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FILED & ENTERED

APR 21 2023

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY may DEPUTY CLERK

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.: 2:23-12359-SK

Jointly administered with:

Case No: 2:23-bk-12360-SK

Case No: 2:23-bk-12361-SK

Hon. Sandra R. Klein

Chapter 11 Case

**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 21, 2023

Time: 2:00 p.m.

Judge: Hon. Sandra R. Klein

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 Upon the Debtors' Emergency Motion for Entry of an Order (I) Approving the Debtors'
2 Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility
3 Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors'
4 Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related
5 Relief (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the
6 "Debtors") filed on April 19, 2023; and upon the First Day Declaration; and this Court having
7 jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a
8 core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a
9 final order consistent with Article III of the United States Constitution; and this Court having found
10 that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§
11 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best
12 interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having
13 found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were
14 appropriate under the circumstances and no other notice need be provided; and this Court having
15 reviewed the Motion and having heard the statements in support of the relief requested therein at a
16 hearing before this Court on April 21, 2023 at 2:00 p.m.; and this Court having determined that the
17 legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief
18 granted herein and is necessary to avoid immediate and irreparable harm pursuant to Bankruptcy
19 Rule 6003; and after due deliberation and sufficient cause appearing therefor,

20 **IT IS HEREBY ORDERED THAT:**

- 21 1. The Motion is GRANTED as set forth in this Order.
- 22 2. The Debtors shall serve the Motion and this Order on each Utility Provider listed on
23 the Utility Providers List, attached as **Exhibit B** to the Motion, no later than three (3) business days
24 after the date that this Order is entered.

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

1 3. The Debtors are authorized, but not directed, to cause the Adequate Assurance
2 Deposit to be held in the Adequate Assurance Account during the pendency of these chapter 11
3 cases.

4 4. The Adequate Assurance Deposit, together with the Debtors' ability to pay for future
5 Utility Services in the ordinary course of business subject to the Adequate Assurance Procedures
6 shall constitute adequate assurance of future payment in satisfaction of section 366 of the
7 Bankruptcy Code.

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

10 a. Subject to paragraphs (b)–(j) herein, the Debtors will deposit the Adequate
11 Assurance Deposit, in the aggregate amount of \$140,000, in the Adequate
12 Assurance Account within five (5) business days after entry of the order
granting this Motion.

13 b. A Utility Provider may make an Adequate Assurance Request if the Debtors
14 have not satisfied their postpetition payment obligation with respect to the
15 applicable Utility Services in accordance with the terms and conditions of
16 such service, and such payment obligation remains unpaid past any
17 applicable grace period for the Utility Service. No disbursement will be made
18 for an Adequate Assurance Request unless the requesting Utility Provider
19 provides notice to the following parties (the “Utility Notice Parties”): (i) the
20 Debtors, (ii) proposed counsel to the Debtors, (iii) counsel to the proposed
DIP Lenders; (iv) the Office of the United States Trustee; and (v) counsel for
the official committee of unsecured creditors (if any) appointed in these
chapter 11 cases. The Debtors shall honor such request within five (5)
business days after the date they receive such Adequate Assurance Request,
subject to the Debtors and the requesting Utility Provider reaching an
alternative resolution. A court order is not required to honor the Adequate
Assurance Request in accordance with the Adequate Assurance Procedures
or to settle a postpetition payment dispute related to Utility Services.

21 c. If the Debtors make a disbursement to a Utility Provider from the Adequate
22 Assurance Account, the Debtors shall replenish the Adequate Assurance
Account in the amount so disbursed.

23 d. The portion of the Adequate Assurance Deposit attributable to each Utility
24 Provider shall be returned to the Debtors or the Reorganized Debtors, as
25 applicable, on the earlier of (i) the Debtors reconciling and paying the Utility
26 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.

27 e. A Utility Provider desiring additional assurances of payment in the form of
28 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

1 against the Debtors on account of any unpaid prepetition charges, the commencement of these
2 chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance, or (ii) requiring
3 additional assurance of payment other than the Proposed Adequate Assurance.

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

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

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

4 11. The Debtors' service of the Motion upon the Utility Services List shall not constitute
5 an admission or concession that each such entity is a "utility" within the meaning of section 366 of
6 the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

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

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

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


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

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

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

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23 Date: April 21, 2023


Sandra R. Klein
United States Bankruptcy Judge