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10 Company, National Association, as Master Trustee

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

12 In re:
13 BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY HOSPITAL
14 (A NONPROFIT PUBLIC BENEFIT
CORPORATION), *et al*,¹

15 Debtors,

- 16
-
- 17 ☒ Affects all Debtors
18 ☐ Affects Beverly Community
19 Hospital Association
20 ☐ Montebello Community Health
Services, Inc.
21 ☐ Beverly Hospital Foundation
22
-

Lead Case No.: 2:23-bk-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

**OMNIBUS OBJECTION TO THE
DEBTORS' MOTION FOR (A) USE OF
CASH COLLATERAL AND (B) MOTION
FOR AUTHORITY TO INCUR POST-
PETITION FINANCING**

Date: May 24, 2023

Time: 9:00 a.m. Pacific Time

Judge: Sandra R. Klein

Place: Zoom.Gov

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27 ¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification
28 number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (the "Hospital") (6005), Montebello
Community Health Services, Inc. ("Montebello") (3550), and Beverly Hospital Foundation (9685). The mailing address
for the Debtors is 309 W. Beverly Blvd., Montebello, California 90



OBJ

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COLLATERAL

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OBJECTION

Secured creditor U.S. Bank Trust Company, National Association, as master trustee (the “Master Trustee”) hereby objects to the entry of a final order on: *Debtors’ Emergency Motion for Entry of an Order Granting Debtors’ Emergency Motion (I) Approving Debtors’ Use of Cash Collateral; and (II) Scheduling a Final Hearing on the Use of Cash Collateral* (the “Cash Collateral Motion”) [Docket No. 27] and the *Debtors’ Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition Secured Creditors, and (III) Granting Related Relief; Memorandum of Points and Authorities in Support Thereof* (the “DIP Motion”) [Docket No. 31]² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed on April 20, 2023 (the DIP Motion and the Cash Collateral Motion are collectively referred to herein as the “Motions”).

Preliminary Statement

Through the Cash Collateral Motion, the Debtors request authority to use the Master Trustee’s cash collateral without its consent and without providing sufficient adequate protection for that use, to, among other things run an opaque sale process to which the Master Trustee vehemently objects. Through the DIP Motion, the Debtors seek to grant priming liens on certain of the Master Trustee’s collateral to the DIP Lender without the Master Trustee’s consent and without providing adequate protection to the Master Trustee to enable the Debtors’ professionals to access approximately \$6 million of the \$13.25 million DIP Loan to fund what amounts to post-petition retainers for themselves, thereby guaranteeing payment in full to those professionals and elevating the payment of their fees over the Master Trustee’s Section 507(b) and superpriority administrative claims as well as the other administrative claims of these estates (and even elevating their fees over

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

1 amounts necessary for the continued operation of the Hospital).³ The Master Trustee objects to the
2 proposed use of its cash collateral and the proposed priming of its liens and claims.

3 At the outset of this case the Master Trustee and the Debtors agreed to two fundamental
4 concepts: (i) no professional fees would be paid from or carved out of the DIP Loan proceeds absent
5 agreement by the Master Trustee (an agreement necessary to ensure that there would be sufficient
6 funds available to continue to fund Hospital operations during the sale process); and (ii) the Master
7 Trustee would receive a second position lien on all of the DIP Collateral in exchange for allowing
8 the DIP Lender to prime certain of the Master Trustee's pre-petition collateral, which was a
9 condition of the DIP Lender funding the first \$6 million under the DIP Loan.⁴ Those agreements
10 were reported to the Court, included in the interim order on the DIP Motion (the "Interim Order")
11 [Docket No. 182 at ¶¶12 and 15] and essential to the Master Trustee's consent to the Debtors' use
12 of its cash collateral, the entry of the Interim Order and the consensual priming of the Master
13 Trustee's liens therein. Now that the Debtors have received the benefit of the parties' initial bargain,
14 and this case appears headed for administrative insolvency, the Debtors are shamelessly trying to
15 re-trade those agreements *in toto*.⁵ This change of heart is presumably because, despite their
16 expressed hopes at the beginning of this case, it is becoming increasingly unlikely that under the
17 current circumstances the Debtors will achieve a sale of the Hospital that will generate sufficient
18 funds to pay their professionals' fees in full. Given that, the Debtors' professionals have apparently
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22 ³ The Master Trustee reserves the right to further object to the DIP Motion, the deadline for which is 2 business
23 days following the Debtors' filing of a final form of order [see Docket No. 204], which occurred at or around 11:00
p.m. Pacific time on Friday May 19, 2023 [Docket No. 284].

24 ⁴ The Master Trustee already has a lien on the proceeds generated by any sale of the DIP Collateral through its
lien on all the Debtors' "accounts." It is the Master Trustee's position that this lien similarly attaches to Montebello's
rights to receive rental payments, which rents have been pledged to the DIP Lender.

25 ⁵ The nearly \$6 million of post-petition fees that the Debtors' professionals are seeking guaranteed payment of
are *in addition* to the nearly \$3 million in fees that they collected from the Debtors in the weeks prior to the Petition
Date. [Docket Nos. 186-187, 280-282, and 285]. At the first day hearing the Debtors represented to the Court that
keeping the Hospital operating was the primary goal of these cases. Shortly thereafter, the Debtors agreed that, in
furtherance of that goal, no professionals would be paid – absent agreement with the Master Trustee – until the end of
this case. The Debtors' professionals' plan to appropriate \$6 million to themselves in the early days of this case, if
allowed, would all but ensure that the Hospital will have insufficient funds to conduct a bona-fide sale process and may
even result in the closure of the Hospital.

1 decided that they are no longer willing to stand by the Hospital, instead attempting to re-trade their
2 deal by seeking a guaranty of their fees regardless of the results of their sale process.

3 Indeed, the Debtors are once again seeking authority to fund the very same “carve-out” that
4 the Court and the United States Trustee expressed concerns with at the first day hearings and that
5 the Debtors agreed through the Interim Order not to pursue absent the consent of the Master Trustee,
6 a sale of the Hospital or the end of these cases. The Court should decline to approve this “carve-
7 out,” (which is not in reality a carve-out at all) because it: (i) would violate the priority scheme of
8 the Bankruptcy Code; (ii) would unnecessarily drain all the very limited cash from these estates and
9 could result in the closure of the Hospital before a legitimate sale process can even begin; and (iii)
10 would allow the professionals of the Debtors and the unsecured creditors committee (the
11 “Committee”) to prime the superpriority administrative and Section 507(b) claims granted to the
12 Master Trustee as adequate protection for the use of its cash collateral under the Court’s interim
13 orders granting the Debtors’ use of cash collateral [Docket Nos. 124, 159, 203 and 264] (the “Cash
14 Collateral Order”).⁶

15 Moreover, now that the Committee has been appointed, the Debtors have aligned themselves
16 with the Committee and are acceding to practically all of its demands. For example, the Debtors
17 are now requesting a non-consensual carve-out from the Master Trustee’s Cash Collateral to pay
18 their and the Committee’s professionals fees [Docket No. 286 at ¶24] notwithstanding the fact that
19 the Cash Collateral Motion does not seek a carve-out and makes no reference to the payment of
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26 ⁶ Based on the record supporting the Motions, including the declaration of the Debtors’ financial advisors
27 [Docket No. 36] and the budgets prepared by the Debtors, it is apparent that Master Trustee’s 507(b) and superpriority
28 administrative claims will be at least approximately \$5 million, resulting from the Debtors’ diminution of its cash
collateral during this case. The Debtors’ proposed “carve-out” is really a back door, unilateral surcharge against the
Master Trustee’s collateral. The Debtors are seeking to prime the Master Trustee’s adequate protection claims
notwithstanding the fact that they also represented to the Court that none of the cash collateral would be used to pay
professional fees. See Docket No. 27, pg. 4, at lines 7-11.

1 professional fees from the Master Trustee's Cash Collateral. [Docket No. 27 at ¶C].⁷ Indeed the
2 Debtors made no mention of a carve-out from the Master Trustee's collateral until one was requested
3 by the Committee. The same holds true for the Debtor's reneging on its agreement with the Master
4 Trustee with respect to the grant of a second lien on the DIP Collateral. It is troubling to say the
5 least that the Committee has been able to exercise so much control over the Debtors during its short
6 time in this case but has not objected to the Debtors extracting over \$13 million of equity from the
7 Montebello estate through the DIP Motion, monies which should be available to pay to the
8 unsecured creditors of that estate. The likely impetus of this alliance is their shared goal to divert
9 as much money as possible from the Master Trustee to the professionals of the Debtors and the
10 Committee.
11

12 Even more troubling is that despite the millions of dollars that the Debtors' professionals
13 have billed and continue to bill, they have not been able to prepare an operating budget that extends
14 past June 18, 2023.⁸ Nor have they set aside monies that could be used to relocate patients or close
15 the Hospital if no sale is achieved, which, given the very high professional fees in this case, appears
16 increasingly likely. More worrisome is the fact that the Debtors and their investment banker Portage
17 Point Partners ("PPP") presumably hired to conduct a sale process, have failed to obtain approval,
18 conditional or otherwise, from the Attorney General of any potential purchaser of the Debtors'
19 assets, making a bona-fide sale process likely impossible. And unless the proceeds of a sale of the
20 Hospital will be sufficient to pay the Master Trustee's claim in full, the Debtors must obtain the
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26 ⁷ The Master Trustee further objects to all relief now being requested by the Debtors through their proposed final
order [Docket Nos. 284 and 286] that was not sought or briefed by the Debtors in the Cash Collateral or DIP Motions
and reserves all of its rights related thereto.

27 ⁸ At a minimum, if the Court is inclined to approve either of the Motions, it should require the Debtors to prepare
28 and file a budget that extends to the anticipated closing date for the sale of the Hospital so that all constituents of these
estates can be comfortable that the additional borrowings sought under the DIP Motion will be worthwhile and cash
will be available to continue to operate the Hospital until it can be sold.

1 Master Trustee's consent to sell the Hospital pursuant to Section 363(f) of the Bankruptcy Code,
2 absent which the Court cannot approve a sale free and clear of the Master Trustee's liens.⁹

3 Given the uncertainty regarding the fate of the Debtors' sale process, the Debtors have a
4 fiduciary obligation to plan for the possibility that one or both of the Attorney General and the
5 Master Trustee, who reserves all rights, will not consent to the sale of the Hospital. But the Debtors
6 have made no such plan, despite the fact that the Master Trustee has repeatedly informed the
7 Debtors, including prior to the filing of this case, that it does not approve of the sale process being
8 conducted by the Debtors' professionals who have thus far failed to ensure that fundamental
9 requirements for a successful sale process have been met.
10

11 Moreover, while the payment of the Debtors' professionals' fees is styled as a "carve-out"
12 of the DIP Lender's collateral, it is not a carve-out at all. The proceeds of the DIP Loan are not the
13 DIP Lender's collateral, and the DIP Lender has no say in how the DIP Loan is spent. The DIP
14 Lender has been granted a first position lien on what the Debtors claim is \$20 million of real estate
15 and other related collateral, owned primarily by Montebello, to secure approximately \$14 million
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18 ⁹ Section 363(f) of the Bankruptcy Code provides:

19 The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest
20 in such property of an entity other than the estate, only if-

21 (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

22 (2) such entity consents;

23 (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate
24 value of all liens on such property;

25 (4) such interest is in bona fide dispute; or

26 (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction
27 of such interest.

28 11 U.S.C. § 363(f); *see also Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 41 (B.A.P. 9th Cir. 2008) ("We join those courts cited above that hold that § 363(f)(3) does not authorize the sale free and clear of a lienholder's interest if the price of the estate property is equal to or less than the aggregate amount of all claims held by creditors who hold a lien or security interest in the property being sold."). "Congress did not intend under § 363(f)(5) that nonconsensual confirmation be a type of legal or equitable proceeding to which that paragraph refers. As a result, the availability of cramdown under § 1129(b)(2) is not a legal or equitable proceeding to which § 363(f)(5) is applicable." *In re PW, LLC*, 391 B.R. at 46; *see also In re Hassen Imps. P'ship*, 502 B.R. 851, 860 (C.D. Cal. 2013) ("By its terms, § 363(f)(5) only authorizes sale free and clear of an interest when there is a proceeding that would compel a 'money satisfaction' of that interest.")

1 of borrowing (approximately a million of which is fees, interest and professional fees of the DIP
2 Lender). Under the terms of the DIP Loan, the DIP Lender does not retain a lien in the proceeds of
3 the DIP Loan. Thus, the DIP Lender is not “carving” anything out of its collateral whatsoever.
4 Rather, the Debtors are trying to sneak this inappropriate post-petition retainer past the Court under
5 the guise of a “carve-out” being blessed by the DIP Lender, when in reality the DIP Lender has no
6 interest in how the proceeds of the DIP Loan are used.
7

8 In fact, although the proceeds of the DIP Loan are not the DIP Lender’s collateral, they do
9 belong to the Debtors’ estates and thus are subject to the Master Trustee’s superpriority
10 administrative claim for the diminution of its cash collateral. The Master Trustee expressly does
11 not consent to the Debtors’ professionals using its collateral to protect themselves against the
12 increasingly likely risk of administrative insolvency they themselves have created by putting their
13 own interests first. And the Bankruptcy Code does not allow them to do so.
14

15 For the foregoing reasons, and as further stated herein, the Court should deny the Motions
16 as presented. However, the Master Trustee would agree to the use of its cash collateral and the
17 approval of the DIP Motion upon the terms of the proposed orders attached hereto as Exhibit A¹⁰
18 and Exhibit B respectively, if the Debtors agree, as the Master Trustee has implored them to do, to
19 restart the sale process with a qualified, experienced investment banker.
20

21 **I. THE DEBTORS ARE NOT ADEQUATELY PROTECTING THE MASTER TRUSTEE FOR THEIR USE OF ITS CASH COLLATERAL**

22 The Court should deny the Debtor’s request to use the Master Trustee’s cash collateral
23 because it has not consented to that use and the Debtors cannot provide adequate protection to the
24 Master Trustee.
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28 ¹⁰ Included in Exhibit A is a redline comparing the Master Trustee’s proposed form of order on the Cash Collateral Motion to the Debtors’ and Committee’s for of order on the Cash Collateral Motion [Docket No. 286].

1 **1. Legal Standard for Use of Cash Collateral**

2 Section 363(c)(2) of the Bankruptcy Code prohibits a debtor from using cash collateral
3 “unless – (A) each entity that has an interest in such cash collateral consents; or (B) the court, after
4 notice and a hearing, authorizes such use in accordance with the provisions of this section.” 11
5 U.S.C. § 363(c)(2). Section 363(e), in turn, requires “adequate protection” of the secured creditor’s
6 interest in the cash collateral to the extent that a debtor is permitted to use cash collateral without
7 consent. 11 U.S.C. § 363(e) (requiring a bankruptcy court to “prohibit or condition such use . . . as
8 is necessary to provide adequate protection of such interest”); *see also Marathon Petroleum Co,*
9 *LLC v. Cohen (In re Delco Oil, Inc.),* 599 F.3d 1255, 1258 (11th Cir. 2010) (noting that, in the
10 absence of adequate protection, the “unhindered use of cash collateral, i.e., ‘secured property’ may
11 result in the dissipation of the estate”). The terms of 11 U.S.C. §363(e) are mandatory. *See Pinnacle*
12 *Rest. at Big Sky, LLC v. CH SP Acquisitions (In re Spanish Peaks Holdings II, LLC),* 872 F.3d 892,
13 899 (9th Cir. 2017); *see also* 3 Collier on Bankruptcy P 363.05 (16th 2023).

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16 When considering the non-consensual use of cash collateral, the “guiding inquiry is whether
17 [the creditor’s] security interests are ‘adequately protected’ absent the additional protection the cash
18 collateral would provide ... In determining whether a creditor’s secured interests are so protected,
19 there must be an individual determination of the value of that interest and whether a proposed use
20 of cash collateral threatens that value.” *In re Martin,* 761 F.2d 472, 476-77 (8th Cir. 1985)
21 (observing that “[i]n any given case, the bankruptcy court must necessarily (1) establish the value
22 of the secured creditor’s interest, (2) identify the risks to secured creditor’s value resulting from the
23 debtor’s request of the use of cash collateral, (3) determine whether the debtor’s adequate protection
24 proposal protects value as nearly as possible against risk to value consistent with the concept of
25 indubitable equivalence”); *see also In re Spanish Peaks Holdings II, LLC,* 872 F.3d at 899-900
26 (quoting 11 U.S.C. § 361(3)) (“‘adequate protection’ includes any relief—other than compensation
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1 as an administrative expense—that will ‘result in the realization by such entity of the indubitable
2 equivalent’ of the terminated interest”); *In re Feather River Orchards*, 56 B.R. 972, 976 (Bankr.
3 E.D. Cal. 1986) (stating that a secured creditor is “entitled to the indubitable equivalent of its present
4 interest as a condition of permitting the use of its cash collateral without its consent”). “Although
5 the concept of adequate protection is a flexible one, it encompasses the basic constitutional
6 requirement that a creditor’s interest in property cannot be in any respect impaired or subjected to
7 increased risk without assurance that the creditor will realize the benefit of its bargain.” *In re*
8 *Magnus*, 50 B.R. 241, 243 (Bankr. D.N.D. 1985).

10 The general purpose of adequate protection is to ensure that the secured creditor ultimately
11 receives what it would have received had bankruptcy not intervened. *In re Las Vegas Monorail Co.*,
12 429 B.R. 317, 326 (Bankr. D. Nev. 2010) (quoting *Security Leasing Partners, LP v. ProAlert, LLC*
13 (*In re ProAlert, LLC*), 314 B.R. 436, 440-41 (B.A.P. 9th Cir. 2004) (“Although stripped of the right
14 to immediate possession of its property, the creditor receives [through adequate protection]
15 assurances that the value it could have received through foreclosure will not decline.”) (internal
16 citations and quotations omitted).

18 A debtor can only meet its adequate protection burden by showing a “firm evidentiary basis”
19 that the secured creditor’s liens will be adequately protected from the decrease in value that will
20 be caused if the debtor is allowed to use the cash collateral. *In re Windsor Hotel, L.L.C.*, 295 B.R.
21 307, 314 (Bankr. C.D. Ill. 2003) (“A finding of adequate protection should be premised on facts, or
22 on projections grounded on a firm evidentiary basis.”) The debtor bears the burden of proof on the
23 issue of whether the secured party’s interest in cash collateral is adequately protected. 11 U.S.C. §
24 363(p)(1) (“the [debtor in possession] has the burden of proof on the issue of adequate protection”).
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26 Here, the Debtors have not and cannot meet this burden.
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1 **2. The Court Should Deny The Debtors' Use of the Master Trustee's Cash Collateral**
2 **Because the Debtors Cannot Adequately Protect the Master Trustee's Interest in**
3 **the Cash Collateral**

4 The Master Trustee has a first position lien on all of the Debtors' right, title and interest in
5 and to accounts, chattel paper, instruments and general intangibles (each as defined in Division 9 of
6 the California Commercial Code) and the proceeds thereof, among other collateral as set forth more
7 fully in paragraph 13 of the Interim Order. Thus, the cash generated by the Debtors' operations is
8 the Master Trustee's cash collateral. *See* Docket No. 27, pg. 4, lines 2-4. Based on the Debtors'
9 budgets they have already used most, if not all, of the nearly \$5 million of cash that they had on
10 hand on the Petition Date. The Debtors do not generate positive operational cash flows and therefore
11 will not be able to replace the Master Trustee's cash collateral during this case. *See* Docket No. 36
12 pg. 2 at lines 10-12; pg. 4 at lines 25-26; and pg. 5 at lines 1-5. Moreover, as the Committee has
13 pointed out, the Debtors accounts receivable, to which the Master Trustee's lien also attaches, have
14 neither decreased in value *nor increased* in value during this case. [Docket No. 289 at ¶9]. Thus, it
15 is obvious that a decrease of \$5 million of cash with no corresponding increase in accounts
16 receivable represents a diminution of \$5 million of value in the Master Trustee's cash collateral.

17 Therefore, because the Debtors have depleted, or are about to deplete, all of the cash on hand
18 at the start of this case, and they do not have the ability to generate replacement cash due to
19 operational losses (and particularly if the professional fee "carve-out" were approved), they cannot
20 provide the Master Trustee with adequate protection for the use of its cash collateral for their
21 continued operations as the Committee appears to argue. Considering the circumstances of this case,
22 i.e., that the Debtors operate a safety net hospital servicing a financially vulnerable community, and
23 that the Debtors are supposedly attempting to sell the Hospital as a going concern, the Master
24 Trustee, on behalf of the parties it represents, has been amenable to permitting its cash collateral to
25 be used for the sole purpose of keeping the Hospital operating and serving the community of
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1 Montebello. The Master Trustee remains willing to allow its cash collateral to be used by the
2 Hospital, but only on the terms set forth in Exhibit A attached hereto and on the condition that the
3 Debtors retain an investment banker with experience in similar cases. However, the Master Trustee
4 does not consent to the Debtor's proposed priming of its adequate protection liens and its
5 superpriority administrative claims through the supposed "carve-out" under the DIP Motion, which
6 would only serve to enrich the Debtors' professionals who have already extracted almost \$3 million
7 from the Debtors for pre-petition services. Nor does the Master Trustee consent to the carve-out
8 now being proposed by the Debtor and Committee [Docket No. 286 at ¶24].

10 Specifically, through the DIP Motion, the Debtors seek to subordinate the adequate
11 protection claims granted to the Master Trustee through the Cash Collateral Orders to guarantee
12 payment of the very high professionals' fees incurred by these estates. Those payments would
13 unnecessarily drain all of the remaining unencumbered assets from these estates leaving nothing
14 with which the Debtors could provide adequate protection to the Master Trustee for their use of its
15 cash collateral throughout these cases. Absent the adequate protection that the Master Trustee has
16 *already* been granted for the prior use of its cash collateral, and additional adequate protection for
17 any future use and diminution of its cash collateral, the Court cannot approve the Debtors' use of its
18 cash collateral. *See* 11 U.S.C. §363(e).

20 The Debtors have also, or will shortly, use all of the initial draw of \$6 million in debtor-in-
21 possession financing requested and obtained through the DIP Motion and the Interim Order [Docket
22 No. 182] just to support the approximately \$3 million of operating losses that the Debtors endure on
23 a monthly basis. The Debtors' projections anticipate that the initial DIP Loan draw will be
24 completely depleted before the end of June requiring the Debtors to draw on the remaining \$7
25 million under the DIP Loan, which the Debtors also anticipate depleting by the third week in June.
26 But that is only because, instead of using those monies to continue the operations of the Hospital
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1 until the Debtors can conduct a sale process as the Debtors' professionals originally agreed to do,
2 or to adequately protect the Master Trustee, as they Debtors promised to do, the Debtors are seeking
3 authority to pay nearly all of that \$7 million to the estates' professionals now and without any
4 certainty as to whether a sale may occur. If, instead, the Debtors' professionals honored their prior
5 agreement and put off the question of fees until the end of this case, the Debtors would have several
6 additional months of runway which would be sufficient to restart the sales process with an
7 experienced investment banker.

9 But, again, after holding themselves out as champions of this struggling safety net Hospital
10 during the first days of this case, the Debtors' professionals have now shown their true colors.
11 Despite the fact that the Debtors, consisting mainly of a single hospital, are projecting that they will
12 lose over \$17 million during the first 9 weeks of this case, they have hired two major law firms, who
13 charge as much as \$1,770 per hour [Docket No. 281 at pg. 7], and a financial advisor, PPP, who is
14 charging very high rates for providing simple book-keeping services. PPP is also seeking to charge
15 the Debtors a full commission to sell the Hospital regardless of whether the successful bidder was
16 sourced by PPP, or if that bidder had been engaged in negotiations with the Hospital prior to PPP's
17 retention by the Debtors, and despite the fact that PPP does not appear to have any prior experience
18 selling a distressed hospital in California.¹¹ The Committee has also hired two additional major law
19 firms and its own financial advisor despite the fact that it appears increasingly likely that this case
20 will not result in any payments to unsecured creditors.

23 Thus, because the Debtors have no unencumbered assets and are proposing to drain all
24 remaining cash from these estates before the end of June, their continued use of the Master Trustee's

26 ¹¹ Indeed, PPP has not only been unable to identify to the Master Trustee a single distressed hospital in California
27 that it has sold, it has also been unable to identify a single hospital it has sold anywhere. A preliminary review of PPP's
28 retention papers confirms this fact. [Docket Nos. 280 and 285]. Thus, the Debtor has taken the highly unusual risk of
retaining an unproven investment banking firm with no experience in selling distressed hospitals to sell a very vulnerable
Hospital, over the objection of the senior secured creditor.

1 cash collateral is not being adequately protected from the diminution of over \$5 million of cash held
2 by the Debtors on the Petition Date.

3 Therefore, the Court should deny the Cash Collateral Motion on the terms presented. The
4 Master Trustee will consent to the use of its cash collateral on the terms set forth in Exhibit A, if the
5 Debtors agree to hire a proven investment banker with experience in this sector.
6

7 **3. The Court Should Deny The Debtors' Request to Fund Post-Petition Retainers for**
8 **their and the Committee's Professionals**

9 In nearly every bankruptcy case it is uncertain whether the estate will have sufficient assets
10 to pay administrative expenses in full. *In re MolyCorp, Inc.*, 562 B.R. 67, 76 (Bankr. D. Del. 2017)
11 (“Those holding administrative claims may run the risk of non-payment or partial payment
12 whenever there is an adequate protection shortfall under section 507(b), super-priority borrowing
13 under section 364, or conversion of the case and subordination of Chapter 11 administrative
14 expenses under section 726(b) of the Bankruptcy Code. These risks are well known to experienced
15 bankruptcy practitioners, such as the attorneys for the Committee in this case.”)

16 A bankruptcy court’s discretion to permit payment of administrative expenses is restricted
17 to the existence of unencumbered assets that exceed any super-priority claims. *Id.* Thus, “as a
18 matter of course, ‘[p]ost-petition attorneys’ and accountants’ fees are administrative expenses and
19 may not be given priority over existing liens and super-priority claims.” *In re MolyCorp, Inc.*, 562
20 B.R. at 75-76. (quoting *In re Am. Res. Mgmt. Corp.*, 51 B.R. 713, 719 (Bankr. D. Utah 1985)).

21 The bankruptcy court (Sontchi, J.) in *MolyCorp, Inc.*, commented that “the effect of a carve-
22 out is to allow affected professionals to look to the secured creditor’s collateral where otherwise
23 they would not be able to do so.” *In re MolyCorp, Inc.*, 562 B.R. at 76. As stated herein, no secured
24 creditor is agreeing to pay the professionals of these estates from the proceeds of its collateral.
25 Rather, the Debtors are seeking to use the proceeds of the DIP Loan to pay the estates’ professionals.
26 The DIP Lender does not have a lien on the proceeds of the DIP Loan once those monies are released
27 to the Debtors, nor is it agreeing to reduce its recovery to pay any administrative claims of these
28 estates. The DIP Lender has little to no interest in how these Debtors use the proceeds of the DIP

1 Loan. It is disingenuous to say the least for the Debtors to style the “carve-out” provision as such
2 when they know full well that it is not in fact a carve-out.

3 The Court should also deny the requested “carve-out” because the Debtors’ professionals
4 expressly agreed in the Interim Order not to pursue the very carve-out that they now seek:

5 Counsel for the Debtors and counsel for the [Master] Trustee agree to defer seeking
6 this Court’s approval of payment of their respective fees and expenses until the earlier
7 of (a) close of a sale of the Beverly Community Hospital; (b) such time as the Debtors
8 and the [Master] Trustee submit to the Court an agreed Budget that contains budgeted
9 line items for such professional fees; and (c) the closing of the Bankruptcy Case. *As*
10 *such, no fees or expenses of professionals, whether of the Debtor, [Master] Trustee*
11 *or Committee, shall be paid from, or carved out of, the proceeds of the DIP Loans*
12 *unless and until the Court approves a budget for those fees and expenses which has*
13 *been mutually agreed to by all parties or the Court enters final orders pursuant to*
14 *Section 330 of the Bankruptcy Code approving such fees and expenses.*

15 *Id.* at ¶15(b) (emphasis added).

16 Notwithstanding the foregoing, the Debtors and their professionals are trying to do an end-
17 run around the priority scheme of the Bankruptcy Code, and their prior agreement that was approved
18 by the Bankruptcy Court and included in the Interim Order. The Bankruptcy Court should decline
19 to countenance this attempt and deny any order on the DIP Motion containing a “carve-out” for
20 professional fees of the estate professionals absent approval of all affected parties as previously
21 agreed.¹²

22 ¹² The Debtors cite to several unreported orders entered by courts within the 9th Circuit purporting to allow “carve-
23 outs” from debtor in possession financing facilities. [Docket No. 270 at pgs. 3-4]. However, the “carve-outs” permitted
24 in those cases are exponentially smaller than the approximately \$6 million purported carve-out herein. In fact, the only
25 case cited by the Debtors that involved a “carve-out” of over \$1 million was the *Verity Health Sys.* case, which was a
26 substantially larger case, involving a hospital system with 16 debtors and \$185 million of debtor in possession financing
27 as opposed to the single hospital being sold in this case and the \$13.25 million in debtor-in-possession financing. In
28 fact, the “carve-out” in *Verity Health Sys.*, was limited to \$2 million, i.e., approximately one-third of the Debtor’s
proposed carve-out, and the court’s order permitting the carve-out required \$3,055,000 of adequate protection payments
be made to a pre-petition secured creditor being primed by the debtor-in-possession lender. *See e.g., In re Verity Health*
Sys. of Cal., Inc., Case No. 2:18-bk-20151-ER (Bankr. C.D. Cal. Oct. 4, 2018) [Docket No. 409 at H]. The Debtors are
asking for 3 times the Verity carve-out and are effectively stripping all of the Master Trustee’s adequate protection as a
result. Moreover, the debtor-in-possession lender in Verity was granted a lien in substantially all of the debtors’ assets
including the proceeds of its loans, whereas the DIP Lender here is only being granted a lien in certain real property and
other related collateral, but not the proceeds of its loan or the Hospital real estate which that loan is meant to support
until it is sold as a going concern.

1 **II. THE MASTER TRUSTEE DOES NOT CONSENT TO THE PRIMING OR**
2 **REMOVAL OF ANY OF ITS PRE-PETITION LIENS AS CONTEMPLATED BY**
3 **THE DIP MOTION**

4 Despite informing the Court and the Master Trustee during the first day hearing in this case
5 that there was no overlap between the DIP Collateral and the Master Trustee's pre-petition collateral,
6 the Debtors pledged certain of the Master Trustee's personal property collateral, namely certain
7 accounts, chattel paper and general intangibles of the Debtors, to the DIP Lender to secure the DIP
8 Loan. [Docket No. 182 at ¶13]. To fix what was at best a careless blunder by the Debtors, and at
9 worst a blatant misrepresentation to the Court and the Master Trustee, the Master Trustee agreed to
10 allow the DIP Lender to take a first position lien in that collateral so that the DIP Loan would be
11 available to keep the Hospital operational until it could be sold. That agreement was expressly
12 conditioned on the removal of the "carve-out" [*id.* at ¶15(b)] from the Budget and the Debtors'
13 granting the Master Trustee a second position lien on *all* of the DIP Collateral. *See* Docket No. 182
14 at ¶13(c).

15
16 However, now that the Debtors have received the benefit of the first \$6 million of the DIP
17 Loan, they seek to strip the Master Trustee of its second position lien on all of the DIP Collateral,
18 but they still expect the Master Trustee to allow the DIP Lender to prime its liens on the Debtors'
19 accounts and other personal property. *See* Docket No. 284 at ¶12(c) (limiting the Master Trustee's
20 replacement liens in the DIP Collateral to the liens it had pre-petition). The Master Trustee does
21 not consent to the Debtors reneging on their previously agreed-to deal.

22
23 Indeed, had the Master Trustee known that the Debtors would simply re-trade their
24 agreement with respect to the consideration the Master Trustee received for allowing the DIP Lender
25 to prime its liens, it would not have agreed to the Interim Order in the first instance. The Debtors'
26 re-trade of the agreement smacks of bad faith.

1 As with the Cash Collateral Motion, the Debtors cannot adequately protect the Master
2 Trustee for the priming of its liens under the DIP Motion. [Docket No. 284 at ¶12]. Therefore,
3 absent adequate protection, the Court cannot approve the DIP Motion over the objection of the
4 Master Trustee. 11 U.S.C. §364(d)(1) (requiring “adequate protection of the interest of the holder
5 of the lien on the property of the estate on which such senior or equal lien is proposed to be granted”).
6

7 **III. THE EQUITY IN THE MONTEBELLO ESTATE SHOULD NOT BE USED TO PAY**
8 **THE ADMINISTRATIVE EXPENSES OF ITS CO-DEBTORS**

9 The Court should not permit the Debtors to strip the Montebello estate of all of its available
10 equity simply to fund the professional fees of its co-debtors. The Debtors have not been
11 substantively consolidated, and the Master Trustee’s deficiency claim is likely the largest, if not the
12 only, claim against the Montebello estate. Through the proposed DIP Loan, the Debtors would drain
13 at least \$14 million of equity from Montebello’s estate and use approximately \$6 million of that
14 equity, which should be available to pay the Master Trustee and other creditors (if any) of
15 Montebello, to pay the professionals, who are not providing any cognizable benefit to any of these
16 estates, let alone Montebello.
17

18 There is no basis, whatsoever, for the Debtors’ professionals to carve-out, surcharge¹³ or
19 otherwise elevate themselves over the secured and other administrative claimants of these estates,
20 and certainly not the legitimate creditors of Montebello. Montebello has few, if any creditors other
21 than the Master Trustee. Absent substantive consolidation there is no basis in the Bankruptcy Code
22

23 ¹³ The payment of administrative expenses from the proceeds of secured collateral is allowed only when those
24 expenses are incurred *primarily* for the benefit of the secured creditor or when the secured creditor caused or consented
25 to the expense. *In re Cass*, No. 2:12-bk-16090 RK, 2015 Bankr. LEXIS 1554, at *42-43 (Bankr. C.D. Cal. May 7,
26 2015) (citing *In re Cascade Hydraulics*, 815 F.2d 546, 548 (9th Cir 1987)). Here, the Debtors’ professionals are
27 proposing to sell the Master Trustee’s collateral through a hopelessly flawed process (that the Master Trustee has not
28 been allowed to participate in) and that, if allowed to continue, would, in all likelihood, diminish the return that the
Master Trustee would have been entitled to, either in a foreclosure process or through a well-managed sale process in
this case. Therefore, absent any concrete or direct benefit being conferred on the Master Trustee by these estates’
professionals, and because the Master Trustee does not consent to a surcharge of its any of its collateral under Section
506(c) and is explicitly reserving all rights related to the Debtors’ sale process, the Debtors are not entitled to surcharge
the proceeds of the Master Trustee’s collateral to pay their professionals.

1 to divert the unencumbered assets of one estate to pay the expenses of another. This is particularly
2 true where the professionals who are seeking payment have completely cut the Master Trustee out
3 of the sale process with respect to its collateral,¹⁴ have provided incomplete and misleading (at best)
4 information about that sale process to the Master Trustee and have refused to replace their novice
5 investment banker, PPP, at the insistence of the Master Trustee.
6

7 It is contrary to the very foundations of the bankruptcy process that a debtor could, as the
8 Debtors are trying to do here, sell fully encumbered collateral, cut the secured creditor out of the
9 process and turn around and expect to have the millions of dollars of professional fees it incurred in
10 doing so paid in full without providing any cognizable benefit to that secured creditor or these
11 estates. *See In re Riverside Inv. P'ship*, 674 F.2d 634, 640 (7th Cir. 1982) (stating in dicta that “[a]s
12 a general rule, the bankruptcy court should not order property sold ‘free and clear of’ liens unless
13 the court is satisfied that the sale proceeds will fully compensate secured lienholders and produce
14 some equity for the benefit of the bankrupt’s estate”). What’s more, the Master Trustee has
15 repeatedly objected to those same professionals being trusted to sell its collateral due to their
16 inexperience, the obvious consequences of which have been borne out by the fact that over one
17 month into this case the Debtors have been unable to identify an acceptable stalking-horse bidder.
18

19 Therefore, the Court should deny the DIP Motion to the extent that it permits the Debtors to
20 use the assets of Montebello to pay professional fees of its co-debtors, including PPP. The Master
21 Trustee is prepared to consent to the final DIP Loan on the terms set forth in Exhibit B so long as
22 the Debtors agree to restart the sale process with a proven investment banker.
23
24

25
26 ¹⁴ Indeed, the Master Trustee has been forced to turn to other participants in these cases, such as the DIP Lender
27 and Committee Counsel, to obtain important information about the case, including the Debtor’s plans with respect to
28 the sale of the Master Trustee’s collateral. The Debtors has repeatedly provided information including drafts of proposed
orders and pleadings to these professionals while not providing the same to the Master Trustee. And in response to a
request that the Debtors agree to mediate the issues surrounding the sale process, the Debtors’ lead counsel has even
gone so far as to inform the Master Trustee’s counsel in writing that “there is no reason to seek mediation in this case
because the secured lenders don’t have anything to contribute to the solution.”

CONCLUSION

WHEREFORE, U.S. Bank Trust Company, National Association, as Master Trustee, respectfully requests that the Court DENY the Motions and GRANT any other or further relief as the Court deems just and proper.

Respectfully Submitted

GREENBERG TRAURIG, LLP

By /s/ Kevin J. Walsh

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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,

- ☒ Affects all Debtors

☐ Affects Beverly Community
Hospital Association

☐ Montebello Community Health
Services, Inc.

☐ Beverly Hospital Foundation

Lead Case No.: 2:23-bk-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

**FINAL ORDER (I) AUTHORIZING THE
DEBTORS TO USE THE CASH
COLLATERAL OF U.S. BANK TRUST
COMPANY NATIONAL ASSOCIATION,
AS MASTER TRUSTEE; (II) PROVIDING
U.S. BANK TRUST COMPANY
NATIONAL ASSOCIATION, AS MASTER
TRUSTEE, ADEQUATE PROTECTION;
AND (III) GRANTING RELATED
RELIEF**

Date: May 24, 2023

Time: 9:00 am

Judge: Sandra R. Klein

Place: Zoom.Gov

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 This Order (I) Authorizing the above-captioned debtors and debtors in possession
2 (collectively, the “Debtors”) to Use the Cash Collateral of U.S. Bank Trust Company National
3 Association, as master trustee and bond trustee of certain bonds described below (collectively the
4 “Master Trustee”); (II) Providing the Master Trustee, Adequate Protection; (III) Scheduling a Final
5 Hearing; and (IV) Granting Related Relief (this “Order”) is entered upon the *Debtors’ Emergency*
6 *Motion for Entry of an Order Granting Debtors’ Emergency Motion (I) Approving Debtors’ Use of*
7 *Cash Collateral; and (II) Scheduling a Final Hearing on the Use of Cash Collateral* (the “Motion”)²
8 [Docket No. 27] filed on April 20, 2023; upon the First Day Declaration, and upon the terms agreed
9 to by the Debtors and the Master Trustee.

11 This Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and having
12 found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that it may enter a final order
13 consistent with Article III of the United States Constitution; that venue of this proceeding and the
14 Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; that the relief
15 requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other
16 parties in interest; that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion
17 were appropriate under the circumstances and no other notice need be provided; and this Court
18 having reviewed the Motion and having heard the statements in support of the relief requested
19 therein at a hearing before this Court on April 21, 2023 at 2:00 p.m.; and this Court having
20 determined that the legal and factual bases set forth in the Motion and at the Hearing establish just
21 cause for the relief granted herein and after due deliberation and sufficient cause appearing therefor,
22 the Court makes the following findings of fact and rulings of law:
23
24
25
26
27

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

The Debtors' Chapter 11 Case; Procedural Background; Jurisdiction; Notice

A. On April 19, 2023 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code and thereby commenced these cases thereunder (collectively, the "Chapter 11 Case"). The Debtors are operating their respective businesses and managing their respective properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These cases have not been substantively consolidated. No request has been made for the appointment of a trustee or examiner.

B. On May 16, 2023, the United States Trustee filed the *Amended Notice of Appointment and Appointment of Committee of Unsecured Creditors Holding Unsecured Claims* [Docket No. 263] appointing the official committee of unsecured creditors pursuant to 11 U.S.C. § 1102(a) (the "Committee").

C. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

D. One of the Debtors, Beverly Community Hospital Association (the "Association"), owns and operates an acute care hospital ("Beverly Hospital") located in the City of Montebello, California. Beverly Hospital is a 224-bed licensed acute care hospital with 194 beds offering a full range of services, including comprehensive diagnostic and treatment options.

E. One of the other Debtors, Montebello Community Health Services, Inc. ("MCHS") owns and operates a medical office building which houses physician's offices, an outpatient medical center and certain rental properties.

F. The third Debtor, the Beverly Hospital Foundation (the "Foundation"), is a California nonprofit public benefit corporation and a tax-exempt organization under the Internal Revenue Code.

1 G. This Court held a hearing to consider granting the relief requested in the Motion on an
2 interim basis on April 21, 2023 (“Initial Hearing”), following which, this Court entered an order
3 [Docket No. 124] based on its consideration of the Motion, the arguments of counsel, the evidence
4 adduced at the Initial Hearing, and the record before it.

5
6 H. The Debtors and the Master Trustee agreed to a further extension of the use of cash
7 collateral on the terms set forth in a second interim order [Docket No. 159], a third extension of the
8 use of cash collateral on the terms set forth in a third interim order [Docket No. 203], and a fourth
9 extension of the use of cash collateral on the terms set forth in a fourth interim order [Docket No.
10 264] (the four interim orders described in Recital H, collectively, the “Interim Orders”). The
11 consensual use of Cash Collateral under the Interim Orders runs through 5:00 p.m. Pacific time on
12 May 24, 2023.

13
14 I. This Court held a hearing to consider the Motion on a final basis on May 24, 2023 (the
15 “Final Hearing”).

16 **The Secured Bond Obligations**

17 J. Each of the Debtors is a member of an obligated group that is obligated to the Bond
18 Trustee (defined below) for the benefit of the beneficial holders (the “Bondholders”) of the Bonds
19 (as defined below) authorized and issued by the California Statewide Communities Development
20 Authority (the “Issuer”) for the benefit of the Debtors.

21
22 K. In 2015, the Issuer issued its \$39,725,000 Revenue Bonds (Beverly Community Hospital
23 Association), Series 2015 (the “Series 2015 Bonds”) pursuant to a certain Master Trust Indenture
24 dated as of December 1, 2015 (as supplemented and amended, the “Master Trust Indenture”) among
25 the three Debtors and U.S. Bank National Association, as master trustee (in such capacity, the
26 “Master Trustee”), and a Bond Indenture, dated as of December 1, 2015 (the “2015 Bond
27 Indenture”) between the Issuer and U.S. Bank National Association, as the bond trustee thereunder
28

1 (in such capacity, the “2015 Bond Trustee”). The proceeds of the Series 2015 Bonds were loaned
2 by the Issuer to the Association pursuant to a Loan Agreement, dated as of December 1, 2015 (the
3 “2015 Loan Agreement”) between the Issuer and the Association.

4 L. In 2017, the Issuer issued its \$19,840,000 Revenue Bonds (Beverly Community Hospital
5 Association), Series 2017 (the “Series 2017 Bonds”; and together with the Series 2015 Bonds, the
6 “Bonds”) pursuant to the Master Trust Indenture, and a Bond Indenture, dated as of May 1, 2017
7 (the “2017 Bond Indenture”; and together with the 2015 Bond Indenture, the “Bond Indentures”)
8 between the Issuer and U.S. Bank National Association, as trustee thereunder (in such capacity, the
9 “2017 Bond Trustee”, and together with its capacity as the 2015 Bond Trustee, the “Bond Trustee”).
10 The proceeds of the Series 2017 Bonds were loaned by the Issuer to the Association pursuant to a
11 certain Loan Agreement, dated as of May 1, 2017 (the “2017 Loan Agreement”; and together with
12 the 2015 Loan Agreement, the “Loan Agreements”) between the Issuer and the Association.
13
14

15 M. U.S. Bank Trust Company National Association is the successor to U.S. Bank National
16 Association in its role as the Master Trustee, the 2015 Bond Trustee and the 2017 Bond Trustee and
17 is referred to herein as the Master Trustee in those capacities.

18 N. To secure the obligations of the Debtors under the Master Trust Indenture, the Bond
19 Indentures and the Loan Agreements, the Master Trustee has a security interest, lien and mortgage
20 on substantially all of the Association’s assets pursuant to (i) the Master Indenture and (ii) a Deed
21 of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of December 1,
22 2015, by the Association as trustor, to Chicago Title Company, a California corporation, as trustee,
23 for the benefit of U.S. Bank, National Association, as master trustee under the Master Trust
24 Indenture (the “Deed of Trust”).
25

26 O. Pursuant to the Master Trust Indenture, the Master Trustee also holds a security interest
27 in the Gross Receivables (as defined in the Master Trust Indenture as the accounts, chattel paper,
28

1 instruments and general intangibles (all as defined in the Cal. Comm. Code § 9101 *et seq.* (the
2 “UCC”))) of each of the Association, the Foundation and MCHS. All of the collateral described in
3 this Paragraph is referred to as the “Prepetition Collateral”. The Master Trustee’s liens on the
4 Prepetition Collateral are referred to herein as the “Prepetition Liens”. The Master Trust Indenture,
5 the Bond Indentures, the Loan Agreement, the Deed of Trust, and any other documents executed in
6 connection with such documents (including the Hanmi Loan Agreement (defined below) and any
7 other documents executed in connection with that agreement), or the Bonds are referred to herein
8 as the “Indenture Documents”.

10 P. Pursuant to a Fourth Supplemental Master Indenture, dated as of August 1, 2019,
11 between the Association, as the obligated group representative, and U.S. Bank National Association,
12 as master trustee, the Debtors became obligated to Hanmi Bank under a Revolving Loan Agreement,
13 dated as of August 1, 2019, between the Association and Hanmi Bank (the “Hanmi Loan
14 Agreement”). The obligations under the Hanmi Loan Agreement are further memorialized by that
15 certain Revolving Promissory Note, dated August 1, 2019, issued by the Association in favor of
16 Hanmi Bank in the principal amount of \$10,000,000 (the “Note”). The obligations of the Debtors
17 under the Hanmi Loan Agreement and the Note are *pari passu* with their obligations under the other
18 Indenture Documents and are secured by the liens in favor of the Master Trustee thereunder.

20 Q. The Master Trustee has the right to enforce the Debtors’ obligations under the Indenture
21 Documents, pursuant to its rights under the Master Indenture, the Loan Agreements and the other
22 Indenture Documents (collectively, the “Obligations”).

24 R. For the avoidance of doubt, the provisions in paragraphs J through Q above are subject
25 to the terms of paragraph 28 hereof.

26 **The Claim on the Obligations**

1 S. The Debtors stipulate that as of the Petition Date, the amounts due and owing under the
2 Bonds, the Note and Indenture Documents (collectively, the “Claim on the Obligations”) are not
3 less than the amounts shown below. The unpaid interest calculation is as of the Petition Date:

- 4 (i) unpaid principal on account of the Series 2015 Bonds in the amount of \$35,620,000;
- 5 (ii) accrued but unpaid interest on the Series 2015 Bonds in the amount of \$381,799.17,
6 which interest continues to accrue on the Series 2015 Bonds at a per diem rate of
\$4,894.87;
- 7 (iii) unpaid principal on account of the Series 2017 Bonds in the amount of \$19,400,000;
- 8 (iv) accrued but unpaid interest on the Series 2017 Bonds in the amount of \$438,471.25,
9 which interest continues to accrue on the Series 2017 Bonds at a per diem rate of
\$2,609.95;
- 10 (v) unpaid principal on account of the Note in the amount of \$10,000,000;
- 11 (vi) accrued but unpaid interest on the Note in the amount of \$ 32,569.45, which
12 interest continues to accrue on the Note at a per diem rate of \$1,666.67 through
May 3 and \$1,736.11 starting May 4.; and
- 13 (v) unliquidated, accrued and unpaid fees and expenses of the Master Trustee and its
professionals. Such amounts when liquidated shall be added to the Obligations.

14 The Master Trustee reserves any and all rights to amend the Claim on the Obligations. Nothing
15 herein shall be deemed to be a waiver of such rights. In the event the Master Trustee amends the
16 Claim on the Obligations to increase the amount set forth in (i) through (vi) above, the Debtors may
17 challenge any amounts in excess of (i) through (vi) as set forth above.

18 For the avoidance of doubt, this paragraph S is subject to the terms of paragraph 28 hereof.

19
20 **Use of Cash Collateral and Need for Adequate Protection**

21 T. The Debtors have requested the use of the Master Trustee’s Cash Collateral (as defined
22 below) in connection with the Chapter 11 Case to preserve the value of its assets while such assets
23 are marketed for a potential sale. Pursuant to the Bankruptcy Code, the Debtors are required to
24 provide adequate protection to the Master Trustee for the use of such Cash Collateral. The Master
25 Trustee has informed the Debtors and the Court that the Master Trustee does not consent to the use
26 of Cash Collateral except upon the terms and conditions of this Order.
27
28

1 U. Without the use of Cash Collateral, the Debtors would suffer immediate and irreparable
2 harm and would likely be required to cease operations immediately or, at a minimum, the Debtors'
3 inability to use Cash Collateral would disrupt the Debtors as a going concern and would otherwise
4 not be in the best interests of the Debtors, their patients, or their creditors, including the Master
5 Trustee. In lieu of giving the Master Trustee relief from the automatic stay or attempting to obtain
6 this Court's approval for use of Cash Collateral (as defined below) on a non-consensual basis, the
7 Debtors wish to provide adequate protection of the liens and security interests of the Master Trustee
8 in Cash Collateral and other Prepetition Collateral on the terms set forth in this Order, reflecting the
9 agreement of the Debtors and the Master Trustee [and the Committee].
10

11 V. The Master Trustee is willing to consent to the use of its Cash Collateral by the Debtors
12 on the terms set forth in this Order, including that Cash Collateral is used solely in the amounts and
13 categories set forth in the Budget (as defined below).
14

15 W. The terms of the proposed use of Cash Collateral, and this Order are fair and
16 commercially reasonable, reflect the Debtors' prudent exercise of business judgment consistent with
17 their fiduciary duties and constitute reasonably equivalent value and fair consideration. Good cause
18 has been shown for the entry of this Order.

19 X. To the extent any portion of the foregoing constitute rulings of law, they shall constitute
20 this Court's rulings with respect to the matters so stated.

21
22 **NOW, THEREFORE, THE COURT HEREBY ORDERS AS FOLLOWS:**

23 1. Disposition. The Motion is granted on the terms set forth in this Order. The date of
24 this Order shall be known as the "Effective Date." Any objections to the relief sought in the Motion
25 that have not been previously resolved or withdrawn, and all reservations of rights contained therein,
26 are overruled on the merits.
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1 2. Jurisdiction. This Court has jurisdiction over this matter pursuant to 28 U.S.C.
2 §§ 157(b) and 1334, and this matter constitutes a core proceeding as defined in 28 U.S.C.
3 § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The Debtors have
4 operated their businesses and managed their properties as Debtors in possession pursuant to 11
5 U.S.C. §§ 1107 and 1108.

6 3. Notice. The Debtors have properly served notice of the Motion and the final hearing
7 thereon pursuant to Sections 102, 361, 362, and 363 of the Bankruptcy Code, Bankruptcy Rules
8 2002 and 4001, and the local rules of the Bankruptcy Court (the “Local Rules”), which notice was
9 sent to, among others: (i) the thirty (30) largest unsecured creditors of the Debtors on a consolidated
10 basis; (ii) the Office of the United States Trustee for the Central District of California; (iii) counsel
11 to the DIP Lender; (iv) the Office of the Attorney General of California; (v) the Prepetition Secured
12 Creditors and their counsel, including the Master Trustee; (vi) all other parties with liens of record
13 on assets of the Debtors (as disclosed in lien searches completed by the Debtors prior to the Petition
14 Date); and (vii) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002
15 or is required to receive notice under Bankruptcy Rules 2002, 4001, or 9014 and any applicable
16 Local Rules. This notice is appropriate in the particular circumstances and is sufficient for all
17 purposes under the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules in
18 respect to the relief requested.

19 4. Good Cause. Good cause has been shown for entry of this Order.

20 5. Authorization to Use Cash Collateral. The Debtors are authorized to use cash
21 collateral (as defined in Section 363 of the Bankruptcy Code) including Gross Receivables (as
22 defined in the Master Trust Indenture) (the “Cash Collateral”), until the earlier of (i) the Debtors’
23 ability to use Cash Collateral terminates as the result of the occurrence of a Termination Event (as
24 set forth below); (ii) July 31, 2023; or (iii) such other date as agreed to in a pleading signed by the
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1 Master Trustee and filed in the Bankruptcy Court and served upon all parties entitled to notice in
2 accordance with Paragraph 3 hereof), unless extended by further order of the Court. Such use of
3 Cash Collateral is only permitted in accordance with the terms of this Order except as it may
4 modified by agreement of the Master Trustee and the Debtors in consultation with the Committee,
5 and subject to further order of the Court.
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7 6. Budget. The Debtors' use of Cash Collateral shall be limited solely to the categories
8 of expenses listed in the Budget attached to Docket No. ____ (the "Budget"), as may be amended
9 from time to time with the prior written approval of the Master Trustee, subject to Permitted
10 Variances. A "Permitted Variance" shall mean, for any Testing Period (as defined in this
11 paragraph): (i) any favorable variance, (ii) an unfavorable variance of not more than fifteen (15%)
12 percent in aggregate disbursements. Compliance will be tested weekly on every Wednesday on a
13 rolling four (4) week basis (each, a "Testing Period"). If the cash disbursements in any such period
14 are less than the amounts for such period in the applicable Budget, then the Permitted Variance for
15 such disbursements for the next succeeding periods shall be increased by an amount equal to such
16 difference (and shall continue to roll over into successive periods to the extent such additional
17 budgeted capacity is unused by the Debtors). The Permitted Variance with respect to each Testing
18 Period shall be determined and certified to the Master Trustee and the Committee by the Debtors
19 not later than the fifth (5th) day immediately following each such Testing Period. The Debtors shall
20 provide to the Master Trustee and the Committee once each week following entry of this Order, a
21 weekly report certified by the Debtors' chief financial officer and in the same form as the Budget
22 indicating all receipts received and disbursements made by the Debtors in the applicable Testing
23 Period compared to the Budget and detailing any variances that are not Permitted Variance.
24 Notwithstanding any other order of the Court, the Debtors shall not be permitted to make any
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1 payments to professionals under the terms of this Order using Cash Collateral. The Master Trustee
2 reserves all rights to object to the retention of estate professionals.

3 7. Exclusion from Cash Collateral. No party, other than the Debtors, may use the Cash
4 Collateral of the Master Trustee. The Debtors are not authorized to use and shall not use any Cash
5 Collateral not derived in the ordinary course of the Debtors' operations.

6 8. Prohibited Use of Cash Collateral. Except as expressly provided in this Order
7 (including paragraph [27]), no Cash Collateral or proceeds thereof shall be used for the purpose of:
8 (i) objecting to, or contesting in any manner, or raising any defense to, the validity, amount, extent,
9 perfection, priority, or enforceability of the Bonds, the Prepetition Collateral, the Claim on the
10 Obligations, or any liens or security interests with respect thereto, or any other rights or interests of
11 the Master Trustee therein; (ii) asserting any claims or defenses or causes of action arising out of,
12 based upon, or related to, in whole or in part, the Bonds or the Indenture Documents, against the
13 Master Trustee, the Bondholders in their capacity as such, or their respective agents, affiliates,
14 subsidiaries, directors, officers, representatives, attorneys or advisors including, without limitation,
15 any actions under Chapter 5 of the Bankruptcy Code, including with respect to payments made
16 pursuant to the Indenture Documents; (iii) paying any material amounts on account of claims arising
17 before the Petition Date, except to the extent provided for in the Budget and approved by the Court;
18 (iv) seeking to modify any of the rights granted to the Master Trustee hereunder; (v) seeking to
19 bifurcate any claims of the Master Trustee; or (vi) after the filing of a proposed disclosure statement
20 relating to a plan of reorganization of liquidation not consented to by the Master Trustee, taking any
21 actions in pursuit of confirmation of such a plan.

22 9. Amendment or Extension of Budget. The Debtors in consultation with the
23 Committee may, at any time, propose to the Master Trustee in writing (including by email) an
24 amended Budget, for the period covered by this Order. Any such proposed amendment or
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1 modification of the terms and conditions, or any amendment, modification, roll-forward or
2 replacement of the Cash Collateral Budget itself, shall be subject to the prior written consent of the
3 Master Trustee. At such time as the amended budget becomes the Budget, the Debtors shall file a
4 copy thereof with this Court and serve it upon all parties entitled to notice in accordance with
5 Bankruptcy Rule 4001(b). Any party in interest, including the Committee, shall have seven (7) days
6 to object to any amended Budget filed with the Court hereunder. If an objection is timely filed, the
7 Court shall set a hearing on the objection as soon as practicable. If no objection is timely filed to
8 any amended Budget, then the amended Budget shall become the Budget for purposes of this Order,
9 with respect to use of Cash Collateral. In the event of a dispute concerning the Budget, all rights of
10 the Debtors, the Committee, and the Master Trustee shall be and are reserved.

12 10. Rollover Lien. Except as otherwise provided in this paragraph 10 and subject to
13 paragraph [27], as further adequate protection for any diminution in the value of Cash Collateral
14 and other Prepetition Collateral resulting from the Debtors' use thereof after the Petition Date
15 ("Diminution"), and solely to the extent of any Diminution, the Master Trustee shall have a valid,
16 perfected, and enforceable replacement lien and security interest (the "Rollover Lien") in all assets
17 of the Debtors existing on or after the Petition Date of the same type as the Prepetition Collateral,
18 together with the proceeds, rents, products, and profits thereof, whether acquired or arising before
19 or after the Petition Date, to the same extent, validity, perfection, enforceability, and priority of the
20 liens and security interests of the Master Trustee as of the Petition Date (the "Postpetition Bond
21 Collateral"). The Rollover Lien shall be subject to only prior valid and perfected liens existing as of
22 the Petition Date that were senior to the liens of the Master Trustee on the Petition Date. The
23 Rollover Lien shall be exclusive of and not attached to the Aggregate Excluded Assets (as defined
24 herein) but shall include and attached to the Potential Master Trustee Claims (as defined herein).
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1 11. Supplemental Lien. As additional adequate protection for any Diminution and as
2 consideration for the use of Cash Collateral and other consideration given by the Master Trustee as
3 set forth in the *Interim Order: Authorizing the Debtors to Obtain Post-Petition Financing, (II)*
4 *Granting Adequate Protection to Prepetition Protection to Prepetition Secured Creditors, (III)*
5 *Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 182] (the “Interim DIP
6 Financing Order”), and any subsequent final order related thereto, the Master Trustee shall,
7 immediately upon the indefeasible payment in full in cash of all the DIP Obligations of the DIP
8 Lender, as defined in the Interim DIP Financing Order, and/or other satisfaction in full (either in
9 cash, by DIP Lender³ credit bid, or by written consent of DIP Lender) of all the DIP Obligations
10 either (i) under Section 363(k) of the Bankruptcy Code or (ii) upon fully executed deed(s) in lieu
11 and/or the completion of one or more foreclosures or other remedies under applicable California
12 law be granted a valid, binding and perfected first position lien, securing the Obligations, on the
13 proceeds of the DIP Collateral, as defined in the Interim DIP Financing Order, and any remaining
14 DIP Collateral that is not liquidated or used to satisfy the DIP Obligations, which liens and security
15 interests, subject to paragraph [27], shall be valid, perfected, binding, enforceable, non-avoidable
16 and effective liens by operation of law as of the date of the indefensible payment of the DIP
17 Obligations and without any further action by the Master Trustee and without the necessity of
18 executing, filing or recording any financing statements, security agreements, mortgages, deeds of
19 trust, filings with a governmental unit, or other documents, agreements, or instruments or the taking
20 of any other actions (including, for the avoidance of doubt, taking possession of any collateral) to
21 validate or perfect (in accordance with applicable law) the Master Trustee’s liens (the “Supplemental
22 Collateral”; and, collectively with the Prepetition Collateral and the Postpetition Bond Collateral,
23 the “Collateral”). To the extent required by the Indenture Trustee, and upon its reasonable request,
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³ References to “DIP Lender” herein shall be to HRE Montebello, LLC, as lender (together with its successor or assigns).

1 the Debtors shall execute a deed of trust in a form satisfactory to the Indenture Trustee to be recorded
2 in the land records evidencing the foregoing liens granted to the Indenture Trustee in the
3 Supplemental Collateral, and the proceeds thereof, immediately following the indefeasible
4 satisfaction of the DIP Obligations. The Supplemental Liens shall be exclusive of and not attached
5 to the Aggregate Excluded Assets but shall include and attached to the Potential Master Trustee
6 Claims.
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8 12. No Further Action Required. The approval of this Order by the Court shall be
9 sufficient and conclusive evidence of the validity, extent, enforceability, and perfection of the
10 Rollover Lien and the Supplemental Lien granted to the Master Trustee, whether or not the Master
11 Trustee elects to file or record financing statements or any other documents that may otherwise be
12 required under federal or state law in any jurisdiction, or to take such other steps as may otherwise
13 be required to obtain, evidence, or perfect such liens under applicable law; provided, however, that
14 upon the request of the Master Trustee, the Debtors shall execute such other documents as may be
15 reasonably requested to evidence and perfect such liens. The Master Trustee may, in its sole
16 discretion, but shall not be required to, file a certified copy of this Order in any filing or recording
17 office in any jurisdiction in which the Debtors have real or personal property The Debtors are
18 authorized and directed to execute, or cause to be executed, all such financing statements or other
19 documents upon the Master Trustee's reasonable request. Such filing or recording shall be accepted
20 and shall constitute further evidence of perfection of the Master Trustee's liens and security interests
21 on and in the Debtors' assets. Subject to paragraph [27], no obligation, payment, transfer, or grant
22 of security under this Order shall be stayed (other than by court order in an appeal from this Order),
23 restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any otherwise
24 applicable state law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.
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1 13. Superpriority Claim. Subject to paragraph [27], as additional adequate protection for
2 any Diminution, the Master Trustee shall have a superpriority administrative expense claim pursuant
3 to Section 507(b) of the Bankruptcy Code with recourse to and payable from any and all assets of the
4 Debtors' estates (excluding the Aggregate Excluded Assets but including the Potential Master
5 Trustee Claims) (the "Superpriority Claim"). The Superpriority Claim shall have priority, pursuant
6 to Section 507(b) of the Bankruptcy Code, over any and all administrative expenses, diminution
7 claims (except the DIP Lender diminution claim to which the Master Trustee's Superpriority Claim
8 is *pari passu*), and all other claims against the Debtors, now existing or hereafter arising, of any kind
9 whatsoever, including, without limitation, all other administrative expenses of the kind specified
10 in Section 503(b) of the Bankruptcy Code, and over any and all administrative expenses or other
11 claims arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726,
12 1113, or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors,
13 any successor trustee, or any creditor in this Chapter 11 Case, whether or not such expenses or
14 claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment,
15 provided however that the Superpriority Claim shall be *pari passu* with any administrative claims
16 of the DIP Lender.

17
18 14. Adequate Protection Payments. In consideration for the use of Cash Collateral, the
19 Debtors shall make adequate protection payments in the amounts and at the times set forth in the
20 Budget (the "Adequate Protection Payments"). To the extent it is determined by final order that the
21 value of the Master Trustee's Prepetition Collateral did not exceed the allowed secured claim of the
22 Master Trustee in these cases, the Adequate Protection Payments (net of any allowed Diminution
23 claim of the Master Trustee) shall be deemed to reduce the allowed amount of such secured claim.

24 15. Aggregate Excluded Assets. No Rollover Lien, Supplemental Lien, Superpriority
25 Claim or any other lien or claim granted pursuant to this Order shall attach to or be asserted against
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1 the following assets of the Debtors: (i) causes of action under Chapter 5 of the Bankruptcy Code or
2 applicable state law equivalents and the proceeds thereof, and (ii) any pre-petition or post-petition
3 commercial tort claims (as such term is defined in the Uniform Commercial Code as in effect in the
4 State of California) and the proceeds thereof, including, without limitation, any and all causes of
5 action (and the proceeds thereof) against (a) current and former trustees, directors, officers,
6 managers, and members of the Debtors, (b) any of the Debtors' auditors, accountants or other
7 professionals and consultants, and/or (c) the Debtors' affiliates or related persons and entities ((i)
8 and (ii) together, the "Aggregate Excluded Assets"). To the extent that any Aggregate Excluded
9 Assets constitute claims or causes of action that, as determined by a final court order, (i) do not
10 constitute property of a Debtor's estate, (ii) constitute Prepetition Collateral, and/or are claims or
11 causes of action that are personal to the Master Trustee (the "Potential Master Trustee Claims"),
12 then such Potential Master Trustee Claims shall not be included in the definition of Aggregate
13 Excluded Assets.
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16 16. Prosecution of Sale. The Debtors intend to file a motion to sell substantially all of
17 their assets, and a motion to approve sale procedures relating to the sale of such assets (collectively,
18 the "Sale Motion"). As further adequate protection of the Master Trustee's interests in the Cash
19 Collateral, the Debtors shall keep the Master Trustee informed on a current basis of the status of all
20 offers received (whether written or oral) for any of the Collateral and shall provide the Master
21 Trustee copies of all such offers within one business day after receipt subject to reasonable
22 confidentiality restrictions. Such information shall also be concurrently provided to the Committee
23 subject to reasonable confidentiality restrictions. Nothing herein shall be interpreted to be the
24 consent of the Master Trustee or the Committee to the Sale Motion, and the Master Trustee and the
25 Committee reserve all rights to object thereto. Furthermore, in connection with the Sale Motion, the
26 Debtors shall request, without limitation (a) that an order be entered approving bid procedures
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1 reasonably acceptable to the Master Trustee; (b) that the Debtors establish milestones, subject to the
2 consent of the Master Trustee, for such sale; and (c) that the order approving the Sale Motion shall
3 provide for the payment of the proceeds of the Collateral, less amounts attributed to the sale of the
4 DIP Collateral, at the closing to be applied to the Claim on the Obligations and/or Adequate
5 Protection Payments as described in and provided for under this Order.
6

7 17. Notice of Pleadings. As further adequate protection of the Master Trustee's interests
8 in the Cash Collateral, and in contemplation for the use of Cash Collateral, the Debtors shall give
9 the Master Trustee at least two (2) business' days advanced notice of their filing of any motions,
10 oppositions, applications, stipulations or other documents in the Chapter 11 Case that affect, relate
11 to or bear upon the Collateral.
12

13 18. Allowance of Claim. As set forth in and subject to paragraph [27] below, the entry
14 of this Order by the Court shall be a conclusive and binding determination on all parties (x) as to
15 the amount and validity of the Claim on the Obligations, and (y) as to the scope, extent, perfection,
16 validity, and enforceability, in all respects, of the Master Trustee's security interests and liens in the
17 Prepetition Collateral, including, without limitation, the Cash Collateral.
18

19 19. Financial Information. As further additional adequate protection of the Master
20 Trustee's security interests in the Cash Collateral and the Prepetition Collateral, the Debtors shall
21 allow the Master Trustee and its professionals and designees reasonable access, during normal
22 business hours and on not less than 72 hours' notice, to the premises, officers, auditors, appraisers
23 and financial advisors of the Debtors in order to conduct appraisals, analyses and/or audits of the
24 Prepetition Collateral and the Collateral, and shall otherwise reasonably cooperate in providing any
25 other financial and operating information requested by the Master Trustee. From and after the entry
26 of this Order, the Debtors shall provide to the Master Trustee and the Committee the financial
27 information to be provided to the DIP Lender pursuant to the *Interim Order (I) Authorizing the*
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1 *Debtors to Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition*
2 *Secured Creditors, (III) Scheduling a Final Hearing, and (IV) Granting Further Relief*[Docket No.
3 182] on Thursday of each week, including any and all reports that the Debtors provide to the DIP
4 Lender. The Debtors shall inform the Committee if the Master Trustee is granted access to the
5 Debtors' premises and provide the Committee with a copy of all information provided to the Master
6 Trustee pursuant to this Paragraph 19.

8 20. Compliance With Indenture Documents. As further adequate protection against
9 Diminution, the Debtors shall comply with the following terms and provisions of the Indenture
10 Documents:

11 **Bond Document Covenants**

12 **Loan Agreements**

13 Section 5.01 (relating to Prohibited Uses)

14 Section 5.05 (relating to Tax Covenant)

15 Section 5.06 (relating to Continuing Disclosure), except that the Debtors shall file
unaudited financial information if audited financial information is not available

16 Section 5.08 (relating to Special Services Covenant)

17 Section 5.09 (relating to Compliance with Bond Indenture)

18 **Master Trust Indenture**

19 Section 3.12 (Insurance)

20 **Supplements to Master Trust Indenture**

21 Section 3.1 (relating to Tax Exempt Status)

22 **Bond Indentures**

23 Section 6.06 (relating to Tax Covenant)

24 Section 6.11 (relating to continuing disclosure), except that the Debtors shall file
unaudited financial information if audited financial information is not available

25 **Deed of Trust**

26 Section 5.2 (relating to payment of Taxes)

27 Section 5.4 (relating to Insurance)

1 The requirements of this Order shall be in addition to, and not in substitution for, the terms and
2 provisions of the Indenture Documents set forth in this Paragraph; provided, however, in the event
3 of any inconsistency between the Indenture Documents and this Order, the terms of this Order shall
4 control. Prior to declaring a Termination Event (defined below) for failure by the Debtors to comply
5 with the terms and provisions above, the Master Trustee shall provide the Debtors and the
6 Committee with at least five (5) business days written notice of the Master Trustee's determination
7 that the Debtors are not in compliance with any of the above terms and provisions. Each of the
8 Committee and the Debtors reserves and preserves all rights and objections with respect thereto,
9 including without limitation, the right to assert that the Debtors have remained in compliance with
10 the terms and provisions of the Indenture Documents or that such compliance is impractical in light
11 of the Debtors' chapter 11 cases.
12

13
14 21. Termination of Use of Cash Collateral With Notice. A Termination Event shall
15 be deemed to have occurred five (5) business days after written notice sent by the Master Trustee to
16 the Debtors, the Committee, their counsel, and the United States Trustee of the occurrence of any
17 of the following (a "Termination Event"):

18 (i) the Debtors' disbursements, measured in the aggregate, exceed the disbursements
19 set forth in the Budget (or any subsequently approved Budget), as applicable, for any
20 Testing Period by more than the Permitted Variance;

21 (ii) the failure of the Debtors to pay, within ten (10) days of the applicable due date,
22 all undisputed administrative expenses in full in accordance with their terms as provided
23 for in the Budget except for any expenses under sections 503(b)(9) or 546(c) of the
24 Bankruptcy Code;

25 (iii) the failure of the Debtors to timely pay all fees due under 28 U.S.C. § 1930;

26 (iv) the failure of the Debtors to obtain entry of an order on or before [June __, 2023],
27 approving bidding procedures;

28 (v) by no later than [July [19], 2023], the Bankruptcy Court shall have entered an order
in form and substance satisfactory to the Master Trustee approving the sale of all or
substantially all of the Debtors' assets;

(vi) the failure of the Debtors to consummate a sale of substantially all of their assets by or before [July 31, 2023];

(vii) the failure of the Debtors to maintain sufficient insurance on the Master Trustee's collateral as required under the Indenture Documents; and

(viii) the failure of the Debtors to comply with, keep, observe, or perform any of their agreements or undertakings under this Order (unless a different termination period is specified for such agreement or undertaking).

Unless prior to the expiration of the five (5) business day period described in this paragraph 19 the Debtors have cured the Termination Event(s) specified in the Master Trustee's notice, or obtained an order of this Court, on notice to and with the opportunity to be heard by the Master Trustee, that no such Termination Event has occurred, the authority of the Debtors to use Cash Collateral hereunder shall terminate without further action of any kind (the "Termination Date"), without prejudice to the Debtors and other parties in interest (including the Committee) seeking an order of this Court for the continued use of Cash Collateral on a non-consensual and expedited basis. In the event the Master Trustee provides notice to the Debtors that a Termination Event has occurred under this Paragraph 19, the Debtors shall schedule a status conference within the five (5) business day period and request that such status conference be held during such period to discuss the outstanding issues related to the proceedings.

22. Termination of Use of Cash Collateral Without Prior Notice. The Debtors' authority to use Cash Collateral hereunder shall terminate without any further action by this Court, and a Termination Event shall occur without prior notice, upon the occurrence of any of the following (also a "Termination Event"):

(i) the Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(ii) the Debtors fail to make the Adequate Protection Payments when due, and such failure continues for three (3) business days following notice to the Debtors by the Master Trustee;

(iii) the earlier of (y) the date of the entry of an order of this Court appointing a Chapter 11 trustee or an examiner with enlarged powers

1 (beyond those set forth in Sections 1104(c) and 1106(a)(3) and (4) of the
2 Bankruptcy Code) for the Debtors; or (z) the date the Debtors file a motion,
3 application, or other pleading consenting to or acquiescing in any such
appointment;

4 (iv) an order is entered in the Chapter 11 Case over the objection of the
5 Master Trustee approving financing pursuant to Section 364 of the
6 Bankruptcy Code that would grant an additional security interest or a lien
7 on any Collateral or granting a superpriority administrative claim that is
equal or superior to the superpriority administrative claim granted to the
Master Trustee under this Order; or

8 (v) an adversary proceeding or contested matter is commenced or
9 joined by the Debtors or the Committee challenging the amount, validity,
enforceability, priority, or extent of the Master Trustee's liens, security
10 interests, or claims.

11 Upon the occurrence of a Termination Event described in this paragraph 22, the Debtors' authority
12 to use Cash Collateral hereunder shall automatically terminate, without prejudice to the Debtors and
13 other parties in interest (including the Committee) seeking an order of this Court for the continued
14 use of Cash Collateral on a non-consensual and expedited basis, and all amounts owed under the
15 terms of this Order and shall be accelerated and immediately due and payable, the Master Trustee
16 shall be permitted to exercise all available remedies without further notice or court order, and the
17 Master Trustee shall be automatically relieved of any further stay under Section 362 of the
18 Bankruptcy Code, or other restriction on enforcement of its prepetition and postpetition liens and
19 security interests in the Collateral to collect the amounts due (also a "Termination Date"). Following
20 the occurrence of a Termination Event under this Paragraph 19, the Debtors shall schedule a status
21 conference within five (5) business days after the occurrence of such Termination Event to discuss
22 the outstanding issues related to the proceedings with the Court. Notwithstanding the foregoing
23 provision regarding relief from the stay under Section 362 of the Bankruptcy Code, the Master
24 Trustee shall take no action with respect to the enforcement of its prepetition and postpetition liens
25 and security interests in the Collateral or to collect the amounts due from the Debtors until such
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1 status conference has been held and the Court has entered an order or otherwise rules as the result
2 of such status conference.

3 23. Claims and Causes of Action. On behalf of itself and the estate, the Debtors reaffirm,
4 and hereby waive, release, and discharge the Master Trustee, all Bondholders in their capacity as
5 such, and their respective affiliates, agents, attorneys, professionals, officers, directors, and
6 employees (collectively, the “Released Parties”), from any and all claims and causes of action
7 arising out of, based upon, or related to, in whole or in part, the Bonds and the Indenture
8 Documents; any aspect of the prepetition relationship between the Master Trustee and/or the
9 Bondholders, and the Debtors; and any other acts or omissions by the Master Trustee and/or the
10 Bondholders in connection with either the Indenture Documents or the Master Trustee’s and/or
11 Bondholders’ prepetition relationship with the Debtors. Further, the Debtors waive any and all
12 rights to object to or contest the amount of the Claim on the Obligations or the Master Trustee’s
13 security interest in the Prepetition Collateral and agree not to challenge that all such claims and
14 security interests have been duly perfected and are in all respects valid and enforceable first priority
15 security interests and liens.

16 24. Failure of Adequate Protection. Nothing herein shall constitute a waiver, release or
17 modification of the rights of the Master Trustee to assert a claim under Sections 364(c) and 507(b)
18 of the Bankruptcy Code and the Committee reserves and preserves all rights, objections and defenses
19 with respect to such claims by the Master Trustee.

20 25. Deemed Request for Stay Relief. This Order shall be deemed to constitute a request
21 as of the Petition Date by the Master Trustee for relief from the automatic stay with respect to the
22 Prepetition Collateral for purposes of any request for adequate protection granted hereunder.

23 26. Modification of Stay. The automatic stay imposed by Section 362 of the Bankruptcy
24 Code is hereby vacated and modified insofar as necessary to permit the Master Trustee to: (i) receive
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1 any payments or distributions made by the Debtors to the Master Trustee for and on behalf of the
2 Bondholders, (ii) apply, allocate, or make payments from any of the funds or accounts maintained
3 by the Master Trustee in accordance with the terms of the Indenture Documents, and (iii) take any
4 action authorized by this Order.

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6 27. Bankruptcy Code Sections 506(c) and 552(b). To the extent provided in this Order,
7 in light of the Master Trustee's agreement to permit the use of its Cash Collateral as herein provided,
8 the Master Trustee is entitled to, and shall be granted, (a) a waiver of any "equities of the case"
9 claims under section 552(b) of the Bankruptcy Code; and (b) a waiver of the provisions of section
10 506(c) of the Bankruptcy Code and any other surcharge on the Collateral.

11 28. Preservation of Rights. If any or all of the provisions of this Order are, at any time,
12 modified, vacated or stayed, such stay, modification, or vacation shall not affect the validity, extent,
13 priority, and enforceability of any lien, priority, or other benefit conferred under this Order prior to
14 such stay, modification, or vacation.

15
16 29. Binding Effect. This Order shall be binding on all creditors and parties in interest in
17 this Chapter 11 Case, including, but not limited to, the Debtors (including any affiliates, insiders and
18 equity holders and their respective affiliates) and any successors thereto, any Chapter 11 or Chapter
19 7 trustee that is appointed or elected in this Chapter 11 Case provided, however, that this Order is
20 without prejudice to the rights of individual creditors (other than affiliates, insiders and equity
21 holders of the Debtors and their respective affiliates) or the Committee, to, on behalf of the Debtors'
22 estates, challenge the validity, amount, perfection, priority, extent or enforceability of the Claim on
23 the Obligations or the pre-petition security interests of the Master Trustee (a "Challenge"), so long
24 as any such Challenge is made on or before the earlier of any Bar Date set by the Court or twenty-
25 eight (28) days after the filing by the Office of the United States Trustee of the appointment of a
26 Committee, after which time all such challenges shall be deemed finally and conclusively barred;
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1 provided further that if one or more claims are timely made under this paragraph 27 and properly
2 filed, then except for such claims, all potential claims and causes of actions are hereby deemed
3 forever waived and relinquished.

4 30. No Competing Liens. Except as set forth herein or as set forth herein or the Interim
5 DIP Financing Order, the Debtors shall not grant liens on, or security interests in, the Prepetition
6 Collateral or the Collateral to any other party, pursuant to Section 364 of the Bankruptcy Code or
7 otherwise, without the consent of the Master Trustee.

8 31. Reservation of Rights. Except as provided in this Order, none of the Debtors nor the
9 Master Trustee nor the Committee waives any of its rights under the Bankruptcy Code, any
10 applicable law, or the Indenture Documents, including, without limitation, the right of the Debtors
11 or the Master Trustee at any time to seek any relief (or to oppose any such relief) under the
12 Bankruptcy Code, or the right of the Debtors, the Master Trustee or the Committee to exercise any
13 of their rights and remedies under the Bankruptcy Code at any time (or to oppose any such relief).

14 32. Further Relief. Nothing herein shall (i) preclude the Master Trustee from seeking any
15 other relief that it may deem appropriate, including relief from the automatic stay; or (ii) prevent the
16 Master Trustee from asserting at some later time that its liens and security interests in the Prepetition
17 Collateral are not being adequately protected and the Committee reserves and preserves all rights,
18 objections and defenses with respect to such request(s) by the Master Trustee.

19 33. No Third-Party Beneficiaries. Except as expressly provided herein, no rights are
20 created hereunder for the benefit of any third party, any creditor, or any direct, indirect or incidental
21 beneficiary except for the Bondholders and Hanmi Bank, as set forth herein.

22 34. Effectiveness. The rights and obligations of the parties under this Order shall be
23 effective and enforceable as of the date of the Petition Date, and, for the avoidance of doubt,
24 Bankruptcy Rule 6004(h) shall not apply hereto. If any or all of the provisions of this Order are
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1 hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur, or stay shall
2 not affect (i) the validity, extent, priority, or enforceability of any obligations incurred prior to the
3 actual receipt of written notice by the Master Trustee of the effective date of such reversal,
4 modification, vacatur, or stay, or (ii) the validity, extent, or enforceability of the liens and claims
5 granted hereunder.
6

7 35. Notices. All notices, requests, demands, waivers, and other communications required
8 or permitted to be given under this Order shall be in writing and shall be deemed to have been duly
9 given if (a) delivered personally, (b) sent by email, or (c) next-day or overnight mail or delivery:

10 (a) If to the Debtors to:

11 Orrick, Herrington & Sutcliffe LLP
12 Attn: Marc A. Levinson
13 The Orrick Building
14 405 Howard Street
15 San Francisco, CA 94105
16 Email: malevinson@orrick.com

17 *Proposed Special Counsel to Debtors and Debtors in Possession*

18 (b) If to the Master Trustee to:

19 Greenberg Traurig, LLP
20 Attn: Kevin J. Walsh, Colleen A. Murphy and Christopher Marks
21 One International Place, Suite 2000
22 Boston, MA 02110
23 E-mail: Kevin.Walsh@gtlaw.com
24 Colleen.Murphy@gtlaw.com
25 Chris.Marks@gtlaw.com

26 *Counsel to the Master Trustee*

27 (c) If to the Committee to:

28 Dentons US LLP
Attn: Tania M. Moyron, Samuel R. Maizel, and Rebecca Wicks
601 South Figueroa Street, Suite 2500
Los Angeles, CA 90017-5704

Email: tania.moyron@dentons.com
samuel.maizel@dentons.com
rebecca.wicks@dentons.com

-and-

Sills Cummis & Gross, P.C.
Attn: Andrew Sherman and Boris Mankovetskiy
One Riverfront Plaza
Newark, NJ 07102
E-mail: asherman@sillscummis.com
bmankovetskiy@sillscummis.com

Proposed Attorneys for the Committee

#####

Dated:
Los Angeles, California

United States Bankruptcy Judge

APPROVED AS TO FORM:

By _____

Marc A. Levinson,
Proposed counsel to Debtors

APPROVED AS TO FORM:

By _____

Kevin J. Walsh,
Counsel to the Master Trustee

APPROVED AS TO FORM:

By _____

Andrew Sherman,
Proposed attorneys to the Committee

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~~Proposed Special~~ Counsel to ~~Debtors and~~

~~Debtors in Possession~~ U.S. Bank Trust

Company National Association, as Master Trustee

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-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

**FINAL ORDER (I) AUTHORIZING THE
DEBTORS TO USE THE CASH
COLLATERAL OF U.S. BANK TRUST
COMPANY NATIONAL ASSOCIATION,
AS ~~BOND~~MASTER TRUSTEE; (II)
PROVIDING U.S. BANK TRUST
COMPANY NATIONAL ASSOCIATION,
AS ~~BOND~~MASTER TRUSTEE,
ADEQUATE PROTECTION; AND (III)**

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.

GRANTING RELATED RELIEF

Date: May 24, 2023
Time: 9:00 am
Judge: Sandra R. Klein
Place: Zoom.Gov ~~-or- Courtroom 1575~~
~~255 E. Temple St.~~
~~Los Angeles, CA 90012~~

This Order (I) Authorizing the above-captioned debtors and debtors in possession (collectively, the “Debtors”) to Use the Cash Collateral of U.S. Bank Trust Company National Association, as ~~Bond Trustee~~ (master trustee and bond trustee of certain bonds described below (collectively the “BondMaster Trustee”); (II) Providing the ~~Bond~~ Master Trustee, Adequate Protection; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief (this “Order”) is entered upon the *Debtors’ Emergency Motion for Entry of an Order Granting Debtors’ Emergency Motion (I) Approving Debtors’ Use of Cash Collateral; and (II) Scheduling a Final Hearing on the Use of Cash Collateral* (the “Motion”)² [Docket No. 27] filed on April 20, 2023; upon the First Day Declaration, and upon the terms agreed to by the Debtors and the ~~Bond~~ Master Trustee.

This Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that it may enter a final order consistent with Article III of the United States Constitution; that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the ~~Motion~~ FINAL CASH COLLATERAL ORDER FINAL

1 requested therein at a ~~hearings~~hearing before this Court on April 21, 2023 ~~and on May 24,~~
2 ~~2023~~at 2:00 p.m.; and this Court having determined that the legal and factual bases set forth in the
3 Motion and at ~~such hearings~~the Hearing establish just cause for the relief granted herein and after
4 due deliberation and sufficient cause appearing therefor, the Court makes the following findings of
5 fact and rulings of law:

6
7 **The Debtors' Chapter 11 Case; Procedural Background; Jurisdiction; Notice**

8 A. On April 19, 2023 (the "Petition Date"), the Debtors filed their voluntary petitions for
9 relief under chapter 11 of the Bankruptcy Code and thereby commenced these cases thereunder
10 (collectively, the "Chapter 11 Case"). The Debtors are operating their respective businesses and
11 managing their respective properties as debtors in possession pursuant to sections 1107(a) and
12 1108 of the Bankruptcy Code. These cases have not been substantively consolidated. No request
13 has been made for the appointment of a trustee or examiner.

14
15 B. On May 16, 2023, the United States Trustee ~~for~~filed the ~~Central District of~~
16 ~~California appointed an~~Amended Notice of Appointment and Appointment of Committee of
17 Unsecured Creditors Holding Unsecured Claims [Docket No. 263] appointing the official
18 committee of unsecured creditors pursuant to 11 U.S.C. § 1102(a) (the "Committee") ~~[Docket No.~~
19 ~~263]~~.

20
21 C. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core
22 proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C.
23 §§ 1408 and 1409.

24 D. One of the Debtors, Beverly Community Hospital Association (the "Association"),
25 owns and operates an acute care hospital ("Beverly Hospital") located in the City of Montebello,
26 California. Beverly Hospital is a 224-bed licensed acute care hospital with 194 beds offering a
27 full range of services, including comprehensive diagnostic and treatment options.

1 E. One of the other Debtors, Montebello Community Health Services, Inc. (“MCHS”)
2 owns and operates a medical office building which houses physician’s offices, an outpatient
3 medical center and certain rental properties.

4 F. The third Debtor, the Beverly Hospital Foundation (the “Foundation”), is a California
5 nonprofit public benefit corporation and a tax-exempt organization under the Internal Revenue
6 Code.

7 G. This Court held a hearing to consider granting the relief requested in the Motion on an
8 interim basis on April 21, 2023 (“Initial Hearing”), following which, this Court entered an order
9 [Docket No. 124] based on its consideration of the Motion, the arguments of counsel, the evidence
10 adduced at the Initial Hearing, and the record before it.

11 H. The Debtors and the ~~Bond~~Master Trustee agreed to a further extension of the use of
12 cash collateral on the terms set forth in a ~~series of subsequent~~second interim order [Docket No.
13 159], a third extension of the use of cash collateral on the terms set forth in a third interim order
14 [Docket No. 203], and a fourth extension of the use of cash collateral on the terms set forth in a
15 fourth interim order [Docket No. 264] (the four interim orders described in Recital H, collectively,
16 the “Interim Orders”). The consensual use of Cash Collateral ~~was extended to~~under the Interim
17 Orders runs through 5:00 p.m. Pacific time on ~~May 22, 2023 pursuant to the most recent~~
18 ~~interim order, which was filed on May 16, 2023 [Docket No. 264]. Through written~~
19 ~~agreement of the Debtors and the Bond Trustee, the use of cash collateral was extended to~~
20 May 24, 2023 ~~at 5:00 p.m. Pacific time.~~

21 I. This Court held a hearing to consider the Motion on a final basis on May 24, 2023 (the
22 “Final Hearing”).

23 **The Secured Bond Obligations**

1 J. Each of the Debtors is a member of an obligated group that is obligated to the Bond
2 Trustee [\(defined below\)](#) for the benefit of the beneficial holders (the “[Bondholders](#)”) of the Bonds
3 (as defined below) authorized and issued by the California Statewide Communities Development
4 Authority (the “[Issuer](#)”) for the benefit of the Debtors.

5 K. In 2015, the Issuer issued its \$39,725,000 Revenue Bonds (Beverly Community
6 Hospital Association), Series 2015 (the “[Series 2015 Bonds](#)”) pursuant to a certain Master Trust
7 Indenture dated as of December 1, 2015 (as supplemented and amended, the “[Master Trust](#)
8 [Indenture](#)”) among the three Debtors and U.S. Bank National Association, as master trustee (in
9 such capacity, the “[Master Trustee](#)”), and a Bond Indenture, dated as of December 1, 2015 (the
10 “[2015 Bond Indenture](#)”) between the Issuer and U.S. Bank National Association, as the bond
11 trustee thereunder (in such capacity, the “[2015 Bond Trustee](#)”). The proceeds of the Series 2015
12 Bonds were loaned by the Issuer to the Association pursuant to a Loan Agreement, dated as of
13 December 1, 2015 (the “[2015 Loan Agreement](#)”) between the Issuer and the Association.

14 L. In 2017, the Issuer issued its \$19,840,000 Revenue Bonds (Beverly Community
15 Hospital Association), Series 2017 (the “[Series 2017 Bonds](#)”; and together with the Series 2015
16 Bonds, the “[Bonds](#)”) pursuant to the Master Trust Indenture, and a Bond Indenture, dated as of
17 May 1, 2017 (the “[2017 Bond Indenture](#)”; and together with the 2015 Bond Indenture, the “[Bond](#)
18 [Indentures](#)”) between the Issuer and U.S. Bank National Association, as trustee thereunder (in
19 such capacity, the “[2017 Bond Trustee](#)”, and together with its capacity as the 2015 Bond Trustee,
20 [the “Bond Trustee”](#)). The proceeds of the Series 2017 Bonds were loaned by the Issuer to the
21 Association pursuant to a certain Loan Agreement, dated as of May 1, 2017 (the “[2017 Loan](#)
22 [Agreement](#)”; and together with the 2015 Loan Agreement, the “[Loan Agreements](#)”) between the
23 Issuer and the Association.
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1 M. U.S. Bank Trust Company National Association is the successor to U.S. Bank National
2 Association in its role as the Master Trustee, the 2015 Bond Trustee and the 2017 Bond Trustee
3 and is referred to herein as the **BondMaster** Trustee in those capacities.

4 N. To secure the obligations of the Debtors under the Master Trust Indenture, the Bond
5 Indentures and the Loan Agreements, the **BondMaster** Trustee has a security interest, lien and
6 mortgage on substantially all of the Association's assets pursuant to (i) the Master Indenture and
7 (ii) a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of
8 December 1, 2015, by the Association as trustor, to Chicago Title Company, a California
9 corporation, as trustee, for the benefit of U.S. Bank, National Association, as master trustee under
10 the Master Trust Indenture (the "Deed of Trust").

11 O. Pursuant to the Master Trust Indenture, the **BondMaster** Trustee also holds a security
12 interest in the Gross Receivables (as defined in the Master Trust Indenture as the accounts, chattel
13 paper, instruments, and general intangibles (all as defined in the Cal. Comm. Code § 9101 *et seq.*
14 (the "UCC"))) of each of the Association, the Foundation and MCHS. All of the collateral
15 described in this **paragraph** Paragraph is referred to as the "Prepetition Collateral." The
16 **BondMaster** Trustee's liens on the Prepetition Collateral are referred to herein as the "Prepetition
17 Liens." The Master Trust Indenture, the Bond Indentures, the Loan Agreement, the Deed of
18 Trust, and any other documents executed in connection with such documents (including the
19 Hanmi Loan Agreement (defined below) and any other documents executed in connection with
20 that agreement), or the Bonds are referred to herein as the "**Bond** Indenture Documents."

21 P. Pursuant to a Fourth Supplemental Master Indenture, dated as of August 1, 2019,
22 between the Association, as the obligated group representative, and U.S. Bank National
23 Association, as master trustee, the Debtors became obligated to Hanmi Bank under a Revolving
24 Loan Agreement, dated as of August 1, 2019, between the Association and Hanmi Bank (the

1 “Hanmi Loan Agreement”). The obligations under the Hanmi Loan Agreement are further
2 memorialized by that certain Revolving Promissory Note, dated August 1, 2019, issued by the
3 Association in favor of Hanmi Bank in the principal amount of \$10,000,000 (the “Note”). The
4 obligations of the Debtors under the Hanmi Loan Agreement and the Note are *pari passu* with
5 their obligations under the other ~~Bond~~Indenture Documents and are secured by the liens in favor
6 of the ~~Bond~~Master Trustee thereunder.

8 Q. The ~~Bond~~Master Trustee has the right to enforce the Debtors’ obligations under the
9 ~~Bond~~Indenture Documents, pursuant to its rights under the Master Indenture, the Loan
10 Agreements and the other ~~Bond~~Indenture Documents (collectively, the “Obligations”).

11 R. For the avoidance of doubt, the provisions in paragraphs J through Q above are subject
12 to the terms of paragraph 28 hereof.

13 **The Claim on the Obligations**

14 S. ~~R.~~ The Debtors stipulate that as of the Petition Date, the amounts due and owing under
15 the Bonds, the Note and ~~Bond~~Indenture Documents (collectively, the “Claim on the Obligations”)
16 are not less than the amounts shown below. The unpaid interest calculation is as of the Petition
17 Date:
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- 19 (i) unpaid principal on account of the Series 2015 Bonds in the amount of
20 \$35,620,000;
- 21 (ii) accrued but unpaid interest on the Series 2015 Bonds in the amount of
22 \$381,799.17, which interest continues to accrue on the Series 2015 Bonds at a per
23 diem rate of \$4,894.87;
- 24 (iii) unpaid principal on account of the Series 2017 Bonds in the amount of
25 \$19,400,000;
- 26 (iv) accrued but unpaid interest on the Series 2017 Bonds in the amount of
27 \$438,471.25, which interest continues to accrue on the Series 2017 Bonds at a per
28 diem rate of \$2,609.95;
- (v) unpaid principal on account of the Note in the amount of \$10,000,000;
- (vi) accrued but unpaid interest on the Note in the amount of \$ 32,569.45, which
interest continues to accrue on the ~~Series 2017 Bonds~~Note at a per diem rate of
\$1,666.67 through May 3 and \$1,736.11 starting May 4; and

(vii)-(v) unliquidated, accrued and unpaid fees and expenses of the **BondMaster** Trustee and its professionals ~~(the “Expense Claim”)~~. Such amounts when liquidated shall be added to the Obligations.

The **BondMaster** Trustee reserves any and all rights to amend the Claim on the Obligations.

Nothing herein shall be deemed to be a waiver of such rights. In the event the **BondMaster** Trustee amends the Claim on the Obligations to increase the amount set forth in (i) through (vi) above, the Debtors may challenge any amounts in excess of (i) through (vi) as set forth above.

~~S.~~ For the avoidance of doubt, ~~the provisions in Paragraphs J through Q and Paragraph R above are~~ this paragraph S is subject to the terms of ~~Paragraph~~ paragraph 28 hereof.

Use of Cash Collateral and Need for Adequate Protection

T. The Debtors have requested the use of the **BondMaster** Trustee’s Cash Collateral (as defined below) in connection with the Chapter 11 Case to preserve the value of ~~their~~ its assets while such assets are marketed for a potential sale. Pursuant to the Bankruptcy Code, the Debtors are required to provide adequate protection to the **BondMaster** Trustee for the use of such Cash Collateral. The **BondMaster** Trustee has informed the Debtors and the Court that the **BondMaster** Trustee does not consent to the use of Cash Collateral except upon the terms and conditions of this Order.

U. Without the use of Cash Collateral, the Debtors would suffer immediate and irreparable harm and would likely be required to cease operations immediately or, at a minimum, the Debtors’ inability to use Cash Collateral would disrupt the Debtors as a going concern and would otherwise not be in the best interests of the Debtors, their patients, or their creditors, including the **BondMaster** Trustee. In lieu of giving the **BondMaster** Trustee relief from the automatic stay or attempting to obtain this Court’s approval for use of Cash Collateral (as defined ~~in Paragraph 5~~ below) on a non-consensual basis, the Debtors wish to provide adequate

1 protection of the liens and security interests of the ~~Bond~~Master Trustee in Cash Collateral and
2 other Prepetition Collateral on the terms set forth in this Order, reflecting the agreement of the
3 Debtors and the ~~Bond~~Master Trustee [and the Committee].

4 V. The ~~Bond~~Master Trustee is willing to consent to the use of its Cash Collateral by the
5 Debtors on the terms set forth in this Order, including that Cash Collateral is used solely in the
6 amounts and categories set forth in the Budget (as defined below).

8 W. The terms of the proposed use of Cash Collateral, and this Order are fair and
9 commercially reasonable, reflect the Debtors' prudent exercise of business judgment consistent
10 with their fiduciary duties and constitute reasonably equivalent value and fair consideration. Good
11 cause has been shown for the entry of this Order.

12 X. To the extent any portion of the foregoing constitute rulings of law, they shall
13 constitute this Court's rulings with respect to the matters so stated.

14 **NOW, THEREFORE, THE COURT HEREBY ORDERS AS FOLLOWS:**

15 1. Disposition. The Motion is granted on the terms set forth in this Order. The date
16 of this Order shall be known as the "Effective Date." Any objections to the relief sought in the
17 Motion that have not been previously resolved or withdrawn, and all reservations of rights
18 contained therein, are overruled on the merits.

19 2. Jurisdiction. This Court has jurisdiction over this matter pursuant to 28 U.S.C.
20 §§ 157(b) and 1334, and this matter constitutes a core proceeding as defined in 28 U.S.C.
21 § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. The Debtors
22 have operated their businesses and managed their properties as Debtors in possession pursuant to
23 11 U.S.C. §§ 1107 and 1108.

24 3. Notice. The Debtors have properly served notice of the Motion and the final
25 hearing thereon pursuant to Sections 102, 361, 362, and 363 of the Bankruptcy Code, Bankruptcy
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Rules 2002 and 4001, and the local rules of the Bankruptcy Court (the “Local Rules”), which notice was sent to, among others: (i) the thirty (30) largest unsecured creditors of the Debtors on a consolidated basis; (ii) the Office of the United States Trustee for the Central District of California; (iii) counsel to the DIP Lender; (iv) the ~~Committee; (v) the~~ Office of the Attorney General of California; ~~(vi)~~ the Prepetition Secured Creditors and their counsel, including the ~~Bond~~Master Trustee; ~~(vii)~~ all other parties with liens of record on assets of the Debtors (as disclosed in lien searches completed by the Debtors prior to the Petition Date); and ~~(viii)~~vii any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under Bankruptcy Rules 2002, 4001, or 9014 and any applicable Local Rules. This notice is appropriate in the particular circumstances and is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules in respect to the relief requested.

4. Good Cause. Good cause has been shown for entry of this Order.

5. Authorization to Use Cash Collateral. The Debtors are authorized to use cash collateral (as defined in Section 363 of the Bankruptcy Code) including Gross Receivables (as defined in the Master Trust Indenture) (the “Cash Collateral”), until the earlier of (i) the Debtors’ ability to use Cash Collateral terminates as the result of the occurrence of a Termination Event (as set forth below); (ii) July 31, 2023; or (iii) such other date as agreed to in a pleading signed by the ~~Bond~~Master Trustee and filed in the Bankruptcy Court and served upon all parties entitled to notice in accordance with Paragraph 3 hereof), unless extended by further order of ~~this~~the Court. Such use of Cash Collateral is only permitted ~~only~~ in accordance with the terms of this Order, except as it may ~~be~~ modified by agreement of the Master Trustee and the Debtors ~~and approved~~ by in consultation with the Committee, and subject to further order of ~~this~~the Court ~~after notice and a hearing. Use.~~

1 6. Budget. The Debtors' use of Cash Collateral shall be limited solely to the
2 categories of expenses listed in the ~~Approved~~ Budget attached to Docket No. ____ (the "Budget")³.
3 ~~Further, such use of Cash Collateral shall be limited solely to pay expenses in the amounts~~
4 ~~and at the times listed in the Budget; provided, however, that the Debtors shall have~~
5 ~~authority to use Cash Collateral in excess of, and at times different from,~~ as may be amended
6 from time to time with the prior written approval of the Master Trustee, subject to Permitted
7 Variances. A "Permitted Variance" shall mean, for any Testing Period (as defined in this
8 paragraph): (i) any favorable variance, (ii) an unfavorable variance of not more than fifteen (15%)
9 percent in aggregate disbursements. Compliance will be tested weekly on every Wednesday on a
10 rolling four (4) week basis (each, a "Testing Period"). If the cash disbursements in any such
11 period are less than the amounts set forth for such period in the applicable Budget to the extent
12 ~~such a variance does not constitute a Termination Event described in Paragraph 21(i) of this~~
13 ~~Order,~~ then the Permitted Variance for such disbursements for the next succeeding periods shall
14 be increased by an amount equal to such difference (and shall continue to roll over into successive
15 periods to the extent such additional budgeted capacity is unused by the Debtors). The Permitted
16 Variance with respect to each Testing Period shall be determined and certified to the Master
17 Trustee and the Committee by the Debtors not later than the fifth (5th) day immediately following
18 each such Testing Period. The Debtors shall provide to the Master Trustee and the Committee
19 once each week following entry of this Order, a weekly report certified by the Debtors' chief
20 financial officer and in the same form as the Budget indicating all receipts received and
21 disbursements made by the Debtors in the applicable Testing Period compared to the Budget and
22 detailing any variances that are not Permitted Variance. Notwithstanding any other order of the
23 Court, the Debtors shall not be permitted to make any payments to professionals under the terms
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³ ~~The Budget will be filed separately once it has been prepared and approved.~~

1 of this Order using Cash Collateral. The ~~Bond~~BondMaster Trustee reserves all rights to object to the
2 retention of ~~the Debtors' estate~~ professionals, ~~and nothing in this Order shall be deemed~~
3 ~~consent by the Bond Trustee to engagement of such professionals by the Debtors.~~

4 7. ~~6.~~ Exclusion from Cash Collateral. No party, other than the Debtors, may use the
5 Cash Collateral of the ~~Bond~~BondMaster Trustee. The Debtors are not authorized to use and shall not
6 use any Cash Collateral not derived in the ordinary course of the Debtors' operations.

7
8 8. ~~7.~~ Prohibited Use of Cash Collateral. Except as expressly provided in this Order
9 (including paragraph [27]), no Cash Collateral or proceeds thereof shall be used for the purpose
10 of: (i) objecting to, or contesting in any manner, or raising any defense to, the validity, amount,
11 extent, perfection, priority, or enforceability of the Bonds, the Prepetition Collateral, the Claim on
12 the Obligations, or any liens or security interests with respect thereto, or any other rights or
13 interests of the ~~Bond~~BondMaster Trustee therein; (ii) asserting any claims or defenses or causes of
14 action arising out of, based upon, or related to, in whole or in part, the Bonds or the
15 ~~Bond~~BondIndenture Documents, against the ~~Bond~~BondMaster Trustee, the Bondholders in their capacity as
16 such, or their respective agents, affiliates, subsidiaries, directors, officers, representatives,
17 attorneys or advisors including, without limitation, any actions under Chapter 5 of the Bankruptcy
18 Code, including with respect to payments made pursuant to the ~~Bond~~BondIndenture Documents; (iii)
19 paying any material amounts on account of claims arising before the Petition Date, except to the
20 extent provided for in the ~~Cash Collateral~~ Budget and approved by the Court; (iv) seeking to
21 modify any of the rights granted to the ~~Bond~~BondMaster Trustee hereunder; ~~or~~ (v) seeking to bifurcate
22 any claims of the ~~Bond~~BondMaster Trustee; or (vi) after the filing of a proposed disclosure statement
23 relating to a plan of reorganization of liquidation not consented to by the ~~Bond~~BondMaster Trustee,
24 taking any actions in pursuit of confirmation of such a plan.
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1 9. ~~8.~~ Amendment or Extension of Budget. The Debtors in consultation with the
2 Committee may, at any time, propose to the Master Trustee in writing (including by email) an
3 amended Budget, for the period covered by this Order. Any such proposed amendment or
4 modification of the terms and conditions, or any amendment, modification, roll-forward or
5 replacement of the Cash Collateral Budget itself, shall be subject to the prior written consent of
6 the ~~Bond~~Master Trustee. ~~When~~At such time as the amended budget becomes the Budget, the
7 Debtors shall file a copy thereof with this Court and serve it upon all parties entitled to notice in
8 accordance with Bankruptcy Rule 4001(b). Any party in interest, including the Committee, shall
9 have seven (7) days to object to any amended Budget filed with the Court hereunder. If an
10 objection is timely filed, the Court shall set a hearing on the objection as soon as practicable. If no
11 objection is timely filed to any amended Budget, then the amended Budget shall become the
12 Budget for purposes of this Order, with respect to use of Cash Collateral. In the event of a dispute
13 concerning the Budget, all rights of the Debtors, the Committee, and the Master Trustee shall be
14 and are reserved.

17 10. ~~9.~~ Rollover Lien. Except as otherwise provided in this paragraph, 10 and subject to
18 ~~Paragraph 28 and the Carveout (as defined in Paragraph 24 below)~~paragraph [27], as further
19 adequate protection for any diminution in the value of Cash Collateral and other Prepetition
20 Collateral ~~in the aggregate~~ resulting from the Debtors' use thereof after the Petition Date
21 ("Diminution"), and solely to the extent of any Diminution, the ~~Bond~~Master Trustee shall have a
22 valid, perfected, and enforceable replacement lien and security interest (the "Rollover Lien") in all
23 assets of the Debtors existing on or after the Petition Date of the same type as the Prepetition
24 Collateral, together with the proceeds, rents, products, and profits thereof, whether acquired or
25 arising before or after the Petition Date, to the same extent, validity, perfection, enforceability, and
26 priority of the liens and security interests of the ~~Bond~~Master Trustee as of the Petition Date (the

1 “Postpetition Bond Collateral”). The Rollover Lien shall be subject ~~and subordinate to the~~
2 ~~Carveout and to~~ only prior valid and perfected liens existing as of the Petition Date that were
3 senior to the liens of the ~~Bond~~ Master Trustee on the Petition Date. The Rollover Lien shall be
4 exclusive of and ~~shall not attach~~ attached to the Aggregate Excluded Assets (as defined
5 ~~below~~ herein) but shall include and attached to the Potential Master Trustee Claims (as defined
6 herein).

8 11. ~~10.~~ Supplemental Lien. ~~Subject to Paragraph 28 and the Carveout, as~~ As
9 additional adequate protection for any Diminution, ~~solely to~~ and as consideration for the ~~extent~~ use
10 of ~~any Diminution,~~ Cash Collateral and ~~as other~~ consideration given by the ~~Bond~~ Master Trustee
11 as set forth in the *Interim Order: Authorizing the Debtors to Obtain Post-Petition Financing, (II)*
12 *Granting Adequate Protection to Prepetition Protection to Prepetition Secured Creditors, (III)*
13 *Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 182] (the “Interim DIP
14 Financing Order”), and any subsequent final order related thereto, the ~~Bond~~ Master Trustee shall,
15 immediately upon the indefeasible payment in full in cash ~~to~~ of all the DIP Obligations of the DIP
16 Lender⁴, as defined in the Interim DIP Financing Order, and/or other satisfaction in full (either in
17 cash, by DIP Lender³ credit bid, or by written consent of DIP Lender) of all the DIP Obligations,
18 ~~as defined~~ either (i) under Section 363(k) of the Bankruptcy Code or (ii) upon fully executed
19 deed(s) in lieu and/or the ~~Interim DIP Financing Order~~ completion of one or more foreclosures
20 or other remedies under applicable California law be granted a valid, binding and perfected first
21 position lien, securing the Obligations, on the proceeds of the DIP Collateral, as defined in the
22 Interim DIP Financing Order, and any remaining DIP Collateral that is not liquidated or used to
23 satisfy the DIP Obligations ~~(the “Supplemental Lien”); provided, however, that the~~

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28 ⁴⁻³ References to “DIP Lender” herein shall be to HRE Montebello, LLC, as lender (together with its successor or
assigns). ~~FINAL CASH COLLATERAL ORDER~~
CASH COLLATERAL ORDER

~~Supplemental Lien shall only attach to the proceeds of the DIP Collateral and any remaining
DIP Collateral to the extent such liquidated or remaining DIP Collateral constitutes
Prepetition Collateral. Subject to Paragraph 28 and the Carveout, such Supplemental Lien,~~
which liens and security interests, subject to paragraph [27], shall be valid, perfected, binding,
enforceable, non-avoidable and effective ~~lien~~liens by operation of law as of the date of the
indefensible payment of the DIP Obligations and without any further action by the Master Trustee
and without the necessity of executing, filing or recording any financing statements, security
agreements, mortgages, deeds of trust, filings with a governmental unit, or other documents,
agreements, or instruments or the taking of any other actions (including, for the avoidance of
doubt, taking possession of any collateral) to validate or perfect (in accordance with applicable
law) the ~~Indenture~~Master Trustee's liens (the "Supplemental Collateral"; and, collectively with
the Prepetition Collateral and the Postpetition Bond Collateral, the "Collateral"). To the extent
required by the Indenture Trustee, and upon its reasonable request, the Debtors shall execute a
deed of trust in a form satisfactory to the Indenture Trustee to be recorded in the land records
evidencing the foregoing liens granted to the Indenture Trustee in the Supplemental Collateral, and
the proceeds thereof, immediately following the indefeasible satisfaction of the DIP Obligations.
The Supplemental Liens shall be exclusive of and ~~shall not attach~~attached to the Aggregate
Excluded Assets but shall include and attached to the Potential Master Trustee Claims.

12. ~~11.~~ No Further Action Required. The approval of this Order by the Court shall be
sufficient and conclusive evidence of the validity, extent, enforceability, and perfection of the
Rollover Lien and the Supplemental Lien granted to the Master Trustee, whether or not the
~~Bond~~Master Trustee elects to file or record financing statements or any other documents that may
otherwise be required under federal or state law in any jurisdiction, or to take such other steps as
may otherwise be required to obtain, evidence, or perfect such liens under applicable law;

1 provided, however, that upon the request of the ~~Bond~~Master Trustee, the Debtors shall execute
2 such other documents as may be reasonably requested to evidence and perfect such liens. The
3 ~~Bond~~Master Trustee may, in its sole discretion, but shall not be required to, file a certified copy of
4 this Order in any filing or recording office in any jurisdiction in which the Debtors have real or
5 personal property. The Debtors are authorized and directed to execute, or cause to be executed, all
6 such financing statements or other documents upon the ~~Bond~~Master Trustee's reasonable request.
7 Such filing or recording shall be accepted and shall constitute further evidence of perfection of the
8 ~~Bond~~Master Trustee's liens and security interests on and in the Debtors' assets. Subject to
9 ~~Paragraph 28 hereof~~paragraph [27], no obligation, payment, transfer, or grant of security under
10 this Order shall be stayed (other than by court order in an appeal from this Order), restrained,
11 voidable, avoidable, or recoverable under the Bankruptcy Code or under any otherwise applicable
12 state law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

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15 13. ~~12.~~ Superpriority Claim. ~~Except as otherwise provided in this~~Subject to
16 ~~paragraph and subject to Paragraph 28 and the Carveout~~[27], as additional adequate protection
17 for any Diminution, the ~~Bond~~Master Trustee shall have a superpriority administrative expense
18 claim pursuant to Section 507(b) of the Bankruptcy Code ~~(solely to the extent the Rollover Lien~~
19 ~~and the Supplemental Lien fail to provide adequate protection with respect to any~~
20 ~~Diminution)~~ with recourse to and payable from any and all assets of the Debtors' estates,
21 ~~(excluding the Aggregate Excluded Assets~~ but including the Potential Master Trustee Claims ~~)~~ (the
22 "Superpriority Claim"). ~~Except for the Carveout, the~~The Superpriority Claim shall have
23 priority, pursuant to Section 507(b) of the Bankruptcy Code, over any and all administrative
24 expenses, diminution claims (except the DIP Lender diminution claim to which the Master
25 Trustee's Superpriority Claim is pari passu), and all other claims against the Debtors, now
26 existing or hereafter arising, of any kind whatsoever, including, without limitation, all other
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1 administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code, and over
2 any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330,
3 331, 503(b), 506(c) ~~(to the extent that an order of this Court waives the rights of the Debtors'~~
4 ~~estates thereunder)~~, 507(a), 507(b), 546, 726, 1113, or 1114 of the Bankruptcy Code, and shall at
5 all times be senior to the rights of the Debtors, any successor trustee, or any creditor in this
6 Chapter 11 Case, whether or not such expenses or claims may become secured by a judgment lien
7 or other non-consensual lien, levy, or attachment, provided however that the Superpriority Claim
8 shall be pari passu ~~to such other liens~~ with any administrative claims of the DIP Lender.

10 14. Adequate Protection Payments. In consideration for the use of Cash Collateral, the
11 Debtors shall make adequate protection payments in the amounts and at the times set forth in the
12 Budget (the "Adequate Protection Payments"). To the extent it is determined by final order that
13 the value of the Master Trustee's Prepetition Collateral did not exceed the allowed secured claim
14 of the Master Trustee in these cases, the Adequate Protection Payments (net of any allowed
15 Diminution claim of the Master Trustee) shall be deemed to reduce the allowed amount of such
16 secured claim.

18 15. ~~13.~~ Aggregate Excluded Assets. No Rollover Lien, Supplemental Lien,
19 Superpriority Claim or any other lien or claim granted pursuant to this Order shall attach to or be
20 asserted against the following assets of the Debtors: (i) causes of action under ~~chapter~~ Chapter 5
21 of the Bankruptcy Code or applicable state law equivalents and the proceeds thereof, and (ii) any
22 pre-petition or ~~postpetition~~ post-petition commercial tort claims (as such term is defined in the
23 Uniform Commercial Code as in effect in the State of California) and the proceeds thereof,
24 including, without limitation, any and all causes of action (and the proceeds thereof) against (a)
25 current and former trustees, directors, officers, managers, and members of the Debtors, (b) any of
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1 the Debtors' auditors, accountants or other professionals and consultants, and/or (c) the Debtors'
2 affiliates or related persons and entities ((i) and (ii) together, the "Aggregate Excluded Assets").

3 ~~14. Adequate Protection Payments. In consideration for the use of Cash~~
4 ~~Collateral, the Debtors shall make adequate protection payments in the amounts and at the~~
5 ~~times set forth in the Budget (the "Adequate Protection Payments"). Any professional of the~~
6 ~~Master Trustee seeking payment of fees and expenses from the Debtors shall provide~~
7 ~~summary copies of its invoices (which shall not be required to contain time entries and~~
8 ~~which may be redacted or modified to the extent necessary to delete any information subject~~
9 ~~to attorney-client privilege, any information constituting attorney work product, or any~~
10 ~~other confidential information) via email (or other electronic means) to the Debtors, the U.S.~~
11 ~~Trustee, and the Committee. The Debtors shall pay the undisputed amounts invoiced within~~
12 ~~ten (10) calendar days (the "Review Period"). In the event that the Debtors, the U.S. Trustee~~
13 ~~or the Committee raises an objection with respect to any invoice during the applicable~~
14 ~~Review Period (which objection must be in a writing delivered by email (or other electronic~~
15 ~~means) to the relevant professional that states with particularity the fees and/or expenses~~
16 ~~being objected to and the grounds therefor) and the parties are unable to fully resolve such~~
17 ~~objection, the Court shall hear and determine such dispute. To the extent it is determined~~
18 ~~by final order that the value of the Master Trustee's Prepetition Collateral did not exceed~~
19 ~~the allowed secured claim of the Master Trustee in these cases, the Adequate Protection~~
20 ~~Payments (net of any allowed Diminution claim of the Master Trustee) shall be deemed to~~
21 ~~reduce the allowed amount of such secured claim~~ To the extent that any Aggregate Excluded
22 Assets constitute claims or causes of action that, as determined by a final court order, (i) do not
23 constitute property of a Debtor's estate, (ii) constitute Prepetition Collateral, and/or are claims or
24 causes of action that are personal to the Master Trustee (the "Potential Master Trustee Claims"),

1 then such Potential Master Trustee Claims shall not be included in the definition of Aggregate
2 Excluded Assets.

3 16. ~~15.~~ Prosecution of Sale. The Debtors intend to file a motion to sell substantially all
4 of their assets, and a motion to approve sale procedures relating to the sale of such assets
5 (collectively, the “Sale Motion”). As further adequate protection of the ~~Bond~~BondMaster Trustee’s
6 interests in the Cash Collateral, ~~and subject to confidentiality requirements imposed by~~
7 ~~potential purchasers,~~ the Debtors shall keep the ~~Bond~~BondMaster Trustee informed on a current basis
8 of the status of all offers received (whether written or oral) for any of the Collateral and shall
9 provide the ~~Bond~~BondMaster Trustee copies of all such offers within one business day after receipt
10 subject to reasonable confidentiality restrictions. Such information shall also be concurrently
11 provided to the Committee subject to reasonable confidentiality restrictions. Nothing herein shall
12 be interpreted to be the consent of the Master Trustee or the Committee to the Sale Motion, and
13 the Master Trustee and the Committee reserve all rights to object thereto. Furthermore, in
14 connection with the Sale Motion, the Debtors shall request, without limitation (a) that an order be
15 entered approving bid procedures reasonably acceptable to the Master Trustee; (b) that the Debtors
16 establish milestones, subject to ~~be~~ the consent of the ~~Bond~~BondMaster ~~Trustee to,~~ for such sale; and (c)
17 that the order approving the Sale Motion, ~~and shall provide for the~~ ~~Bond Trustee reserves all~~
18 ~~rights to object thereto~~ payment of the proceeds of the Collateral, less amounts attributed to the
19 sale of the DIP Collateral, at the closing to be applied to the Claim on the Obligations and/or
20 Adequate Protection Payments as described in and provided for under this Order.

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24 17. ~~16.~~ Notice of Pleadings. As further adequate protection of the ~~Bond~~BondMaster
25 Trustee’s interests in the Cash Collateral, and in contemplation for the use of Cash Collateral, the
26 Debtors shall give the ~~Bond~~BondMaster Trustee at least two (2) business’ days advanced notice of their
27

1 filing of any motions, oppositions, applications, stipulations or other documents in the Chapter 11
2 Case that affect, relate to or bear upon the Collateral.

3 18. ~~17.~~ Allowance of Claim. As set forth in and subject to ~~Paragraph 28~~ paragraph
4 [27] below, the entry of this Order by the Court shall be a conclusive and binding determination on
5 all parties (x) as to the amount and validity of the Claim on the Obligations, and (y) as to the
6 scope, extent, perfection, validity, and enforceability, in all respects, of the ~~Bond~~ Master Trustee's
7 security interests and liens in the Prepetition Collateral, including, without limitation, the Cash
8 Collateral.

10 19. ~~18.~~ Financial Information. As further additional adequate protection of the
11 ~~Bond~~ Master Trustee's security interests in the Cash Collateral and the Prepetition Collateral, the
12 Debtors shall allow the ~~Bond~~ Master Trustee and its professionals and designees reasonable
13 access, during normal business hours and on not less than 72 hours' notice, to the premises,
14 officers, auditors, appraisers and financial advisors of the Debtors in order to conduct appraisals,
15 analyses and/or audits of the Prepetition Collateral and the Collateral, and shall otherwise
16 reasonably cooperate in providing any other financial and operating information requested by the
17 ~~Bond~~ Master Trustee. From and after the entry of this Order, the Debtors shall provide to the
18 ~~Bond~~ Master Trustee and the Committee the financial information to be provided to the DIP
19 Lender pursuant to the *Interim Order (I) Authorizing the Debtors to Obtain Post-Petition*
20 *Financing, (II) Granting Adequate Protection to Prepetition Secured Creditors, (III) Scheduling a*
21 *Final Hearing, and (IV) Granting Further Relief* [Docket No. 182] on Thursday of each week,
22 including any and all reports that the Debtors provide to the DIP Lender. The Debtors shall
23 inform the Committee if the Master Trustee is granted access to the Debtors' premises and provide
24 the Committee with a copy of all information provided to the Master Trustee pursuant to this
25 Paragraph 19.

20. ~~19.~~ ~~Compliance with Bond~~With Indenture Documents. As further adequate protection against Diminution, the Debtors shall comply with the following terms and provisions of the ~~Bond~~Indenture Documents:

Bond Document Covenants

Loan Agreements

Section 5.01 (relating to Prohibited Uses)

Section 5.05 (relating to Tax Covenant)

Section 5.06 (relating to Continuing Disclosure), except that the Debtors shall file unaudited financial information if audited financial information is not available

Section 5.08 (relating to Special Services Covenant)

Section 5.09 (relating to Compliance with Bond Indenture)

Master Trust Indenture

Section 3.12 (Insurance)

Supplements to Master Trust Indenture

Section 3.1 (relating to Tax Exempt Status)

Bond Indentures

Section 6.06 (relating to Tax Covenant)

Section 6.11 (relating to continuing disclosure), except that the Debtors shall file unaudited financial information if audited financial information is not available

Deed of Trust

Section 5.2 (relating to payment of Taxes)

Section 5.4 (relating to Insurance)

The requirements of this Order shall be in addition to, and not in substitution for, the terms and provisions of the ~~Bond~~Indenture Documents set forth in this ~~paragraph~~Paragraph; provided, however, in the event of any inconsistency between the ~~Bond~~Indenture Documents and this Order, the terms of this Order shall control. Prior to declaring a Termination Event (defined ~~in~~ ~~Paragraph 20~~ below) for failure by the Debtors to comply with the terms and provisions ~~of this~~

1 ~~paragraph~~above, the Master Trustee shall provide the Debtors and the Committee with at least
2 five (5) business days written notice of the Master Trustee's determination that the Debtors are not
3 in compliance with any ~~such~~of the above terms and provisions. Each of the Committee and the
4 Debtors reserves and preserves all rights and objections with respect thereto, including without
5 limitation, the right to assert that the Debtors have remained in compliance with the terms and
6 provisions of the Indenture Documents or that such compliance is impractical in light of the
7 Debtors' chapter 11 cases. ~~Notwithstanding anything set forth in this paragraph, to the extent~~
8 ~~the Court enters an order approving the sale of some or all of the Debtors' assets, such sale~~
9 ~~or any actions taken in connection therewith shall not trigger a Termination Event under~~
10 ~~this Order.~~

11
12 21. ~~20.~~ Termination of Use of Cash Collateral ~~with~~With Notice. A Termination Event
13 shall
14 be deemed to have occurred five (5) business days after written notice sent by the ~~Bond~~Master
15 Trustee to the Debtors, the Committee, their counsel, and the United States Trustee of the
16 occurrence of any of the following (a "Termination Event"):

17
18 (i) the ~~payment of any expense that would cause aggregate actual expenditures~~
19 ~~on a cumulative basis in the Budget measured during any consecutive three (3)~~
20 ~~week period to exceed one hundred ten percent (115%) of the total budgeted~~
21 ~~expenses in the Budget for such measuring period. Any budgeted expenditures not~~
22 ~~paid in a particular budget period may be paid during a subsequent period and, for~~
23 ~~the purpose of calculating the variances~~Debtors' disbursements, measured in the
aggregate, exceed the disbursements set forth ~~above~~in the Budget ~~will be revised to~~
~~move such expenditures to the later period~~(or any subsequently approved Budget), as
applicable, for any Testing Period by more than the Permitted Variance;

24 (ii) the failure of the Debtors to pay, within ten (10) days of the applicable due date,
25 all undisputed administrative expenses in full in accordance with their terms as provided
26 for in the Budget except for any expenses under sections 503(b)(9) or 546(c) of the
Bankruptcy Code;

27 (iii) the failure of the Debtors to timely pay all fees due under 28 U.S.C. § 1930;

28 (iv) the failure of the Debtors to obtain entry of an order on or before ~~May~~June
2023, approving bidding procedures; ~~22 22-~~ FINAL CASH COLLATERAL ORDER FINAL
CASH COLLATERAL ORDER

(v) by no later than July [19], 2023, the Bankruptcy Court shall have entered an order in form and substance satisfactory to the **BondMaster** Trustee approving the sale of all or substantially all of the Debtors' assets;

(vi) the failure of the Debtors to consummate a sale of substantially all of their assets by or before July 31, 2023;

(vii) the failure of the Debtors to maintain sufficient insurance on the **BondMaster** Trustee's collateral as required under the **BondIndenture** Documents; and

(viii) the failure of the Debtors to comply with, keep, observe, or perform any of their agreements or undertakings under this Order (unless a different termination period is specified for such agreement or undertaking).

Unless prior to the expiration of the five (5) business day period described in this paragraph, 19

the Debtors have cured the Termination Event(s) specified in the **BondMaster** Trustee's notice,

or obtained an order of this Court, on notice to and with the opportunity to be heard by the

BondMaster Trustee ~~and the Committee~~, that no such Termination Event has occurred, the

authority of the Debtors to use Cash Collateral hereunder shall terminate without further action

of any kind (the "Termination Date"), without prejudice to the Debtors, ~~the Committee~~ and

other parties in interest (including the Committee) seeking an order of this Court for the

continued use of Cash Collateral on a non-consensual and expedited basis. In the event the

BondMaster Trustee provides notice to the Debtors ~~and the Committee~~ that a Termination

Event has occurred under this ~~paragraph~~ Paragraph 19, the Debtors shall schedule a status

conference ~~as soon as the Court's schedule permits~~, within the five (5) business ~~days if~~

~~possible~~, day period and request that such status conference be held during such period to

discuss the outstanding issues related to the proceedings. ~~The Master Trustee may not~~

~~terminate the use of Cash Collateral and shall take no action to enforce its prepetition and~~

~~postpetition liens and security interests or to collect any amounts due from the Debtors~~

~~until such status conference has been conducted and the Court has entered an order~~

~~authorizing such relief.~~

1 22. ~~21.~~ Termination of Use of Cash Collateral Without Prior Notice. The Debtors'
2 authority to use Cash Collateral hereunder shall terminate without any further action by this Court,
3 and a Termination Event shall occur without prior notice, upon the occurrence of any of the
4 following (also a "Termination Event"):
5

6 (i) the Chapter 11 Case is dismissed or converted to a case under
Chapter 7 of the Bankruptcy Code;

7 (ii) the Debtors fail to make ~~the undisputed portions of~~ the
8 Adequate Protection Payments when due, and such failure continues for
9 three (3) business days following notice to the Debtors ~~and the~~
~~Committee~~ by the ~~Bond~~ Master Trustee;

10 (iii) the earlier of (y) the date of the entry of an order of this Court
11 appointing a Chapter 11 trustee or an examiner with enlarged powers
12 (beyond those set forth in Sections 1104(c) and 1106(a)(3) and (4) of the
13 Bankruptcy Code) for the Debtors; or (z) the date the Debtors file a
motion, application, or other pleading consenting to or acquiescing in any
such appointment;

14 (iv) an order is entered in the Chapter 11 Case over the objection of
15 the ~~Bond~~ Master Trustee approving financing pursuant to Section 364 of
16 the Bankruptcy Code that would grant an additional security interest or a
17 lien on any Collateral or granting a superpriority administrative claim that
is equal or superior to the superpriority administrative claim granted to
the ~~Bond~~ Master Trustee under this Order; or

18 (v) an adversary proceeding or contested matter is commenced or
19 joined by the Debtors or the Committee challenging the amount, validity,
20 enforceability, priority, or extent of the ~~Bond~~ Master Trustee's liens,
security interests, or claims.

21 Upon the occurrence of a Termination Event described in this paragraph 22, the Debtors' authority
22 to use Cash Collateral hereunder shall automatically terminate, without prejudice to the Debtors ~~or~~
23 ~~any~~ and other ~~party~~ parties in interest (including the Committee) seeking an order of this Court
24 ~~to for the continued~~ use of Cash Collateral on a non-consensual and expedited basis, and all
25 amounts owed under the terms of this Order and shall be accelerated and immediately due and
26 payable, the Master Trustee shall be permitted to exercise all available remedies without further
27

1 notice or court order, and the Master Trustee shall be automatically relieved of any further stay
2 under Section 362 of the Bankruptcy Code, or other restriction on enforcement of its prepetition
3 and postpetition liens and security interests in the Collateral to collect the amounts due (also a
4 “Termination Date”). ~~In the event~~Following the occurrence of a Termination Event **identified**
5 **in under** this Paragraph ~~21 becomes likely~~19, the Debtors shall schedule a status conference **as**
6 ~~soon as the Court’s schedule allows~~within five (5) business days after the occurrence of such
7 Termination Event to discuss the outstanding issues related to ~~such an event~~the proceedings with
8 the Court. Notwithstanding the foregoing provision regarding relief from the stay under Section
9 362 of the Bankruptcy Code, the Master Trustee ~~may not terminate the Debtors’ use of Cash~~
10 ~~Collateral and~~ shall take no action with respect to the enforcement of its prepetition and
11 postpetition liens and security interests in the Collateral or to collect the amounts due from the
12 Debtors until such status conference has been held and the Court has entered an order or otherwise
13 rules as ~~at the~~ result of such status conference.

14 23. ~~22.~~ Claims and Causes of Action. ~~Subject to Paragraph 28, on~~On behalf of itself
15 and the estate, the Debtors reaffirm, and hereby waive, release, and discharge the ~~Bond~~BondMaster
16 Trustee, all Bondholders in their capacity as such, and their respective affiliates, agents, attorneys,
17 professionals, officers, directors, and employees (collectively, the “Released Parties”), from any
18 and all claims and causes of action arising out of, based upon, or related to, in whole or in part, the
19 Bonds and the ~~Bond~~BondIndenture Documents; any aspect of the prepetition relationship between the
20 ~~BondMaster~~ Trustee and/or the Bondholders, and the Debtors; and any other acts or omissions by
21 the ~~BondMaster~~ Trustee and/or the Bondholders in connection with either the ~~Bond~~BondIndenture
22 Documents or the ~~BondMaster~~ Trustee’s and/or Bondholders’ prepetition relationship with the
23 Debtors. Further, ~~and also subject to Paragraph 28,~~ the Debtors waive any and all rights to
24 object to or contest the amount of the Claim on the Obligations or the ~~Bond~~BondMaster Trustee’s

1 security interest in the Prepetition Collateral and agree not to challenge that all such claims and
2 security interests have been duly perfected and are in all respects valid and enforceable first
3 priority security interests and liens. ~~The foregoing release shall not bind any individual~~
4 ~~creditors (other than affiliates, insiders and equity holders of the Debtors and their~~
5 ~~respective affiliates) or the Committee acting on behalf of the Debtors' estates, as to any~~
6 ~~claims, causes of action, etc., arising prior to the date of the entry of this Order. For the~~
7 ~~avoidance of doubt, the foregoing release shall not bind any individual creditors (other than~~
8 ~~affiliates, insiders and equity holders of the Debtors and their respective affiliates) or the~~
9 ~~Committee, acting on behalf of the Debtors' estates, as to any claims, causes of action, etc.,~~
10 ~~arising prior to the date of the entry of this Order.~~

11
12 24. ~~23.~~ Failure of Adequate Protection. Nothing herein shall constitute a waiver,
13 release or modification of the rights of the ~~Bond~~Master Trustee to assert a claim under Sections
14 364(c) and 507(b) of the Bankruptcy Code.

15
16 ~~24. — Carveout. In partial consideration of the Debtors' acknowledgement of the~~
17 ~~debt due and owing, the Master Trustee consents to certain expenses and professional fees~~
18 ~~incurred during the pendency of the Debtors' chapter 11 cases that shall be superior in all~~
19 ~~instances to the liens and claims of the Master Trustee, including the Rollover Liens,~~
20 ~~Supplemental Liens and Superpriority Claims, and all other parties (the "Carveout"). For~~
21 ~~purposes hereof, the Carvout means the sum of (a) the statutory fees of the United States~~
22 ~~Trustee pursuant to 28 U.S.C. § 1930 and the fees of the Clerk of this Court, (b) the~~
23 ~~postpetition expenses incurred in the ordinary course of the Debtors' operations to the~~
24 ~~extent such amounts were set forth in the Budget but not paid during the applicable Budget~~
25 ~~periods, (c) postpetition expenses incurred in the ordinary course of the Debtors' operations~~
26 ~~and set forth in the line items of the Budget but that are not payable during an applicable~~
27

~~Budget period (i.e., when the Budget is no longer in effect), (d) to the extent allowed by the Court, the fees and expenses in an aggregate amount not to exceed \$20,000 incurred by any trustee appointed in the chapter 11 cases, (e) professional fees and expenses of attorneys and financial advisors employed by the Debtors and the Committee, pursuant to sections 327 and 1103 of the Bankruptcy Code (collectively, the “Case Professionals”) allowed by the Court (but regardless of the date of allowance), and incurred prior to the occurrence of a Termination Event, and (f) to the extent allowed by the Court and incurred after the occurrence of a Termination Event, (i) professional fees and expenses of Debtors’ professionals in an aggregate amount not to exceed \$100,000 after exhaustion of retainers and (ii) professional fees and expenses of Committee’s professionals in an aggregate amount not to exceed \$50,000, subject to rights of parties in interest to object or defend the allowance of any Case Professionals’ fees and expenses, as applicable; provided, however, notwithstanding anything to the contrary herein, no more than an aggregate of \$75,000 of the Carveout may be used by the Committee to investigate the amount, extent, priority, validity, perfection or enforceability of (x) any Committee reserves and preserves all rights, objections and defenses with respect to such claims, ~~including claims asserted~~ by the Master Trustee ~~on account of any alleged obligations owing to the Master Trustee under the Indenture Documents and any other documents entered in connection therewith, and (y) any liens on or security interests in the Prepetition Collateral asserted by the Master Trustee, including the Prepetition Liens (collectively, the “Committee Lien Challenge”) and the Additional Committee Claims (as defined below). Nothing contained herein or in the Budget shall affect the rights of the Case Professionals to seek allowance and payment of fees and expenses in excess of the amounts set forth in the Carve Out and Budget or to permit the~~~~

~~Debtor to pay such amount as approved by the Court from sources other than Cash Collateral.~~

25. Deemed Request for Stay Relief. This Order shall be deemed to constitute a request as of the Petition Date by the ~~Bond~~Master Trustee for relief from the automatic stay with respect to the Prepetition Collateral for purposes of any request for adequate protection granted hereunder.

26. Modification of Stay. The automatic stay imposed by Section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit the ~~Bond~~Master Trustee to: (i) receive any payments or distributions made by the Debtors to the ~~Bond~~Master Trustee for and on behalf of the Bondholders, (ii) ~~upon notice to the Debtors and the Committee, and to the extent not inconsistent with this Order,~~ apply, allocate, or make payments from any of the funds or accounts maintained by the ~~Bond~~Master Trustee in accordance with the terms of the ~~Bond~~Indenture Documents, and (iii) take any action authorized by this Order.

27. Bankruptcy Code Sections 506(c) and 552(b). To the extent provided in this Order, in light of the Master Trustee's agreement to permit the use of its Cash Collateral as herein provided, the Master Trustee is entitled to, and shall be granted, (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code; and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code and any other surcharge on the Collateral.

28. ~~27.~~ Preservation of Rights. If any or all of the provisions of this Order are, at any time, modified, vacated or stayed, such stay, modification, or vacation shall not affect the validity, extent, priority, and enforceability of any lien, priority, or other benefit conferred under this Order prior to such stay, modification, or vacation.

1 29. ~~28.~~ Binding Effect. This Order shall be binding on all creditors and parties in
2 interest in this Chapter 11 Case, including, but not limited to, the Debtors (including any affiliates,
3 insiders and equity holders and their respective affiliates) and any successors thereto, ~~including~~
4 any ~~chapter~~Chapter 11 or ~~chapter~~Chapter 7 trustee that is appointed or elected in this Chapter 11
5 Case; ~~provided, however,~~ that this Order is without prejudice to the rights of individual creditors
6 (other than affiliates, insiders and equity holders of the Debtors and their respective affiliates) or
7 the Committee, to, on behalf of the Debtors' estates, ~~bring a Committee Lien~~ challenge the
8 validity, amount, perfection, priority, extent or enforceability of the Claim on the Obligations or
9 the pre-petition security interests of the Master Trustee (a "Challenge"), so long as any such
10 ~~Committee Lien~~ Challenge is made ~~by no later than fifty-six~~ on or before the earlier of any Bar
11 Date set by the Court or twenty-eight (5628) days ~~following entry of this Order, unless such~~
12 ~~date is extended with the consent~~ after the filing by the Office of the ~~Master~~ United States
13 Trustee (of the "Lien Challenge Deadline") appointment of a Committee, after which time all
14 such challenges shall be deemed finally and conclusively barred. ~~Nothing in this paragraph~~
15 ~~shall limit, modify or otherwise prejudice in any way the Committee's right to bring~~
16 ~~challenges, disputes;~~ provided further that if one or more claims are timely made under this
17 paragraph 27 and properly filed, then except for such claims, all potential claims ~~or~~ and causes of
18 ~~action against the Master Trustee other than the Committee Lien Challenge, including, but~~
19 ~~not limited to, those arising under chapter 5 of the Bankruptcy Code or applicable state law~~
20 ~~equivalents and any non-lien challenges (the "Additional Committee Claims"). The~~
21 ~~Additional Committee Claims shall not be subject to the Lien Challenge Deadline. The~~
22 ~~Committee is hereby granted exclusive standing and authority to investigate, prosecute~~
23 ~~and/or settle any Committee Lien Challenge and Additional Committee Claims. Nothing in~~
24 ~~this Order vests or confers on any person, other than the Committee as set forth herein,~~

~~standing or authority to pursue any cause of action belonging to the Debtors or their~~
~~estates~~ actions are hereby deemed forever waived and relinquished.

30. ~~29.~~ No Competing Liens. Except as set forth herein or as set forth herein or the
Interim DIP Financing Order, the Debtors shall not grant liens on, or security interests in, the
Prepetition Collateral or the Collateral to any other party, pursuant to Section 364 of the
Bankruptcy Code or otherwise, without the consent of the ~~Bond~~ Master Trustee.

31. ~~30.~~ Reservation of Rights. Except as provided in this Order, none of the Debtors
nor the ~~Bond~~ Master Trustee nor the Committee waives any of its rights under the Bankruptcy
Code, any applicable law, or the ~~Bond~~ Indenture Documents, including, without limitation, the
right of the Debtors or the ~~Bond~~ Master Trustee at any time to seek any relief (or to oppose any
such relief) under the Bankruptcy Code, or the right of the Debtors ~~or~~ the ~~Bond~~ Master Trustee or
the Committee to exercise any of their rights and remedies under the Bankruptcy Code at any time
(or to oppose any such relief).

32. ~~31.~~ Further Relief. Nothing herein shall (i) preclude the ~~Bond~~ Master Trustee from
seeking any other relief that it may deem appropriate, including relief from the automatic stay; or
(ii) prevent the ~~Bond~~ Master Trustee from asserting at some later time that its liens and security
interests in the Prepetition Collateral are not being adequately protected and the Committee
reserves and preserves all rights, objections and defenses with respect to ~~any~~ such request(s) by
the Master Trustee.

33. ~~32.~~ No Third-Party Beneficiaries. Except as expressly provided herein, no rights
are created hereunder for the benefit of any third party, any creditor, or any direct, indirect or
incidental beneficiary except for the Bondholders and Hanmi Bank, as set forth herein.

34. ~~33.~~ Effectiveness. The rights and obligations of the parties under this Order shall
be effective and enforceable as of the date of the Petition Date, and, for the avoidance of doubt,

1 Bankruptcy Rule 6004(h) shall not apply hereto. If any or all of the provisions of this Order are
2 hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur, or stay shall
3 not affect (i) the validity, extent, priority, or enforceability of any obligations incurred prior to the
4 actual receipt of written notice by the ~~Bond~~Master Trustee of the effective date of such reversal,
5 modification, vacatur, or stay, or (ii) the validity, extent, or enforceability of the liens and claims
6 granted hereunder.
7

8 35. ~~34.~~ Notices. All notices, requests, demands, waivers, and other communications
9 required or permitted to be given under this Order shall be in writing and shall be deemed to have
10 been duly given if (a) delivered personally, (b) sent by email, or (c) next-day or overnight mail or
11 delivery:
12

13 (a) If to the Debtors to:

14 Orrick, Herrington & Sutcliffe LLP
15 Attn: Marc A. Levinson
16 The Orrick Building
17 405 Howard Street
18 San Francisco, CA 94105
19 Email: malevinson@orrick.com

Proposed Special Counsel to Debtors and Debtors in Possession

20 (b) If to the ~~Bond~~Master Trustee to:

21 Greenberg Traurig, LLP
22 Attn: Kevin J. Walsh ~~and~~, Colleen A. Murphy and Christopher Marks
23 One International Place, Suite 2000
24 Boston, MA 02110
25 E-mail: Kevin.Walsh@gtlaw.com
26 Colleen.Murphy@gtlaw.com
27 Chris.Marks@gtlaw.com

Counsel to the ~~Bond~~Master Trustee

28 (c) If to the Committee to:

Dentons US LLP

- 31-31 -

~~FINAL CASH COLLATERAL ORDER~~ FINAL
CASH COLLATERAL ORDER

Attn: Tania M. Moyron, Samuel R. Maizel, and Rebecca Wicks
601 South Figueroa Street, Suite 2500
Los Angeles, CA 90017-5704
Email: tania.moyron@dentons.com
samuel.maizel@dentons.com
rebecca.wicks@dentons.com

-and-

Sills Cummis & Gross, P.C.
Attn: Andrew Sherman and Boris Mankovetskiy
One Riverfront Plaza
Newark, NJ 07102
E-mail: asherman@sillscummis.com
bmankovetskiy@sillscummis.com

Proposed Attorneys for the Committee

####

Dated: _____
Los Angeles, California

United States Bankruptcy Judge

APPROVED AS TO FORM:

By _____

Marc A. Levinson,
Proposed counsel to Debtors

APPROVED AS TO FORM:

By _____

Kevin J. Walsh,
Counsel to the ~~Bond~~ Master Trustee

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APPROVED AS TO FORM:

By
Andrew Sherman,
Proposed attorneys to the Committee

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Document 1 ID	2023.05.22 - Beverly Hospital Final Cash Collateral Order 4160-9316-0007 3.docx
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Statistics:	
	Count
Insertions	326
Deletions	296
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	622

EXHIBIT B

1 GREENBERG TRAURIG, LLP
KEVIN J. WALSH (admitted *pro hac vice*)
2 COLLEEN A. MURPHY (admitted *pro hac vice*)
CHRISTOPHER MARKS (admitted *pro hac vice*)
3 One International Place, Suite 2000
Boston, Massachusetts 02110
4 Telephone: (617) 310-6000
Email: Kevin.Walsh@gtlaw.com
5 Colleen.Murphy@gtlaw.com
Chris.Marks@gtlaw.com

6 HOWARD J. STEINBERG
7 1840 Century Park East, Suite 1900
Los Angeles, CA 90067
8 Telephone: 310-586-7700
Email: steinbergh@gtlaw.com

9 Counsel to U.S. Bank Trust
10 Company National Association, as Master Trustee

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

13 In re:
14 BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY HOSPITAL
15 (A NONPROFIT PUBLIC BENEFIT
CORPORATION), *et al*,¹
16 Debtors,

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

Jointly administered with:
Case No: 2:23-bk-12360-SK
Case No: 2:23-bk-12361-SK

Chapter 11 Case

- 17 ☒ Affects all Debtors
18 ☐ Affects Beverly Community
19 Hospital Association
20 ☐ Montebello Community Health
Services, Inc.
21 ☐ Beverly Hospital Foundation
22

**FINAL ORDER: (I) AUTHORIZING THE
DEBTORS TO OBTAIN POST-PETITION
FINANCING, (II) GRANTING
ADEQUATE PROTECTION TO
PREPETITION SECURED CREDITORS,
AND (III) GRANTING RELATED
RELIEF**

Date:
Time:
Judge: Sandra R. Klein
Place: Zoom.Gov – or - Courtroom 1575
255 E. Temple St.
Los Angeles, CA 90012

24 Upon the Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the
25 Debtors to Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition
26

27 ¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification
28 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 *Secured Creditors, and (III) Granting Related Relief; Memorandum of Points and Authorities in*
2 *Support Thereof* (the “DIP Motion”),² dated April 20, 2023, filed by Beverly Community Hospital
3 Association, Montebello Community Health Services, Inc., and Beverly Hospital Foundation
4 (collectively, the “Debtors”), as debtors and debtors in possession in the above captioned chapter
5 11 cases (collectively, the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 364(c)(1),
6 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code (the
7 “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy
8 Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Bankruptcy Rules for the United
9 States Bankruptcy Court for the Central District of California (the “Local Rules” or “LBR”), for
10 entry of an interim order (the “Interim Order”) and this final order (this “Final Order”) authorizing
11 the Debtors to, among other things: *inter alia*:

12 (1) to (A) obtain postpetition secured debtor in possession financing in an
13 aggregate principal amount of up to \$13,250,000 (the “DIP Facility”), pursuant to the terms and
14 conditions set forth in the Senior Secured Superpriority Debtor-in-Possession Credit Agreement
15 (substantially in the form attached as Exhibit 2 to the *Stipulation Re Interim Order: (I) Authorizing*
16 *the Debtors to Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition*
17 *Secured Creditors, (III) Scheduling a Final Hearing and (IV) Granting Related Relief*
18 (the “Stipulation”) incorporated by reference herein, and as hereafter amended, restated,
19 supplemented, waived, or otherwise modified from time to time, all in accordance with, and subject
20 to, the terms of this Interim Order, the “DIP Credit Agreement”), by and among the Debtors, as
21 borrowers (collectively, the “DIP Borrowers”), and HRE Montebello, LLC, as lender (together with
22 its successor or assigns, the “DIP Lender”), and (B) incur the “Obligations” under the DIP Credit
23 Agreement (such Obligations, as defined in the DIP Credit Agreement, shall be referred to herein
24 as the “DIP Obligations”) (the DIP Credit Agreement and the other “Loan Documents” (as defined
25 in the DIP Credit Agreement), together with any related agreements, documents, guarantees,
26
27

28

² Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the DIP Motion.

1 certificates, instruments, exhibits and schedules, each as amended, restated, supplemented, waived,
2 or otherwise modified from time to time, the “DIP Documents”);

3 (2) to execute and deliver the DIP Documents and to perform all of their
4 respective obligations thereunder and such other and further acts as may be necessary or desirable
5 in connection with the DIP Documents;

6 (3) the grant of valid, enforceable, non-avoidable, automatically and properly
7 perfected security interests, liens and superpriority claims, including allowed superpriority
8 administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code and liens
9 pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code to the DIP Lender in the DIP
10 Collateral (as defined herein) (and all proceeds thereof), to secure all DIP Obligations, as more fully
11 set forth in the Interim Order and this Final Order;

12 (4) modification of the automatic stay imposed under Section 362 of the
13 Bankruptcy Code, to the extent necessary, to implement and effectuate the terms and provisions of
14 the DIP Documents, the Interim Order and this Final Order;

15 (6) the scheduling of a final hearing (the “Final Hearing”) on the DIP Motion for
16 this Court to consider entry of this Final Order, *inter alia*, authorizing the borrowings under the DIP
17 Facility on a final basis.

18 This Court having found that notice of the relief sought in the DIP Motion and at the Final
19 Hearing was provided by the Debtors in accordance with Bankruptcy Rules 2002, 4001 and 9014
20 and all applicable Local Rules, and having held the Final Hearing on _____, 2023; and after
21 considering the DIP Motion, the First Day Declaration, the DIP Documents, and the evidence
22 submitted and the arguments made on the record at the Interim Hearing and Final Hearing; and there
23 being no unresolved objections to the interim relief requested in the DIP Motion; and it appearing
24 to this Court that granting the interim relief requested in the DIP Motion is necessary to avoid
25 immediate and irreparable harm to the Debtors and their estates, and is otherwise fair and reasonable
26 and in the best interests of the Debtors, their creditors, and their estates, represents a sound exercise
27 of the Debtors’ business judgment, and is necessary for the continued operation of the Debtors’
28

1 businesses; and upon the record of the Chapter 11 Cases and after due deliberation and consideration
2 and for good and sufficient cause appearing therefor:

3 **THIS COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

4 A. Petition Date. On April 19, 2023 (the “Petition Date”), each Debtor filed a voluntary
5 petition with this Court commencing a case under chapter 11 of the Bankruptcy Code. The Debtors
6 are continuing to operate their respective businesses and manage their respective properties as
7 debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As of the date
8 hereof, no trustee or examiner has been appointed in any of the Chapter 11 Cases.

9 B. Jurisdiction and Venue. This Court has jurisdiction over these proceedings pursuant
10 to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is
11 proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

12 C. Committee Formation. On May 16, 2023, United States Trustee for the Central
13 District of California (the “U.S. Trustee”) appointed an official committee of unsecured creditors
14 (the “Committee”).

15 D. Permitted Prior Liens. As used herein, the term “Permitted Prior Liens” shall mean
16 only the “Permitted Liens” (as defined in the DIP Credit Agreement) that constitute valid,
17 enforceable, prior, perfected, and non-avoidable Liens as of the Petition Date. Nothing contained
18 herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is
19 valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice
20 the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Lender, or the
21 Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or
22 extent of any alleged Prior Permitted Lien. The right of a seller of goods to reclaim or seek a return
23 of such goods (whether under Section 546(c) of the Bankruptcy Code or otherwise) shall not be a
24 Permitted Prior Lien and shall be expressly subject to the DIP Liens.

25 E. Need for Postpetition Financing. Based upon the pleadings and proceedings of
26 record in the Chapter 11 Cases, the Debtors do not have sufficient available sources of working
27 capital and financing to carry on the operation of their businesses without the DIP Facility. The
28 Debtors’ ability to maintain business relationships with their vendors and suppliers, to make payroll,

1 to make capital expenditures, to make adequate protection payments, and to satisfy other working
2 capital and operational needs and otherwise finance their operations and conduct their business
3 affairs is essential to the Debtors' continued viability. In addition, based on the record presented at
4 the Interim Hearing and the Final Hearing: (i) the Debtors' critical need for financing is immediate
5 and the entry of this Final Order is necessary to avoid immediate and irreparable harm to the
6 Debtors' estates and the value of their assets; (ii) in the absence of the DIP Facility, the continued
7 operation of the Debtors' businesses would not be possible and serious and irreparable harm to the
8 Debtors and their estates would occur; and (iii) the preservation, maintenance and enhancement of
9 the going concern value of the Debtors are of the utmost significance and importance.

10 F. No Credit Available on More Favorable Terms. Given their current financial
11 condition, financing arrangements and capital structure, the Debtors are unable to obtain sufficient
12 committed financing from sources other than the DIP Lender on terms more favorable than under
13 the DIP Facility and the DIP Documents. The Debtors are not able to obtain unsecured committed
14 financing allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code.
15 The Debtors also have been unable to obtain sufficient committed financing (a) having priority over
16 administrative expenses of the kind specified in Sections 503(b), 507(a), and 507(b) of the
17 Bankruptcy Code, (b) secured by a lien on property of the Debtors and their estates that is not
18 otherwise subject to a lien, or (c) secured solely by a junior lien on property of the Debtors and their
19 estates that is subject to a lien. Financing on a postpetition basis is unavailable to the Debtors
20 without providing the DIP Lender: (i) the DIP Liens on the DIP Collateral (each as defined herein),
21 as provided herein and in the DIP Documents with the priorities set forth herein; (ii) the DIP
22 Superpriority Claims (as defined herein); and (iii) the other rights, protections and benefits set forth
23 in this Interim Order. After considering all alternatives, the Debtors have concluded, in the exercise
24 of their sound business judgment, that the DIP Facility represents the best financing available to
25 them at this time and is in the best interests of their estates and creditors.

26 G. Sections 506(c). As a material inducement to the DIP Lender to
27 agree to provide the DIP Facility, the DIP Lender shall receive a waiver of the provisions of Section
28 506(c) of the Bankruptcy Code.

1 H. Use of Proceeds of the DIP Facility. As a condition to entry into the DIP Documents
2 and the extension of credit under the DIP Facility as provided in this Final Order, the DIP Lender
3 requires, and the Debtors have agreed, that proceeds of the DIP Facility shall be used only in a
4 manner consistent with the terms and conditions of the DIP Documents, the Interim Order, and this
5 Final Order and in accordance with the Budget Requirements (as defined below), solely for the
6 following: (a) funding of working capital, capital expenditures, and other general corporate needs
7 in the ordinary course in compliance with the Budget Requirements and the DIP Documents, (b) the
8 payment of costs of administration of the Chapter 11 Cases in compliance with the Budget
9 Requirements and the DIP Documents, (c) payment of interest, fees, costs and expenses related to
10 the DIP Facility as provided for in this Final Order and the DIP Documents (including the reasonable
11 and documented fees and expenses of the DIP Lender's professionals and advisors), (d) payment of
12 such prepetition obligations as permitted under the DIP Documents, consented to by the DIP Lender,
13 and approved by this Court, and (e) payment of such other amounts in compliance with the Budget
14 Requirements and the DIP Documents.

15 I. Good Faith of the DIP Lender. The DIP Lender has indicated a willingness to
16 provide financing to the Debtors subject to: (i) entry of the Interim Order and this Final Order; (ii)
17 approval of the terms and conditions of the DIP Facility and the DIP Documents; (iii) satisfaction
18 of the closing conditions set forth in the DIP Documents; and (iv) findings by this Court that the
19 DIP Facility is essential to the Debtors' estates, that the DIP Lender is extending credit to the Debtors
20 pursuant to the DIP Documents in good faith, and that the DIP Lender's claims, superpriority claims,
21 security interests and liens and other protections granted pursuant to the Interim Order, this Final
22 Order and the DIP Documents will have the protections provided by Section 364(e) of the
23 Bankruptcy Code. Based upon the pleadings and proceedings of record in the Chapter 11 Cases,
24 (x) the terms and conditions of the DIP Facility and the DIP Documents, and the fees paid and to be
25 paid thereunder, are fair, reasonable, and the best available to the Debtors under the circumstances,
26 are ordinary and appropriate for secured financing to debtors-in-possession, reflect the Debtors'
27 exercise of prudent business judgment consistent with their fiduciary duties, and are supported by
28 reasonably equivalent value and consideration, (y) the terms and conditions of the DIP Facility were

1 negotiated in good faith and at arms' length among the Debtors and the DIP Lender, with the
2 assistance and counsel of their respective advisors, and (z) any credit extended, loans made, and
3 other financial accommodations extended to the Debtors by the DIP Lender, including, without
4 limitation, pursuant to the Interim Order and this Final Order, have been extended, issued or made,
5 as the case may be, in "good faith" within the meaning of Section 364(e) of the Bankruptcy Code
6 and in express reliance upon the protections offered by Section 364(e) of the Bankruptcy Code, and
7 the DIP Facility, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the full
8 protection of Section 364(e) of the Bankruptcy Code in the event that this Final Order or any
9 provision hereof is vacated, reversed or modified, on appeal or otherwise.

10 J. Notice. Notice of the Final Hearing and the proposed entry of this Final Order has
11 been provided by the Debtors, whether by facsimile, email, overnight courier, or hand delivery, to:
12 (i) the thirty (30) largest unsecured creditors of the Debtors on a consolidated basis; (ii) the Office
13 of the U.S. Trustee; (iii) Bryan Cave Leighton Paisner LLP ("BCLP"), as counsel to the DIP Lender;
14 (iv) the Office of the Attorney General of California; (v) the Prepetition Secured Creditors and their
15 counsel, including without limitation, U.S. Bank Trust Company, National Association, as Master
16 Trustee (the "Indenture Trustee") under that Master Trust Indenture, dated as of December 1, 2015,
17 among Beverly Community Hospital Association, Beverly Hospital Foundation, Montebello
18 Community Health Services, Inc., and U.S. Bank National Association as Master Trustee (the
19 "Master Indenture"); (vi) Dentons LLP and Sills Cummis & Gross, P.C., as proposed co-counsel to
20 the Committee; (vii) all other parties with liens of record on assets of the Debtors (as disclosed in
21 lien searches completed by the Debtors prior to the Petition Date); and (viii) any other party that has
22 filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under
23 Bankruptcy Rules 2002, 4001, or 9014 and any applicable Local Rules. Requisite notice of the DIP
24 Motion and the relief requested thereby has been provided and no other notice need be provided for
25 entry of this Final Order.

26 K. Immediate Entry. The Debtors have requested immediate entry of this Final Order
27 pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Final Order, the
28 Debtors' businesses, properties and estates will be immediately and irreparably harmed. This Court

1 concludes that entry of this Final Order is in the best interests of the Debtors' respective estates and
2 creditors as its implementation will, among other things, enhance the Debtors' prospects for their
3 successful reorganization.

4 Based on the foregoing finding and conclusions, the DIP Motion, the First Day Declaration,
5 and the record made before this Court at the Interim Hearing and the Final Hearing, and good and
6 sufficient cause appearing therefore,

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

8 1. Approval of Final Order. The DIP Motion is approved, on a final basis, on the terms
9 and conditions set forth in this Final Order. Any objections to the relief requested in the DIP Motion
10 that have not previously been withdrawn, waived, settled, or resolved, and all reservations of rights
11 included therein, are hereby denied with prejudice and overruled on the merits. This Final Order
12 shall become effective immediately upon its entry.

13 2. Approval of DIP Documents; Authority Thereunder. The DIP Facility is hereby
14 approved on a final basis. The Debtors are hereby authorized to (a) execute and deliver the DIP
15 Documents (including the DIP Credit Agreement) and such additional documents, instruments,
16 certificates, and agreements as may be required or reasonably requested by the DIP Lender to
17 implement the terms or effectuate the purposes of this Final Order and the DIP Documents, (b) incur
18 and perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order
19 and the DIP Documents, and (c) following entry of the Final Order and the occurrence of the Closing
20 Date, request Advances up to the full amount of the DIP Facility.

21 3. Validity of DIP Documents and DIP Obligations. Each of the DIP Documents
22 constitute and evidence (and shall deemed to be) the legal, valid, and binding obligation of the
23 Debtors, enforceable against the Debtors, their estates and any successors thereto, including any
24 trustee appointed in the Chapter 11 Cases or in any case under Chapter 7 of the Bankruptcy Code
25 upon the conversion of any of the Chapter 11 Cases (collectively, the "Successor Cases"). Loans
26 and advances made under the DIP Facility (the "DIP Loans") will fund the Debtors' working capital
27 and general corporate needs in the ordinary course of business and to pay such other amounts as are
28 required or permitted to be paid pursuant to the DIP Credit Agreement, this Final Order and any

1 other orders of this Court, in each case to the extent permitted under the DIP Credit Agreement and
2 in compliance with the Budget Requirements. No DIP Obligations or any other obligation, payment,
3 transfer, or grant of security under the DIP Documents or this Final Order shall be stayed (other than
4 by court order in an appeal from this Final Order), restrained, voided, voidable, or recoverable under
5 the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any avoidance,
6 defense, reduction, setoff, recoupment, counterclaim, recharacterization, subordination, cross-
7 claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any
8 person or entity.

9 4. Authorization to Borrow. Subject to the terms and conditions of this Final Order and
10 the DIP Documents and in compliance with the Budget Requirements, upon entry of this Final Order
11 and through the earliest to occur of (a) the entry of the Final Order, and (b) the Termination Date
12 (as defined herein), the DIP Borrowers are authorized to request Advances up to an aggregate
13 outstanding principal amount of \$13,250,000. The DIP Lender shall have no obligation to make a
14 DIP Loan unless all of the conditions precedent to the making of such DIP Loan under the DIP
15 Documents and this Final Order have been (x) satisfied in full or (y) waived by the DIP Lender in
16 its sole and absolute discretion. The DIP Lender shall provide prompt notice to the Master Trustee
17 and the Committee if it has waived any conditions precedent pursuant to this paragraph 4.

18 5. Authorization to Use Cash Collateral. Subject to the terms and conditions of this
19 Final Order and the DIP Documents and in compliance with the Budget Requirements, the Debtors
20 are authorized to use all DIP Collateral constituting “cash collateral,” as defined in Section 363(a)
21 of the Bankruptcy Code (the “DIP Cash Collateral”) in compliance with the DIP Documents and
22 this Final Order until the Termination Date (as defined below), and all authority to use DIP Cash
23 Collateral shall terminate automatically upon the Termination Date. For purposes of clarity, the
24 DIP Cash Collateral shall include all rent, lease payments, fees, and all other cash generated from
25 the leasing and operations of the DIP Collateral. The Debtors are permitted to continue to use DIP
26 Cash Collateral during the pendency of any Remedies Notice Period (as defined below) in
27 accordance with the Budget Requirements.

28 6. Use of Proceeds and Cash Collateral; Segregation; No Re-Borrowing.

1 (a) The Debtors shall segregate and deposit into the Clearing Account (as defined
2 in the DIP Loan Agreement) all DIP Cash Collateral, and shall segregate and deposit into the
3 Security Deposit Account (as defined in the DIP Loan Agreement) all tenant security deposits. The
4 DIP Lender shall have a continuing, valid, binding, enforceable, non-avoidable, and automatically
5 and properly perfected first-priority security interest in the Clearing Account and Security Deposit
6 Account and all amounts on deposit in the Clearing Account and Security Deposit Account.

7 (b) Notwithstanding anything to the contrary in any of the first-day orders, the
8 Debtors shall use proceeds of the DIP Facility and DIP Cash Collateral only for the purposes
9 permitted by this Final Order and the DIP Documents and in compliance with the Budget
10 Requirements. The DIP Liens shall continue to attach to the DIP Cash Collateral irrespective of the
11 commingling of DIP Cash Collateral with other cash of the Debtors. Any failure by the Debtors on
12 or after the Petition Date to comply with the segregation requirements of Section 363(c)(4) of the
13 Bankruptcy Code in respect of any DIP Cash Collateral shall not be used as a basis to challenge the
14 extent, validity, enforceability or perfected status of the DIP Liens on any DIP Cash Collateral.

15 (c) The DIP Loan is a term loan (not a revolving loan), and once Advances have
16 been made to Debtors, Loan Availability under the DIP Loan shall be permanently reduced by the
17 amounts of such Advances. The Debtors may not re-borrow any amounts Advanced under the DIP
18 Facility after such amounts have been repaid to Lender.

19 7. Approved Budget.

20 (a) General. Except as otherwise provided herein or approved by the DIP Lender,
21 proceeds of the DIP Facility shall be used only in compliance with the Budget Requirements.

22 (b) Approved Budget. Attached as Exhibit 3 to the Stipulation and incorporated
23 by reference herein is a cash flow forecast covering the 5-week period commencing with the week
24 in which the Petition Date occurred, depicting, on a weekly and line item basis, (i) projected cash
25 receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-
26 related expenses (including professional fees of the Debtors' and the Committee's professionals and
27 advisors), and any other fees and expenses relating to the DIP Documents), (iii) net cash flow, and
28 (iv) the other items set forth therein and other information reasonably requested by the DIP Lender

1 for such 5-week period, in form and substance satisfactory to the DIP Lender in its sole discretion
2 (the “Initial Budget”). Subject to the terms of the DIP Documents, the Initial Budget has been and
3 shall be updated from time to time by the Debtors with the consent of the DIP Lender and in
4 consultation with the Master Trustee and the Committee (the “Approved Budget”).

5 (c) Updated Budget. No later than 5:00 p.m. prevailing Eastern Time on the first
6 Wednesday after the end of each Applicable Measurement Period (as defined in the DIP Credit
7 Agreement), the Debtors shall deliver by email (or other electronic means) to the DIP Lender, the
8 Committee, and Master Trustee an update of the latest Approved Budget covering the 9-week period
9 commencing with the week in which the Debtors deliver such update, which update shall be
10 consistent with the form and level of detail set forth in the latest Approved Budget, provide a
11 reconciliation for the results of the prior month period compared to the prior Approved Budget and
12 is satisfactory in form and substance to the DIP Lender and Indenture Trustee in their sole discretion
13 (each such update, an “Updated Budget”); provided that the Debtors shall comply with the
14 requirements set forth in the DIP Credit Agreement and any final or interim cash collateral order
15 entered by the Bankruptcy Court, with respect to the timing and content of each Updated Budget.
16 The Updated Budget shall become the Approved Budget (and replace any prior Approved Budgets)
17 only under the circumstances described in the DIP Credit Agreement and any final or interim cash
18 collateral order entered by this Court.

19 (d) Variance Reporting. The Debtors shall deliver to the DIP Lender, the Master
20 Trustee and the Committee Variance Reports and Compliance Certificates (as defined in the DIP
21 Credit Agreement) in accordance with the terms and on the dates set forth in the DIP Credit
22 Agreement. From time to time upon reasonable request of the DIP Lender, the Debtors and their
23 advisors shall participate in status calls with the DIP Lender and its professionals and advisors (but
24 in no event less than on a bi-weekly basis), to discuss the financial operations and performance of
25 the Debtors’ business and such other matters relating to the Debtors as the DIP Lender (or its agents
26 or advisors) shall reasonably request.

27 (e) Permitted Variances. (i) Actual Cash Receipts during any Applicable
28 Measurement Period (as defined in the DIP Credit Agreement) shall not be less than 85% of the

1 Budgeted Cash Receipts (as defined in the DIP Credit Agreement) for such Applicable Measurement
2 Period, and (ii) the Actual Disbursement Amount (as defined in the DIP Credit Agreement) on a
3 total-disbursements basis shall not exceed 115% of the Budgeted Disbursement Amount (as defined
4 in the DIP Credit Agreement) for such Applicable Measurement Period (on a total-disbursements
5 basis). No professional fees disbursed to Professional Persons (each as defined below) under the
6 Approved Budget shall exceed the line-item budgeted amounts for such Professional Persons for
7 any applicable calendar week when budgeted in the Approved Budget. All estimated fees, costs and
8 expenses payable for DIP Fees and Lender Expenses budgeted under the Approved Budget shall be
9 timely disbursed weekly when budgeted in the Approved Budget, and such payments shall in no
10 way modify, limit, or cap the DIP Lender's right to timely receive DIP Fees and Lender Expenses
11 under Paragraph 10 of this Final Order.

12 8. Budget Compliance. The Debtors shall at all times comply with the Approved
13 Budget (subject to the Permitted Variances) and all other budget conditions, requirements, and
14 limitations set forth in this Final Order and in the DIP Documents (collectively, the "Budget
15 Requirements"). The Debtors shall provide all reports and other documents and information
16 required in the DIP Documents or reasonably requested by the DIP Lender, and the Debtors' failure
17 to comply with the Budget Requirements or to provide the reports and other documents and
18 information required in the DIP Documents or reasonably requested by the DIP Lender shall
19 constitute an Event of Default under the DIP Credit Agreement. The Debtors shall
20 contemporaneously provide the Master Trustee and the Committee with all reports and other
21 documents and information provided to the DIP Lender.

22 9. Payment of DIP Fees and Expenses. The Debtors are hereby authorized and directed
23 to pay weekly when budgeted in the Approved Budget and any other times upon demand all Lender
24 Expenses (as defined in the DIP Credit Agreement) and all other fees, costs, expenses, premiums
25 and other amounts payable under the terms of the DIP Documents, including, without limitation,
26 the reasonable and documented prepetition and postpetition fees and out-of-pocket costs and
27 expenses of BCLP and any other counsel, appraisers, title companies, surveyors, environmental,
28 zoning and/or property condition consultants, advisors, professionals and/or consultants retained in

1 connection with advising the DIP Lender or as otherwise required by the DIP Documents and the
2 Debtors are hereby authorized to pay such costs directly to such third parties. Payment of such
3 amounts shall not be subject to Court approval or U.S. Trustee fee guidelines or subject to the
4 provisions of Sections 327, 328, 329, 330 or 331 of the Bankruptcy Code, and no recipient of any
5 such payment shall be required to file with respect thereto any interim or final fee application with
6 this Court. Any professional of the DIP Lender that is seeking payment of fees and expenses from
7 the Debtors shall provide summary copies of its invoices (which shall not be required to contain
8 time entries and which may be redacted or modified to the extent necessary to delete any information
9 subject to attorney-client privilege, any information constituting attorney work product, or any other
10 confidential information) via email (or other electronic means) to the Debtors, the U.S. Trustee, and
11 the Committee. The Debtors shall pay the full amount invoiced within ten (10) calendar days (the
12 “Review Period”), any amounts not already paid under the Approved Budget after receipt of the
13 applicable invoice, regardless of whether such amounts are in excess of the amounts set forth in the
14 Approved Budget. In the event that the U.S. Trustee or counsel to the Committee raises an objection
15 with respect to any invoice during the applicable Review Period (which objection must be in a
16 writing delivered by email (or other electronic means) to the relevant professional that states with
17 particularity the fees and/or expenses being objected to and the grounds therefor) and the parties are
18 unable to fully resolve such objection, this Court shall hear and determine such dispute, provided
19 that neither the raising of an objection to an invoice nor the inability of the parties to fully resolve
20 such objection shall delay payment of such invoice, and the relevant professional shall only be
21 required to disgorge amounts objected to upon being so ordered, pursuant to a final order of this
22 Court. All unpaid Lender Expenses and other unpaid fees, costs, expenses and other amounts owed
23 or payable to the DIP Lender shall be secured by the DIP Collateral and afforded all of the priorities
24 and protections afforded to the DIP Obligations under this Final Order and the DIP Documents.
25 Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the
26 DIP Lender in connection with or with respect to the DIP Facility are hereby approved in full and
27 shall not be subject to avoidance, disgorgement, or any similar form of recovery by the Debtors or
28 any other person.

1 10. Indemnification. The Debtors shall indemnify and hold harmless the DIP Lender in
2 accordance with the terms and conditions contained in the DIP Credit Agreement.

3 11. DIP Superpriority Claims. Subject any Permitted Superpriority Claim (as defined
4 below) which shall be *pari passu*, immediately upon and effective as of entry of this Final Order,
5 pursuant to Section 364(c)(1) of the Bankruptcy Code, the DIP Obligations shall constitute allowed
6 superpriority administrative expense claims against each Debtor, on a joint and several basis (the
7 “DIP Superpriority Claims”), senior to and with priority in payment over any and all administrative
8 expenses and any other claims against the Debtors or their estates in the Chapter 11 Cases or any
9 Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without
10 limitation, the kinds specified in or ordered pursuant to any provision of the Bankruptcy Code,
11 including, but not limited to, Sections 105, 326, 328, 330, 331, 361, 364, 365, 503(b), 506(c) (subject
12 to and upon entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy
13 Code or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases
14 pursuant to Section 1112 of the Bankruptcy Code, whether or not such expenses or claims may
15 become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP
16 Superpriority Claims shall, for purposes of Section 1129(a)(9)(A) of the Bankruptcy Code, be
17 considered an administrative expense allowed under Section 503(b) of the Bankruptcy Code, shall
18 be against each Debtor on a joint and several basis, and shall be payable from and have recourse to
19 all DIP Collateral. Other than with respect to the Permitted Superpriority Claim, the DIP
20 Superpriority Claims shall not be or be made junior to or *pari passu* with any claim heretofore or
21 hereinafter granted or created in any of the Chapter 11 Cases or any Successor Cases and shall be
22 valid and enforceable against the Debtors, their estates and any successors thereto, including,
23 without limitation, any trustee appointed in any of the Chapter 11 Cases or any Successor Cases
24 until such time as the DIP Obligations are paid in full. As used herein, the term “Permitted
25 Superpriority Claim” means any superpriority administrative expense claim provided to any
26 Prepetition Secured Creditors or to any lender that makes loans to any Debtor pursuant to Section
27 364 either on an unsecured basis or secured by collateral that is not subject to the DIP Liens (defined
28

below). For avoidance of doubt, any Permitted Superpriority Claim shall not attach to or otherwise encumber the DIP Liens (defined below) or the DIP Collateral (defined below).

12. DIP Liens.

(a) Effective as of entry of the Interim Order, the DIP Lender was granted, and immediately upon the entry of this Final Order, the DIP Lender is granted, a continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first priority security interests in and liens on (collectively, the “DIP Liens”) the property identified as “Collateral” in the DIP Loan Agreement (the “DIP Collateral”), including, without limitation, the “BCHA Clearing Account,” the “MCHS Clearing Account,” and the “Security Deposit Account” (as such terms are defined in the DIP Loan Agreement), as collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration, or otherwise) of the DIP Obligations.

(b) Notwithstanding anything to the contrary in this Final Order or the DIP Loan Agreement and related documents, but except as expressly provided for in paragraph 13(c) hereof, the DIP Collateral shall exclude: (i) all of Debtors’ right, title and interest in and to the accounts, chattel paper, instruments and general intangibles (each as defined in Division 9 of the California Commercial Code) and the proceeds thereof, and (ii) solely as related to Debtor, Beverly Community Hospital Association, all of Debtors’ right, title and interest in and to: (a) the real property located in the County of Los Angeles, State of California, as described in Exhibit A to the Deed of Trust (defined below) (the “Land”); (b) all buildings, structures, improvements, fixtures and appurtenances now or hereafter placed on the Land, and all apparatus and equipment now or hereafter attached in any manner to the Land or any building on the Land, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment (collectively, the “Improvements”); (c) all easements and rights of way appurtenant to the Land; all crops growing or to be grown on the Land (including all such crops following severance from the Land); all standing timber upon the Land (including all such timber following severance from the Land); all development rights or credits and air rights; all water and water rights (whether riparian,

1 appropriative, or otherwise, and whether or not appurtenant to the Land) and shares of stock
2 pertaining to such water or water rights, ownership of which affect the Land; all minerals, oil, gas
3 and other hydrocarbon substances and rights therein, on, under, or upon the Land; (d) all existing
4 and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions relating
5 to the use and enjoyment of all or any part of the Land or the improvements, and any and all
6 guaranties and other agreements relating to or made in connection with any of the foregoing; (e) all
7 proceeds, including all claims to and demands for them, of the voluntary or involuntary, conversion
8 of any of the Land, Improvements, or the other property described above into cash or liquidated
9 claims, including proceeds of all present and future fire, hazard or casualty insurance policies, and
10 all condemnation awards or payments now or later to be made by any public body or decree by any
11 court of competent jurisdiction for any taking or in connection with any condemnation or eminent
12 domain proceeding, and all causes of action and their proceeds for any breach of warranty,
13 misrepresentation, damage or injury to, or defect in, the Land, Improvements, or the other property
14 described above or in any part of them; and (f) all proceeds of, additions and accretions to,
15 substitutions and replacements for, and changes in any of the property described in the preceding
16 subparagraphs (a)-(e) (the assets described in subparagraphs (a) through (f), collectively,
17 the “Property”); (g) all tangible personal property of every kind or description, whether stored on
18 the Land or elsewhere, including without limitation, all goods, materials, supplies, tools, books,
19 records, chattels, furniture, fixtures, equipment, and machinery, and which in all cases is (1) used or
20 useful or acquired in connection with any construction undertaken on the Land or the maintenance
21 of the Land and the Improvements, or (2) affixed or installed, or to be affixed or installed, in any
22 manner on the Land or the Improvements; (h) all architectural and engineering plans, specifications
23 and drawings, and as-built drawings which arise from or relate to the Land or the Improvements;
24 (i) all general intangibles and rights relating to the Property, including, without limitation, all
25 permits, licenses and claims to or demands for the voluntary or involuntary conversion of any of the
26 Land, Improvements, or other Property into cash or liquidated claims, proceeds of all present and
27 future fire, hazard or casualty insurance policies to the extent exclusively relating to the Property,
28 and all condemnation awards or payments now or later to be made by any public body or decree by

1 any court of competent jurisdiction for any taking of the Property or in connection with any
2 condemnation or eminent domain proceeding with respect to the Property, and all causes of action
3 and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in,
4 the Land, Improvements, or other Property or an part of them; (j) all deposit accounts (other than
5 the BCHA Deposit Account, the MCHS Clearing Account, and the Security Deposit Account) from
6 which Beverly Community Hospital Association may from time to time authorize the Indenture
7 Trustee to debit payments due on the Secured Obligations (as defined in that certain Deed of Trust,
8 Assignment of Rents, Security Agreement and Fixture Filing, dated as of December 1, 2015, by
9 Beverly Community Hospital Association, as trustor, to Chicago Title Company, as trustee for the
10 benefit of U.S. Bank National Association as master trustee under the Master Indenture, as
11 beneficiary (the “Deed of Trust”); and (k) all substitutions, replacements, additions, accessions and
12 proceeds for or to any of the foregoing, and all books, records and files relating to any of the
13 foregoing, including, without limitation, computer readable memory and data and any computer
14 software or hardware reasonably necessary to access and process such memory and data (the assets
15 described in subparagraphs (i) and (ii), collectively, the “Indenture Trustee Collateral”).

16 (c) The Indenture Trustee Collateral shall exclude any of Debtors’ right, title and
17 interest in and to the accounts, chattel paper, instruments and general intangibles (each as defined
18 in Division 9 of the California Commercial Code) and the proceeds thereof arising out of the “Real
19 Property,” the “Improvements,” the “Leases” and/or the proceeds thereof, including all “Rents” (as
20 such terms are defined in (a) that certain Deed of Trust, Assignment of Leases and Rents, Security
21 Agreement (including Fixture Filing) granted by the BCHA, and (b) that certain Fee and Leasehold
22 Deed of Trust, Assignment of Leases and Rents, Security Agreement (including Fixture Filing)
23 granted by MCHS (together, the “DIP Deeds of Trust”). For avoidance of doubt, and except as
24 expressly provided for in this paragraph, the DIP Liens shall not attach to or otherwise encumber
25 the Indenture Trustee Collateral and the Indenture Trustee’s liens and security interests shall not
26 attach to or otherwise encumber the DIP Collateral (including without limitation, the BCHA
27 Clearing Account, the MCHS Clearing Account, and Security Deposit Account), or the DIP Cash
28 Collateral, such that the DIP Liens shall be the sole and exclusive liens and security interests (except

1 for Permitted Prior Liens) on all “Real Property,” the “Improvements,” the “Leases,” and/or the
2 proceeds thereof, including all “Rents” (as such capitalized terms are defined in the DIP Deeds of
3 Trust), including, without limitation, any insurance claims or proceeds, condemnation awards,
4 proceeds, profits, and other general intangibles that are related to or arising out of the “Real
5 Property,” the “Improvements,” and/or the “Leases” (as such capitalized terms are defined in the
6 DIP Deeds of Trust); provided, however, that to the extent, as of the Petition Date, the foregoing
7 was part of the Indenture Trustee Collateral and subject to valid, enforceable, and unavoidable liens
8 and security interest of the Indenture Trustee, as consideration for, and expressly as a condition of,
9 the Indenture Trustee’s consent to exclude the foregoing asserted collateral from the Indenture
10 Trustee Collateral as set forth herein, and as additional adequate protection, immediately upon the
11 indefeasible payment in full in cash of all the DIP Obligations and/or other satisfaction in full (either
12 in cash, by DIP Lender credit bid, or by written consent of the DIP Lender) of all the DIP obligations
13 either (i) under Section 363(k) of the Bankruptcy Code or (ii) upon fully executed deed(s) in lieu
14 and/or the completion of one or more foreclosures or other remedies under applicable California
15 law, the Indenture Trustee shall be granted a first priority lien, securing the obligations due under
16 the Master Indenture, on the proceeds of the DIP Collateral and any remaining DIP Collateral that
17 is not sold, liquidated or used to satisfy the DIP Obligations, which liens and security interests shall
18 be valid, perfected, binding, enforceable, non-avoidable and effective liens by operation of law as
19 of the date of the indefensible payment in full of the DIP Obligations and without any further action
20 by the Indenture Trustee and without the necessity of executing, filing or recording any financing
21 statements, security agreements, mortgages, deeds of trust, filings with a governmental unit, or other
22 documents, agreements, or instruments or the taking of any other actions (including, for the
23 avoidance of doubt, taking possession of any collateral) to validate or perfect (in accordance with
24 applicable law) the Indenture Trustee’s liens. Nothing herein shall be construed to preclude or estop
25 the Committee from investigating and/or challenging the extent, validity, priority or enforceability
26 of the Indenture Trustee’s prepetition claims and liens, all of which rights and claims of the
27 Committee are expressly reserved and preserved.

28

1 (d) To the fullest extent permitted by the Bankruptcy Code or applicable law, any
2 provision of any law, rule, regulation, lease, loan document, easement, use agreement, license,
3 contract, organizational document, or other instrument or agreement that restricts the ability of any
4 of the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold
5 interest in (or the proceeds thereof) the DIP Collateral (or requires the consent of or the payment of
6 any fees or obligations to any entity in order for any of the Debtors to take such actions) shall have
7 no force or effect with respect to the DIP Liens on such fee or leasehold interests or other DIP
8 Collateral (or the proceeds of any assignment and/or sale thereof).

9 (e) The DIP Collateral does not include any real property and other assets that
10 are used by the hospital in its operations as a health facility (as such term is defined under Cal.
11 Health & Safety Code § 1250) or other facilities that provide similar health care (as defined under
12 Cal. Code Regs. Tit. 11, § 999.5), and therefore any sale, foreclosure, or other disposition of the DIP
13 Collateral, either to a for-profit entity or non-profit entity, shall not require the consent of the
14 Attorney General of the State of California under Cal. Corp. Code § 5914 or § 5920. Further, service
15 of the Interim Order is deemed written notice to the Attorney General under Cal. Corp. Code § 5913
16 of Debtors' intention to sell, lease, convey, exchange, transfer or otherwise dispose of all or
17 substantially all of the DIP Collateral to either a non-profit or a for-profit entity, and no further
18 notice to, or consent or approval by, the Attorney General shall be required.

19 13. Priority of DIP Liens.

20 (a) Effective as of entry of the Interim Order, the DIP Liens constitute
21 continuing, valid, binding, enforceable, non-avoidable, automatically and properly perfected
22 security interests in and liens on in the DIP Collateral as follows:

23 (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, valid, binding,
24 continuing, enforceable, non-avoidable, automatically and properly perfected first priority liens on
25 and security interests in all DIP Collateral that is not otherwise subject to any Permitted Prior Liens;
26 and

27 (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, valid, binding,
28 continuing, enforceable, non-avoidable, automatically and properly perfected junior liens on and

1 security interests in all DIP Collateral that is subject to any Permitted Prior Liens, which junior liens
2 and security interests in favor of the DIP Lender shall be subject only to any such Permitted Prior
3 Liens.

4 (b) Except as expressly set forth herein, the DIP Liens and the DIP Superpriority
5 Claims: (i) shall not be or be made junior to or *pari passu* with (A) any lien, security interest or
6 claim heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Cases, and shall
7 be valid and enforceable against the Debtors, their estates, any trustee or any other estate
8 representative appointed or elected in the Chapter 11 Cases or any Successor Cases and/or upon the
9 dismissal of any of the Chapter 11 Cases or any Successor Cases, provided however that the DIP
10 Liens and DIP Superpriority Claims shall be *pari passu* with any replacement liens granted to the
11 Indenture Trustee through any interim or final Cash Collateral Orders entered by the Bankruptcy
12 Court in these Chapter 11 Cases, (B) any lien or interest that is avoided and preserved for the benefit
13 of the Debtors and their estates under Section 551 of the Bankruptcy Code or otherwise, and (C)
14 any intercompany or affiliate lien or claim of the Debtors; and (ii) shall not be subject to Sections
15 510, 549, or 550 of the Bankruptcy Code.

16 (c) Notwithstanding anything contained in this Final Order or any other order of
17 this Court to the contrary, the DIP Liens shall constitute first priority liens on and security interests
18 in all DIP Cash Collateral.

19 14. Professional Fees

20 (a) No Direct Obligation To Pay Allowed Professional Fees. The DIP Lender
21 shall not be responsible for the payment or reimbursement of any fees or disbursements of any
22 Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases.
23 Nothing herein or otherwise shall be construed to obligate the DIP Lender, in any way, to pay
24 compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the
25 Debtors have sufficient funds to pay such compensation or reimbursement.

26 (b) Agreement Regarding Professional Fees. The Debtors and the Indenture
27 Trustee agree that the professional fee line items under the Restructuring Costs section of the
28 Budget (e.g., Debtors Professionals, Secured Lenders Professionals and UCC Professionals) shall

1 reflect no balances for purposes of this Interim Order. Counsel for the Debtors and counsel for the
2 Indenture Trustee agree to defer seeking this Court's approval of payment of their respective fees
3 and expenses until the earlier of (a) close of a sale of the Beverly Community Hospital; (b) such
4 time as the Debtors and the Indenture Trustee submit to the Court an agreed Budget that contains
5 budgeted line items for such professional fees; and (c) the closing of the Bankruptcy Case. As
6 such, no fees or expenses of professionals, whether of the Debtor, Indenture Trustee or Committee,
7 shall be paid from, or carved out of, the proceeds of the DIP Loans unless and until the Court
8 approves a budget for those fees and expenses which has been mutually agreed to by all parties or
9 the Court enters final orders pursuant to Section 330 of the Bankruptcy Code approving such fees
10 and expenses.
11

12 (c) Objection Rights. Nothing contained herein is intended to constitute, nor
13 shall be construed as consent to, the allowance of any Professional Person's fees, costs or expenses
14 by any party and shall not affect the right of the Debtors, the DIP Lender, the Master Trustee, the
15 Committee, or any other party-in-interest to object to the allowance and/or payment of any such
16 amounts incurred or requested.
17

18 15. Limitation on Use of DIP Facility Proceeds. Notwithstanding anything herein to the
19 contrary, no portion of the DIP Facility or the DIP Collateral (or the proceeds of any of the
20 foregoing) shall include, apply to, be available for, or be used for payment of any fees, costs or
21 expenses incurred by any party, including the Debtors or the Committee, in connection with any of
22 the following: (a) investigation (including by way of examinations or discovery proceedings),
23 preparation for, initiation, assertion, joining, commencement, support or prosecution of any claims,
24 counter-claims, actions, causes of action, proceedings, adversary proceedings, applications,
25 motions, objections, defenses, or other contested matters against the DIP Lender or any of its
26 successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives,
27 agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors,
28 members, managers, shareholders, and employees, past, present and future, and their respective

1 heirs, predecessors, successors and assigns, in each case in their respective capacities as such and
2 with respect to any transaction, occurrence, omission, action or other matter (each, a “Secured Party
3 Claim”), including, without limitation, (i) investigating or challenging in any way the DIP
4 Obligations, the DIP Documents, the DIP Liens, the DIP Superpriority Claims, or any other security
5 interests, liens, or claims of the DIP Lender (including with respect to the validity, enforceability,
6 priority, extent, nature, or amount of any of the foregoing or any defense, counterclaim, or offset to
7 any of the foregoing), or (ii) investigating or asserting any action seeking to invalidate, modify, set
8 aside, recharacterize, avoid, or subordinate, in whole or in part, the DIP Obligations; (b) the assertion
9 of any claims or causes of action against the DIP Lender, including, without limitation, claims or
10 actions to prevent, hinder or delay the DIP Lender’s enforcement or realization on the DIP Collateral
11 in accordance with the Interim Order, this Final Order, or the DIP Documents, as applicable; (c)
12 seeking to amend or modify any of the rights, remedies, priorities, privileges, protections and
13 benefits granted to the DIP Lender under the Interim Order, this Final Order, or the DIP Documents;
14 (d) payment of any amount on account of any claims arising prior to the Petition Date unless such
15 payments are (i) in accordance with the DIP Credit Agreement, and (ii) approved by order of this
16 Court; or (e) any purpose that is prohibited under the Bankruptcy Code.

17 16. Section 506(c) Waiver. The Debtors irrevocably waive and are prohibited from
18 asserting any surcharge claim, whether under Sections 105(a) or 506(c) of the Bankruptcy Code or
19 otherwise, for any costs and expenses incurred in connection with the preservation, protection or
20 enhancement of, or realization by the DIP Lender upon, the DIP Collateral, and no costs or expenses
21 of administration that have been or may be incurred in any of the Chapter 11 Cases or any Successor
22 Cases at any time shall be charged against the DIP Lender any of its claims or liens (including any
23 claims or liens granted pursuant to the Interim Order or this Final Order) or the DIP Collateral
24 pursuant to Sections 105(a) or 506(c) of the Bankruptcy Code or otherwise.

25 17. No Marshaling/Application of Proceeds. The Debtors irrevocably waive and are
26 prohibited from asserting the equitable doctrine of “marshaling” or any other similar doctrine with
27 respect to the DIP Collateral, and in no event shall the DIP Lender be subject to the equitable
28 doctrine of “marshaling” or any other similar doctrine with respect to the DIP Collateral. All

1 proceeds of the DIP Collateral shall be received and used in accordance with this Final Order and
2 the DIP Documents.

3 18. Disposition of Collateral. Except as expressly permitted by the DIP Documents, (a)
4 the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any of the DIP Collateral
5 without an order of this Court or the prior written consent of the DIP Lender, and (b) shall apply all
6 net proceeds of the DIP Collateral, whether sold in the ordinary course or otherwise, as provided in
7 the DIP Credit Agreement.

8 19. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with
9 expanded powers, or any responsible officer subsequently appointed in the Chapter 11 Cases or any
10 Successor Cases shall obtain credit or incur debt in violation of the DIP Documents at any time prior
11 to the indefeasible payment in full in cash of all the DIP Obligations and/or other satisfaction in full
12 (either in cash, by DIP Lender credit bid, or by written consent of DIP Lender) of all the DIP
13 obligations either (i) under Section 363(k) of the Bankruptcy Code or (ii) upon fully executed
14 deed(s) in lieu and/or the completion of one or more foreclosures or other remedies under applicable
15 California law and the termination of DIP Lender's obligation to extend credit under the DIP
16 Facility (including subsequent to the confirmation of any Chapter 11 plan with respect to any or all
17 of the Debtors and the Debtors' estates) and such facilities are secured by any DIP Collateral, then
18 all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP
19 Lender to be applied in accordance with this Final Order and the DIP Documents.

20 20. Protections of Rights of DIP Lender.

21 (a) Unless the DIP Lender shall have provided its prior written consent, or all
22 DIP Obligations have been indefeasibly paid in full in cash and the lending commitments under the
23 DIP Facility have terminated, there shall not be entered in the Chapter 11 Cases or any Successor
24 Cases any order (including any order confirming a Chapter 11 plan) that authorizes any of the
25 following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security,
26 mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or that is
27 entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP
28 Liens and/or the DIP Superpriority Claims except as expressly set forth in this Final Order or the

1 DIP Documents; or (ii) the modification of any of the DIP Lender's rights under this Final Order or
2 the DIP Documents with respect any DIP Obligations.

3 (b) The Debtors (and/or their legal and financial advisors in the case of clauses
4 (i) through (iii) below) will (i) reasonably cooperate with, consult with, and provide to the DIP
5 Lender all such information and documents that any or all of the Debtors are obligated (including
6 upon reasonable request by the DIP Lender) to provide under the DIP Documents or the provisions
7 of this Final Order; (ii) upon reasonable advance notice, during normal business hours, permit the
8 DIP Lender and its advisors to visit and inspect any of the Debtors' business premises and other
9 properties, to examine and make abstracts or copies from any of their respective books, records,
10 reports, and other papers, and to discuss their respective affairs, finances, properties, business
11 operations, and accounts with their respective officers, employees, independent public accountants,
12 and other professional advisors; (iii) permit the DIP Lender to consult with the Debtors'
13 management and advisors on matters concerning the Debtors' businesses, financial condition,
14 operations, and assets; and (iv) upon reasonable advance notice, permit the DIP Lender to conduct,
15 at its discretion and at the Debtors' cost and expense, field audits, collateral examinations,
16 liquidation valuations, environmental surveys, and appraisals at reasonable times in respect of any
17 or all of the DIP Collateral in accordance with the DIP Documents.

18 21. Automatic Effectiveness of Liens. The DIP Liens are valid, perfected, binding,
19 enforceable, non-avoidable and effective liens by operation of law as of the Petition Date without
20 any further action by the Debtors or the DIP Lender and without the necessity of executing, filing
21 or recording any financing statements, security agreements, mortgages, filings with a governmental
22 unit, or other documents, agreements, or instruments or the taking of any other actions (including,
23 for the avoidance of doubt, taking possession of any collateral) to validate or perfect (in accordance
24 with applicable law) the DIP Liens or to entitle the DIP Lender to the priorities granted herein. If
25 the DIP Lender hereafter requests that the Debtors execute and deliver any financing statements,
26 security agreements, mortgages, filings with a governmental unit, or other documents, agreements,
27 or instruments considered by the DIP Lender to be reasonably necessary or desirable to further
28 evidence the perfection of the DIP Liens, the Debtors are hereby authorized and directed to execute

1 and deliver any such documents, agreements, and instruments to the DIP Lender, and the DIP
2 Lender is hereby authorized to file or record any such documents, agreements or instruments in its
3 discretion without seeking modification of the automatic stay under Section 362 of the Bankruptcy
4 Code, in which event all such documents shall be deemed to have been filed or recorded at the time
5 and on the Petition Date; provided, however, that no such filing or recordation shall be necessary or
6 required in order to create or perfect the DIP Liens. The DIP Lender, in its sole discretion, may file
7 a copy of this Final Order as a financing statement with any filing or recording office or with any
8 registry of deeds or similar office in addition to, or in lieu of, such financing statements, mortgages,
9 notices of liens or similar documents, agreements, or instruments, and any such filing, recording, or
10 similar office is directed to accept such filing as a financing statement.

11 22. Modification of Automatic Stay. The automatic stay imposed under Section 362(a)
12 of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms, rights,
13 benefits, privileges, remedies and provisions of this Final Order and the DIP Documents (without
14 further notice, motion, application to, order of, or hearing before this Court), including, without
15 limitation, to permit: (a) the Debtors to take all appropriate actions necessary or reasonably
16 requested by the DIP Lender to (i) grant the DIP Liens, the DIP Superpriority Claims, or any other
17 liens or claims set forth herein, and (ii) ensure that the DIP Liens or any other liens granted hereunder
18 are perfected and maintain the priority set forth herein; (b) the Debtors to incur all liabilities and
19 obligations (including the DIP Obligations) to the DIP Lender, as contemplated under this Final
20 Order and the DIP Documents; (c) the Debtors to pay all amounts required under, in accordance
21 with, and subject to the DIP Documents and this Final Order; (d) the DIP Lender to retain and apply
22 payments made in accordance with the DIP Documents and this Final Order; (e) subject to paragraph
23 24 hereof, the DIP Lender to exercise, upon the occurrence and during the continuance of any Event
24 of Default under the DIP Documents, all rights and remedies provided for in this Final Order and
25 the DIP Documents and take any or all actions provided therein, in each case without further notice,
26 motion, application to, order of, or hearing before, this Court; and (f) the implementation of all of
27 the terms, rights, benefits, privileges, remedies, and provisions of this Final Order and the DIP
28 Documents.

1 23. Case Milestones. As a condition to the DIP Facility, the Debtor shall comply with
2 each of the Milestones³ (as defined in the DIP Credit Agreement). For the avoidance of doubt, the
3 failure of the Debtors to comply with any of the Milestones shall, unless waived in writing by the
4 DIP Lender, (a) constitute an immediate Event of Default under the DIP Credit Agreement and this
5 Final Order, and (b) subject to paragraph 24 below, permit the DIP Lender to exercise all rights and
6 remedies provided for in this Final Order and the DIP Documents.

7 24. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and
8 during the continuation of an Event of Default under any of the DIP Documents, notwithstanding
9 the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to,
10 hearing before, or order from this Court, but subject to the terms of this Final Order, the DIP Lender
11 may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (i) the
12 unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and
13 all other DIP Obligations to be immediately due and payable, without presentment, demand, protest
14 or other notice of any kind, all of which are hereby expressly waived by the Debtors, (ii) the
15 termination, reduction or restriction of any further commitment to extend credit to the Debtors to
16 the extent any such commitment remains under the DIP Facility, and (iii) the termination of the DIP
17 Facility and the DIP Documents as to any future liability or obligation of the DIP Lender, but without
18 affecting any of the DIP Liens or the DIP Obligations. The Termination Declaration shall be
19 delivered by email (or other electronic means) to counsel to the Debtors, counsel to the Committee,
20 counsel for the Indenture Trustee and the U.S. Trustee. The Debtors, Indenture Trustee and/or the
21 Committee shall be entitled to seek an emergency hearing with this Court to be held within five (5)
22 days after the Termination Date (the “Remedies Notice Period”). The date on which the Remedies
23 Notice Period expires, unless the Court orders otherwise, is referred to herein as the “Termination
24 Date”). Unless this Court orders otherwise, the automatic stay in the Chapter 11 Cases otherwise
25 applicable to the DIP Lender shall automatically terminate at the end of the Remedies Notice Period
26 without further notice or order, and the DIP Lender shall be entitled (without further order of or
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³ NTD: Milestones must be updated.

1 application or motion to this Court) to enforce all rights and remedies of the DIP Lender under the
2 DIP Documents, this Final Order, and applicable law to satisfy the DIP Obligations, the DIP
3 Superpriority Claims, and the DIP Liens. The DIP Liens shall maintain all right, priority, perfection,
4 and other protections granted pursuant to the Interim Order and this Final Order and provided under
5 the DIP Documents until all of the DIP Obligations are indefeasibly paid in cash and discharged,
6 and none of the DIP Liens shall be released until all of the DIP Obligations have been indefeasibility
7 paid in cash and discharged. The Debtors and the Committee shall cooperate with the DIP Lender
8 in the exercise of its rights and remedies (whether against the DIP Collateral or otherwise), shall not
9 challenge or raise any objection to the exercise of such rights and remedies except during the
10 Remedies Notice Period, and shall waive any right to seek relief under the Bankruptcy Code,
11 including under Section 105 thereof, to the extent that such relief would restrict or impair the rights
12 and remedies of the DIP Lender set forth in this Final Order and the DIP Documents. For the
13 avoidance of doubt, no party in interest, except for the Indenture Trustee to the extent any
14 enforcement of rights and remedies are sought against the Indenture Trustee Collateral, shall have
15 the right to contest the enforcement of the rights and remedies set forth in this Final Order or the
16 DIP Documents on any basis other than an assertion that no Event of Default has occurred and is
17 continuing. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter
18 any orders required by the provisions of this paragraph and relating to the application, re-imposition
19 or continuance of the automatic stay as provided hereunder. The delay or failure to exercise rights
20 and remedies under the applicable DIP Documents or this Final Order by the DIP Lender shall not
21 constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise, unless such
22 waiver is pursuant to a written instrument executed in accordance with the terms of the DIP
23 Documents and this Final Order, as applicable.

24 25. Maintenance of DIP Collateral. Until the indefeasible payment in full in cash of all
25 the DIP Obligations and/or other satisfaction in full (either in cash, by DIP Lender credit bid, or by
26 written consent of DIP Lender) of all the DIP obligations either (i) under Section 363(k) of the
27 Bankruptcy Code or (ii) upon fully executed deed(s) in lieu and/or the completion of one or more
28 foreclosures or other remedies under applicable California law and the termination of the DIP

1 Lender's obligation to extend credit under the DIP Facility, the Debtors shall (x) insure the DIP
2 Collateral as required under the DIP Documents, (y) conduct all business activities required to
3 manage the rental properties, including, but not limited to, collecting rents, timely paying real estate
4 taxes when due, maintaining the properties and premises in the condition and in the manner set forth
5 and required by the DIP Documents, and (z) maintain books, records, and accounts to the extent and
6 as required by the DIP Documents.

7 26. Binding Effect. Immediately upon entry, the terms and provisions of this Final Order
8 shall inure to the benefit of the Debtors, the DIP Lender, and each of their respective successors and
9 assigns, and shall be binding upon the Debtors, the DIP Lender, the Committee, and any and all
10 other creditors of the Debtors or other parties in interest and their respective successors and assigns,
11 including without limitation, any trustee hereafter appointed for the estate of any of the Debtors,
12 whether in the Chapter 11 Cases or any Successor Cases. Such binding effect is an integral part of
13 this Final Order.

14 27. Survival. The terms and provisions of this Final Order and any actions taken
15 pursuant hereto (including, but not limited to, the granting of the DIP Liens and the DIP
16 Superpriority Claims) shall survive the entry of any order: (a) converting any of the Chapter 11
17 Cases to a Chapter 7 case; or (b) dismissing any of the Chapter 11 Cases or any Successor Cases,
18 and the terms and provisions of this Final Order and any actions taken pursuant hereto shall continue
19 in full force and effect notwithstanding the entry of any such order. The terms and provisions of
20 this Final Order shall continue in the Chapter 11 Cases and any Successor Cases, and all liens and
21 claims granted pursuant to the Interim Order and this Final Order shall maintain their priority as
22 provided by this Final Order and the DIP Documents until all of the DIP Obligations are indefeasibly
23 paid in cash and discharged and all commitments to extend credit under the DIP Facility are
24 terminated. If an order dismissing any of the Chapter 11 Cases or any Successor Cases is at any
25 time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy
26 Code) that: (a) the DIP Liens and the DIP Superpriority Claims granted to and conferred upon the
27 DIP Lender and the protections afforded to the DIP Lender pursuant to the Interim Order, this Final
28 Order and the DIP Documents shall continue in full force and effect and shall maintain their

1 priorities as provided in the Interim Order and this Final Order until all DIP Obligations shall have
2 been paid and satisfied in full in cash (and that such DIP Liens, DIP Superpriority Claims and other
3 protections shall, notwithstanding such dismissal, remain binding on all interested parties); and (b)
4 to the maximum extent permitted by applicable law, this Court shall retain jurisdiction,
5 notwithstanding such dismissal, for the purpose of enforcing the DIP Liens and the DIP
6 Superpriority Claims.

7 28. Amendment of DIP Documents. The Debtors and the DIP Lender are hereby
8 authorized (without further notice, motion or application to, order of or hearing before, this Court)
9 to amend, modify, or supplement any of the DIP Documents if such amendment, modification, or
10 supplement (a) is non-material or non-adverse to the Debtor, (b) does not directly affect the
11 Indenture Trustee Collateral, and (c) is in accordance with the terms of the DIP Documents, provided
12 however that notice of any such amendment, modification, or supplement shall be provided to the
13 Indenture Trustee and the Committee in writing. In the case of a material amendment, modification,
14 or supplement to the DIP Documents that is adverse to the Debtors or that directly affects the
15 Indenture Trustee Collateral, the Debtors or the DIP Lender shall provide notice (which may be
16 provided through email) of any such amendment, modification, or supplement to counsel for the
17 Committee, the Indenture Trustee and the U.S. Trustee, each of whom shall have five (5) business
18 days from the date of such notice to object in writing to such amendment, modification, or
19 supplement; provided, however, that any forbearance from, or waiver of, a breach by the Debtors of
20 a covenant, representation or any other agreement or a default or an Event of Default, in each case
21 under the DIP Documents, shall not constitute a material amendment, modification or supplement.
22 If no objections are timely received by the Debtors or the DIP Lender, as applicable, during such
23 five business (5) days' notice period, the Debtors and the DIP Lender are authorized and empowered
24 to implement, in accordance with the terms of the DIP Documents, such material amendment,
25 modification or supplement to the DIP Documents, without further notice, hearing or approval of
26 this Court. Any proposed material amendment, modification, or supplement to the DIP Documents
27 that is subject to a timely filed objection in accordance with this paragraph shall be subject to further
28 order of this Court (which may be sought on an expedited basis).

1 29. Insurance Policies. On each insurance policy maintained by the Debtors which
2 insures or consists of DIP Collateral: (i) the DIP Lender is, and shall be deemed to be, without any
3 further action by or notice to any person, named as an additional insured; and (ii) the DIP Lender
4 shall be, and shall be deemed to be, without any further action by or notice to any person, named as
5 a loss payee. The Debtors are hereby authorized and, upon the written request of the DIP Lender,
6 shall use commercially reasonable efforts to have the DIP Lender added as an additional insured
7 and loss payee on each insurance policy maintained by the Debtors which in any way relates to the
8 DIP Collateral.

9 30. Protection Under Section 364(e) of the Bankruptcy Code. The DIP Lender has acted
10 in good faith in connection with the Interim Order, this Final Order and its reliance on the Interim
11 Order and this Final Order is in good faith. Based on the findings set forth in this Final Order and
12 the record of the Chapter 11 Cases, and in accordance with Section 364(e) of the Bankruptcy Code,
13 if any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed,
14 such reversal, modification, vacation or stay shall not affect (a) the validity of any DIP Obligations
15 owing to the DIP Lender, incurred prior to the actual receipt by the DIP Lender of written notice of
16 the effective date of such reversal, modification, vacation or stay, or (b) the validity or enforceability
17 of any DIP Loans or other advances previously made or any claim, lien, security interest or priority
18 authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations
19 owing to the DIP Lender. Notwithstanding any such reversal, modification, vacation or stay, any
20 incurrence of DIP Obligations prior to the actual receipt by the DIP Lender of written notice of the
21 effective date of such reversal, modification, vacation or stay, shall be governed in all respects by
22 the provisions of this Final Order, and the DIP Lender shall be entitled to all of the rights, remedies,
23 protections and benefits granted under Section 364(e) of the Bankruptcy Code, this Final Order, and
24 the DIP Documents with respect to the incurrence of DIP Obligations.

25 31. Sale Process; Credit Bidding.

26 (a) The Debtors' selection of a broker or investment banker for a sale of any of
27 the DIP Collateral (the "DIP Collateral Broker") shall be subject to the written approval of the DIP
28 Lender, which approval shall not be unreasonably withheld, delayed or denied. The Debtors and

1 the DIP Collateral Broker shall keep the DIP Lender informed on a current basis of the status of all
2 offers received (whether written or oral) for any of the DIP Collateral and shall provide the DIP
3 Lender copies of all such offers within one business day after receipt. Pending completion of a sale
4 of the DIP Collateral, the Debtors (i) shall take all actions necessary to preserve the leases (including
5 the Ground Lease) covering any of the DIP Collateral (including all actions necessary to prevent the
6 deemed rejection of any such leases under Section 365 of the Bankruptcy Code), and (ii) shall take
7 no action that could reasonably result in the rejection of any of the leases (including the Ground
8 Lease) covering any of the DIP Collateral.

9 (b) The DIP Lender shall be considered a qualified bidder (whether described as
10 “Qualified Bidder” or similar term or not specifically defined) in connection with any sale of DIP
11 Collateral. The DIP Lender shall have the right to “credit bid”, in full or in part, up to the full
12 amount of the applicable outstanding DIP Obligations in connection with the sale of all or any
13 portion of the DIP Collateral (including without limitation, any sale pursuant to Section 363 of the
14 Bankruptcy Code, any sale included as part of any Chapter 11 plan subject to confirmation under
15 Section 1129(b)(2)(A)(ii) - (iii) of the Bankruptcy Code, or any sale made by a Chapter 7 trustee
16 under Section 725 of the Bankruptcy Code), whether (a) after the occurrence of an Event of Default
17 under the DIP Credit Agreement, or (b) as a bidder in any sale, auction or other disposition of DIP
18 Collateral conducted in the Chapter 11 Cases. The foregoing rights shall be not be stayed during or
19 otherwise affected by the Remedies Notice Period.

20 32. Discharge Waiver. The DIP Obligations and the obligations of the Debtors with
21 respect to the liens, claims and adequate protection provided to the DIP Lender under this Final
22 Order shall survive (and not be discharged by) the entry of an order confirming a Chapter 11 plan
23 in any of the Chapter 11 Cases, notwithstanding the provisions of Section 1141(d) of the Bankruptcy
24 Code, unless such obligations have been indefeasibly paid in full in cash on or before the effective
25 date of the confirmed Chapter 11 plan. The Debtors shall not propose or support any Chapter 11
26 plan that is not conditioned upon the indefeasible payment in full in cash of all DIP Obligations
27 upon the earlier of the effective date of the confirmed Chapter 11 plan or the Termination Date. In
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1 no event shall a Chapter 11 plan alter the terms of repayment of any of the DIP Obligations from
2 those set forth in the DIP Documents unless agreed to by and among the Debtors and the DIP Lender.

3 33. No Third Party Rights. Except as explicitly provided for herein, this Final Order does
4 not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect,
5 or incidental beneficiary other than the DIP Lender.

6 34. Joint and Several Liability. Nothing in this Final Order shall be construed to
7 constitute a substantive consolidation of any of the Debtors' estates, it being understood, however,
8 that the Debtors shall be jointly and severally liable for all obligations under this Final Order and
9 the DIP Documents, including without limitation, the DIP Obligations and the DIP Superpriority
10 Claims in accordance with the terms of this Final Order and the DIP Documents.

11 35. Limitations on Liability. In determining to make extensions of credit under the DIP
12 Facility or in exercising any rights or remedies as and when permitted pursuant to this Final Order,
13 the Final Order, or the DIP Documents, as applicable, the DIP Lender shall not be deemed to be in
14 control of the operations of the Debtors or any affiliate (as defined in Section 101(2) of the
15 Bankruptcy Code) of the Debtors, or to be acting as a "responsible person" or "owner or operator"
16 with respect to the operation or management of the Debtors or any affiliate of the Debtors (as such
17 terms, or any similar terms, are used in the United States Comprehensive Environmental Response,
18 Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or
19 state statute). Furthermore, nothing in this Final Order, the DIP Documents, or any other documents
20 related thereto shall in any way be construed or interpreted to impose or allow the imposition upon
21 the DIP Lender of any liability for any claims arising from the prepetition or postpetition activities
22 of the Debtors or any affiliate of the Debtors, including any and all activities by the Debtors in the
23 operation of their business or the administration of the Chapter 11 Cases.

24 36. Findings of Fact and Conclusions of Law. This Final Order constitutes, where
25 applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable
26 *nunc pro tunc* to the Petition Date immediately upon entry hereof. The findings and conclusions set
27 forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy
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1 Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as
2 such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

3 37. Entry of this Final Order; Waiver of Stay. Notwithstanding Bankruptcy Rules
4 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Local Rule, or Rule 62(a)
5 of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and
6 enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

7 38. Choice of Law; Jurisdiction. The DIP Facility and DIP Documents (and the rights
8 and obligations of the parties thereto) provide that they shall be governed by, and construed and
9 interpreted in accordance with, the laws of the State of New York and, to the extent applicable,
10 California law and the Bankruptcy Code. This Court shall have exclusive jurisdiction with respect
11 to any and all disputes or matters under, or arising out of, or in connection with, either the DIP
12 Facility or the DIP Documents.

13 39. No Modification of Final Order. Until and unless the DIP Obligations have been
14 indefeasibly paid in full in cash and all commitments to extend credit under the DIP Facility have
15 been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to,
16 directly or indirectly, without the prior written consent of the DIP Lender: (a) any modification,
17 stay, vacatur, amendment, or extension of this Final Order; (b) any priority claim for any
18 administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of
19 any kind or nature whatsoever, including any administrative expense of the kind specified in
20 Sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases
21 or any Successor Cases, equal or superior to the DIP Superpriority Claims other than the Permitted
22 Superpriority Claims to the extent permitted under this Final Order; or (c) any lien on any of the
23 DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in
24 the DIP Documents.

25 40. Controlling Effect of Final Order. To the extent any provision of this Final Order
26 conflicts with any provision of the DIP Motion, the Interim Order or any DIP Document, the
27 provisions of this Final Order shall control.

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1 41. Service. Service of this Final Order and notice of the Final Hearing shall be made
2 upon the parties described in paragraph P above and any person who, as of the date hereof, has filed
3 a notice pursuant to Bankruptcy Rule 2002.

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
One International Place, Boston, MA 02110

A true and correct copy of the foregoing document entitled (*specify*): Omnibus Objection to the Debtors' Motion for (A) Use of Cash Collateral and (B) Motion for Authority to Incur Post-Petition Financing.

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 05/22/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 05/22/2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

05/22/2023 Kevin J. Walsh
Date *Printed Name*

/s/ Kevin J. Walsh
Signature

SERVICE LIST

- **Megan M Adeyemo** madeyemo@grsm.com, asoto@grsm.com
- **David E Ahdoot** dahdoot@bushgottlieb.com, kprestegard@bushgottlieb.com
- **Joseph M Ammar** ammar@millercanfield.com
- **Scott E Blakeley** seb@blakeleyllp.com, ecf@blakeleyllp.com
- **Joseph P Buchman** jbuchman@bwslaw.com, gmitchehl@bwslaw.com
- **Adrian Butler** abutler@bushgottlieb.com
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