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Nathan and Miriam Barnert Memorial  
Hospital Association d/b/a Barnert Hospital  
David J. Adler (DA-0048)  
John G. Loughnane (JL-8040)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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In re:	:	Chapter 11
	:	Case No. 07-
NATHAN AND MIRIAM BARNERT	:	
MEMORIAL HOSPITAL ASSOCIATION	:	
d/b/a BARNERT HOSPITAL,	:	Hearing Date: August ___, 2007
	:	Hearing Time: __:___ .m.
Debtor.	:	

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**APPLICATION IN SUPPORT OF MOTION FOR AN ORDER (I) APPROVING  
DEBTOR'S ADEQUATE ASSURANCE OF PAYMENT FOR  
POSTPETITION UTILITY SERVICES; AND (II) SCHEDULING FINAL  
HEARING TO DETERMINE ADEQUATE ASSURANCE**

TO: Honorable Judge of the  
United States Bankruptcy Court

Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital, as  
debtor and debtor-in-possession herein ("Barnert Hospital" or the "Debtor"), by and through its  
proposed counsel, McCarter & English, LLP, respectfully represents as follows:

### **Introduction and Jurisdiction**

1. This Motion seeks entry of an Order: (i) approving the Debtor's adequate assurance of payment for postpetition utility services; and (ii) scheduling a final hearing to determine adequate assurance (the "Motion"). As set forth below, granting the Debtor the relief requested herein is essential to the Debtor's ability to operate and provide healthcare to the local communities.

2. The Debtor files the within Motion pursuant to 11 U.S.C. §§105 and 366.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§1334, 151 and 157. This is a "core proceeding" pursuant to 28 U.S.C. §§157(b)(2)(A) and (O).

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

5. An Official Committee of Unsecured Creditors has not yet been appointed.

### **Background**

6. On August 15, 2007 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of New Jersey (the "Court").

7. The Debtor has continued in possession of its property and has continued to operate and manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. Barnert Hospital is a 256-bed acute care hospital located at 680 Broadway, Paterson, New Jersey which serves the communities of Bergen and Passaic counties. Barnert Hospital was founded in 1908. Barnert Hospital's dedicated and diverse staff delivers the best possible health care to a multi-cultural community treating over 6,500 in-patients and 112,000 outpatients per year.

9. The Debtor has approximately 635 full time employees and its physicians and medical staff practice a broad range of specialties. The Barnert Occupational Health Center provides diagnosis and treatment of work-related issues related to asbestos and hazardous waste, hearing loss, employment physicals, and injury prevention. Centers for pain management, sleep disorders, and breast health supplement the trauma facilities of the hospital. Outreach services include the Family and Child Education project operated in conjunction with the Paterson Public School District, with an eye toward prevention of health problems particularly among economically disadvantaged populations. Additional information concerning the Debtor's background and the events leading up to the chapter 11 filing may be found in the Affidavit of Peter J. Betts In Support Of Debtor's First-Day Motions (the "Betts Affidavit") filed concurrently herewith.<sup>1</sup>

#### **Relief Requested and Authority Therefor**

10. In connection with the operation of its business, the Debtor uses gas, water, sewer, electric, telephone, networking and other utility services provided by the utility companies listed on **Exhibit A** attached hereto (each, a "Utility Company" and collectively, the "Utility Companies"). Any loss, interruption or discontinuation of services provided by the Utility Companies would cause great harm to the Debtor and pose a serious risk to its patients. Because the Debtor operates a hospital, not only would the termination of utility services impair the Debtor's ability to operate its business, it would seriously jeopardize the quality of care the Debtor's patients receive.

11. Section 366 of the Bankruptcy Code governs the rights and obligations of the Utility Companies as providers of utility services to the Debtor. 11 U.S.C. §366(a) and (b). Pursuant to section 366, Utility Companies cannot alter, refuse, or discontinue service to a debtor

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Betts Affidavit.

within twenty (20) days after commencement of a bankruptcy case solely on the basis of the bankruptcy filing. Id. A utility may, however, discontinue service if neither the trustee nor the debtor furnish adequate assurance of payment, in the form of a deposit or other security, for service after such date. 11 U.S.C. §366(b).

12. Section 366(c)(1)(A) defines the term “adequate assurance” as (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption or (vi) another form of security that is mutually agreed on between the utility and the debtor. 11 U.S.C. §366(c)(1)(A).

13. Termination of utility services in this case would have disastrous consequences by placing patient lives in danger through the interruption of potentially vital services. The debtor requires power to operate life-sustaining equipment. In addition, consequences in terms of the potential for reorganization could likewise be devastating.

14. The Debtor intends to pay all postpetition obligations owed to the Utility Companies in a timely manner. By this Motion, the Debtor seeks to satisfy the Bankruptcy Code for assurance to the utility Companies and the Debtor’s need for uninterrupted utility service necessary, and to continue providing health care to a diverse and underserved community.

15. To comply with section 366, the Debtor proposes to submit security deposits to the Utility Companies in an amount equal to ten (10) days of utility service, based on the total payment over the previous three (3) months of prepetition obligations to the Utility Companies, divided by ninety-one (91) days and multiplied by ten (10). The Debtor estimates that the aggregate amount of the security deposits will equal approximately \$38,034.00.

16. In addition, the Debtor proposes that any Utility Company that is not satisfied with the foregoing may file an objection prior to the return date of the final hearing. Any Utility

Company that does not file a timely objection shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code, and shall further be deemed to have waived any right to seek additional adequate assurance during the course of the Debtor's Chapter 11 case, except as provided in Bankruptcy Code sections 366(b)(2) or 366(c)(3), as applicable.

17. Finally, all Utility Companies will thereafter be prohibited from altering, refusing or discontinuing utility services to the Debtor absent further order of this Court. 11 U.S.C. 366(a).

18. Clearly this Court has the power and authority to establish standards for adequate assurance of future payments for utility service under § 366(b). See e.g. in re Adelphia Business Solutions, Inc., 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002); In re 499 W. Warren St. Assocs. Ltd. P'ship., 138 B.R. 363, 365 (Bankr. N.D.N.Y. 1991); In re Begley, 41 B.R. 402, 405-06 (Bankr. E.D. Pa. 1984), aff'd, 760 F.2d 46 (3d Cir. 1985).

19. The proposed deposit is sufficient to provide adequate assurance to the Utility Companies. See e.g. In re Northwest Airlines, Inc., Case No. 05-17930 (Bankr. S.D.N.Y. Oct. 3, 2005) (15-day estimate of utility use in form of reserve fund constituted adequate assurance). The Debtor believes that the procedures outlined above are consistent with the requirements of section 366 and necessary for the success of the Debtor's Chapter 11 case. The procedures allow each Utility Company with an opportunity, consistent with section 366(c)(2), to request adequate assurance within the first thirty (30) days of the Debtor's bankruptcy case in an amount different than that offered hereby and the Court will then decide whether such request is fair and reasonable.

20. The Debtor submits that the relief requested herein strikes a fair balance between the rights of Utility Companies and the Debtor's need for uninterrupted utility services that are crucial to the hospital and its patients. The Utility Companies have an opportunity to demand alternative assurance by means of objecting to this Motion. Furthermore, the procedure proposed hereby provides the Debtor with the opportunity for this Court to determine whether such demand is fair and reasonable under the circumstances of this bankruptcy case. The general relief requested has been granted by numerous courts in this district. See In re the Megan Group, Inc., Case No. 04-2129 (Bankr. D.N.J. May 21, 2004); In re Congoleum Corporation, Case No. 03-51524 (Bankr. D.N.J. Jan. 7, 2004); In re General Chemical Industrial Products Inc., Case No. 03-48772 (Bankr. D.N.J. Dec. 3, 2003); In re The Grand Union Co., Case No. 00-39613 (Bankr. D.N.J. Oct. 4, 2000). Similar relief has also been granted in Chapter 11 cases in other districts. In re Saint Vincent Medical Center of N.Y., Case No. 05-14945 (Bankr. S.D.N.Y. July 11, 2005). See, e.g., In re Winn-Dixie Stores, Inc., Case No. 05-11063 9Bankr. S.D.N.Y. Mar. 10, 2005); In re Tower Automotive, Inc., Case No. 05-10578 (Bankr. S.D.N.Y. Feb. 28, 2005); In re American Business Financial Services, Inc., Case No. 05-10203 (Bankr. D. Del. Jan. 26, 2005); In re IWO Holdings, Inc., Case No. 05-10009 (Bankr. D. Del. Jan. 4, 2005); In re Women First Healthcare, Inc., Case No. 04-11278 (Bankr. D. Del. May 19, 2004).

21. Based on the foregoing, the Debtor submits that the assurance of payment to the Utility Companies is adequate and conforms with section 366 of the Bankruptcy Code, is not prejudicial to the rights of any Utility Company to object to the proposed adequate assurance payments, and is the best interests of the Debtor and its estate.

### **Notice**

22. The Debtor seeks the requested interim relief and proposed to serve the Utility Companies, the forty (40) largest unsecured creditors of the Debtor, the Office of the United

States Trustee, and its prepetition secured lenders (and their counsel, where known). The Debtor submits that such service will constitute good and sufficient notice.

23. The Debtor request that the Court fix a return date for the final order no later than thirty (30) days after the Petition Date, which would allow the Debtor ample time to provide notice of the hearing date by first class mail.

WHEREFORE, the Debtor respectfully requests entry of an Order, in substantially the form attached hereto, granting the relief requested herein and such other and further relief as is just and necessary.

Dated: Newark, New Jersey  
August 15, 2007

McCARTER & ENGLISH, LLP,  
Proposed Attorneys to Nathan and  
Miriam Barnert Memorial Hospital  
Association d/b/a Barnert Hospital

By: /s/ David J. Adler  
David J. Adler (DA-0048)  
John G. Loughnane  
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**Exhibit A**

**UTILITY COMPANIES**

<b><u>Name</u></b>	<b><u>Address</u></b>	<b><u>Deposit \$<sup>1</sup></u></b>
Public Service Electric and Gas	80 Park Plaza, Newark, NJ 07101	\$25,372.00
MCI	500 2 <sup>nd</sup> Avenue, S.E., Cedar Rapids, Iowa, 52401	\$4,784.00
Verizon	140 West St., New York, NY 10007	\$1,338.00
Passaic Valley Water Commission	1525 Main Avenue, Clifton, NJ 07011-2139	\$1,721.00
Verizon Cabs	140 West St., New York, NY 10007	\$287.00
Universal Electric Motor Service	131 S. Newman St., Hackensack, NJ 07601	\$1,580.00
Dev Gasoline Inc.	498 Lakeview Avenue, Clifton, NJ 07011	\$406.00
Interstate Waste Services	200 Sterling Road, Sloatsburg, NY 10974	\$449.00
Welco-CGI Gas Technologies, LLC	425 Avenue P., Newark, NJ 07105	\$785.00
Broadview Networks	744 Broad St., 10 <sup>th</sup> floor, Newark, NJ 07102	\$856.00
New Jersey Telephone Co., Inc.	8 Cleveland St., Caldwell, NJ 07006	\$214.00
AT&T	160 Holiday Plaza, Newark, NJ 07114	\$61.00
Arch Wireless Inc.	1800 West Park Dr. Westborough, MA 01581	\$130.00
T Mobile	12920 S.E. 38 <sup>th</sup> St., Bellevue, WA 98006	\$29.00
Comcast	1500 Market St., Philadelphia, PA 19102	\$22.00

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<sup>1</sup> Based on current total monthly invoices for the immediate three (3) months, divided by ninety-one (91) days and multiplied by ten (10).

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Caption in Compliance with D.N.J. LBR 9004-2(c)

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Proposed Attorneys to Nathan and Miriam Barnert

Memorial Hospital Association d/b/a Barnert

Hospital, Debtor-in-Possession

David J. Adler (DA-0048)

John G. Loughnane (JL-8040)

In the Matter of:

NATHAN AND MIRIAM BARNERT

MEMORIAL HOSPITAL ASSOCIATION d/b/a

BARNERT HOSPITAL

Debtor-in-Possession.

Case No.: 07-

Judge:

Hearing Date:

**ORDER (I) APPROVING DEBTOR'S ADEQUATE ASSURANCE OF  
PAYMENT FOR POSTPETITION UTILITY SERVICES; AND (II) SCHEDULING  
FINAL HEARING TO DETERMINE ADEQUATE ASSURANCE**

The relief set forth on the following pages, number two (2) through four (4), is hereby

**ORDERED.**

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Debtor: NATHAN AND MIRIAM BARNERT MEMORIAL HOSPITAL  
ASSOCIATION d/b/a BARNERT HOSPITAL

Case No.: 07-

Caption of Order: ORDER (I) APPROVING DEBTOR'S ADEQUATE  
ASSURANCE OF PAYMENT FOR POSTPETITION UTILITY  
SERVICES; AND (II) SCHEDULING FINAL HEARING TO  
DETERMINE ADEQUATE ASSURANCE

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THIS MATTER having been opened to the Court upon the Motion of Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital, as debtor and debtor-in-possession herein (the "Debtor"), by and through its proposed counsel, McCarter & English, LLP, for an Order, pursuant to section 366 of title 11 of the United States Code (the "Bankruptcy Code"), approving Debtor's adequate assurance of payments for postpetition utility services and scheduling a final hearing to determine adequate assurance; and good and sufficient notice of the hearing on the Motion having been given in accordance with the Order regarding Application for Expedited Consideration of First Day matters previously entered by the Court, as evidenced by the Affidavit of Service filed with the Court; and the Court having held a hearing on the date hereof, and having considered the moving papers, opposition thereto, if any, and the arguments of counsel; and good cause appearing for the entry of this Order;

IT IS ORDERED as follows:

1. The Motion is granted.
2. Within five business days hereof, the Debtor shall pay a cash deposit equivalent to ten (10) days of utility service, based on the total payments over the previous three (3) months of prepetition obligations to the utility companies, divided by ninety-one (91) days and

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Debtor: NATHAN AND MIRIAM BARNERT MEMORIAL HOSPITAL  
ASSOCIATION d/b/a BARNERT HOSPITAL

Case No.: 07-

Caption of Order: ORDER (I) APPROVING DEBTOR'S ADEQUATE  
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multiplied by ten (10), which shall constitute adequate assurance of payment under section 366 of the Bankruptcy Code.

3. The Debtor shall pay on a timely basis all undisputed invoices with respect to postpetition utility services.

4. A final hearing to consider entry of a final Order fixing the amount of adequate assurance to be paid to the Utility Companies shall be scheduled for \_\_\_\_\_, 2007, at \_\_\_:\_\_\_ .m. (the "Final Hearing Date").

5. Objections to the proposed adequate assurance amounts may be filed by the Utility Companies so as to be received by counsel to the Debtor no later than seven (7) days prior to the Final Hearing Date.

6. Absent any further Order of this Court, the Utility Companies are hereby enjoined through and including the Final Hearing Date from (a) altering, refusing or discontinuing Utility Services to, or discriminating against, the Debtor; or (b) requiring the payment by the Debtor of any deposit or other security for Utility Services, except as provided for herein.

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Debtor: NATHAN AND MIRIAM BARNERT MEMORIAL HOSPITAL  
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Case No.: 07-

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7. Within five (5) business days from the date of this Order, the Debtor shall provide notice and a copy of this signed Order and the Motion by first class mail to the Utility Companies; provided further that for Utility Companies that may have been omitted from **Exhibit A** to the Motion, the Debtor shall promptly provide notice of this Order upon learning of such Utility Company.

8. 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.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.