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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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**MOTION FOR ORDER (I) AUTHORIZING PAYMENT OF PREPETITION WAGES,
EMPLOYEE BENEFITS AND EXPENSE REIMBURSEMENT, (II) AUTHORIZING
AND DIRECTING BANKS TO HONOR CHECKS WITH RESPECT THERETO**

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 these 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, substantially in the form annexed hereto as Exhibit A (the "Wage Order"), authorizing (i) payment of all unpaid prepetition wages and salaries, employment benefits and expense reimbursement; (ii) payment of prepetition funds deducted from payroll, including without limitation, payroll related trust taxes, tax deposits, third party providers and processing fees; (iii)

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 in these Chapter 11 Cases and have not sought relief under Chapter 11.

use of accrued PTO (defined below); (iv) reimbursement of employee expenses; (v) payment of employee benefits; and (vi) banks to honor any employee wage, salary and benefit checks with respect thereto. In support of this Motion, the Debtors rely upon the Affidavit of John Spicer Pursuant to Local Rule 1007-2 and in Support of First Day Motions (the "Spicer Affidavit") and respectfully represents as follows:

SUMMARY OF RELIEF REQUESTED

1. By this Motion, the Debtors seek authorization to honor certain prepetition and related obligations owed to their employees, earned by such individuals within one hundred and eighty (180) days before the Petition Date, and not to exceed \$12,425 per employee. The employee workforce of medical and administrative personnel (the "Employees") are the core of the hospital's operations. Their continued service is paramount to patient safety and critical for maintaining consistent, high quality standards necessary for proper patient care. Additionally, maintaining positive employee relations will allow the Debtors to continue, without unnecessary interruption, their efforts to achieve a successful sale of the Medical Centers (as hereafter defined and described) and continuity of the Debtors' not-for-profit mission.

2. Accordingly, the debtors request that those Employees who are part of the Debtors' ongoing operations receive their unpaid prepetition wages and continue to receive their ordinary course prepetition benefits (as further described herein) during their employment with the Medical Centers. The Motion also seeks the customary relief for the Debtors to pay amounts required by law for trust fund taxes, deduction and withholdings to the appropriate government agencies and benefit providers.

3. Absent an Order granting the relief requested by this Motion, the Debtors run the risk that continuing operations and vital patient care will be compromised. Maintaining positive

employee relations is essential to the Debtors ongoing operations. The Employees are primarily responsible for and charged with ensuring continuity in the quality of care provided to the Debtors' patients. Thus, to avoid the significant risks of resignations, overall discontent or loss of morale among essential employees, and in view of the priority awarded to wage claims under the Bankruptcy Code, it is necessary and appropriate that the Debtors be granted the requested authorization.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this 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).

5. Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory predicate for the relief requested herein are sections 105(a), 363(b), 507(a)(4) and (a)(5) and 541(a) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

BACKGROUND

7. On the date hereof, (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Contemporaneously herewith, the Debtors have sought the joint administration of their cases on a procedural basis only.

8. The Debtors remain in possession of its assets and continue to manage their operations as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee, examiner or committee of creditors has yet been appointed.

THE 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 242-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, 176-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.²

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

² The remaining Debtors in these cases have limited or no operations. NRHMC Services Corporation is a for-profit corporation and wholly owned subsidiary of NRHMC, Inc. Its business activities consists primarily of locating, negotiating and providing physicians and other healthcare entities with real estate rentals. M.V.H. Corporation is a not-for-profit corporation which owns the parking garage located adjacent to the MVH property. Its average revenues for the last three years have been less than \$25,000 per year. It does not have any current operations, existing debt or other liabilities.

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.

20. As a result, the Debtors re-commenced discussions with MMC regarding a potential transaction. Following intensive, arms length, good faith negotiations among the Debtors and MMC, the parties 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. The aggregate Purchase Price for the Acquired Assets totals \$54 million,

plus the appraised value of the Furniture, Fixtures and Inventory, payable in cash at the closing subject to adjustments. These adjustments include, inter alia, any repayment of DIP Term Loan or Revolving Loans made by MMC pursuant to its guaranty, any Assumed Liabilities, any Cure Amounts (not to exceed \$3 million) and any assumed Employee Liabilities..

21. 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.

FACTS RELEVANT TO MOTION

A. The Debtor's Employees

22. The Debtors employ a total of 2000 Employees, comprised of approximately 1365 union and 635 non-union employees (collectively, the "**Employees**"). Union employees consist of members of 1199 SEIU United Healthcare Workers East ("**1199 SEIU**"), New York State Nurses Association ("**NYSNA**") and Teamsters Local 338 (the "**Teamsters**", and collectively with the employees of the remaining unions, the "**Union Employees**").

23. The executive payroll each pay period aggregates approximately \$1.7 million and the non-executive payroll aggregates approximately \$3.6 million inclusive of payroll related benefits. Employees are paid bi-weekly in the Debtors' ordinary course of business, with each payroll being made four (4) days in arrears for non-management employees and eleven (11) in arrears for executives (collectively, the "**Prepetition Wages**"). The gross bi-weekly payroll of all of the Employees, including executives and management (save for a few exceptions of senior management and physicians), is less than \$12,425 per employee.

24. The payroll for Employees for the pay period from May 6, 2013 to May 20, 2013 was paid on May 23-24 for non-management and is to be paid on May 30-31 for management.

All wages and benefits earned by Employees during this pay period constitute prepetition wages and payroll related benefits. In addition, for the pay period from May 21, 2013 through the Petition Date there are prepetition wages and benefits which will be paid in the ordinary course on June 6-7, 2013 for non-management and June 13-14, 2013 for management.

25. Approximately 75% of Employees are paid by check while the remaining 25% are paid by direct deposit. Accordingly, some of the Employees who received payment of their Wages by check immediately prior to the Petition Date may not yet have presented the checks for payment, and for those who have, some may not yet have cleared through the banking system. Thus, the Debtors request authorization to pay the aggregate amount of accrued wages and salaries that have not yet been paid to these Employees for periods prior to the Petition Date, and direct all applicable banks and other financial institutions at which the Debtors maintain disbursement accounts and any other bank the Debtors are authorized to do business with (the "**Banks**") be authorized and directed to honor or send all checks or wire transfers, as the case may be, for all prepetition wages that have either already been sent on behalf of the Employees but not yet presented for payment or have yet to clear through the banking system.

B. **Withholding and Payroll Taxes**

26. The Debtors are required by law to withhold from the wages of their Employees, and remit to the appropriate taxing authorities, all applicable federal, state, and local income taxes, state unemployment taxes and social security and Medicare taxes and in certain instances, to pay expenses related thereto (collectively, the "**Trust Fund Taxes**"). In addition, the Debtors also make certain deductions from Employee paychecks for certain benefit programs, pension contributions, insurance, disability, union dues, tuition, assistance and other similar programs (the "**Deductions**", and together with the Trust Fund Taxes, the "**Withholdings**"). The Debtors

transfer the Withholdings to the appropriate government agencies, and/or benefit providers in accordance with the payment schedules established by such agencies or providers.

27. As of the Petition Date, the Debtors had not yet transferred all Withholdings, and some transfers previously made may be currently outstanding. The Withholdings are not property of the Debtors' estates and belong to the individual Employees on whose behalf the Withholdings are retained. Accordingly, the Debtors request that they be authorized, but not directed, to (a) transfer any Withholdings relating to the period prior to the Petition Date to the appropriate agencies, third parties and/or benefit providers in the ordinary course of business, and (b) continue to withhold Withholdings in the ordinary course of business and make required transfers to the appropriate agencies, third parties, and/or benefit providers on a going forward basis.

C. **Employee Benefits**

(a) **Health Benefits**

28. In the ordinary course of their business, the Debtor contribute to several benefit funds which provide various benefits to the Debtor's Employees (collectively, the "**Employee Benefits**"). The Employee Benefits include, but are not limited to, medical and dental insurance, vision coverage, COBRA coverage, workers' compensation, disability, 401(k) and related programs. The estimated cost to the Debtors of funding the unpaid Employee Benefits that are due and payable to both union and nonunion Employees through the Petition Date is approximately \$2,083,237.20.

(b) **Savings, Investments and Retirement Plans**

29. **403(b) Plan**. The Medical Centers offer a 403(b) savings and investment plan (the "**Employee 403(b) Plan**") for non-union staff hired prior to January 1, 2003. All union employees are in a multi employer defined benefit plan. Voluntary employee contributions to

the Employee 403(b) Plan are deducted from payroll; a check is issued, and mailed to Oppenheimer Fund. The Debtors transfer/mail the contributions, along with the remaining Withholdings to the appropriate government agencies, and/or benefit providers in accordance with the payment schedules established by such agencies and/or providers. Employer contributions are at the discretion of the Medical Center.

30. Approximately \$1.5 million in the aggregate is withheld and then transferred to the appropriate governmental agencies, third parties, and/or benefit providers on a bi-weekly basis for non-management employees. For management/executive employees and certain professional corporation employees, approximately \$647 thousand in the aggregate is withheld and then transferred to the appropriate governmental agencies, third parties, and/or benefit providers on a bi-weekly basis. As of the Petition Date, the Debtors have not yet transferred/mailed all Withholdings, and some transfers made may be currently outstanding or may have not yet cleared through the banking system.

(c) Paid Time Off ("PTO")

31. Vacation. One of the Debtors' PTO policies relates to vacation time. Generally, vacation time is accrued by Employees over the course of each year. Union and Non-Union Employees are generally eligible for up to twenty (20) vacation days per calendar year based on their position and length of tenure. Part-time Employees, working twelve (12) to eighteen (18) hours or more, are entitled to prorated vacation time. No unused vacation time may be accrued and banked at the end of the year. Nor are Employees who leave the employ of the Debtors paid for unused vacation time.

32. Sick Time. Employees also receive certain sick benefits as part of PTO. Generally, all Employees, both Union and Non-Union, accrue sick time of up to twelve (12) days per year. Part-time Employees are entitled to prorated vacation time. Employees may accrue up

to 180 days of sick time. No Employees are entitled to a cash payment of unused sick time at separation.

33. Personal Time. PTO also includes entitlement to certain personal time. Generally, up to four (4) days of personal time is accrued by Non-Union and Non-Union Employees over the course of each year. No unused personal time may be accrued and banked at year end and employees are not paid for unused personal time upon separation.

34. The Debtors estimate that the aggregate amount of all PTO obligations described above as of the Petition Date is approximately \$7.45 million for Union and Non-Union Employees. The Debtors are seeking authorization to continue to allow Employees to use their accrued prepetition PTO in the ordinary course of the Debtors' business and only during the Employees' on-going postpetition employment by the Debtors, and provided that (a) each Employee will be required to use any accrued postpetition time first and, thereafter, any accrued prepetition time would be applied and (b) all requests for PTO Leave must be coordinated and approved by the applicable Employee's supervisor, consistent with past practices, so as not to disrupt ongoing operations. The Debtors are not proposing or seeking authority to pay any prepetition PTO obligations any employee may be entitled to upon separation.

(d) Reimbursable Expenses

35. In the ordinary course of business, the Debtors reimburse hourly and salaried employees for certain expenses incurred by the Employees during the course of their employment on behalf of the Debtors. As of the Petition Date, many Employees were owed reimbursement of employee business expenses (collectively, "Expenses"). To enable the Employees to perform their jobs effectively, the Debtors must continue corporate policies of permitting certain Employees to incur business and travel-related expenses and thereafter seek reimbursement by submitting appropriate invoices or vouchers evidencing such expenses. In the

ordinary course of the Debtors' businesses, Employees travel to meet with vendors, suppliers, and customers and are reimbursed for expenses incurred in connection therewith. The Employees may be unwilling or unable to continue this vital business practice if they are not reimbursed for Prepetition Expenses, thus potentially undermining the Debtors' on-going businesses.

36. The Debtors, therefore, seek to reimburse employees for expenses incurred by such employees in the ordinary course of business. Such accrued expenses do not aggregate more than \$5,000 for the Employees, collectively.

D. Bank Accounts

37. Prior to the Petition Date, the Debtors issued payroll, expense and medical claim checks drawn from the Debtors' payroll and other accounts. In order to give effect to the requested relief, the Debtors request that the Court provide specific authorization and direction to all the Banks the Debtors are authorized to do business with to honor payroll checks, expense checks and medical claims, including all payroll related wire payments drawn on the Debtors' accounts. The Debtors have sufficient funds in their respective accounts to enable them to pay in full the obligations owed to their employees and independent contractors for which authorization is sought herein. Accordingly, the Banks will not be prejudiced by the entry of an order directing them to honor checks or fund transfers for the payment of such amounts.

RELIEF REQUESTED

38. By this Motion, the Debtors seek entry of an Order, substantially in the form of Exhibit A hereto, pursuant to sections 363 and 105(a) of the Bankruptcy Code authorizing, but not requiring, (i) payment of all unpaid Prepetition Wages (ii) payment of all Withholdings in the ordinary course; (iii) allowing use of accrued PTO in the ordinary course of business under the

terms hereinabove set forth; (iv) reimbursement and payment of Employee Expenses; and (v) payment of Employee Benefits (collectively, the "**Prepetition Employee Obligations**").

39. The Debtors seeks authorization for the payment of only those Prepetition Employee Obligations which have been earned by such individuals within one hundred and eighty days (180) before the Petition Date, as described in this Motion, and in amounts not to exceed \$12,425 per employee (the "**Priority Cap**"). To the extent the Prepetition Employee Obligations due any individual employee exceeds the Priority Cap, the Debtors are not proposing to pay, and will withhold payment of any excess. Additionally, the Debtors request authorization to reimburse employees for all Expenses incurred in the ordinary course of business.

40. The Debtors further request that all Banks be authorized and directed to receive, process honor and pay any and all checks drawn on the Debtors' payroll and other disbursement accounts to pay the Prepetition Employee Obligations whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments and provided further, that the Banks will not honor checks: (a) for services rendered more than 180 days prior to the Petition Date, or (b) if payment of same would cause the employee to exceed the \$12,425 maximum priority allowance under Bankruptcy Code section 507(a)(4). The Debtors represent that all such checks are drawn on identifiable payroll and disbursement accounts and can be readily identified as relating directly to the authorized payment of the Prepetition Employee Obligations. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

BASIS FOR RELIEF REQUESTED

41. Payment of the Prepetition Employee Obligations, as provided for herein, in accordance with the Debtors' discretion and ordinary course business practices, is in the best interest of the Debtors' estates, their creditors, and all parties in interest and will enable the

Debtors to operate without disruptions. Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek authority to continue the policies and programs related to the Prepetition Employee Obligations on a postpetition basis, and to pay all such obligations owed thereunder in the ordinary course of business as of the Petition Date, without regard to whether such obligations accrued before or after the Petition Date.

42. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provisions of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. 11 U.S.C. § 105(a).

43. Pursuant to section 105(a) of the Bankruptcy Code, orders are appropriate where they are essential to the debtor's reorganization efforts and do not pose a burden on the debtor's creditors. Accordingly, Courts frequently apply section 105(a) to authorize relief in Chapter 11 cases, similar to that sought herein where the debtors have a large workforce that is important to the preservation of its business. See In re Chateaugay Corp., 80 B.R. 270, 287 (Bankr. S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to pay pre-petition bankruptcy wages, salaries, employee benefits, reimbursements); see also, In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because debtor in possession has fiduciary duties it must meet, it is logical that the bankruptcy court may "authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estates" under section 105(a)); In re Gulf Air, Inc., 112 B.R.152, 154 (Bankr.W.D. La. 1989) (authorizing the debtor to pay current employees' pre-bankruptcy wages, salaries, medical benefits and business expense claims); In re Ionosphere Clubs, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (same).

44. The purpose of section 105(a) is to “assure the bankruptcy courts [sic] power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.” 2 Collier on Bankruptcy 105.01 (15th ed. rev. 2004); see also Schwartz v. Aquatic Dev. Group, Inc. (In re Aquatic Dev. Group, Inc.), 352 F.3d 671, 680 (2d Cir. 2003) (“it is axiomatic that bankruptcy courts are “courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.”); Official Comm. of Unsecured Creditors v. PSS S.S. Co. Inc. (In re Prudential Lines, Inc.), 928 F.2d 565, 574 (2d Cir. 1991) (“This provision has been construed liberally to enjoin [actions] that might impede the reorganization process.”) quoting MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93 (2d Cir. 1988). Thus, section 105(a) essentially codifies the bankruptcy court’s inherent equitable powers. See Croton River Club, Inc. v. Half Moon Bay Homeowners Ass’n, Inc. (In re Croton River Club, Inc.), 52 F.3d 41, 45 (2d Cir. 1995) (“Bankruptcy courts have long had broad equity power to manage the affairs of debtors, a power now codified in Section 105 of the Bankruptcy Code.”) (citations omitted).

45. Additionally, pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, the Debtors’ Employees’ claims for “wages, salaries, or commission, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date, and claims against the Debtors for contributions to Employee benefit plans arising from services rendered within 180 days before the Petition Date, are afforded unsecured priority status to the extent of \$12,425 per Employee. See 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

46. The Debtors believe that all of the Prepetition Employee Obligations constitute priority claims and are obligations that arise in the ordinary course of business postpetition, fall within the priority limits of sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and

therefore would be required to be paid prior to the Debtors confirming a plan of reorganization or liquidation. Further, payment of the Employee Obligations as provided for herein, in accordance with the Debtors' discretion and ordinary course business practices, will enable the Debtors to operate without disruptions. Payment of such amounts at this time is necessary and appropriate and in the best interests of the Debtors' estates, their creditors and all parties in interest.

47. The Debtors' request to honor and remit Withholdings should also be approved. Such amounts principally represent a portion of Employee earnings that governments (in the case of taxes), Employees (in the case of voluntarily withheld amounts) and judicial authorities (in the case of involuntarily withheld amounts) have designated for deduction from paychecks of the Employees. The failure to pay these benefits could result in hardship to certain Employees as well as administrative problems for the Debtors. Indeed, the Debtors would expect numerous and frequent inquiries from garnishors regarding the Debtors' failure to submit, among other things, child support and alimony payments that are not the Debtors' property, but, rather, have been withheld from paychecks of Employees on such other parties' behalf. Moreover, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors' inability to submit such payments.

48. Additionally, the failure to remit Withholdings may subject the Debtors and their directors and officers to federal or state liability. See City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.), 41 F.3d 92, 94-96 (3d Cir. 1994) (state law requiring debtor to withhold city income tax from its employees' wages created trust relationship between debtor and city for payment of withheld taxes); DuCharmes & Co. v. Michigan (In re DuCharmes), 852 F.2d 194, 195 (6th Cir. 1988) (noting the special liabilities for failure to pay trust fund taxes). Furthermore, because such funds do not constitute property of the Debtors' estates pursuant to section 541(d)

of the Bankruptcy Code, the funds are not subject to the normal bankruptcy prohibitions against payment. See Begier v. IRS, 496 U.S. 53, 67 (1990) (explaining that the debtor's payment of employee withholding for federal income and FICA taxes not a preferential transfer because withholding held in trust for taxing authority and not a part of debtor's estate); Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron), 155 F.3d 718, 721-22 (4th Cir. 1998); In re Pioneer Commercial Funding Corp., 140 B.R. 951, 955 (Bankr. S.D.N.Y. 1992).

49. Courts in this district have routinely approved payment of pre-petition claims for compensation, benefits and expense reimbursements. See e.g., In re Saint Vincents Catholic Medical Centers, et. al., Case No. 10-11963 (Bankr. S.D.N.Y. April 14, 2010); In re Uno Rest. Holdings Corp., Case No. 10-10209 (Bankr. S.D.N.Y. Feb. 17, 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 9, 2009); In re Reader's Digest Ass'n., Case No. 09-23529 (Bankr. S.D.N.Y. Sep. 17, 2009); In re Old Carco, LLC (f/k/a Chrysler, LLC), Case No. 09-50002 (Bankr. S.D.N.Y. May 4, 2009); In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y. April 13, 2009).

50. The continued and uninterrupted performance of service by the Debtors' Employees is necessary to support continuing operations and to maintain consistent, high-quality patient care. The Debtors submit that the Employees will suffer undue hardship and, in many instances, serious financial difficulties without the relief requested herein. Additionally, any delay in paying the prepetition compensation would seriously harm the Debtors' relationship with their Employees and could irreparably impair employee morale at the very time that the continued dedication, confidence, and cooperation of the Employees is most critical. Nor can the Debtors afford to jeopardize patient safety by the destabilization and potential departure of the

employee workforce. A high turnover rate in the Debtors' workforce could jeopardize the safety of the patients, particularly in light of the difficulty presently encountered by many healthcare providers in today's competitive market with respect to replacing workers.

51. Thus, to avoid the significant risks of resignations and of discontent or loss of morale among essential employees, and in view of the priority awarded to wage claims, it is necessary and appropriate that the Debtors be granted the authorization to pay outstanding Employee Obligations. The relief requested in this Motion is without prejudice to the Debtors' right to seek to discontinue or modify any compensation and/or benefit programs during these Chapter 11 Cases.

52. In addition, it would be inequitable to require the Employees to personally bear the cost of any business expense they incurred prepetition for the benefit of the Debtors, on the expectation it would be reimbursed. The Debtors thus submit that it is critical that they be permitted to continue their pre-petition policies of allowing their employees to incur reasonable and necessary expenses and seek reimbursement therefore by submitted appropriate request for cash disbursements and receipts evidencing such out-of-pocket expenses.

**APPLICABLE BANKS SHOULD BE AUTHORIZED TO HONOR
AND PAY CHECKS ISSUED AND MAKE OTHER TRANSFERS
TO PAY THE PRE-PETITION EMPLOYEE OBLIGATIONS**

53. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing. Concurrently with the filing of this motion, the Debtors have filed a motion seeking approval of a debtor-in-possession financing facility in an amount up to \$33 with Midcap Financial, LLC. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an

authorized payment made to an Employee. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests with respect to Employee Obligations that were not processed, honored or paid as of the Petition Date.

54. The Banks will not be authorized and shall not honor checks: (a) for services rendered more than 180 days prior to the Petition Date, or (b) if payment of same would cause the employee to exceed the \$12,425 maximum priority allowance under Bankruptcy Code section 507(a)(4).

55. The Debtors also seek authority to issue new post-petition checks, or effect new fund transfers, on account of the Employee Obligations to replace any pre-petition checks or fund transfer requests that may be dishonored or rejected. As a result of the commencement of the Debtors' Chapter 11 Cases, and in the absence of an order of the Court providing otherwise, the Debtors' checks, wire transfers and direct deposit transfers on account of the Employee Obligations may be dishonored or rejected by the Disbursement Banks.

56. Authorization to pay all amounts, under this Motion, including on account of the Employee Obligations shall not be deemed to constitute post-petition assumption or adoption of any contract, program or policy pursuant to section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all their rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts under this Motion, including on account of Employee Obligations shall not affect the Debtors' right to contest the amount or validity of any Employee Obligations, including without limitation the Withholdings.

THE PROVISIONS OF RULE 6003 HAVE BEEN SATISFIED

57. Bankruptcy Rule 6003 provides, in pertinent part, that:

Except 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 use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition. . . .

Fed. R. Bankr. P. 6003(b).

58. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date to the extent that relief is “necessary to avoid immediate and irreparable harm.” *Id.* Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. See In re Ames Dep’t Stores, Inc., 115 B.R. 34, 36 n. 2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001(c)(2)).

59. Bankruptcy courts have held that irreparable harm to the bankruptcy estate exists where distractions to employees would burden the reorganization. See Nevada Power Co. v. Calpine Corp. (In re Calpine Corp.), 365 B.R. 401, 410 (S.D.N.Y. 2007) (holding that potential distractions to employees constitutes “imminent irreparable harm” if they would impact the restructuring process); Lomas Fin. Corp. v. N. Trust Co. (In re Lomas Fin. Corp.), 117 B.R. 64, 67 (S.D.N.Y. 1990) (imminent and irreparable harm found where “key personnel would be distracted from participating in the reorganization process”). Further, a lapse in benefit coverage and financial hardship imposed on employees may also constitute “immediate and irreparable harm.” *Id.*; see also Commc’ns Workers of Am., District One, AFL-CIO v. NYNEX Corp., 898 F.2d 887, 891 (2d Cir. 1990) (termination of insurance coverage constitutes irreparable harm); Whelan v. Colgan, 602 F.2d 1060, 1062 (2d Cir. 1979) (same).

60. Immediate and irreparable harm would result if the relief requested herein on an interim basis is not granted. The Employees are one of the Debtors' most valued assets. The Employees, of course, depend upon wages and benefits to support themselves and their families. In addition, they are necessary to ensure the continued quality of patient care to the Debtors' patients. If the Debtors do not continue to provide uninterrupted the compensation and benefits that their Employees rely on, the Employees may suffer hardship and many may seek alternative employment. Moreover, the Debtors' failure to honor certain of the Prepetition Employee Obligations during the Interim Period may put at risk the Debtors' ability to continue operating, and may impose liability on certain of the Debtors' officers for unpaid taxes. Accordingly, the Debtors submit that the relief requested to be included in the Order is essential to preserve the ongoing value of the Debtors' operations and hence will benefit the Debtors, their estates, their creditors, and all other parties in interest.

WAIVER OF RULE 6004 REQUIREMENTS

61. The Debtors' need for immediate authority to honor the Prepetition Employee Obligations also justifies elimination of the notice requirements under Bankruptcy Rule 6004(a) and the 14 day stay period imposed by Bankruptcy Rule 6004(h). That rule provides that, unless a court orders otherwise, an 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. Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order takes effect. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h).

62. As described above, any delay in the Debtors obtaining the relief requested herein may undermine the purpose of that relief: to maintain the value of the Debtors' estates by assuring Employees that the most important Prepetition Employee Obligations will continue

uninterrupted. Accordingly, the Court should waive the 14 day stay period provided for in Bankruptcy Rule 6004(h), and order that the Debtors are immediately authorized to honor and pay the Prepetition Employee Obligations as described in this motion.

63. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' or any other party's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission of the validity of any claim or a waiver of the Debtors' or any other party's rights to dispute such claim subsequently.

WAIVER OF MEMORANDUM OF LAW

64. Based on the authority provided herein, the Debtors respectfully request that the Court waive the requirement that the Debtors file a memorandum of law in support of this Motion pursuant to Local Bankruptcy Rule for the Southern District of New York 9013-1(b).

NOTICE

65. As of the filing of this Motion, no trustee, examiner or creditors' committee has been appointed in these 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 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 Mount Vernon City Attorney; (viii) the Internal Revenue Service; and (ix) the New York State

Department of Taxation and Finance; (e) counsel to MMC; (f) the United States Department of Justice; (g) the United States Department of Health and Human Services, and (h) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other notice need be given..

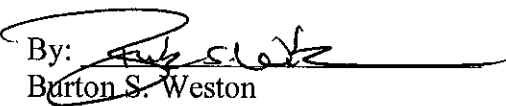
NO PRIOR REQUEST

66. 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 29, 2013
Great Neck, New York

GARFUNKEL WILD, P.C.

By: 
Burton S. Weston
Afsheen A. Shah
111 Great Neck Road
Great Neck, New York 11021
Telephone: (516) 393-2200
Facsimile: (516) 466-5964

*Proposed Attorneys for Debtors
and Debtors in Possession*

Exhibit A

Form of Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

Chapter 11

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER, et al.

Case No. 13-_____()

Debtor.

-----X

**INTERIM ORDER PURSUANT TO SECTIONS 363(b) AND 105(a) OF THE
BANKRUPTCY CODE (I) AUTHORIZING PAYMENT OF CERTAIN
PREPETITION WAGES, EMPLOYEE BENEFITS AND EXPENSE
REIMBURSEMENT AND (II) AUTHORIZING AND DIRECTING
BANKS TO HONOR CHECKS WITH RESPECT THERETO**

Upon consideration of the motion (the "Motion")¹ of Sound Shore Medical Center of Westchester ("SSMC") and certain of its debtor affiliates"), as Chapter 11 debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors")² in these chapter 11 cases (the "Chapter 11 Cases"), seeking entry of an Order, pursuant to sections 363(b) and 105(a), title 11, the United States Code (as amended, the "Bankruptcy Code"), authorizing (i) payment of all unpaid prepetition wages and salaries; (ii) payment of funds deducted from payroll, including without limitation, payroll related trust taxes, tax deposits, third party providers and processing fees; (iii) use of accrued PTO; (iv) reimbursement of employee expenses; (v) payment of employee benefits; and (vi) banks to honor any employee wage, salary and benefit checks with respect thereto, all as described more fully in the Motion; and the Court having subject matter jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to

¹Capitalized terms not defined herein 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 (). There are certain additional affiliates of the Debtors who are not debtors in these Chapter 11 Cases and have not sought relief under Chapter 11.

Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); the Motion being a core proceeding pursuant to 28 U.S.C. § 157(B); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and appropriate notice of the Motion having been provided under the circumstances of this case; and it appearing that no other or further notice of the Motion need be provided; and a hearing on the Motion having been conducted before this Court on May ____, 2013; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and all parties in interest; and upon the affidavit of John Spicer in Support Pursuant to Local Rule 1007-2 and in Support of First Day Motions, dated as of the Petition Date; and 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 on an interim basis to the extent provided herein.
2. The Debtors are hereby authorized, but not directed, to pay all unpaid Prepetition Wages and related Withholdings, subject to the maximum permitted amounts in Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.
3. The Debtors are authorized, but not directed, to continue the programs and policies as relate to PTO on a postpetition basis and to alter, modify, or discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court; provided, however, that nothing herein modifies the Debtors' obligations under section 1113 of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors are authorized, but not directed, to (a) to continue to honor programs and policies as relate to PTO in the ordinary course of the Debtors' during any Employees' continued

postpetition employment by the Debtors, and (b) to continue to allow Employees to use their accrued prepetition and postpetition PTO Leave in the ordinary course of the Debtors' postpetition business operations during the applicable Employees' continued postpetition employment by the Debtors, provided that: (i) each Employee will be required to use any accrued postpetition time first and, thereafter, any accrued prepetition time would be applied; (ii) the Debtors are not authorized to cash out or otherwise pay any employee for unused PTO upon separation from the Debtors or otherwise; and (iii) all requests for PTO Leave must be coordinated and approved by such Employees' Supervisor(s), consistent with past practices, so as not to disrupt the Debtors' business operations. Notwithstanding the foregoing, to the extent that relief is granted in the Order authorizing the payment of any amount that is otherwise required by applicable nonbankruptcy law to be paid (*i.e.*, the payment of a trust fund tax), the Debtors shall comply with applicable nonbankruptcy law in the exercise of their discretion.

4. The Debtors are authorized, but not directed, to reimburse employees for Expenses incurred in the ordinary course of business. Any ordinary course Expense reimbursements shall not be considered payments to the Employee within Bankruptcy Code section 507(a)(4).

5. The Debtors are authorized, but not directed, to continue to allocate and distribute the Withholdings in accordance with their existing policies and prepetition practices or as required by applicable federal, state and local law, without regard to whether such amounts arose before or after the Petition Date.

6. To the extent that checks are issued to Employees or other entities in connection with the Prepetition Employee Obligations (including, but not limited to, prepetition

Wages), the Banks upon which any checks are drawn in payment thereof, either before, on, or after the Petition Date are hereby authorized to honor such checks upon presentation.

7. All applicable Banks are authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts, payable under the terms of this Order, whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized and directed to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order.

8. The Debtors are authorized, but not directed, to reissue any check, electronic payment, or other transfer that was drawn in payment of any claims arising from, or related to, the Prepetition Employee Obligations that are not cleared by a depository.

9. 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 an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

10. The Debtors are authorized, but not directed, to take all actions necessary to implement the relief granted in this Order.

11. Notwithstanding anything in this Order to the contrary, the payment of any claims pursuant to this Order and other honoring of the Prepetition Employee Obligations shall neither (a) make such obligations administrative expenses of the estates entitled to priority status under sections 503 and 507 of the Bankruptcy Code nor (b) constitute approval by this

Court of any employee plan or program, including any incentive plans, under any section of the Bankruptcy Code, including section 503(c).

12. Nothing contained in this Order shall be deemed to be an assumption or adoption of any policy, procedure, or executory contract that may be described or referenced herein or in the Motion. The Debtors retain the discretion to not make the payments contemplated by this Order or the Motion for particular Employees and nothing in this Order will, in and of itself, constitute a promise or guarantee of any payment to any Employee.

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

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

Dated: _____, 2013
White Plains, New York

HON. ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

In re:

Chapter 11

SOUND SHORE MEDICAL CENTER
OF WESTCHESTER, et al.

Case No. 13-_____()

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IT IS HEREBY ORDERED THAT:

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The Debtors are authorized, but not directed, to continue the programs and policies as relate to PTO on a postpetition basis and to alter, modify, or discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court; provided, however, that nothing herein modifies the Debtors' obligations under section 1113 of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors are authorized, but not directed, to (a) to continue to honor programs and policies as relate to PTO in the ordinary course of the Debtors' during any Employees' continued

postpetition employment by the Debtors, and (b) to continue to allow Employees to use their accrued prepetition and postpetition PTO Leave in the ordinary course of the Debtors' postpetition business operations during the applicable Employees' continued postpetition employment by the Debtors, provided that: (i) each Employee will be required to use any accrued postpetition time first and, thereafter, any accrued prepetition time would be applied; (ii) the Debtors are not authorized to cash out or otherwise pay any employee for unused PTO upon separation from the Debtors or otherwise; and (iii) all requests for PTO Leave must be coordinated and approved by such Employees' Supervisor(s), consistent with past practices, so as not to disrupt the Debtors' business operations. Notwithstanding the foregoing, to the extent that relief is granted in the Order authorizing the payment of any amount that is otherwise required by applicable nonbankruptcy law to be paid (*i.e.*, the payment of a trust fund tax), the Debtors shall comply with applicable nonbankruptcy law in the exercise of their discretion.

The Debtors are authorized, but not directed, to reimburse employees for Expenses incurred in the ordinary course of business. Any ordinary course Expense reimbursements shall not be considered payments to the Employee within Bankruptcy Code section 507(a)(4).

The Debtors are authorized, but not directed, to continue to allocate and distribute the Withholdings in accordance with their existing policies and prepetition practices or as required by applicable federal, state and local law, without regard to whether such amounts arose before or after the Petition Date.

To the extent that checks are issued to Employees or other entities in connection with the Prepetition Employee Obligations (including, but not limited to, prepetition Wages), the

Banks upon which any checks are drawn in payment thereof, either before, on, or after the Petition Date are hereby authorized to honor such checks upon presentation.

All applicable Banks are authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts, payable under the terms of this Order, whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized and directed to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order.

The Debtors are authorized, but not directed, to reissue any check, electronic payment, or other transfer that was drawn in payment of any claims arising from, or related to, the Prepetition Employee Obligations that are not cleared by a depository.

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

The Debtors are authorized, but not directed, to take all actions necessary to implement the relief granted in this Order.

Notwithstanding anything in this Order to the contrary, the payment of any claims pursuant to this Order and other honoring of the Prepetition Employee Obligations shall neither (a) make such obligations administrative expenses of the estates entitled to priority status under sections 503 and 507 of the Bankruptcy Code nor (b) constitute approval by this Court of

any employee plan or program, including any incentive plans, under any section of the Bankruptcy Code, including section 503(c).

Nothing contained in this Order shall be deemed to be an assumption or adoption of any policy, procedure, or executory contract that may be described or referenced herein or in the Motion. The Debtors retain the discretion to not make the payments contemplated by this Order or the Motion for particular Employees and nothing in this Order will, in and of itself, constitute a promise or guarantee of any payment to any Employee.

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

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

Dated: _____, 2013
White Plains, New York

HON. ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE