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Attorneys for Howard M. Ehrenberg, Chapter 11 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,<sup>1</sup>

Debtor.

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

Chapter 11

Jointly administered with:

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

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

**CHAPTER 11 TRUSTEE'S MOTION TO  
APPROVE SETTLEMENT BY AND  
BETWEEN BEVERLY COMMUNITY  
HOSPITAL ASSOCIATION AND  
BEVERLYCARE; MEMORANDUM OF  
POINTS AND AUTHORITIES AND  
DECLARATION OF HOWARD. M.  
EHRENBERG IN SUPPORT THEREOF**

**Fed. R. Bankr. P. 9019(a) and Loc.  
Bankr. R. 9013-1(o)**

DATE: March 13, 2024  
TIME: 9:00 a.m.  
PLACE: Courtroom "1575"  
Royball Federal Building  
255 East Temple St.  
Los Angeles, CA 90012

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

<sup>1</sup> 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 Boulevard, Montebello, CA 90640.



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1 **TO THE HONORABLE SANDRA KLEIN, UNITED STATES BANKRUPTCY JUDGE,**  
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that on March 13, 2024 at 9:00 a.m. or as soon  
4 thereafter as the matter may be heard in the above referenced Court, the Honorable  
5 Sandra Klein, United States Bankruptcy Judge Presiding, Howard M. Ehrenberg, (the  
6 “Trustee”), the duly appointed, qualified, and acting chapter 11 trustee for the bankruptcy  
7 estates of the jointly administered debtors Beverly Community Hospital Association, dba  
8 Beverly Hospital, a nonprofit public benefit corporation (the “Hospital”), Montebello  
9 Community Health Services, Inc. (“Montebello”), and Beverly Hospital Foundation (the  
10 “Foundation”) (and sometimes jointly referred to as the “Debtors”), will and hereby does  
11 move for an Order granting “*Chapter 11 Trustee’s Motion to Approve Settlement By and*  
12 *Between Beverly Community Hospital Association and BeverlyCare; Memorandum of*  
13 *Points and Authorities and Declaration of Howard M. Ehrenberg in Support Thereof*” (the  
14 “Motion”).

15 The settlement is memorialized in a settlement agreement between the Trustee  
16 and BeverlyCare (“Care”) and resolves amounts due and owing to the Hospital pursuant  
17 to a promissory note executed by Care in favor of the Hospital in 2022.

18 This Motion is brought in accordance with Federal Rule of Bankruptcy Procedure  
19 9019(a) and Local Bankruptcy Rule 9013-1(o)(1) and is made on the ground that Trustee  
20 has determined in his best business judgment that it is in the best interests of the  
21 bankruptcy estate to settle this matter on the terms set forth in the following Motion.

22 This Motion is based on the attached memorandum of points and authorities, the  
23 declaration of Howard M. Ehrenberg in support hereof and the exhibits attached hereto  
24 the pleadings and records on file with the Court and such other argument or law as will  
25 be presented in further briefing or at the hearing on this Motion.

1           **WHEREFORE**, the Trustee respectfully requests that the Court enter an order:

2           1.       Approving the settlement with Care;

3           2.       Authorizing the Trustee to take such other and further action as may be  
4 necessary by the terms of the Agreement; and

5           3.       Granting such other relief as the Court deems just and proper.

6

7           DATED: February 19, 2024

Respectfully Submitted,

8

**GREENSPOON MARDER LLP**

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10

By: /s/ Elissa D. Miller

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Elissa D. Miller

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Attorneys for Howard M. Ehrenberg, Chapter  
11 Trustee

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**  
**OF MOTION TO SETTLE WITH BEVERLYCARE**

**I.**

**PREFATORY STATEMENT**

This Motion seeks approval of a settlement by and between Howard M. Ehrenberg, the Trustee for the Hospital and Care, a 501(c)(3) not for profit Federally Qualified Health Center. The Trustee is informed that over the years, the Hospital provided space and administrative and other support to Care which often went unpaid. The Trustee is also informed that the total amount due was memorialized in a Promissory note in 2022 which was all due and payable on August 31, 2023. The amount was not paid, and the settlement between the Trustee and Care resolves all amounts due and owing and disputes related thereto for a one-time payment of \$500,000.00.

For the reasons set forth herein, the Trustee submits that the settlement is fair, equitable and in his best business judgment and should be approved.

**II.**

**PERTINENT FACTS**

**A. The Bankruptcy, the Sale, and The Appointment of the Trustee**

On April 19, 2023 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. On May 10, 2023, the Office of the United States Trustee (the "OUST") appointed an official committee of unsecured creditors.

On Motion of the Debtors on August 18, 2023, the Court entered its "Order (A) Authorizing the Sale of Debtors' Assets to Purchaser Free and Clear of Liens, Claims, Interests, and Other Interests; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief" (the "Sale Order") [Docket No. 718] granting the Sale Motion, approving the AHWM APA, and authorizing the Debtors' proposed sale to AHWM pursuant to 11 U.S.C. §§ 105(a), 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules

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1 of Bankruptcy Procedure, and Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules  
2 for the Central District of California.

3 On September 7, 2023, the Debtors caused to be filed their “Notice of Closing of  
4 Sale to White Memorial Medical Center d/b/a Adventist Health White Memorial” [Docket  
5 No. 789] pursuant to which, among other things, the Debtors reported that, the effective  
6 date of the sale, of 12:01 a.m. (Pacific Time) on September 7, 2023. Four days later,  
7 U.S. Bank Trust Company, National Association, as Master Trustee (“U.S. Bank”) caused  
8 to be filed “U.S. Bank Trust Company, National Association, As Master Trustee’s  
9 Emergency Request for Status Conference and Order to Show Cause Why A Chapter 11  
10 Trustee Should Not Be Appointed” (the “OSC”) [Docket No. 791].

11 The OSC was granted by the Court pursuant to its “Order Directing the  
12 Appointment of a Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee  
13 Applications” entered on September 13, 2013 [Docket No. 803]. On September 15,  
14 2023, the U.S. Trustee filed its “Notice of Appointment of Chapter 11 Trustee” [Docket  
15 No. 811] pursuant to which Howard M. Ehrenberg was appointed chapter 11 trustee for  
16 the Debtors’ jointly administered estates.

17 On September 15, 2023, the OUST filed its “Application for Order Approving  
18 Appointment of Trustee and Fixing Bond” [Docket No. 813]. On September 15, 2023, the  
19 Court entered its “Order Approving the Appointment of a Chapter 11 Trustee” [Docket No.  
20 815]. As a result of the foregoing, Howard M. Ehrenberg became the duly appointed,  
21 qualified, and acting chapter 11 trustee for the Debtors’ jointly administered estates, and  
22 he continues to act in this capacity.

23 **B. Care and the Debt Owed from Care to the Hospital**

24 Care is a 501(c)(3) not-for-profit corporation. It is a Federally Qualified Health  
25 Center (“FQHC”) operated under the auspices of the Health Resources and Services  
26 Organization (“HRSA”), an agency of the U.S. Department of Health and Human  
27 Services. As noted on the HRSA website, “HRSA programs provide equitable health  
28 care to people who are geographically isolated and economically or medically

1 vulnerable.” <https://www.hrsa.gov/about> HRSA strictly monitors and audits qualifying  
2 FQHC.

3 Also as noted on the HRSA website, services are delivered through FQHCs which  
4 “provide comprehensive services (either on-site or by arrangement with another  
5 provider), including preventive health services; dental services; mental health and  
6 substance abuse services; transportation services necessary for adequate patient care;  
7 and hospital and specialty care” depending upon the type of FQHC.

8 <https://www.fqhc.org/what-is-an-fqhc> Care is an FQHC, as noted on the website health  
9 center locator tool. HRSA funds, in part, the operations and services provided by FQHCs  
10 including CARE.

11 After his appointment, the Trustee immediately began reviewing each of the three  
12 Debtors, its assets and its liabilities. The Trustee learned that for many years, the  
13 Hospital had an arrangement with Care for Care to provide non-hospital medical services  
14 to the under and uninsured population in the areas surrounding the Hospital. Care is  
15 located on property which was leased from the Hospital.

16 The Trustee also learned that over the years, CARE had become indebted to the  
17 Hospital for lease payments, accounting and other administrative/management support in  
18 increasing amounts. Various promissory notes were signed by CARE from time to time  
19 from 2017 through 2020.

20 In or about October 2022, Care and the Hospital decided to “refinance” the  
21 amounts due pursuant to the 2017-2020 notes into a single note which Care would be  
22 required to repay the hospital. Attached to the Declaration of Howard Ehrenberg (the  
23 “Ehrenberg Decl.) as **Exhibit 2** is a true and correct copy of the Note in the principal  
24 amount of \$5,139,438.15 which is the amount of all principal and interest then due and  
25 owing from CARE to the Hospital pursuant to the notes from 2017 through 2020 as  
26 identified on Note..

27 The Trustee made demand on Care to pay the Note in response to which, Care  
28 raised certain defenses and also contended it was unable to pay the full amount due as

1 to do so would leave it with insufficient funds to continue operating and providing needed  
2 services to the community. After negotiations, the Trustee agreed to the settlement  
3 which was memorialized in the Settlement Agreement (the “Agreement”) approval of  
4 which is sought by this Motion.

5 **III.**

6 **THE SETTLEMENT**

7 Attached to the Ehrenberg Decl. as **Exhibit 1** is a true and correct copy of the  
8 Agreement. The following is a summary of the Agreement's pertinent terms. Parties in  
9 interest are encouraged to review the Agreement for its full terms and conditions.

10 In full settlement of the disputes by and between the Trustee and Care related to  
11 the Promissory note, within seven (7) business days after entry of the final order  
12 approving this Agreement, Care shall pay to the Trustee the sum of \$500,000. In  
13 addition, the parties are exchanging mutual general releases related to Note and all other  
14 agreements of any nature between the Debtor and Care.

15 **IV.**

16 **THE SETTLEMENTS SHOULD BE APPROVED BECAUSE IT IS FAIR,**

17 **EQUITABLE AND IN THE BEST INTEREST OF THE ESTATE**

18 Federal Rule of Bankruptcy Procedure 9019 provides that “on motion by the  
19 trustee and after notice and a hearing, the court may approve a compromise or  
20 settlement.” Fed. R. Bankr. P. 9019. Compromise is favored over continued litigation.  
21 See In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986) (citing Port O’Call  
22 Investment Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9<sup>th</sup> Cir. 1976)). A compromise  
23 should be approved if it is “fair and equitable.” In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir.  
24 1988); In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986), cert. denied, 479 U.S.  
25 854 (1986); Burton v. Ulrich (In re Schmidtt), 215 B.R. 417, 424 (9<sup>th</sup> Cir. B.A.P. 1997)  
26 (considering whether a compromise is fair and equitable for the creditors and whether it is  
27 in the best interests of the estate). “Whether a compromise will benefit or harm the  
28 Debtor is immaterial.” Burton v. Ulrich (In re Schmidtt), 215 B.R. at 424.

1 In determining whether to approve a compromise or settlement, the court must  
2 consider the following factors:

- 3 1. the probability of success in the litigation;
- 4 2. the difficulties, if any, to be encountered in the matter of collection;
- 5 3. the complexity of the litigation involved, and the expense,  
6 inconvenience and delay necessarily attending it; and
- 7 4. the paramount interest of the creditors and a proper deference to  
8 their reasonable views.

9 In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988); In re A & C Properties, 784 F.2d  
10 1377, 1381 (9<sup>th</sup> Cir. 1986). When considering these factors, the court need “only canvass  
11 the issues.” In re Schmitt, 215 B.R. at 423 (citing In re Blair, 538 F.2d at 851-52); Cosoff  
12 v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2<sup>nd</sup> Cir. 1983), cert. denied, 464  
13 U.S. 822 (1983). “A mini trial on the merits is not required.” In re Schmitt, 215 B.R. at  
14 423. A compromise or settlement should be approved unless it “fall[s] below the lowest  
15 point in the range of reasonableness.” Cosoff v. Rodman (In re W.T. Grant Co.), 699  
16 F.2d 599, 608 (2<sup>nd</sup> Cir. 1983), cert. denied, 464 U.S. 822 (1983); see also In re A & C  
17 Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986) (holding that a settlement should be  
18 approved if it is reasonable given the particular circumstances of the case), cert. denied,  
19 479 U.S. 854 (1986).

20 The compromise approval process does not contemplate that a bankruptcy court  
21 will substitute its business judgment for that of a trustee. To the contrary, a settlement  
22 that has been negotiated by a trustee, as representative of the estate, is entitled to  
23 deference. See In re Morrison, 69 B.R. 586, 592 (Bankr. E.D. Pa. 1987) (“The objecting  
24 creditors may not substitute their judgment for that of the Trustee”).

25 Applying the A&C factors to this settlement supports the Trustee’s determination  
26 that the Agreement is in his best business judgment.



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**A. Probability of Success in the Litigation**

The Trustee has concluded that this factor weighs in favor of the settlement.

While the note is unclear in many respects, it does provide for interest payable at 4% commencing July 1, 2022 (Note ¶1). It also provides that in the event of any default, the Hospital may declare the entire note due and payable at which time, the principal and all interest due under the Note shall be immediately payable. (Note ¶5) No interest was paid, and the Trustee demanded full payment but no funds were forthcoming.

However, the Note is not well drafted--it is somewhat ambiguous. There is no clear maturity date, it provides for automatic renewal of the maturity date on an undefined anniversary date, and the note is not dated (although from the title of the PDF received by the Trustee, he believes it was entered in October 2022) although interest commenced in July 2022.

With regard to the maturity date, the Note provides that the entirety of the principal and interest due under the Note was payable on August 31, 2023. However, the same paragraph provides that the "Maturity Date will automatically renew on the anniversary of the Original Maturity Date for a period of five years for any amounts due and payable."

While the term Maturity Date is defined, the term "anniversary date" is not. The Trustee contends that the anniversary date is not the same date as the maturity date, however, there is no guidance as to what the anniversary date is. The Trustee contends that the Maturity and anniversary dates are not the same, as that would not make sense. If the Trustee is incorrect and the anniversary and the Maturity Date are the same, then the Note may not be in default until, at the earliest 2028. Regardless of when the note was or will be due by its terms, the Note has not been paid.

In other words, there is likely not a clear path to recovery on this Note.

**B. The Difficulties, If Any, To Be Encountered In The Matter Of Collection**

The Second A&C factor is the most troublesome to the Trustee. Care, as an FQHC, receives most of its funding from HRSA. It also seeks reimbursement from Medi-cal, covered California and other insurance. It receives donations, grants and gifts and

1 against that it also provides services regardless of ability to pay. Pursuant to its website  
2 Care's "goal is to help eliminate health disparities by making healthcare convenient and  
3 accessible to everyone." <https://beverlycare.org/about-us/>

4 Care contends that through careful money management and timing of monies in  
5 vs. payment of amounts due and expected amounts due, Care currently has funds in its  
6 account. However, the Trustee is not sanguine that there will be funds available to pay a  
7 judgment in the future. This is particularly true as Care may now have to begin paying for  
8 lease obligations and management which the Hospital pre-bankruptcy was providing and  
9 only accruing amounts due.

10 In other words, the Trustee believes that if the Settlement is not approved and he  
11 is forced to litigate, the money now available to pay a settlement, will not be available to  
12 pay a judgment, unless he can prevail on some type of pre-judgment remedy.<sup>2</sup> He is not  
13 confident he will be able to do so.

14 **C. The Complexity Of The Litigation Involved, And The Expense,**  
15 **Inconvenience And Delay Necessarily Attending It.**

16 The analysis of this third A&C factor also supports the settlement. While the  
17 litigation should not be complex – a breach of promissory note-- it may be in this case.  
18 As discussed above, the Note is vague and ambiguous. The meaning of the contract will  
19 have to be litigated through the use of parol evidence and the Trustee's counsel will need  
20 to depose Hospital and Care personnel involved in the negotiations as to the meaning of  
21 the terms in the Note. He will also need to seek production of correspondence and drafts  
22 of agreements.

23 The litigation would likely not be able to be resolved quickly or by a motion but  
24 rather only by trial with testimony. While the Trustee would not request a jury trial, the  
25 Trustee would not be surprised if Care does, thus adding to the expense. The Trustee  
26

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27 <sup>2</sup> The Trustee is not confident he would be able to prove his prima facie case for the  
28 reason discussed in connection with the first A&C factor – probability of success - a  
requirement for a writ of attachment.

1 would thus have to incur fees and costs to litigate which will just add to a balance, if he  
2 prevails that may or may not be recoverable.

3 Finally, the delay of the matter will likely not be insignificant as the matter winds its  
4 way through the litigation process.

5 **D. The Paramount Interest Of The Creditors And A Proper Deference To**  
6 **Their Reasonable Views.**

7 As is the case with the first three factors, the application of this fourth and final  
8 A&C factor supports settlement. The paramount interest of creditors which a bankruptcy  
9 court must consider in deciding whether to approve a proposed compromise, generally  
10 reflects not only the desire of creditors to obtain the maximum possible recovery, but also  
11 their competing desire that the recovery should occur in the least amount of time  
12 possible. See In re Marples, 266 B.R. 202, 206 (Bankr. D. Idaho 2001); In re Lake City  
13 RV, Inc., 226 B.R. 241, 243-44 (Bankr. D. Idaho 1998).

14 The settlement resolves the claim against Care in a manner meant to avoid further  
15 administrative expenses while at the same time, recognizing that Care requires resources  
16 to continue to provide the valuable services it provides in the community. It is an amount  
17 reached after negotiations, after the Trustee reviewed financial information and after the  
18 Trustee consulted with U.S. Bank, the Hospital's first priority secured creditor, who voiced  
19 approval of the Settlement.

20 As noted earlier, generally, a court should approve a proposed settlement so long  
21 as it is above "the lowest point in the range of reasonableness," giving deference to a  
22 trustee's reasonable business judgment. See In re Receivership Estate of Indian  
23 Motorcycle Mfg., Inc., 299 B.R. 8, 21 (D. Mass. 2003) ("The court may give substantial  
24 deference to the business judgment of a bankruptcy trustee when deciding whether to  
25 approve a settlement").

26 Based on the foregoing, the Trustee submits that the settlement is fair and  
27 equitable, in his best business judgment and should be approved.

28

V.

**EFFECT OF SETTLEMENT ON ESTATE**

As noted above, the settlement recovers immediately and without significant legal fees, \$500,000, all of which is the secured creditors collateral. At this time, however, what the ultimate result of this settlement will be on distributions is unknown as the Trustee has not yet set a bar date. In addition, his professionals are currently analyzing and identifying potential avoidance claims, the recoveries on which will be unencumbered assets. Finally, the Trustee continue to negotiate with U.S. Bank as to a budget/surcharge of its collateral to operate the estate. Resolution of all of the foregoing, as well as other issues, will define the financial parameters of the estate.

VI.

**CONCLUSION**

Based on the foregoing, the Trustee respectfully requests that the Court enter an order:

1. Granting the Motion;
2. Approving the settlement with Care;
3. Authorizing the Trustee to take such other and further action as may be necessary by the terms of the Agreement; and
4. Granting such other relief as the Court deems just and proper.

DATED: February 19, 2024

**Greenspoon Marder LLP**

By: /s/ Elissa D. Miller

Elissa D. Miller  
Attorneys for Howard M. Ehrenberg, Chapter  
11 Trustee

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**DECLARATION OF HOWARD M. EHRENBURG**

I, Howard M. Ehrenberg, declare:

1. I am an attorney licensed to practice in the State of California and before this Court. I am the duly appointed, qualified, and acting chapter 11 trustee for the estates of the jointly administered debtors Beverly Community Hospital Association, dba Beverly Hospital, a nonprofit public benefit corporation ("Beverly Community"), Montebello Community Health Services, Inc. ("Montebello Health"), and Beverly Hospital Foundation ("Foundation ") (collectively and interchangeably, the "Debtor" or "Debtors"). The statements contained in this declaration are based on my personal knowledge, review of documents, and my investigation of the Debtors' cases conducted since my appointment as chapter 11 trustee, and, if called as a witness, I could and would competently testify thereto.

2. I make this declaration in support of my "Chapter 11 Trustee's Motion To Approve Settlement By and Between Beverly Community Hospital Association and BeverlyCare; Memorandum of Points and Authorities and Declaration of Howard M. Ehrenberg in Support Thereof" (the "Motion"), through which I seek, an order authorizing me to accept \$500,000 in full and complete payment of a promissory note pursuant to which Care agreed to pay the Hospital approximately \$5.2 million pursuant to a Settlement Agreement (the "Agreement"), a true and correct copy of which is attached hereto as **Exhibit 1**. As set forth in detail herein, I believe the settlement is fair, equitable and in my best business judgment.

3. The facts underlying the Motion are as follows:

**The Bankruptcy**

4. On April 19, 2023 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. On May 10, 2023, the Office of the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors.

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1           5.       On August 7, 2023, the Debtors caused to be filed their “Notice of Motion  
2 and Motion for Entry of An Order (I) Authorizing the Sale of Substantially all of the  
3 Debtors’ Assets Free and Clear of All Liens, Claims, and Encumbrances; to White  
4 Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear; (II)  
5 Authorizing the Assumption and Assignment of Certain Executory Contracts and  
6 Unexpired Leases, and (III) Granting Related Relief; Declaration of Jason A. Cohen in  
7 Support Thereof” ” (the “Sale Motion”) [Docket No. 638]. The Sale Motion sought, among  
8 other things, approval of that certain “Asset Purchase Agreement” (the “AHWM APA”),  
9 dated as of August 7, 2023, by and between Beverly Community and Montebello Health,  
10 as sellers, and White Memorial Medical Center d/b/a Adventist Health White Memorial  
11 (“AHWM”), as buyer.

12           6.       Eleven days later, on August 18, 2023, the Court entered its “Order (A)  
13 Authorizing the Sale of Debtors’ Assets to Purchaser Free and Clear of Liens, Claims,  
14 Interests, and Other Interests; (B) Approving the Assumption and Assignment of  
15 Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related  
16 Relief” (the “Sale Order”) [Docket No. 718] granting the Sale Motion, approving the  
17 AHWM APA, and authorizing the Debtors’ proposed sale to AHWM pursuant to 11 U.S.C.  
18 §§ 105(a), 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules  
19 of Bankruptcy Procedure, and Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules  
20 for the Central District of California.

21           7.       On September 7, 2023, the Debtors caused to be filed their “Notice of  
22 Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White  
23 Memorial” [Docket No. 789] pursuant to which, among other things, the Debtors reported  
24 that, pursuant to Section 1.3 of the AHWM APA, the Closing (as defined in the AHWM  
25 APA) of the sale to AHWM occurred on September 6, 2023 (the “Closing Date”), with an  
26 Effective Time (as defined in the AHWM APA) of 12:01 a.m. (Pacific Time) on  
27 September 7, 2023. Four days later, U.S. Bank Trust Company, National Association, as  
28 Master Trustee (“U.S. Bank”) caused to be filed “U.S. Bank Trust Company, National

1 Association, As Master Trustee’s Emergency Request for Status Conference and Order  
2 to Show Cause Why A Chapter 11 Trustee Should Not Be Appointed” (the “OSC”)  
3 [Docket No. 791].

4 8. The OSC was granted by the Court pursuant to its “Order Directing the  
5 Appointment of A Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee  
6 Applications” entered on September 13, 2013 [Docket No. 803]. On September 15,  
7 2023, the OUST filed its “Notice of Appointment of Chapter 11 Trustee” [Docket No. 811]  
8 pursuant to which I was appointed chapter 11 trustee for the Debtors’ jointly administered  
9 estates.

10 9. On September 15, 2023, the OUST filed its “Application for Order  
11 Approving Appointment of Trustee and Fixing Bond” [Docket No. 813]. On September 15,  
12 2023, the Court entered its “Order Approving the Appointment of A Chapter 11 Trustee”  
13 [Docket No. 815]. As a result of the foregoing, I became the duly appointed, qualified,  
14 and acting chapter 11 trustee for the Debtors’ jointly administered estates and continue to  
15 act in this capacity.

16 **Care and the Debt Owning from Care to the Hospital**

17 10. Based on information provided to me, I learned that Care is a 501(c)(3) not-  
18 for-profit corporation. It is a Federally Qualified Health Center (“FQHC”) operated under  
19 the auspices of the Health Resources and Services Organization (“HRSA”), an agency of  
20 the U.S. Department of Health and Human Services. As noted on the HRSA website,  
21 “HRSA programs provide equitable health care to people who are geographically isolated  
22 and economically or medically vulnerable.” <https://www.hrsa.gov/about> HRSA strictly  
23 monitors and audits qualifying FQHC.

24 11. Also as noted on the HRSA website, services are delivered through FQHCs  
25 which “provide comprehensive services (either on-site or by arrangement with another  
26 provider), including preventive health services; dental services; mental health and  
27 substance abuse services; transportation services necessary for adequate patient care;  
28 and hospital and specialty care. <https://www.fqhc.org/what-is-an-fqhc> Care is an FQHC

1 as noted on FQHC's website health center locator tool. HRSA funds, in part, the  
2 operations and services provided by CARE.

3 12. After my appointment, in connection with my investigation of the Hospital, I  
4 learned that for many years, the Hospital had an arrangement with Care for Care to  
5 provide non-hospital medical services to the under and uninsured population in the areas  
6 surrounding the Hospital. I also learned that Care is located on premises which were  
7 leased from the Hospital.

8 13. I have been advised by both CARE and the Hospital personnel that through  
9 the years, CARE had become indebted to the Hospital for lease payments, accounting  
10 and other administrative/management support services provided by the Hospital in  
11 increasing amounts.

12 14. I also learned and was provided a copy of a Note entered between Care  
13 and the Hospital in or about October 2022 in the principal amount of \$5,139,438.15. A  
14 true and correct copy of the Note is attached hereto as **Exhibit 2**. As recited in the Note,  
15 the note is a refinance of various promissory notes documenting obligations owed by  
16 Care to the Hospital from 2017 through 2020 in various amounts.

17 15. Following my appointment, I caused demand to be made on Care to pay  
18 the Note. Care raised certain defenses and also contended it was unable to pay the full  
19 amount due. After negotiations, I agreed to the settlement, which is memorialized in the  
20 Agreement, **Exhibit 1**, approval of which is sought by this Motion.

21 16. In reviewing the Agreement and determining that the settlement was fair  
22 reasonable and in my best business judgment, I considered each of the four A&C factors.

23 17. I first looked at the probability of success in the litigation and concluded this  
24 factor weighs in favor of the settlement. While the note is unclear in many respects as to  
25 date of maturity and other matters, it provides for interest payable at 4% commencing  
26 July 1, 2022 (Note ¶1). It also provides that in the event of any default, the Hospital may  
27 declare the principal and all interest due under the Note immediately payable. (Note ¶5)  
28 No interest was paid and as noted above, I caused a demand to be made for full



1 payment. The Note was not paid. While for this reason, I should prevail. Other issues  
2 with the note make it less likely. .

3 18. The Note is not well drafted. There is no clear maturity date, it provides for  
4 automatic renewal of the maturity date, and the note is not dated (although from the Title  
5 of the PDF I received it states it was entered in October 2022, although interest  
6 commenced in July 2022).

7 19. With regard to the maturity date, the Note provides that the entirety of the  
8 principal and interest due under the Note was payable on August 31, 2023. No amount  
9 was paid. However, the same paragraph provides that the "Maturity Date will  
10 automatically renew on the anniversary of the Original Maturity Date for a period of five  
11 years for any amounts due and payable. While the term Maturity Date is defined, the  
12 "anniversary date" is not. The anniversary could be one month or five years later.  
13 However, it is my opinion that the anniversary date could not be before August 31, 2024,  
14 or the provision would not make sense. Since, there is no guidance on whether or not I  
15 am correct, the anniversary date would have to be litigated. If ultimately a court  
16 determines that the anniversary and the Maturity Date are the same, then the Note is not  
17 currently due and may not be in default until, at the earliest, 2028. In other words, there  
18 is likely not a clear path to recovery on this Note.

19 20. The second A&C factor is the most troublesome to me. I do not want to put  
20 Care out of business as I believe it provides necessary healthcare services to members  
21 of the community surrounding the Hospital. However, I am aware that Care primarily  
22 receives its funding from state and federal funds. As such, it is my understanding that at  
23 any time, the flow of funds can be affected in changes in how HRSA reimburses FQHCs  
24 for services provided, government policies, failure to pass budgets and the like.  
25 Moreover, it is likely Care will now have to begin paying for lease obligations and  
26 management which the Hospital pre-bankruptcy was providing. Thus, I have a real and  
27 justifiable concern that if I do not settle now, funds will not be available when and if I am  
28 awarded a judgment against Care.

**Greenspoon Marder LLP**  
1875 Century Park East, SUITE 1900  
LOS ANGELES, CALIFORNIA 90067  
TEL. 213.626.2311 • FAX 954.771.9264

1           21. I also considered the third A&C factor. While do not believe that litigation of  
2 a promissory note, in general, is a complex matter, it may be in this case. As discussed  
3 above, the Note is vague and ambiguous and will require the presentation of parol  
4 evidence to interpret. My counsel will need to depose Hospital and Care personnel  
5 involved in the negotiations as to the meaning of the agreement. They will also need to  
6 seek production of correspondence and drafts of agreements. The case would not likely  
7 be able to be resolved quickly or by a motion but rather only by trial with testimony and I  
8 would be surprised if Care did not request a jury trial. I would thus have to incur fees and  
9 costs to litigate which will just add to a balance. Finally, the delay of the matter will likely  
10 not be insignificant as the matter winds its way through the litigation process.

11           22. As with the first three factors, the application of this fourth and final A&C  
12 factor--the paramount interest of creditors--supports settlement. The settlement resolves  
13 the claim against Care for an insignificant amount in a manner meant to avoid further  
14 administrative expenses. It is an amount reached after I reviewed financial information,  
15 after negotiations, I consulted with U.S. Bank, the Hospital's first priority secured creditor,  
16 and after U.S. Bank voiced its approval of the Settlement.

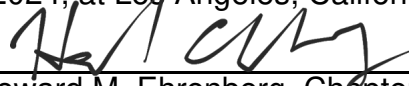
17           23. I also considered the effect of this Agreement on the estate. As noted  
18 above, the settlement recovers immediately and without significant legal fees \$500,000,  
19 all of which is the secured creditor's collateral. What the ultimate result of this settlement  
20 will be on distributions, however, is unknown as I have not yet set a bar date. In addition,  
21 my professionals are currently analyzing and identifying potential avoidance claims, the  
22 recoveries on which will be unencumbered assets. Finally, I continue to negotiate with  
23 U.S. Bank as to a budget/surcharge of its collateral to operate the estate. Resolution of  
24 all of the foregoing will define the financial parameters of the estate.

25           24. Based on the foregoing, it is my opinion that the Agreement between me  
26 and Care is fair, equitable, in the best interests of the estate and its creditors and in my  
27 best business judgment.  
28

25. I respectfully request that the settlement be approved.

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

Executed this 19th day of February 2024, at Los Angeles, California.

  
Howard M. Ehrenberg, Chapter 11 Trustee

**Greenspoon Marder LLP**  
1875 Century Park East, SUITE 1900  
LOS ANGELES, CALIFORNIA 90067  
TEL. 213.626.2311 • FAX 954.771.9264

# EXHIBIT 1

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and between Howard M. Ehrenberg, solely in his capacity as trustee (the "Trustee") of the estate of Beverly Community Hospital Association (the "Debtor"), and BeverlyCare ("Care"). The Trustee and Care may hereinafter be referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

A. On April 19, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

B. On August 7, 2023, the Debtors caused to be filed their "Notice of Motion and Motion for Entry of An Order (I) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of All Liens, Claims, and Encumbrances; to White Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief; Declaration of Jason A. Cohen in Support Thereof" (the "Sale Motion") [Docket No. 638].

C. Eleven days later, on August 18, 2023, the Court entered its "Order (A) Authorizing the Sale of Debtors' Assets to Purchaser Free and Clear of Liens, Claims, Interests, and Other Interests; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief" (the "Sale Order") [Docket No. 718] granting the Sale Motion, approving the AHWM APA, and authorizing the Debtors' proposed sale to AHWM pursuant to 11 U.S.C. §§ 105(a), 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules for the Central District of California.

D. On September 7, 2023, the Debtors caused to be filed their "Notice of Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White Memorial" [Docket No. 789]. Four days later, U.S. Bank Trust Company, National Association, as Master Trustee ("U.S. Bank") caused to be filed "U.S. Bank Trust Company, National Association, As Master Trustee's Emergency Request for Status Conference and Order to Show Cause Why A Chapter 11 Trustee Should Not Be Appointed" (the "OSC") [Docket No. 791].

E. The OSC was granted by the Court pursuant to its "Order Directing the Appointment of a Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee Applications" entered on September 13, 2013 [Docket No. 803]. On September 15, 2023, the OUST filed its "Notice of Appointment of Chapter 11 Trustee" [Docket No. 811] pursuant to which Howard M. Ehrenberg was appointed chapter 11 trustee for the Debtors' jointly administered estates.

F. On September 15, 2023, the OUST filed its "Application for Order Approving Appointment of Trustee and Fixing Bond" [Docket No. 813]. On September 15, 2023, the Court entered its "Order Approving the Appointment of a Chapter 11 Trustee" [Docket No. 815]. As a result of the foregoing, Howard M. Ehrenberg became the duly appointed, qualified, and acting chapter 11 trustee for the Debtors' jointly administered estates, and he continues to act in this capacity.

G. Following his appointment, the Trustee was advised that one of the assets of the Estate is the monies due from Care pursuant to a Promissory Note (the "Note") executed by the Debtor and Care. The Trustee also ascertained that Care is a non-profit Federally Qualified Health Center which had formerly worked in tandem with the Debtor to provide services to patients who were underinsured and uninsured.

H. The Trustee reviewed the Note and made demand on Care for full repayment of the approximately \$5 million due and owing.

I. Care advised the Trustee that it did not have the financial resources to pay the note in full and to continue to operate and provide medical services to the community.

J. After negotiations, the Parties reached the settlement memorialized by this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants, conditions, promises, and agreements contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1**

### **APPROVAL ORDER AND BINDING EFFECT**

**1.1. Binding Effect.** This Agreement shall become effective and binding only upon entry by the Bankruptcy Court of a final order approving the Agreement (the "Approval Order"). The Approval Order is "final" after it is entered unless an appeal is timely filed and a stay pending appeal is obtained. In the event of a timely-filed appeal and stay, the order shall become final if and when the appeal is resolved in favor of the Trustee. In the event the stay pending appeal is lifted prior to the resolution of the appeal, the order shall become final upon the lifting of the stay pending appeal. The "Effective Date" of this Agreement shall be the first business day after the Approval Order becomes final.

**1.2. Court Approval.** Upon execution of this Agreement by the Parties, the Trustee will promptly file a motion to approve this Agreement with the Bankruptcy Court. The Trustee shall use his best efforts to obtain the Bankruptcy Court's approval of the motion and this Agreement, and the Parties shall cooperate in this regard and in defending against an appeal of the Court's approval of the Motion.

**1.3. Termination of Agreement.** In the event that this Agreement is not approved by the Bankruptcy Court with a final Approval Order, with the exception of Article I of this Agreement, this Agreement shall become null and void and of no force or effect.

## **ARTICLE 2** **TERMS OF SETTLEMENT**

**2.1.** Upon entry of the Approval Order, the Trustee shall provide Care with a copy of the Approval Order. Care shall have seven (7) business days after entry of the Approval Order to remit to the Trustee the sum of \$500,000 by check made payable to "Howard M. Ehrenberg, Chapter 7 Trustee of the Bankruptcy Estate of Beverly Care Hospital Association or by wire transfer pursuant to instructions to be provided by the Trustee. If by Check, the check should be sent to:

Greenspoon Marder  
Attention: Howard M. Ehrenberg, Trustee  
1875 Century Park East, Suite 1900  
Los Angeles, California 90067

## **ARTICLE 3** **REPRESENTATIONS AND WARRANTIES**

**3.1. No Undisclosed Inducements.** The Parties represent that they have entered into this Agreement in reliance on their own investigation and that no representations, warranties, or promises other than those set forth in this Agreement were made by the Parties or their agents, employees, or counsel to induce either Party to enter into this Agreement.

**3.2. Representation by Counsel.** Each Party represents that he or she has obtained independent legal advice with respect to this Agreement, the subject matter of this Agreement, the facts referred to above, and any rights or asserted rights arising therefrom. The Parties acknowledge that they are executing this Agreement voluntarily, without any duress or undue influence.

**3.3. Authority to Execute Agreement.** The Parties warrant and represent that they are authorized to execute this Agreement on behalf of the respective parties and in their respective capacities as indicated below, provided however that the Trustee's execution of this Agreement is specifically subject to the approval of the Bankruptcy Court as provided for herein.

**ARTICLE 4**  
**RELEASE OF CLAIMS**

**4.1. Release of Claims by the Trustee.** Except as otherwise provided in this Agreement, and effective only upon (a) approval of the Agreement by the Bankruptcy Court, and (b) receipt of the Estate's allocation of the Settlement amount, the Trustee, for and on behalf of the Estate and his successors (collectively, the "Releasing Parties") shall release and discharge Care, and its respective officers, directors, agents, attorneys, and employees from any and all claims, demands, controversies, actions, causes of action, suits, proceedings, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, and liquidated or unliquidated, relating to the Note and all other agreements of any nature between Debtor and Care.

**4.2. Release of Claims by Care.** Except as otherwise provided in this Agreement, Care, for itself and its officers, directors, agents, attorneys, employees successors, assigns, grantees, and affiliates (collectively, the "Care Releasing Parties"), shall release and discharge any and all claims or interests which the Care Releasing Parties may now own or hold, or may have previously owned or held, or may in the future own or hold, against the Trustee and the Estate and their respective agents, attorneys, and employees from any and all claims, demands, controversies, actions, causes of action, suits, proceedings, obligations, liabilities, fines, penalties, costs, expenses, attorneys' fees, and damages of whatsoever character, nature, or kind, in law or in equity, whether known or unknown, fixed or contingent, and liquidated or unliquidated, relating to the Note and all other agreements of any nature between Debtor and Care.

**4.3. Final Release and Bar.** The Parties hereby acknowledge that it is their intention that this Agreement shall be effective as a full and final release of, and as a bar with prejudice to, each and every claim which the parties have or had against one another as is applicable, directly or indirectly. In connection with such waiver and relinquishment, the parties acknowledge that they or their attorneys may hereafter discover facts different from or in addition to the facts that they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to hereby fully, finally, absolutely, and forever release any and all claims released above, which now do exist, may exist, or have existed between them, and that in furtherance of such intentions the release as given herein by the parties shall be and remains in effect as a full and complete release of any and all claims notwithstanding the discovery of any such different or additional facts.

The Parties acknowledge that they have read and are familiar with, and/or have been advised by their legal counsel of, the of California Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES



NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge and agree that this Agreement releases all claims as allowed by law existing or arising prior to the execution of this Agreement which the Parties may have against each other, whether such claims are now known or unknown, suspected or unsuspected.

## **ARTICLE 5**

### **GENERAL PROVISIONS**

**5.1. Integration.** This Agreement sets forth the entire agreement between the Parties with regard to the subject matter hereof and no change, modification, amendment, termination or discharge of this Agreement shall be binding unless made in writing and executed by each of the parties. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter hereof, are contained in this Agreement and the documents referred to herein or implementing the provisions hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another party with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein, and superseded hereby and thereby.

**5.2. No Third-Party Beneficiaries.** This Agreement is not for the benefit of any person who is not a party signatory to this Agreement or who is not specifically named as a beneficiary in this Agreement, and the provisions of this Agreement are not intended to affect the rights of any party or non-party against any person or entity who is not a party signatory to this Agreement or who is not specifically named as a beneficiary in this Agreement.

**5.3. Attorneys' Fees.** With respect to any suit or proceeding involving the enforcement of this Agreement, including, but not limited to, instituting any action or proceeding to enforce any provisions of this Agreement, to prevent a breach of this Agreement, for damages by reason of any alleged breach of any provisions of this Agreement, or for a declaration of a Party's rights or obligations under this Agreement, the ultimate prevailing Party shall be entitled to recover from the losing Party or Parties, in addition to such other relief as may be granted, his/her reasonable attorneys' fees (other than the attorneys' fees and costs to prepare this Agreement and seek Bankruptcy Court approval of this Agreement).

**5.4. Survival.** It is expressly understood and agreed by each of the Parties that nothing provided for in this Agreement is intended to nor does it release any claims arising out of breach of this Agreement, or any representations contained herein or

made in connection herewith. All representations, warranties and covenants herein shall survive the execution of this Agreement.

**5.5. Further Documentation.** Following the date hereof, the parties must take such action and execute and deliver such further documents as may be reasonably necessary or appropriate to effectuate the intention of this Agreement.

**5.6. Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted and enforced in accordance with the laws of the State of California.

**5.7. Jurisdiction.** In the event a dispute arises under this Agreement, the Bankruptcy Court shall have exclusive jurisdiction to interpret and enforce this Agreement.

**5.8. Interpretation.** This Agreement shall be treated as jointly drafted and will not be construed against any Party as drafter. Furthermore, in the event of any ambiguity in or dispute regarding the interpretation of this Agreement, the interpretation will not be resolved by any rule of interpretation providing for interpretation against the Party who causes the uncertainty to exist or against the draftsman.

**5.9. Meaning of Pronouns and Effect of Headings.** As used in the Agreement and attached exhibits, the masculine, feminine and/or neuter gender, in the singular or plural, shall be deemed to include the others whenever the text so requires. The captions and paragraph headings in the Agreement are inserted solely for convenience or reference and shall not restrict, limit or otherwise affect the meaning of the Agreement.

**5.10. Counterparts and Electronic Signatures.** This Agreement may be executed in multiple counterpart copies, each of which shall be deemed an original, but all of which together shall constitute one agreement. A signature sent and received by facsimile or other electronic means shall constitute an original signature for purposes of this Agreement. An electronic signature shall constitute an original signature for purposes of this Agreement.

**5.11. Severability.** In the event that any covenant, condition or other provision contained in this Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein, so long as such severance does not materially affect the consideration given or received herein or the general intent hereof. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent that the scope or breadth is permitted by law.

**5.12. Waiver.** No breach of any provision herein can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. No failure or delay on the part of any Party to exercise any right hereunder, nor any other indulgence of such Party, shall operate as a waiver of any other rights hereunder, nor shall any single exercise by any Party of any right hereunder preclude any other or further exercise thereof. The rights and remedies herein provided are cumulative and not exclusive of any right or remedies provided by law.

**5.13. Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, heirs, executors, administrators, etc. of each of the Parties, including but not limited to any successor trustee and the Debtor after the case is dismissed or closed.

**5.14. No Assignments or Delegation of Rights.** Neither Party hereto has assigned or delegated any rights to any other party or person any of the rights or interests related to any claim which may be subject to the terms of this Agreement.

**5.15. Further Assurances.** The Parties shall take all further acts and sign all further documents necessary or convenient to effectuate the purpose of this Agreement.

**5.16. Full Authority to Sign Agreement.** Any individual signing on behalf of any Party hereto expressly represents and warrants to each other Party that he or she has full authority to do so and to bind such Party hereto and, in the case of the Trustee, to bind the Estate, subject only to approval of the Bankruptcy Court.

**5.17. Parties to Bear Own Costs.** Each party shall be responsible for the payment of its own costs, attorneys' fees, and all other expenses in connection with negotiation, preparation, execution, and approval of this Agreement.

**5.18. Recitals Acknowledged.** The Recitals are true and correct to the best of the Parties' knowledge, and hereby adopted by the Parties as material understandings upon which the Parties have relied in preparation of this Agreement.

**5.19. Notices.** Any notice by any Party to any other Party may be made by e-mail and delivered to the other Party at the address below until written notice of a different email address is given by the Party. Any payments to be made pursuant to this Agreement shall be deemed made only upon actual receipt.

**To the Trustee:**

Howard M. Ehrenberg, Bankruptcy Trustee for Beverly Hospital  
c/o Greenspoon Marder  
1875 Century Park East, Suite 1900  
Los Angeles, CA 90067  
[Howard.ehrenberg@gmlaw.com](mailto:Howard.ehrenberg@gmlaw.com)

with a copy to:

Elissa D. Miller, Esq.  
Greenspoon Marder  
1875 Century Park East, Suite 1900  
Los Angeles, CA 90067  
[elissa.miller@gmlaw.com](mailto:elissa.miller@gmlaw.com)

**To Care :**

Coral Nakamatsu, Executive Director  
Beverly Care  
1920 W. Whittier Boulevard  
Montebello, CA 90640  
[cnakamatsu@beverlycare.org](mailto:cnakamatsu@beverlycare.org)

with a copy to:

Dawn Brewer, Esq.  
Law Office of Dawn Brewer  
1046 Princeton Drive, #103  
Marina del Rey, CA 90292  
[dawn@dbrewerlaw.com](mailto:dawn@dbrewerlaw.com)

IN WITNESS WHEREOF, the Parties hereto hereby execute this Settlement Agreement as of the date of final signature below.

DATED: February 8, 2024



Howard M. Ehrenberg, solely in his capacity  
as Chapter 11 Trustee of the Estate Beverly  
Community Hospital Association

DATED: February 7th, 2024

BeverlyCare

By:



Its Executive Director

# EXHIBIT 2

**PROMISSORY NOTE**  
(this "Note")

**Borrower:** BeverlyCare of 1920 W. Whittier Blvd, Montebello, CA 90640 (the "Borrower")

**Lender:** Beverly Community Hospital Association of Beverly Hospital, 309 W. Beverly Blvd.  
Montebello, CA 90640 (the "Lender")

**Principal Amount:** \$5,139,438.15 USD

1. FOR VALUE RECEIVED, The Borrower promises to pay to the Lender at such address as may be provided in writing to the Borrower, the principal sum of \$5,139,438.15 USD, with interest payable on the unpaid principal at the rate of 4.00 percent per annum, calculated monthly not in advance, beginning on July 1, 2022.
2. Borrower intends to refinance in full, existing obligations that are owed to the Lender, as described below:

Note Dated 1/20/2017 Outstanding Principal \$250,000 Owed Interest \$56,145.83

Note Dated 11/16/2017 Outstanding Principal \$665,000 Owed Interest \$113,431.87

Note Dated 11/30/2018 Outstanding Principal \$250,000 Owed Interest \$35,291.67

Note Dated 1/25/2019 Outstanding Principal \$500,000 Owed Interest \$64,258.24

Note Dated 3/31/2019 Outstanding Principal \$1,200,000 Owed Interest \$121,671.12

Note Dated 1/10/2020 Outstanding Principal \$750,000 Owed Interest \$54,394.90

Note Dated 6/24/2020 Outstanding Principal \$750,000 Owed Interest \$33,468.29

Note Dated 12/13/2021 Outstanding Principal \$292,484.14 Owed Interest \$3,292.09

Total Outstanding Principal amounts of existing obligations: \$4,657,484.14

Total Accrued and Owed interest on existing obligations: \$481,954.01

Total amount: \$5,139,438.15

3. Borrower shall pay (a) the principal in the amount of \$5,139,438.15, plus (b) all accrued and unpaid interest owing under this Note, on or before August 31, 2023, (the "Maturity Date"), on which date all amount owing hereunder shall be due and payable. The Maturity Date will automatically renew on the anniversary of the original Maturity Date for a period of five years for any amounts due and payable.
4. At any time while not in default under this Note, the Borrower may pay the outstanding balance then owing under this Note to the Lender without further bonus or penalty.
5. Notwithstanding anything to the contrary in this Note, if the Borrower defaults in the performance of any obligation under this Note, then the Lender may declare the principal amount owing and interest due under this Note at that time to be immediately due and payable.
6. The Borrower shall be liable for all costs, expenses and expenditures incurred including, without limitation, the complete legal costs of the Lender incurred by enforcing this Note as a result of any default by the Borrower and such costs will be added to the principal then outstanding and shall be due and payable by the Borrower to the Lender immediately upon demand of the Lender.
7. Further, if the Lender declares the principal amount owing under this Note to be immediately due and payable, and the Borrower fails to provide full payment within 15 days, the Borrower will be charged a \$500 USD late fee.
8. If any term, covenant, condition or provision of this Note is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Note will in no way be affected, impaired or invalidated as a result.

9. This Note will be construed in accordance with and governed by the laws of the State of California.

10. This Note will ensure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Borrower and the Lender. The Borrower waives presentment for payment, notice of non-payment, protest and notice of protest.

IN WITNESS WHEREOF the parties have duly affixed their signatures under seal

**SIGNED, SEALED, AND DELIVERED**

this 4<sup>th</sup> day of October.



BeverlyCare

Per: *Gabriel Salas* (SEAL)

**SIGNED, SEALED, AND DELIVERED**

this 16<sup>th</sup> day of September.



Beverly Community Hospital Association

Per: *[Signature]* (SEAL)



## 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 1875 Century Park East, Suite 1900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 11 TRUSTEE'S MOTION TO APPROVE SETTLEMENT BY AND BETWEEN BEVERLY COMMUNITY HOSPITAL ASSOCIATION AND BEVERLYCARE; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF HOWARD. M. EHRENBURG IN SUPPORT THEREOF** 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*) February 20, 2024 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:

- **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
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☐ Service information continued on attached page.

## **2. SERVED BY UNITED STATES MAIL:**

On (date) February 20, 2024, 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.

The Honorable Sandra R. Klein  
U.S. Bankruptcy Court  
Roybal Federal Building  
255 E. Temple Street, Suite 1582  
Los Angeles, CA 90012

Dawn Brewer, Esq.  
Law Office of Dawn Brewer  
1046 Princeton Drive, #103  
Marina del Rey, CA 90292

☐ 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.

February 20, 2024

Cheryl Caldwell

/s/Cheryl Caldwell

*Date*

*Printed Name*

*Signature*