behavioral health programs consisting of psychiatric services designed specifically for individuals whose needs have not been met through traditional approaches

11. Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center ("SECC") is a 150-bed, comprehensive facility offering short-term rehabilitation/sub-acute care, as well as skilled long-term care. SECC dedicates 100-beds for long-term skilled medical management for individuals with chronic conditions or disabilities who are no longer capable to live independently. The remaining 50-beds are utilized for short-term stays and rehabilitation to accommodate patients recovering from heart surgery, heart attacks, strokes, and orthopedic surgery. (SSMC, MVH and SECC are sometimes collectively referred to as the "Medical Centers")

12. SSMC, MVH and SECC (with their affiliated Debtors) together comprise the Sound Shore Health System, Inc. ("SSHS" or the "System") which was formed in 1997 when

the three affiliated healthcare institutions joined together to create one of the largest regional healthcare systems between New York City and Albany. Today, the System provides a range of specialized services, including orthopedic surgery, behavioral health, pediatrics, OB/GYN, continuing care facilities, a nursing home and community care clinics providing primary care services for the indigent and uninsured. Their affiliation with the New York College of Medicine also enables the Debtors to provide a teaching environment in multiple disciplines to their community and patients.

13. As the largest “safety net” providers for southern Westchester County, the Medical Centers serve a disproportionate share of patients in the Medicaid and uninsured populations. Annually, they are responsible for approximately 13,000 acute discharges, 55,000 emergency department visits and 60,000 indigent care clinic visits.

14. As is true with many community hospitals serving a working class constituency, the Medical Centers have been beset by the financial pressures caused by cuts in Medicare and Medicaid funding, declining indigent pool payments, and changing demographics in the communities served by the Debtors. Commencing in 2006 and increasingly each year thereafter, the Debtors experienced a progressive decline in patient volume and discharges and reduction in acuity of the case mix. Operating revenues decreased, leading to significant losses in the years preceding these filings. Cash book balances were frequently negative, and vendor payables increased to over 225 days past due. With a substantial portion of their assets liened, the Debtors had limited ability to obtain sufficient working capital financing. Simultaneously, the Debtors are faced with increased competition from other regional healthcare providers.

15. The Debtors sought to address one component of this liquidity crisis, vendor payables, through a voluntary restructuring and reduction of unsecured indebtedness and in 2008 effectuated a creditor compromise. More than \$20 million of unsecured indebtedness obligations were settled at significant discounts. Coupled with cost cutting measures, the Debtors were repositioned to improve financially.

16. Additionally, in order to increase overall efficiency in their operations, in October 2011, MVH and SSMC executed a conversion to a new electronic medical record and billing system. Multiple problems were encountered during the conversion process which still have not been fully remedied. Major delays in billing and cash collections resulting from the conversion led to increased patient account denials and bad-debt write offs. To avoid continued delays and losses, it became necessary (at significant cost) to dedicate additional resources to resolve the conversion issues, resulting in a further drain on available cash and resources. As a consequence, liquidity again became a pressing issue, this time preventing the Debtors from implementing critical system updates vital to improving its infrastructure and physical plant.

17. Liquidity delays have also extended vendor disbursements. The mounting trade payable liabilities led, in some cases, to the immediate termination of necessary service relationships. In other cases, the Debtors were forced to renegotiate existing terms and payment of outstanding liabilities. Simultaneously, the Debtors were facing a decrease in volume and a shift over the course of the last two years from the provision of inpatient care to increased ambulatory care at lower reimbursement rates. During this same period of time, provider costs continued to increase.

18. As the Debtors' financial condition continued to deteriorate, the Debtors began to actively search for a viable healthcare partner or other affiliation for the Medical Centers. The Debtors recognized that a merger or affiliation with a strong healthcare partner was critical to their ability to maintain operations and their charitable mission, achieve administrative efficiencies and reduce overhead costs, attract and retain quality physicians, gain increased access to much needed capital, make necessary capital improvements and implement long overdue technological upgrades.

19. A proposed transaction was discussed with several major hospitals and healthcare institutions, including: Montefiore Medical Center ("**MMC**"), Yale-New Haven Health System, North Shore-LIJ Health System, NYU Medical Center and Westchester County Health Care Corporation ("**WCHCC**"). In November, 2012, a memorandum of understanding which contemplated a full asset merger between SSHS and WCHCC was entered into and several months of negotiations followed. However, a transaction at sufficient purchase consideration could not be finalized. As a result, discussions commenced among the Debtors and MMC. At the conclusion of these efforts, the Debtors and MMC entered into an asset purchase agreement (the "**Purchase Agreement**"). As part of their restructuring strategy, the Debtors intend to sell all of their Owned Real Property, Furniture, Fixtures, Inventory, Assigned Contracts and related operating assets, which collectively comprise the Acquired Assets (all as defined in the Purchase Agreement), to MMC which will thereafter continue operations at the Debtors' current facilities.

20. It is a condition of the Purchase Agreement that the Sale Transaction be consummated pursuant to the provisions of section 363 of the Bankruptcy Code, and subject to higher and better offers. In furtherance of that effort, the Debtors' respective Boards voted to approve the filing of Chapter 11 petitions for the Debtors.

THE UTILITY PROVIDERS

21. 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 23 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 \$518,841.00 per month on account of Utility Services. **As of the Petition Date, the Debtors believe they are current on their utility costs.**

22. Uninterrupted utility service is vital to maintaining on-going patient care and safety during the sale process. Any interference with Utility Services would compromise the Debtors’ operations and jeopardize patient health and safety. The value of the Debtors on-going services would also be negatively impacted. Because the uninterrupted provision of Utility Services is essential to the Debtors’ continued operations, 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

23. By this Motion, pursuant to sections 105(a) and 366 of the Bankruptcy Code, the Debtor 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; (c) approving the Debtors' proposed procedures governing Utility Providers' requests for additional or different adequate assurance; and (d) setting a final hearing (the "**Final Hearing**") on the Debtor's proposed adequate assurance procedures.

The Adequate Assurance

24. 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.

25. 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, \$260,000.00 into a newly created, segregated escrow account (the "**Utility Reserve**") for the benefit of utilities providing services to the Medical Centers within 20 days of the Petition Date. The Utility Reserve equals approximately 15 days of the Debtors' estimated aggregate postpetition utility expenses for the Medical Centers, 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.

26. Numerous recent cases in this District have agreed that a reserve based upon two weeks estimated costs determined over a twelve month period was more than adequate. See In re Saint Vincents Catholic Medical Centers, et al., Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. June 11, 2010); In re Citadel Broad. Corp., Case No. 09-17442 (Bankr. S.D.N.Y. Feb. 3, 2010); In re FairPoint Commc'n, Inc., Case No. 09-16335 (Bankr. S.D.N.Y. Nov. 18, 2009); In re The

Reader's Digest Ass'n, Case No. 09-23529 (Bankr. S.D.N.Y. Sept. 17, 2009); In re Old Carco f/k/a Chrysler LLC, Case No. 09-50002 (Bankr. S.D.N.Y. May 28, 2009).

27. 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

28. 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 Debtor proposes 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) Sound Shore Medical Center of Westchester, 16 Guion Place, New Rochelle, New York, 10802, Attn: John Spicer; (ii) counsel to the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York, Attn: Burton S. Weston, Esq. (iii) Alvarez & Marsal Healthcare Industry Group, LLC, 600 Madison Avenue, New York, New York 10022, Attn: Stuart McLean; and (iv) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan D. Golden, Esq. and William E. Curtin, Esq. (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

29. 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 that, prior to the Final Hearing, the Debtors identify additional Utility Providers (the “**Additional Providers**”), the Debtors will file promptly amendments to the Utility Service List, and shall serve copies of the Procedures Order on such newly-identified Utility Providers.² The Debtors request that, pending the entry of a final order on the Motion, the Interim Procedures Order be binding on all Utility Providers, including the Additional Utility Providers, regardless of when such Utility Provider was added to the Utility Service List. 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 Interim Procedures Order on such Additional Utility Provider.

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

BASIS FOR RELIEF REQUESTED

30. The relief requested herein will ensure that the Debtors' operations 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. 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 Debtor 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.

31. Sections 366(a) and 366(c)(2) of the Bankruptcy Code prevent utility companies from discontinuing, altering or refusing service to a debtor during the first thirty (30) days of a chapter 11 case. However, after the thirty (30) day period, a utility company has the option of terminating its services, pursuant to section 366(c)(2) of the Bankruptcy Code if a debtor has not furnished adequate assurance of payment.

32. 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.

33. 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).

34. Furthermore, pursuant to section 366(c)(3)(B), in determining whether an assurance of payment is adequate, the court may not consider (a) the absence of security before the petition date, (b) the debtor's history of timely payments or (c) the availability of an administrative expense priority. The Debtor believe that the Proposed Adequate Assurance is sufficient and reasonable and constitutes adequate assurance of payment under section 366(c) of the Bankruptcy Code.

35. 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 In re Caldor Inc., 199 B.R. 1, 3 (S.D.N.Y. 1996) (noting that section 366(b) of the Bankruptcy Code "does not require an 'absolute guarantee of payment'"), aff'd sub nom. Virginia Elec. & Power Co., 117 F.3d 646; see also, In re Steinebach, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance . . . all § 366(b) requires is that a utility be protected from an unreasonable risk of non-payment."); In re Santa Clara Circuits W., Inc., 27 B.R. 680, 685 (Bankr. D. Utah 1982); In re George C. Frye Co., 7 B.R. 856, 858 (Bankr. D. Me. 1980). 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").

36. Based on the foregoing standards, entry of the Interim 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."

37. 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."

38. 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. 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.

39. 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., In re Saint Vincents Catholic Medical Center et al., Case No. 10-11963 (Bankr. S.D.N.Y. April 14, 2010); In re FairPoint Commc'ns, Inc., Case No. 09-16335 (Bankr. S.D.N.Y. Nov. 18, 2009); In re Cabrini Med. Ctr., Case No. 09-14398 (Bankr. S.D.N.Y. July 29, 2009); In re The Reader's Digest Ass'n, Case No. 09-23529 (Bankr. S.D.N.Y. Sept. 17, 2009); In re Motors Liquidation Co. (f/k/a Gen. Motors Corp.), Case No. 09-50026 (Bankr. S.D.N.Y. June 1, 2009); In re Old Carco, LLC (f/k/a Chrysler LLC), Case No. 09-50002 (Bankr. S.D.N.Y. May 28, 2009).

40. 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.

41. 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

42. 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."

43. 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.

NOTICE

44. 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 (i) the Debtor's thirty largest unsecured creditors on a consolidated basis; (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 Southern District of New York, (iv) the Attorney General of the State of New York; (v) the Westchester County Attorney; (vi) the New Rochelle City Attorney, (vii) the Internal Revenue Service; (viii) the New York State Department of Taxation and Finance; (e) counsel to MMC; (f) the United States Department of Justice, Commercial Litigation; (g) the United States Department of Health and Human Services (h) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; and (i) all of the Utility Providers listed on Exhibit B hereto. The Debtors submit that no other notice need be given..

NO PRIOR REQUEST

45. 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: May 28, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.

By: 

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*Proposed Attorneys for Debtor
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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

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER, et al.

Case No. 13-_____()

Debtors.
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**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 (the “**Motion**”)¹ of Sound Shore Medical Center of Westchester (“**SSMC**”) and certain of its affiliates, as Chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**”)², in the above referenced Chapter 11 cases (the “**Chapter 11 Cases**”), for interim and final orders 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; (c) approving the Debtors’ proposed procedures for determining Utility Providers’ requests for additional or different adequate assurance; and (d) scheduling a Final Hearing on the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to sections 28 U.S.C. §§ 157 and 1334 and the Standing Order of

¹ Capitalized terms, not herein defined, shall have the meaning ascribed to them in the Motion.

² The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number include: Sound Shore Health System, Inc. (1398), Sound Shore Medical Center of Westchester (0117), The Mount Vernon Hospital, Inc. (0115), Howe Avenue Nursing Home d/b/a Helen and Michael Schaffer Extended Care Center (0781), NRHMC Services Corporation (9137), The M.V.H. Corporation (1514) and New Rochelle Sound Shore Housing, LLC (0117). There are certain additional affiliates of the Debtors who are not debtors and have not sought relief under Chapter 11.

Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a 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; and it appearing that no other or further notice is necessary; 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 the Court having reviewed the Motion and the Spicer Affidavit and having heard the statements in support of the interim relief requested therein at the hearing (the "**Hearing**") held before the Court; and the Court having determined that the legal and factual bases set forth in the Motion, the Spicer Affidavit and at the Hearing establish just cause for the relief granted herein; 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. Pending a Final Hearing, the Motion is granted on an interim basis 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, as a condition to the Debtors receiving such utility services pending the entry of a Final Order.

3. The Debtor shall deposit \$260,000 into a segregated account (the “**Utility Reserve**”) within 20 days of the Petition Date.

4. The Debtors are authorized to reduce the Utility Reserve to the extent any Utility Provider receives any value from the Debtors 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 a corresponding amount.

5. The Utility Reserve constitutes sufficient adequate assurance of future payment to the Utility Companies 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 must abide by the following 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) Sound Shore Medical Center of Westchester, 16 Guion Place, New Rochelle, New York, 10802, Attn: John Spicer; (ii) counsel to the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York, Attn: Burton S. Weston, Esq. (iii) Alvarez & Marsal Healthcare Industry Group, LLC, 600 Madison Avenue, New York, New York 10022, Attn: Stuart McLean; and (iv) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan D. Golden, Esq. and William E. Curtin, Esq. (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.

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 the Interim 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 Interim 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 the Interim 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 Interim 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 Interim 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.

16. The final hearing to consider entry of a final order granting the relief requested in the Motion on a final basis shall be held on _____, 2013 at _____ Eastern Time; and any objections to entry of such order shall be in writing, filed with the Court (with a copy to Chambers) in accordance with General Order M-242, and served upon (a) proposed counsel to the Debtors, Garfunkel Wild, P.C., 111 Great Neck Road, Great Neck, New York 11021, Attn: Burton S. Weston, Esq. (b) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan D. Golden, Esq. and William E. Curtin, Esq.; (c) counsel for the Debtors' prepetition and proposed postpetition lender, Lisa J. Lenderman, Esq., Deputy General Counsel, MidCap Financial, LLC, 7255 Woodmont Ave., Suite 200, Bethesda, MD 20814 and Waller Lansden Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219, Attn: Katie G. Stenberg and Daniel Flournoy; (d) counsel for any statutory committee appointed in these Chapter 11 Cases (or the Debtors' thirty (30) largest unsecured creditors on a consolidated basis, in the event no Committee has been appointed); and (e) any party filing a notice of appearance and request for service of papers in each case so as to be received no later than _____, on _____, 2010.

Dated: _____, 2013
New York, New York

By: _____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Utility Providers

Utility Provider	Address	Type of Service	Average Monthly Charge
Castle Oil Corporation	500 Mamaroneck Avenue Harrison, NY 10528	Oil	
Con Edison	511 Theodore Fremd Avenue Rye, NY 10580	Electric	2,000
Cablevision of Southern Westchester	PO Box 9256 Chelsea, MA 02150-9256	Cable/TV	75
Con Edison- M. Palumbo	708 1 st Avenue New York, NY 10017	Electric	200,000
United Water New Rochelle	2525 Palmer Avenue New Rochelle, NY 10801	Water	16,000
Verizon	PO Box 15124 Albany, NY 12212-5124	Phone	6,180
Board of Water Supply	PO Box 271 Mt. Vernon, NY 10551	Water	18,000
Con Edison	4 Irving Place New York, NY 10150	Electric	160,000
Nextel Communications	10700 Park Ridge Blvd #600 Reston, VA 20190	Phone	27,580
Cablevision-CT	PO Box 9256 Chelsea, MA 02150-9256	Cable	160
Broadview Networks	PO Box 26021 New York, NY 10087-6021	Phone System	16,326
Verizon Wireless	PO Box 408 Newark, NJ 07101-0408	Phone	2,220
Con Edison for Wolf's Lane	40 Beechtree Lane Pelham, NY 10803	Electric	832
Cablevision Lightpath, Inc.	PO Box 360111 Pittsburgh, PA 15251-6111	Cable	62,551
Cablevision- Bethpage	1111 Stewart Avenue Bethpage, NY 11714-3581	Cable	1,476
Verizon (4820)	PO Box 4820 Trenton, NJ 08650-4820	Phone	760
Verizon Wireless (SPR)	PO Box 408 Newark, NJ 07101-0408	Phone	195
AT&T GA	PO Box 105068 Atlanta, GA 30348-5068	Phone	127
Cablevision	PO Box 371378 Pittsburgh, PA 15250-7378	Cable	160
Con Edison	JAF Station -PO Box 1702 New York, NY 10116-1702	Electric	661

Arch Wireless	555 Taxter Road, Suite 100 Elmsford, NY 10523	Phone	3,501
AT&T	1701 Golf Road, TWR 3 5 th FL 60008	Phone	
Grand Total			518,841