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Proposed Counsel to Debtors and
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re:

BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY HOSPITAL
(A NONPROFIT PUBLIC BENEFIT
CORPORATION), *et al.*¹

Debtors,

Lead Case No.: 2:23-bk-12359

Jointly administered with:

Case No: 2:23-bk-12360

Case No: 2:23-bk-12361

Hon. Sandra R. Klein

Chapter 11 Case

- ☒ Affects all Debtors
- ☐ Affects Beverly Community
Hospital Association
- ☐ Montebello Community Health
Services, Inc.
- ☐ Beverly Hospital Foundation

**DEBTORS' EMERGENCY MOTION
FOR ORDER (I) APPROVING DEBTORS'
ADEQUATE ASSURANCE OF PAYMENT
FOR UTILITY SERVICES, (II)
PROHIBITING UTILITY PROVIDERS
FROM ALTERING, DISCONTINUING
SERVICE, (III) APPROVING DEBTORS'
PROPOSED PROCEDURES AND
(IV) GRANTING RELATED RELIEF**

Date: April [•], 2023

Time: TBD

Judge: [TBD]

Place: Zoom.Gov – or - Courtroom 1575
255 E. Temple St.
Los Angeles, CA 90012

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.



1		<u>TABLE OF CONTENTS</u>	
2			<u>Page</u>
3	I.	RELIEF REQUESTED	1
4	II.	JURISDICTION AND VENUE.....	1
5	III.	STATEMENT OF FACTS.....	1
6	A.	The Debtors’ Background.	1
7	B.	The Utility Services and Utility Providers.	2
8	C.	Proposed Adequate Assurance of Payment.....	3
9	D.	The Adequate Assurance Procedures.	4
10	E.	Modifications to the Utility Services List.	4
11	F.	Prohibitions on Altering, Refusing, or Discontinuing Service.....	5
12	IV.	BASIS FOR RELIEF	5
13	V.	PROCESSING OF CHECKS AND ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED.....	8
14	VI.	EMERGENCY CONSIDERATION.....	9
15	VII.	WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)	9
16	VIII.	WAIVER OF MEMORANDUM OF POINTS AND AUTHORITIES	9
17	IX.	NOTICE	10
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Page(s)

Cases

In re Caldor, Inc.

199 B.R. 1 (S.D.N.Y. 1996), *aff'd sub nom., Va. Elec. & Power Co. v. Caldor, Inc.*,
117 F.3d 646 (2d Cir. 1997)..... 6

In re Circuit City Stores, Inc.

No. 08-35653, 2009 WL 484553 (Bankr. E.D. Va. Jan. 14, 2009)..... 7

In re Crystal Cathedral Ministries

454 B.R. 124 (C.D. Cal. 2011)..... 6

In re Gardens Regional Hosp. & Med. Cntr., Inc.

No. 2:16-bk-17463-ER (Bankr. C.D. Cal. June 9, 2016)..... 8

In re Keydata Corp.

12 B.R. 156 (B.A.P. 1st Cir. 1981) 6

In re Pilgrim's Pride Corp.

No. 08-45664 (DML), 2009 WL 7313309 (Bankr. N.D. Tex. Jan. 4, 2009) 6

In re Solid Landings Behavioral Health, Inc.

No. 8:17-bk-12213-CB (Bankr. C.D. Cal. June 8, 2017)..... 8

Steinbach v. Tuscon Elec. Power Co. (In re Steinbach)

303 B.R. 634 (Bankr. D. Ariz. 2004) 6

Va. Elec. & Power Co.

117 F.3d at 650..... 6

In re Verity Health System of California, Inc.

No. 2:18-bk-20151-ER (Bankr. C.D. Cal. Sept. 7, 2018)..... 8

In re Visiting Nurse Association of the Inland Counties

No. 6:18-bk-16908MH (Bankr. C.D. Cal. Aug. 28, 2018) 8

1	<u>Statutes</u>	
2	11 U.S.C.	
3	§ 105(a)	1, 7, 8
4	§ 366	1, 2, 3, 5, 7, 8
5	§ 366(b)	7
6	§ 366(c)	5
7	§ 366(c)(1)	5
8	§ 366(c)(2)	5
9	§ 366(c)(2)	7
10	§ 1107(a)	2
11	§ 1108	2
12	28 U.S.C.	
13	§ 157	1
14	§ 157(b)	1
15	§ 1334	1
16	§ 1408	1
17	§ 1409	1
18	United States Code Title 11 Chapter 11	1, 2
19	<u>Rules and Regulations</u>	
20	Federal Rules of Bankruptcy Procedure	
21	Rule 1015(b)	2
22	Rule 6003	9
23	Rule 6004(a)	9
24	Rule 6004(h)	9
25	Local Bankruptcy Rules	
26	Rules 2081-1(a)(3)	1, 9
27	Rule 5011-1(a)	1
28	Rule 6003	1
	Rule 6004	1
	Rule 9013-1(c)	9
	Rules 9075-1	1

I.

RELIEF REQUESTED

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² hereby move, on an emergency basis (this “Motion”), to seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) approving the Debtors proposed adequate assurance of payment for future utility services, (b) prohibiting utility companies from altering, refusing, or discontinuing services, (c) approving the Debtors’ proposed procedures for resolving additional assurance requests, and (d) granting related relief.

II.

JURISDICTION AND VENUE

The United States Bankruptcy Court for the Central District of California (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order No. 13-05* (C.D. Cal. Jul. 1, 2013), and Rule 5011-1(a) of the Local Bankruptcy Rules for the United States Bankruptcy Court Central District of California (the “Local Bankruptcy Rules”). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The bases for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Rules 2081-1(a)(3) and 9075-1 of the Local Bankruptcy Rules.

III.

STATEMENT OF FACTS

A. The Debtors’ Background.

Beverly Hospital is a nonprofit, 202-bed hospital in Montebello that serves low-income patients in the nearby Los Angeles area. As a safety net hospital, Beverly serves a geographic area

² A detailed description of the Debtors and their business, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Alice Cheng in Support of the Debtors’ First Day Emergency Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on the date hereof (the “Petition Date”). Capitalized terms used but not otherwise defined in this Motion have the meanings given to them in the First Day Declaration or elsewhere in this Motion.

1 where half the population lives under the Federal Poverty Level. Beverly has been historically
2 underfunded and, in the post-Covid economy, became increasingly cash-strapped. With 91% of its
3 patients relying on Medicare and Medi-Cal, the Hospital's financial struggles only worsened as the
4 cost of labor, medical supplies and medicine ballooned while government reimbursement rates have
5 stayed the same.

6 On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter
7 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties
8 as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
9 Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural
10 consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy
11 Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these
12 chapter 11 cases, and no committees have been appointed or designated.

13 **B. The Utility Services and Utility Providers.**

14 The Debtors obtain electricity, natural gas, water and sewage, telephone, internet, garbage,
15 recycling, cable, fire protection, and other similar services (collectively, the "Utility Services") from
16 a number of utility providers and brokers (collectively, the "Utility Providers") to operate their
17 businesses and manage their properties in the ordinary course. A non-exclusive list of the Utility
18 Providers and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the
19 "Utility Providers List") is attached hereto as **Exhibit B**.³

20 On average, the Debtors spend approximately \$280,000 per month on utilities. As of the
21 Petition Date, the Debtors estimate that approximately \$280,000 on account of their Utility Services
22 will become due and owing in the next twenty one days.

23 On any given business day, patients undergo surgical procedures and receive medical
24 treatments for which sophisticated life-sustaining equipment powered by the Utility Services is

25
26 ³ Although the Debtors believe that the Utility Providers List includes all of their Utility Providers, subject to the
27 limitations set forth in the Adequate Assurance Procedures, the Debtors reserve the right to supplement the list if
28 they inadvertently omitted any Utility Provider. Additionally, the listing of an entity on the Utility Providers List
is not an admission by the Debtors that such entity is or is not a utility within the meaning of section 366 of the
Bankruptcy Code, and the Debtors reserve all rights with respect to any such determination. Additionally, the
Debtors may have inadvertently omitted one or more Utility Providers. Therefore, the Debtors request relief
applicable to all Utility Providers regardless of whether such Utility Provider is identified on **Exhibit B**.

1 essential. While any interruption in Utility Services would certainly prove detrimental to the
2 Debtors' business, any interruption of the Utility Services, no matter how brief, could be extremely
3 harmful to the patients at the Debtors' facilities. Uninterrupted Utility Services are essential to the
4 Debtors' ongoing hospital operations and their ability to provide care to their patients. Without
5 Utility Services, the Debtors' operations will shut down and patients could be harmed.

6 **C. Proposed Adequate Assurance of Payment.**

7 The Debtors intend to satisfy postpetition obligations owed to the Utility Providers in the
8 ordinary course of business and in a timely manner. Cash on hand and cash generated in the ordinary
9 course of business as well as debtor in possession financing will provide the Debtors with sufficient
10 liquidity to pay the Utility Providers for Utility Services in accordance with past practice. As
11 additional assurance of payment, the Debtors propose to deposit \$140,000 (the "Adequate
12 Assurance Deposit") into a segregated bank account (the "Adequate Assurance Account") within
13 five business days after the Order is entered.

14 The Adequate Assurance Deposit is equal to approximately one half of the Debtors' average
15 monthly cost of Utility Services, calculated based on the historical average of payments made to the
16 Utility Providers over the twelve month period prior to the Petition Date, excluding certain amounts
17 and subject to certain adjustments. The Adequate Assurance Deposit will be held in a segregated,
18 debtor-in-possession bank account in the Debtors' name (the "Adequate Assurance Account") for
19 the benefit of the Utility Providers for the duration of the Debtors' chapter 11 cases and may be
20 applied to any postpetition defaults in payment to the Utility Providers in accordance with the
21 Adequate Assurance Procedures (as defined herein). The Adequate Assurance Deposit, in
22 conjunction with the Debtors' cash on hand, cash generated in the ordinary course of business, and
23 anticipated debtor in possession financing (collectively, the "Proposed Adequate Assurance"),
24 demonstrates the Debtors' ability to pay for future Utility Services in accordance with past practice
25 and constitutes sufficient adequate assurance to the Utility Providers in full satisfaction of section
26 366 of the Bankruptcy Code.

D. The Adequate Assurance Procedures.

The Debtors propose the adequate assurance procedures set forth herein (the “Adequate Assurance Procedures”) for any Utility Provider that is either (a) not satisfied with the Proposed Adequate Assurance or (b) seeking payment of their applicable portion of the Adequate Assurance Deposit for adequate assurance of future payment (each, an “Adequate Assurance Request”) during the pendency of the chapter 11 cases. In summary, the Adequate Assurance Procedures permit a Utility Provider to object to the Proposed Adequate Assurance by filing and serving an Adequate Assurance Request upon certain notice parties. The Debtors may use their discretion to resolve any Adequate Assurance Request with the Utility Provider and without further order of the Court. If the Debtors determine that the Adequate Assurance Request cannot be consensually resolved, the Debtors may seek Court resolution of the Adequate Assurance Request. In addition, if postpetition amounts remain unpaid beyond the applicable grace period associated with the Utility Services, the Utility Provider may make an Adequate Assurance Request pursuant to the proposed Adequate Assurance Procedures. As such, the proposed Adequate Assurance Procedures are an efficient and streamlined resolution process for matters related to Utility Services that may arise during the cases.

E. Modifications to the Utility Services List.

The Debtors have made an extensive and good faith effort to identify all Utility Providers and include them on the Utility Providers List. If the Debtors subsequently identify additional Utility Providers or discontinue any Utility Services, the Debtors seek authority, in their sole discretion, to amend the Utility Providers List to add or remove any Utility Provider. The Debtors further request that the relief requested in this motion, including the proposed Adequate Assurance Procedures, and the Order granting the relief requested in this motion shall apply to any subsequently identified Utility Provider provided the Debtors add any such Utility Provider to the Utility Providers List within thirty days from the Petition Date. The Debtors will serve a copy of this motion and the Order on any Utility Provider added to the Utility Providers List. Any subsequently added Utility Provider shall have twenty one days from the date of service of this motion and the Order to make a request for additional adequate assurance of payment in accordance with the Adequate Assurance Procedures. Pursuant to the Adequate Assurance Procedures, the

1 Debtors may seek to resolve any subsequently added Utility Provider's request for adequate
2 assurance of payment by mutual agreement with the Utility Provider without further order of this
3 Court or the need to schedule a hearing with this Court to determine the adequacy of assurance
4 payment.

5 **F. Prohibitions on Altering, Refusing, or Discontinuing Service.**

6 Uninterrupted Utility Service is essential to the Debtors' ongoing business operations and
7 overall success of these chapter 11 cases. Should any Utility Provider refuse or discontinue service,
8 even for a brief period, the Debtors' business operations could be disrupted severely.
9 Discontinuation of Utility Service would essentially shut down operations, and any significant
10 disruption of operations could pose risks to public health and put these chapter 11 cases in jeopardy.
11 Moreover, based on their books and records, the Debtors believe there are no material defaults or
12 arrearages for undisputed invoices accrued in connection with postpetition Utility Services other
13 than any payment interruptions that may have resulted as a result of the chapter 11 filing. As such,
14 it is essential that the Utility Services continue uninterrupted during the pendency of these chapter
15 11 cases.

16 Accordingly, the Debtors request that, pending the entry of the Order and the resolution of
17 any Additional Assurance Request, objection, or Determination Hearing, the Utility Providers,
18 including any Additional Utility Provider, are prohibited from (a) discriminating against the
19 Debtors, (b) altering, refusing, or discontinuing service to the Debtors, or (c) requiring payment of
20 a deposit or receipt of any other security for continued service other than the Adequate Assurance
21 Deposit as a result of these chapter 11 cases or any unpaid prepetition invoices.

22 **IV.**

23 **BASIS FOR RELIEF**

24 Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or
25 alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the
26 Bankruptcy Code requires a debtor to provide "adequate assurance" of payment for postpetition
27 services in a form "satisfactory" to the utility company within thirty (30) days of the Petition Date,
28 or the utility provider may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). A non-

1 exhaustive list of examples for what constitutes “assurance of payment” is contained in section 366
2 of the Bankruptcy Code. 11 U.S.C. § 366(c)(1) (listing “(i) a cash deposit; (ii) a letter of credit; (iii)
3 a certificate of deposit; (iv) a surety bond; and (v) a prepayment of utility consumption” as examples
4 of adequate assurance requests).

5 Although assurance of payment must be “adequate,” such adequacy “is not to be confused
6 with actual payment or an absolute guarantee of payment.” *In re Crystal Cathedral Ministries*, 454
7 B.R. 124, 131 (C.D. Cal. 2011); *see also Steinbach v. Tuscon Elec. Power Co. (In re Steinbach)*,
8 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (explaining that bankruptcy courts are “not required to
9 give a utility company the equivalent of a guarantee of payment, but must only determine that the
10 utility is not subject to any unreasonable risk of non-payment”) (quoting *In re Adelpia Bus. Sols.,*
11 *Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002)); *In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996)
12 (“Section 366(b) . . . does not require an absolute guarantee of payment.”) (internal quotation and
13 citation omitted), *aff’d sub nom., Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir.
14 1997). A court should examine the totality of the circumstances to decide whether a utility company
15 will be subject to an unreasonable risk of nonpayment when considering whether a proposed
16 assurance amount is “adequate.” *See In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981).
17 The focus should be on “the need of the utility for assurance” to ensure that the debtor will “supply
18 no more than that” because the debtor “has a conflicting need to conserve scarce financial
19 resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted). Accordingly, a
20 utility company’s demand for a guarantee of payment should be refused when the debtor has already
21 afforded adequate assurance of payment based on the specific circumstances.

22 Termination of the Utility Services could result in the Debtors’ inability to provide care to
23 their patients and would impair the Debtors’ ability to operate the hospital to the detriment of all
24 stakeholders. *See In re Pilgrim’s Pride Corp.*, No. 08-45664 (DML), 2009 WL 7313309, at *2
25 (Bankr. N.D. Tex. Jan. 4, 2009) (“The consequences of an unexpected termination of utility service
26 to [the debtors] could be catastrophic.”). Here, the Utility Providers are adequately assured against
27 any risk of nonpayment for future services. The Adequate Assurance Deposit, the Debtors’ ongoing
28 ability to meet obligations as they come due in the ordinary course, and anticipated access to debtor

1 in possession financing provides assurance of the Debtors' payment of their future obligations. The
2 Debtors intend to allocate \$140,000 in the Adequate Assurance Account, which is segregated from
3 the Debtors' cash management system. The Adequate Assurance Deposit is equal to approximately
4 one half of the Debtors' average monthly cost of Utility Services, calculated based on the historical
5 average of payments made to the Utility Providers over the twelve month period ending on February
6 28, 2023, excluding certain amounts and subject to certain adjustments.

7 In addition, the Debtors have proposed Adequate Assurance Procedures that give Utility
8 Providers an opportunity to seek additional adequate assurance as appropriate. These procedures
9 should be permitted because they facilitate the Debtors' ability to provide assurance of future
10 payment. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance
11 Procedures proposed herein, to implement the protections afforded under section 366 of the
12 Bankruptcy Code. *See, e.g., In re Circuit City Stores, Inc.*, No. 08-35653, 2009 WL 484553, at *5
13 (Bankr. E.D. Va. Jan. 14, 2009) (stating that "the plain language of § 366 of the Bankruptcy Code
14 allows the Court to adopt the [p]rocedures set forth in the [u]tility [o]rder"). Such procedures are
15 important because, without them, the Debtors "could be forced to address numerous requests by
16 utility companies in an unorganized manner at a critical period in their efforts to reorganize." *Id.* If
17 the Debtors are inundated with requests, a Utility Provider could seize on the chaos and make an
18 extortionate, last-minute demand for adequate assurance that would force the Debtors to pay
19 amounts beyond what would be required under section 366 as a result of the threat of losing critical
20 Utility Services. *See id.* at *5. The proposed Adequate Assurance Procedures prevent such an
21 outcome and create an orderly process while preserving the Utility Providers' rights under sections
22 366(b) and (c)(2) of the Bankruptcy Code. *See id.* at *5–6. Further, any rights the Utility Providers
23 believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are preserved under
24 the Adequate Assurance Procedures. *See id.* at *5–6. The Utility Providers still have the right to
25 request modification of the Proposed Adequate Assurance in accordance with such procedures. *See*
26 *id.* at *6.

27 Moreover, this Court possesses the power under section 105(a) of the Bankruptcy Code to
28 "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of

1 this title.” 11 U.S.C. § 105(a). Here, the Order approving both the Adequate Assurance Procedures
2 and the Proposed Adequate Assurance is necessary and appropriate to carry out the provisions of
3 the Bankruptcy Code, particularly section 366 thereof. If neither the Adequate Assurance
4 Procedures nor the Proposed Adequate Assurance are approved, then there is a substantial risk that
5 Utility Providers could attempt to terminate the Debtors’ Utility Services. Accordingly, the Court
6 should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both
7 the Adequate Assurance Procedures and the Proposed Adequate Assurance.

8 Courts in this district have routinely granted relief similar to that requested herein in other
9 chapter 11 cases with similarly situated debtors. *See, e.g., In re Verity Health System of California,*
10 *Inc.*, No. 2:18-bk-20151-ER (Bankr. C.D. Cal. Sept. 7, 2018) [Docket No. 133]; *In re Visiting Nurse*
11 *Association of the Inland Counties*, No. 6:18-bk-16908MH (Bankr. C.D. Cal. Aug. 28, 2018)
12 [Docket No. 45]; *In re Solid Landings Behavioral Health, Inc.*, No. 8:17-bk-12213-CB (Bankr. C.D.
13 Cal. June 8, 2017) [Docket Nos. 31, 32, 39, 40, 41, 42]; *In re Gardens Regional Hosp. & Med. Cntr.,*
14 *Inc.*, No. 2:16-bk-17463-ER (Bankr. C.D. Cal. June 9, 2016) [Docket No. 57].⁴

15 V.

16 **PROCESSING OF CHECKS AND ELECTRONIC FUND TRANSFERS SHOULD BE**
17 **AUTHORIZED**

18 The Debtors have sufficient funds to pay the amounts described in this Motion in the
19 ordinary course of business by virtue of expected cash flows from ongoing business operations, and
20 debtor in possession financing. In addition, under the Debtors’ existing cash management system,
21 the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment
22 in respect of the Utility Services. Accordingly, the Debtors believe that checks or wire transfer
23 requests, other than those relating to authorized payments, will not be honored inadvertently.
24 Therefore, the Debtors respectfully request that the Court authorize all applicable financial
25 institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks
26 or wire transfer requests in respect of the relief requested in this Motion.

27
28 ⁴ Because of the voluminous nature of the orders cited herein, such order have not been attached to this Motion.
Copies of these orders are available upon request to the Debtors’ proposed counsel.

1 **VI.**

2 **EMERGENCY CONSIDERATION**

3 Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the
4 petition date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed.
5 R. Bankr. P. 6003. Additionally, Local Bankruptcy Rule 2081-1(a)(3) allows a movant to request
6 the type of relief herein for emergency consideration. For the reasons discussed above, (a)
7 approving the Debtors proposed adequate assurance of payment for future utility services, (b)
8 prohibiting utility companies from altering, refusing, or discontinuing services, (c) approving the
9 Debtors’ proposed procedures for resolving additional assurance requests, and (d) granting related
10 relief as requested herein is integral to the Debtors’ ability to transition their operations into these
11 chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of
12 these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The
13 relief requested is necessary in order for the Debtors to operate their business in the ordinary course
14 and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates
15 for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the
16 “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court
17 approve the relief requested in this Motion on an emergency basis.

18 **VII.**

19 **WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)**

20 To implement the foregoing successfully, the Debtors seek a waiver of the notice
21 requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use,
22 sale, or lease of property under Bankruptcy Rule 6004(h).

23 **VIII.**

24 **WAIVER OF MEMORANDUM OF POINTS AND AUTHORITIES**

25 The Debtors respectfully request that this Court treat this Motion as a written memorandum
26 of points and authorities or waive any requirement that this Motion be accompanied by a written
27 memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(c).

IX.

NOTICE

The Debtors will provide notice of this Motion via first class mail, facsimile or email (where available) to: (a) the Office of the U.S. Trustee Region 16; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) U.S. Bank, N.A. and counsel thereto; (d) Hanmi Bank and counsel thereto; (e) the Utility Providers; (f) the Internal Revenue Service; (g) the Office of the Attorney General of the State of California; (h) the National Association of Attorneys General; and (i) all other parties who have filed a request for special notice and service of papers with the clerk of this Court.

No prior request for the relief sought in this Motion has been made by the Debtors to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant this Motion and enter an order in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: April 19, 2023

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Jennifer L. Nassiri
Jennifer L. Nassiri

JUSTIN R. BERNBROCK
JENNIFER L. NASSIRI
CATHERINE JUN
ROBERT B. McLELLARN
ALEXANDRIA G. LATTNER

Proposed Counsel to Debtors and
Debtors in Possession

Exhibit A

Proposed Order

EXHIBIT A

[Proposed Order]

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:

BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY HOSPITAL
(A NONPROFIT PUBLIC BENEFIT
CORPORATION), *et al*,¹

Debtors,

- ☒ Affects all Debtors
- ☐ Affects Beverly Community
Hospital Association
- ☐ Montebello Community Health
Services, Inc.
- ☐ Beverly Hospital Foundation

Lead Case No.: 2:23-bk-12359

Jointly administered with:

Case No: 2:23-bk-12360

Case No: 2:23-bk-12361

Hon. Sandra R. Klein

Chapter 11 Case

**[PROPOSED] ORDER (I) APPROVING
DEBTORS' ADEQUATE ASSURANCE OF
PAYMENT FOR UTILITY SERVICES,
(II) PROHIBITING UTILITY
PROVIDERS FROM ALTERING,
DISCONTINUING SERVICE,
(III) APPROVING DEBTORS'
PROPOSED PROCEDURES AND
(IV) GRANTING RELATED RELIEF**

Date: April [•], 2023

Time: TBD

Judge: [TBD]

Place: Zoom.Gov – or - Courtroom 1575
255 E. Temple St.
Los Angeles, CA 90012

Upon the Debtors' Emergency Motion for Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.

1 *Relief* (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the
2 “Debtors”) filed on April 19, 2023; and upon the First Day Declaration; and this Court having
3 jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a
4 core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a
5 final order consistent with Article III of the United States Constitution; and this Court having found
6 that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§
7 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best
8 interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having
9 found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were
10 appropriate under the circumstances and no other notice need be provided; and this Court having
11 reviewed the Motion and having heard the statements in support of the relief requested therein at a
12 hearing before this Court on April [], 2023 at [].m; and this Court having determined that the
13 legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief
14 granted herein and is necessary to avoid immediate and irreparable harm pursuant to Bankruptcy
15 Rule 6003; and after due deliberation and sufficient cause appearing therefor,

16 **IT IS HEREBY ORDERED THAT:**

- 17 1. The Motion is GRANTED as set forth in this Order.
- 18 2. The Debtors shall serve the Motion and this Order on each Utility Provider listed on
19 the Utility Providers List, attached as **Exhibit B** to the Motion, no later than three (3) business days
20 after the date that this Order is entered.
- 21 3. The Debtors are authorized, but not directed, to cause the Adequate Assurance
22 Deposit to be held in the Adequate Assurance Account during the pendency of these chapter 11
23 cases.
- 24 4. The Adequate Assurance Deposit, together with the Debtors’ ability to pay for future
25 Utility Services in the ordinary course of business subject to the Adequate Assurance Procedures
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28 ² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

1 shall constitute adequate assurance of future payment in satisfaction of section 366 of the
2 Bankruptcy Code.

3 5. The following Adequate Assurance Procedures are hereby approved, and the terms
4 thereof are in full force and effect:

- 5 a. Subject to paragraphs (b)–(j) herein, the Debtors will deposit the Adequate
6 Assurance Deposit, in the aggregate amount of \$140,000, in the Adequate
7 Assurance Account within five (5) business days after entry of the order
8 granting this Motion.
- 9 b. A Utility Provider may make an Adequate Assurance Request if the Debtors
10 have not satisfied their postpetition payment obligation with respect to the
11 applicable Utility Services in accordance with the terms and conditions of
12 such service, and such payment obligation remains unpaid past any
13 applicable grace period for the Utility Service. No disbursement will be made
14 for an Adequate Assurance Request unless the requesting Utility Provider
15 provides notice to the following parties (the “Utility Notice Parties”): (i) the
16 Debtors, (ii) proposed counsel to the Debtors, (iii) counsel to the proposed
17 DIP Lenders; (iv) the Office of the United States Trustee, and (v) counsel for
18 the official committee of unsecured creditors (if any) appointed in these
19 chapter 11 cases. The Debtors shall honor such request within five (5)
20 business days after the date they receive such Adequate Assurance Request,
21 subject to the Debtors and the requesting Utility Provider reaching an
22 alternative resolution. A court order is not required to honor the Adequate
23 Assurance Request in accordance with the Adequate Assurance Procedures
24 or to settle a postpetition payment dispute related to Utility Services.
- 25 c. If the Debtors make a disbursement to a Utility Provider from the Adequate
26 Assurance Account, the Debtors shall replenish the Adequate Assurance
27 Account in the amount so disbursed.
- 28 d. The portion of the Adequate Assurance Deposit attributable to each Utility
Provider shall be returned to the Debtors or the Reorganized Debtors, as
applicable, on the earlier of (i) the Debtors reconciling and paying the Utility
Provider’s final invoice in accordance with applicable nonbankruptcy law
following the Debtors’ termination of Utility Services from such Utility
Provider and (ii) the effective date of any chapter 11 plan confirmed in these
chapter 11 cases.
- e. A Utility Provider desiring additional assurances of payment in the form of
deposits, prepayments, increases in the proposed allocable Adequate
Assurance amount, or otherwise must serve a request for additional assurance
(an “Additional Assurance Request”) on the Utility Notice Parties within
thirty (30) days of the Petition Date.
- f. All Additional Assurance Requests and Adequate Assurance Requests must
set forth in writing the following: (i) the location(s) for which Utility Services
are provided and the account number(s) for such location(s); (ii) the
outstanding balance for each such account and a summary of the Debtors’
payment history relevant to the affected account(s); (iii) an explanation as to
why the Utility Provider believes the Adequate Assurance Deposit is not
adequate assurance of payment under section 366 of the Bankruptcy Code or

the basis for seeking the Adequate Assurance Deposit, each as applicable; and (iv) list all Prepetition Deposits or surety bonds that the Utility Provider holds for the Utility Services related to the Additional Assurance Request.

- g. The Debtors may, without further order from the Court, resolve an Additional Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable. The Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to any official committee appointed in these cases, and the U.S. Trustee upon request.
- h. The Debtors may reduce or remove a Utility Provider's portion of the Adequate Assurance Deposit with the consent of such Utility Provider at any time during the chapter 11 cases.
- i. If the Debtors and the Utility Provider are not able to reach a resolution within fourteen (14) days of receipt of the Additional Assurance Request, the Debtors may request a hearing before the 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. Pending final resolution of the Determination Hearing, the Utility Provider filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

6. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

7. Unless and until a Utility Provider files and serves an Additional Assurance Request in accordance with the Adequate Assurance Procedures and the Court rules otherwise at a Determination Hearing, the Utility Provider shall be (a) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (b) forbidden from (i) discontinuing, altering, or refusing Utility Services to or discriminating against the Debtors on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, or (ii) requiring additional assurance of payment other than the Proposed Adequate Assurance.

8. The Debtors are authorized to (a) add any Utility Provider to the Utility Providers List (each a, "Subsequently Identified Utility Provider"), (b) remove any Utility Provider from the

1 Utility Providers List, and (c) add to or subtract from the Adequate Assurance Account the portion
2 of such deposit allocated to any Utility Provider(s); or Subsequently Identified Utility Provider(s);
3 provided that the Debtors may only add Subsequently Identified Utility Provider(s) to the Utility
4 Providers List and deposit funds in the Adequate Assurance Account in the sum of the “Proposed
5 Adequate Assurance” allocated to such Subsequently Identified Utility Provider(s) within thirty (30)
6 days from the Petition date, provided further that the Debtors shall provide fourteen (14) days’ notice
7 to any Utility Provider that it is being removed from the Utility Providers List and that its respective
8 Adequate Assurance Deposit will be deducted from the Adequate Assurance Account. If an
9 objection is received from such Utility Provider(s), the Debtors may request a hearing before this
10 Court regarding such objection. The Debtors shall not deduct the Adequate Assurance Deposit
11 allocated to any such Utility Provider that the Debtors seek to terminate or delete from the Utility
12 Providers List unless and until the fourteen (14) day notice period has expired without objection
13 from the respective Utility Provider(s).

14 9. The Debtors must (a) serve any Subsequently Identified Utility Provider a copy of
15 the Motion and Order within three (3) business days of such provider being added to the list, (b)
16 allocate additional amounts to the Adequate Assurance Deposit in accordance with the Motion, and
17 (c) provide notice to the Subsequently Identified Utility Provider of its proposed Adequate
18 Assurance. Any Subsequently Identified Utility Provider shall (a) be bound to the Adequate
19 Assurance Procedures and (b) have twenty-one (21) days from the date of service of the Motion and
20 the Order to make a request for additional adequate assurance of payment in accordance with the
21 Adequate Assurance Procedures.

22 10. The Adequate Assurance Procedures set forth herein are for all Utility Providers
23 providing Utility Services to the Debtors in either their capacity as landlords or tenants and are not
24 limited to those entities listed on the Utility Providers List.

25 11. The Debtors’ service of the Motion upon the Utility Services List shall not constitute
26 an admission or concession that each such entity is a “utility” within the meaning of section 366 of
27 the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

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1 12. The requirement under Local Bankruptcy Rule 9013-1(c) to file a memorandum of
2 law in connection with the Motion is waived.

3 13. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

4 14. Notice of the Motion as provided therein shall be deemed good and sufficient notice
5 of the Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied
6 by such notice.

7 15. Notwithstanding Bankruptcy Rule 6004(h), this Order is immediately effective and
8 enforceable upon its entry.

9 16. The Debtors are authorized to take all actions necessary to effectuate the relief
10 granted in this Order in accordance with the Motion.

11 17. This Court retains exclusive jurisdiction with respect to all matters arising from or
12 related to the implementation, interpretation, and enforcement of this Order.

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Exhibit B

Utility Providers List

Vendor Name	Utility Address	Type of Utility	Account #	Monthly Average
AMERICAN MESSAGING	PO BOX 5749 CAROL STREAM, IL 60197-5749	Paging/Text Notifications	L8-656096	\$400
AT&T (B001283)	P.O. BOX 5025 CAROL STREAM, IL 60197-5025	Phone/Internet	960 550-1470 331 351-9128 331 841-4229 334 381-7059 336 842-3076	\$300
AT&T (B007942)	PO BOX 5014 CAROL STREAM, IL 60197-5014	Phone/Internet	322797867 322797868	\$286
AT&T MOBILITY (B005234)	PO BOX 6463 CAROL STREAM, IL 60197-6463	Phone/Internet	287272242183	\$10
ATHENS DISPOSAL CO INC	PO BOX 54957 LOS ANGELES, CA 90054-0957	Trash Service	MC0001115 MC0033763 MC0001792 MC0033763 MC0103061 (M000005) MC0001963 (I000014) MC0098983 (P000006)	\$17,270
BAI CONNECT (B007985)	15301 VENTURA BLVD, SUITE D- 220 SHERMAN OAKS, CA 91403	Internet	P149689	\$1,100
CHARTER SPECTRUM	PO BOX 7173 PASADENA, CA 91109-7173	Internet	8245100030891580 (M000244) 8245100030892943 (I000131)	\$110
CONSTELLATION NEW ENERGY-GAS	9400 BUNSEN PARKWAY, SUITE 100 LOUISVILLE, KY 40220	Natural Gas	BG-94431	\$20,000
DIGITAL TELECOMMUNICATIONS CORP	25709 RYE CANYON RD SANTA CLARITA, CA 91355	Landline Phones	2166	\$10,000
MEDIWASTE DISPOSAL LLC	PO BOX 6579 CORONA, CA 92878	Medical Waste Disposal	201869	\$9,500

Vendor Name	Utility Address	Type of Utility	Account #	Monthly Average
MONTEBELLO LAND AND WATER CO	344 E MADISON AVENUE, MONTEBELLO, CA 90640	Water Utility	024-19890A-1 024-19890B-1 024-19890C-1 024-19890D-1 024-19890F-1 024-19890G-1 023-18741A-1 (M000002) 0023-18640-1 (M000002) 0023-18740-1 (M000002) 0023-18741-1 (M000002) 0024-19440-1 (M000002) 0028-34235-1 (M000002) 0021-10120-1 (M000002) 0028-33140-1 (I000004) 0028-33820-1 (I000004) 0028-33830-1 (I000004) 0028-33840-1 (I000004) 0028-33863-1 (I000004) 0028-33870-1 (I000004) 023-18600C-1 (P000002) 024-19935A-1 (P000002) 024-19935B-1 (P000002) 0024-19940-1 (P000002) 024-19932A-1 (S000046)	\$14,000
RECYCLED WASTE PRODUCTS	8844 S MILLERGROVE DR SANTA FE SPRINGS, CA 90670	Recycled Waste Disposal	58252	\$50
SO CA EDISON CO	PO BOX 300 ROSEMEAD, CA 91771	Electricity Supply	700117956185 700220660189 700247165239 700410957116 700412155872 700412279245 700007971626 700258179284 (M000006) 700410617818 (M000006) 700520812444 (M000006) 700299936269 (I000006) 700247165239 (I000006) 700070476810 (P000007) 700070516822 (P000007) 700288802992 (P000007)	\$162,000
THE GAS COMPANY	P O BOX C MONTEREY PARK, CA 91756	Gas Utility	00650030000 00860030006 08580063009 06900070902 (M000004) 16810060000 (M000004) 02150024731 (I000005)	\$19,250

Vendor Name	Utility Address	Type of Utility	Account #	Monthly Average
			18530023037 (I000005) 17900023791 (I000005) 01940024555 (I000005) 02780024671 (I000005) 01700030883 (P000014)	
T-MOBILE	PO BOX 742596 CINCINNATI, OH 45274-2596	Cellular Telephone/Backup Wireless Internet	969608607 983153032-8	\$2,200
US TELEPACIFIC CORP (TPX)	515 S FLOWER ST, 47TH FLOOR LOS ANGELES, CA 90071-2201	Phone/Internet	142559	\$10,000