

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	)	
	)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> <sup>1</sup>	)	Case No. 24-55507 (PMB)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS AUTHORIZING DEBTORS TO (I) PAY PREPETITION  
WAGES, COMPENSATION, AND EMPLOYEE BENEFITS, (II) CONTINUE  
CERTAIN EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY  
COURSE, AND (III) GRANTING RELATED RELIEF**

LaVie Care Centers, LLC (“LaVie”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), hereby move (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively), granting the relief described below. In support thereof, the Debtors rely upon the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”),<sup>2</sup> filed contemporaneously herewith. In further support of the Motion, the Debtors respectfully represent as follows:

<sup>1</sup> The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.



**RELIEF REQUESTED**

1. By the Motion, the Debtors respectfully request entry of the Interim Order and the Final Order authorizing, but not directing, the Debtors (a) to pay, perform, and/or honor, as applicable, prepetition obligations to their employees and independent contractors, including accrued prepetition wages, salaries, overtime, and other cash and non-cash compensation claims, except as otherwise set forth herein (collectively, the “Employee Compensation Claims”); (b) to honor and continue in the ordinary course of business until further notice (but not assume under Bankruptcy Code section 365(a)), certain of the Debtors’ vacation, sick time, and holiday time policies, medical, personal, and military leave policies, and employee benefit plans, programs, policies, and procedures (collectively, the “Employee Benefit Obligations”), and to pay all fees and costs in connection therewith, except as otherwise set forth herein; (c) to reimburse Employees (as defined below) for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business (the “Employee Expense Obligations”); (d) to pay all prepetition withholdings and payroll-related taxes associated with the Employee Compensation Claims and the Employee Benefit Obligations (the “Employee Tax Obligations”); (e) to maintain the Workers’ Compensation Program (as defined herein) postpetition in the ordinary course of business and to pay any prepetition amounts related thereto (the “Workers’ Compensation Obligations”); (f) to make all contributions and obligations related to the Unions (as defined herein) (the “Union Obligations”); (g) to pay all administrative fees and employee contributions to the Employee 401(k) plan (the “401(k) Obligations”); (h) to maintain the Bonus Programs (as defined herein) and pay all prepetition amounts related thereto (the “Employee Bonus Obligations”); and (i) to maintain the Employee Severance Program (as defined herein) and pay any prepetition amounts related thereto (the “Employee Severance Obligations” and, collectively with the Employee

Compensation Claims, the Employee Benefit Obligations, the Employee Expense Obligations, the Employee Tax Obligations, the Workers' Compensation Obligations, the Union Obligations, the 401(k) Obligations, and the Employee Bonus Obligations, the "Prepetition Employee Obligations"), all in accordance with prepetition practices. By the Motion the Debtors also seek authorization to pay prepetition amounts that are owed to the Employment Agencies (as defined herein) which provide additional staffing for the Debtors' Facilities, as described in detail below.

2. The Debtors also request that the Interim Order and the Final Order authorize the Debtors' banks and other financial institutions (collectively, the "Banks") to receive, process, honor, and pay any and all checks and other forms of payment drawn on the Debtors' bank accounts, including fund transfers and electronic payment requests, to the extent they relate to any of the foregoing and to rely on the Debtors' direction to pay amounts authorized under the Motion, provided that sufficient funds are available in the applicable accounts to make such payments.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The legal predicates for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rules 9006-2, 9013-1, and 9013-2 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the "Local Rules") and the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the "Complex Case Procedures").

## **BACKGROUND**

### **I. The Chapter 11 Cases**

5. On the date hereof (the "Petition Date"), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases") in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Court"). The Debtors continue to operate their business and manage their property as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. To date, the Office of the United States Trustee for Region 21 (the "U.S. Trustee") has not appointed an official committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed.

7. As discussed in greater detail in the First Day Declaration, the Debtors operate 43 licensed facilities (the "Facilities") providing a variety of acute care and rehabilitative services to primarily elderly residents. The Debtor Consulate Management Company III, LLC ("CMC III") provides management and support services to each of the Facilities. The Debtors include entities that continue to operate the Facilities and entities that are no longer operational, but previously operated or managed facilities that have since been divested.

8. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the First Day Declaration.

## II. The Prepetition Employee Obligations

### A. Employees and Employee Compensation

#### i. Employees

9. The Debtors' workforce comprises a total of approximately 3,600 employees, including nurses, certified nursing assistants, licensed practical nurses, caregivers, receptionists, corporate-level personnel, and other Facility staff (collectively, the "Employees"), categorized as follows:

- (a) approximately 290 full-time salaried employees (the "Salaried Employees");
- (b) approximately 2,140 full-time hourly employees (the "Hourly Employees" and, together with the Salaried Employees, the "Full-Time Employees"); and
- (c) approximately 1,170 part-time employees (the "Part-Time Employees").

10. Of the Debtors' approximately 3,600 Employees, approximately 45 are employed in corporate positions, while the remaining approximately 3,555 are employed at the Debtors' Facilities. Additionally, approximately 6.9% of the Debtors' Employees—approximately 245 Employees in total (the "Represented Employees")—are represented by four unions, namely (a) the United Food & Commercial Workers Union ("UFCW"), (b) United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union Local 15198-01 ("USW"), (c) District Council 86, American Federation of State, County, and Municipal Employees, AFL/CIO ("AFSCME 86"), and (d) District Council 87, American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME 87" and together with UFCW, USW, and AFSCME 86, the "Unions"). The Debtors' contractual arrangements with the Unions regarding the Represented Employees are memorialized in those certain collective bargaining

agreements dated March 14, 2023 (UFCW), July 1, 2023 (AFSCME 86); August 1, 2020 (AFSCME 87); August 23, 2020 (AFSCME 87); and July 1, 2023 (USW) (together, the “CBAs”).

**ii. Employee Compensation**

11. The Debtors incur obligations to their Employees for, among other things, wages, overtime,<sup>3</sup> and salaries (the “Employee Compensation”) earned on a salaried or hourly basis. The Debtors have two payroll cycles: Cycle 1 and Cycle 2. For each payroll cycle, Employees are paid in arrears every two weeks on Monday by check, pay cards, or direct deposit into their bank accounts. The Debtors’ aggregate payroll (for both payroll cycles) averages approximately \$5.7 million per pay period. The Debtors’ next scheduled payroll dates for Employees for the two payroll cycles are June 10, 2024 (Cycle 1) and June 17, 2024 (Cycle 2).<sup>4</sup>

12. As of the Petition Date, the Debtors estimate that approximately \$5.8 million is currently due and owing on account of accrued, but unpaid, Employee Compensation for work performed prior to the Petition Date (the “Unpaid Employee Compensation”) and seek authority to pay such amounts. None of the Debtors’ Employees are owed more than \$15,150 on account of prepetition Employee Compensation. Failure to pay the Unpaid Employee Compensation would result in financial hardship for many Employees and likely would lead to numerous departures across the Debtors’ organization, thereby putting at risk the health and safety of the Debtors’ residents. In light of the central role played by the Employees in the operation of the Debtors’ business, and the costs, difficulties, and attendant risks associated with filling sudden vacancies—particularly those roles requiring specialized skills and training or familiarity with the

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<sup>3</sup> Hourly Employees are paid overtime for approved hours worked in excess of 40 hours per work week or, if applicable, after more than eight hours per days and more than 80 hours in a 14-day period. All such time is paid at an Hourly Employee’s regular rate of pay and at one and one-half times such regular rate of pay.

<sup>4</sup> The Debtors funded a Cycle 2 payroll on May 30, 2024, and those funds are no longer in the Debtors possession or control.

Debtors' residents or Facilities—the Debtors seek authority to make payments on account of Unpaid Employee Compensation and to continue to pay Employee Compensation in the ordinary course of business postpetition consistent with past practices.

**iii. Independent Contractors**

13. In addition to the Employees, the Debtors also use the services of a variety of individuals and firms engaged by the Debtors through various agreements as contractors, consultants, and third-party service providers (collectively, the “Independent Contractors”). In all, the Company has relationships with approximately 29 Independent Contractors. The Independent Contractors serve as medical directors at the Facilities or provide resident services such as grooming and entertainment. In many cases, given the rural nature of some of the Debtor facilities, the Independent Contractors are the only option available to the Debtors for the services provided. On average, the Debtors pay approximately \$140,000 per month for the services of Independent Contractors. As of the Petition Date, the Debtors owe approximately \$159,000 on account of accrued, but unpaid, amounts to Independent Contractors, all of which will come due and owing in the first 30 days of the Chapter 11 Cases (collectively, the “Unpaid Independent Contractor Amounts”). Some of the Independent Contractors are provided through professional corporations, which are paid by the Debtors in the ordinary course of business and which, in turn, pay the individual Independent Contractors. While in the aggregate the professional corporation may be owed more than \$15,150, none of the individual Independent Contractors are owed, in the aggregate, any amounts in excess of the \$15,150 priority wage cap imposed by the Bankruptcy Code. The Debtors seek authority, but not direction, to pay the Unpaid Independent Contractor Amounts in the ordinary course of business and to continue to pay the Independent Contractors for their services in the ordinary course of business on a postpetition basis.

**iv. Agency Workers**

14. To supplement the staffing of their facilities by the Employees, the Debtors obtain the services of various nurses, licensed practical nurses, certified nursing assistants, and other supplemental and temporary employees (collectively, the “Agency Workers”) provided by three staffing agencies (collectively, the “Employment Agencies”).<sup>5</sup> These Agency Workers are necessary for the Debtors to provide the appropriate level of care for their residents, and to satisfy the requisite staff-to-resident ratio pursuant to Medicare and Medicaid requirements.<sup>6</sup> The Employment Agencies invoice the Debtors based upon the number of hours worked by the Agency Workers and, in turn, the Employment Agencies pay the Agency Workers’ wages and other amounts to which the Agency Workers are entitled. Currently, the Debtors utilize the services of approximately 75 Agency Workers in their Facilities per week. Historically, on average, the Debtors have paid the Employment Agencies approximately \$200,000 each month. If the Employment Agencies are unable or unwilling to provide the Debtors with the necessary Agency Workers, the Debtors may not have sufficient staffing to maintain current resident occupancy levels, which obviously would have a substantial and adverse impact on the Debtors’ business and prospects in the Chapter 11 Cases.

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<sup>5</sup> The Employment Agencies are Staffquest, Inc.; Sunset Staffing LLC, and Level-Up Staffing, LLC. Level-Up Staffing, LLC is a debtor in these Chapter 11 Cases. The Debtors are requesting that intercompany transfers to Level-Up Staffing, LLC be honored as part of the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Existing Cash Management System, (B) Maintain Existing Bank Accounts and Business Forms and Honor Certain Prepetition Obligations elated to the Use Thereof,(C) Maintain Purchasing Card Program and Honor Prepetition Obligations Related Thereto, and (D) Continue to Perform Intercompany Transactions; (II) Extending the Time for the Debtors to Comply with 11 U.S.C. § 345(b) Deposit and Investment requirements, and (III) Granting Related Relief.* (the “Cash Management Motion”).

<sup>6</sup> As described more fully in the First Day Declaration, the Debtors’ reliance on Agency Workers has significantly decreased over time; however, the Debtors still require the services of certain Agency Workers to ensure sufficient staffing ratios in their Facilities.



15. As of the Petition Date, the Debtors estimate that approximately \$520,000 remains due and outstanding to the Employment Agencies, all of which will be due and owing in the first 30 days of the Chapter 11 Cases. Accordingly, the Debtors request authority to pay the Employment Agencies all prepetition amounts due and owing, continue to pay the Employment Agencies in the ordinary course of business postpetition, and continue to utilize the Agency Workers provided by the Employment Agencies, as necessary or appropriate in the ordinary course of business.

**v. Payroll Taxes**

16. Applicable statutory authority requires the Debtors to match and pay from their own funds additional amounts for Social Security, Medicare taxes, and federal and state unemployment insurance (the “Payroll Taxes”). As of the Petition Date, the Debtors estimate that they owe approximately \$420,000 on account the employer portion of Payroll Taxes, all of which will come due within the first 30 days of the Chapter 11 Cases (the “Unpaid Payroll Taxes”). By the Motion, the Debtors request authority to pay and remit the Unpaid Payroll Taxes in the ordinary course of business and consistent with past practice and to continue paying and remitting the Payroll Taxes in the ordinary course on a postpetition basis.

17. The Debtors utilize ADP (“ADP”) to remit the Payroll Taxes to the relevant taxing authorities and retain CMC III, who contracts with Synergy Health Care Services (“Synergy”) to file W-2 forms and maintain and administer the employee benefit programs pursuant to certain management agreements, as described in further detail in the First Day Declaration. ADP draws funds from LaVie’s bank accounts for purposes of payroll. The Debtors with employees also pay ADP’s processing fees. ADP receives approximately \$20,000 each month from the relevant Debtors for fees each quarter. As of the Petition Date, the Debtors owe approximately \$20,000 on

account of ADP's services that will be due and owing in June 2024 (the "ADP Processing Fees"). The Debtors submit that the postpetition use of ADP's services is in the best interests of the Debtors' estates, as ADP's services are necessary to avoid delay or interruption in the remittance of the Payroll Taxes. Accordingly, by the Motion, the Debtors seek authority to pay the ADP Processing Fees and continue using ADP's services on a postpetition basis in the ordinary course of business consistent with past practices.

**vi. Garnishments, Union Dues, and Other Withholding Obligations**

18. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employee Compensation, including, without limitation, (a) the Employee portion of payroll taxes; (b) garnishments, child support, service charges, Union dues, and similar deductions; and (c) other pre- and post-tax deductions payable pursuant to certain of the Employee Benefit Obligations discussed herein (such as an Employee's share of health care benefits and insurance premiums, contributions under flexible spending plans, 401(k) contributions, and miscellaneous deductions). On average, the Debtors deduct a total of approximately \$3.7 million from Employee Compensation per month, which the Debtors, or various third-party administrators discussed below, then forward to the appropriate third-party recipients.

19. The Debtors, through ADP and CMC III, routinely withhold from Employee paychecks amounts that the Debtors are required to transmit to third parties. Examples of such withholdings include social security, FICA, Medicare, federal, state, and local income taxes, garnishments, 401(k) contributions, and Employee healthcare contributions (collectively, the "Employee Taxes"). Specifically, health and benefit deductions and 401(k) contributions are withheld from Employee Compensation, then funded to the applicable third-party administrator or insurance carrier by the Debtors. Garnishments and the Employee portion of the Payroll Taxes

are withheld by the Debtors and remitted to the applicable entities by ADP. Social security, FICA, Medicare, and federal, state, and local income taxes are computed by CMC III and the applicable amounts are withheld from Employee Compensation. ADP withdraws funds from the Debtors' bank accounts for such withholdings, along with the employer share of FICA and Medicare, and unemployment taxes, and ADP remits those amounts to the applicable entities. The Debtors believe that the Employee Taxes, to the extent that they remain in the Debtors' possession, constitute funds held in trust and therefore are not property of the Debtors' bankruptcy estates. Thus, the Debtors believe that they have authority to direct the Employee Taxes to the appropriate parties, and, by the Motion, the Debtors are requesting authorization to continue to withhold and remit such amounts on a postpetition basis in the ordinary course of business.

20. The Represented Employees make certain Union-specific contributions, including, but not limited to, Union dues. The Debtors withhold these amounts from the Employee Compensation of the Represented Employees and then remit these Union Obligations to the Unions. On average, the Debtors remit approximately \$5,000 per month in Union Obligations. For the avoidance of doubt, the Debtors do not make any contributions to the Unions on behalf of their Represented Employees. As of the Petition Date, the Debtors estimate that they hold approximately \$4,700 on account of Union Obligations, all of which will come due within the first 30 days of the Chapter 11 Cases. Accordingly, by the Motion, the Debtors request authority to remit the Union Obligations in the ordinary course of business and consistent with past practice and to continue collecting and remitting the Union Obligations in the ordinary course of business on a postpetition basis.

**vii. Payday Advance Program**

21. The Debtors offer a payday advance program (the “Payday Advance Program”) to their eligible Employees through Payactiv (“Payactiv”). Through Payactiv, eligible Employees can request advance payment of up to 50% of their earned wages before payment pursuant to the relevant payment cycle. Employees using Payactiv pay a fee to use the service. The Debtors do not pay a fee to Payactiv. Historically, Employees have received pay advances through Payactiv for earned wages in the amount of \$316,000 each pay cycle. As of the Petition Date, the Debtors estimate that approximately \$160,000 (the “Payactiv Advance Obligations”) remains due and outstanding to Payactiv for Employee advances taken prior to the Petition Date, all of which will be due and owing in the first 30 days of the Chapter 11 Cases. The Debtors seek authority to pay the prepetition pay advances and to continue offering the Payday Advance Program.

**B. Time Off Benefits**

22. Prior to the Petition Date, the Debtors offered Full-Time Employees who work more than 30 hours per week other forms of compensation, including paid time off for holidays, personal holidays, vacations, sick days, and other time off (collectively, the “Time Off Benefits”). These forms of compensation are usual, customary, and necessary if the Debtors are to retain qualified employees to operate their businesses.

**i. Holiday Time**

23. The Debtors observe six paid holidays per year (the “Holiday Time”). Holiday pay is not accrued and only applies when an employee works the recognized holiday. Hourly non-exempt Employees who work on a Debtors’ recognized holiday will be paid for their hours worked plus holiday pay at their regular rate of pay for half of their actual hours worked that day. For example, an hourly Employee that works 7.5 hours on a holiday would be paid for 7.5 regular

hours and 3.75 holiday hours. Salaried exempt Employees who work on a company recognized holiday may take another day off paid during the pay period. By the Motion, the Debtors seek authorization to continue the Holiday Time policy in the ordinary course of business in accordance with prepetition practices.

**ii. Vacation and Sick Time**

24. The Debtors offer paid vacation time (“Vacation Time”) and paid sick leave benefits (“Sick Days” and together with Vacation Time “PTO”) according to policies maintained at the Facility level.

**1. General PTO Policy**

25. Other than the four Facilities, which are discussed below, the Debtors offer Vacation Time and Sick Days to Full-Time Employees and hourly non-exempt employees, excluding the Executive Director and Director of Clinical Services, with a minimum of 70 regularly paid hours per bi-weekly pay period. Union employees also receive Vacation Time and Sick Days pursuant to their respective CBAs. Accrual of Vacation Time and Sick Days is based on an employee’s length of service in an eligible position and status using a 40-hour work week and excluding overtime, with accruals beginning on the first day of full-time eligible employment, which is available after the successful completion of 90 days of employment. Depending upon the Employee, Vacation Time begins accruing on the date of hire, the first anniversary of the date of hire, or the date on which the Employee becomes a Full-Time Employee<sup>7</sup> (the 12-month period following any such date, a “Benefit Year”), in the following manner:

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<sup>7</sup> Part-Time Employees that become Full-Time Employees begin to earn vacation time after 90 days of scheduled Full-Time hours.

Length of Service	Vacation Accrual		Sick Accrual		TOTAL PTO		Holiday Premium <sup>8</sup>
	Hours	Days	Hours	Days	Hours	Days	Days
0 – 1 Year	72	9	24	3	96	12	6
1 – 5 Years	80	10	40	5	120	15	6
> 5 Years	120	15	40	5	160	20	6

26. Accrued but unused Vacation Time will roll over to the following year up to a maximum of 120 hours and accrued Sick Days will roll over up to a maximum of 120 hours. Other than the policies described below, the Debtors do not pay out Vacation Time or Sick Days at termination of employment or at change of status, unless otherwise required by state law.

**2. Harts Harbor PTO Policy**

27. The Facility known as Harts Harbor maintains a PTO policy providing that all Full-Time Employees who work a minimum of 70 regularly paid hours per two-week pay period begin to accrue Vacation Time and are eligible to earn PTO 91 days after being employed. Employees at Harts Harbor accrue PTO pursuant to their length of service as outlined below.

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<sup>8</sup> Hourly non-exempt employees who work on a company recognized holiday will be paid for their hours worked plus holiday pay at their regular rate of pay for half of their actual hours worked that day. For example, an employee that works 7.5 hours on a holiday would be paid for 7.5 regular hours and 3.75 holiday hours. Salaried exempt Employees who work on a company recognized holiday may take another day off paid during the pay period.

<b>Years of Service</b>	<b>Maximum Annual PTO Accrual* 8 + Hours Per Day</b>	<b>Maximum Annual PTO Accrual** 7.5 Hours Per Day</b>
91 Days to 1 Year of Completed Service	9 Days- 72 Hours	9 Days- 67.5 Hours
Beginning the 2 <sup>nd</sup> Year of Employment to the 5 <sup>th</sup> Year of Completed Service	22 Days- 176 Hours	22 Days- 165 Hours
Beginning the 6 <sup>th</sup> Year of Employment to the 10 <sup>th</sup> year of Completed Service	26 Days- 208 Hours	26 Days- 195 Hours
Beginning the 11 <sup>th</sup> Year of Employment +	31 Days- 248 Hours	31 Days- 232.5 Hours

28. Harts Harbor provides for a maximum PTO accrual of 50 days of PTO, which equates to 400 paid hours for an employee that works eight or more hours per day and 375 paid hours for an employee who works seven and one-half hours per day. Harts Harbor’s PTO policy allows for a buyback of PTO hours at its discretion each year, with any buy-back being announced by September 30 and the buyback of hours to take place in December of each calendar year. If approved, the hourly/non-exempt employee would be paid at sixty percent (60%) of the designated approved buy back hours established by the Harts Harbor. To be eligible, hourly/non-exempt employees must have more than ten (10) days in their PTO bank. Following the buy back, the employee must retain at least ten (10) hours in their PTO bank.

29. Harts Harbor provides payment for accrued, but unused PTO in certain circumstances. Employees, who resign with two (2) or more years of continuous full-time service and less than eleven (11) years full time service and provide proper working notice, will be paid sixty percent (60%) of their PTO hours. Employees who resign with eleven (11) or more years of

full-time service and provide proper working notice will be paid at eighty percent (80%) of their PTO hours. Employees with less than two (2) years of full-time service do not receive any payment of PTO hours.

**3. St. Luke Manor, St. Luke Pavilion, and Locust Grove PTO Policy**

30. The Facilities known as St. Luke Manor, St. Luke Pavilion, and Locust Grove maintain a PTO policy providing PTO to eligible Full-Time Employees pursuant to their length of service as outlined below.

<b>Years of Service</b>	<b>Vacation Days</b>
1 – 5 Years	Up to 10 Days
6 – 10 Years	Up to 15 Days
11+ Years	Up to 20 Days

31. Employees of St. Luke Manor, St. Luke Pavilion, and Locust Grove may carry over vacation from year-to-year, with a maximum accrual of two times the annual accrual amount for an eligible Employee.

32. Employees of St. Luke Manor, St. Luke Pavilion, and Locust Grove who are laid off are paid all unused vacation time. Resigning employees who have completed at least one year of service and give at least 14 days' notice, and who work their entire notice period, are paid for all unused PTO. Employees who voluntarily resign, but fail to give and work the notice period, and employees who are discharged for just cause forfeit all unused PTO.

33. As of the Petition Date, the Debtors are carrying approximately 14,138 days of accrued and unused Vacation Time and 10,718 days of accrued and unused Sick Days. The Debtors seek to continue their Vacation Time and Sick Day policies in the ordinary course.



**iii. Medical Leave**

34. The Debtors are committed to upholding their employees' rights to medical leave ("Medical Leave") under relevant state and federal laws. Employees that qualify are allowed to take 12 workweeks of Medical Leave in a single 12-month period for certain medical events, such as the birth of a child, or 26 workweeks during a single 12-month period to care for a covered service member of the military ("Military Caregiver Leave"). If accrued and unused Sick Days or Vacation Time are available, the Employee must first take any Sick Days as part of the approved period of leave; if there are no accrued Sick Days, the Medical Leave will be unpaid leave.

35. The Debtors seek to continue their Medical Leave and Military Caregiver Leave policies in the ordinary course of business postpetition consistent with past practices.

**iv. Military Leave**

36. Employees with 90 days or more of service are allowed military leave of absence ("Military Leave") when called to active duty, funeral honors, or other military obligations. The Debtors pay the difference between what the employee earns from the government for military service and what would have been earned as normal time on the job. The difference is paid for up to 17 days of military encampment in a calendar year and requires the summons/notice from the government plus a copy of the correspondence government pay summary. The Debtors seek to continue their Military Leave policy in the ordinary course of business postpetition in accordance with prepetition practices.

**v. Other Time Off Policies**

37. The Debtors also maintain policies for requests by Employees for time off from work as the result of, among other things, jury duty, family and medical leave, and bereavement leave (collectively, the "Other Time Off Policies"). The Debtors do not make any cash payments

for unused Other Time Off Benefits upon an Employee's termination or departure. By this Motion, the Debtors seek to continue their Other Time Off Policies in the ordinary course in accordance with prepetition practices.

**C. Reimbursable Business Expenses**

38. The Debtors have expense reimbursement policies for certain travel, lodging, ground transportation, meals, phone and internet usage (for business use only), automobile usage (gas, mileage, tolls, and parking), and miscellaneous business expenses (collectively, the "Reimbursable Expenses"). The Reimbursable Expenses are ordinary course business expenses that certain of the Debtors' Employees incur in performing their job functions. On average, the Debtors pay approximately \$171,000 per month to Employees with respect to Reimbursable Expenses.<sup>9</sup> The Debtors also provide prepaid corporate cards (the "Corporate Cards") to approximately 13 corporate-level Employees to which they may charge their Reimbursable Expenses. A further description of the Corporate Cards is contained in the Cash Management Motion.

39. As of the Petition Date, the Debtors estimate that approximately \$171,000 is expected to be reimbursed to Employees for Reimbursable Expenses. By the Motion, the Debtors seek authority to continue reimbursing all Employee Expense Obligations, whether directly to Employees or through payments to American Express, including any amounts accrued prior to the Petition Date.

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<sup>9</sup> Employees are likely to submit reimbursement requests for prepetition expenses after the Petition Date, as the Debtors ask that reimbursement requests be submitted within 60 days of when the expense is incurred and sometimes submission delays occur. Reimbursable Expenses are incurred by Employees with the understanding that they will be reimbursed.

**D. Employee Benefit Obligations**

40. Prior to the Petition Date, the Debtors offered their Full-Time Employees, who work a minimum of 30 hours<sup>10</sup> per week (the “Eligible Employees”), various standard employee benefits including, without limitation, (a) medical, dental, vision, and prescription drug benefits, (b) life and accidental death and dismemberment insurance, (c) voluntary disability benefits,<sup>11</sup> and (d) miscellaneous other voluntary benefits provided to the Eligible Employees in the ordinary course of business (collectively, the “Employee Benefits”). Such Employee Benefits are administered pursuant to consolidated plans, programs, and policies that cover the Employees. The amounts set forth below reflect the approximate cost of such Employee Benefits. Failure to continue the Employee Benefit Obligations could cause Employees to experience severe hardship and likely would lead to significant attrition. In light of the critical role the Employees play in providing care to the Debtors’ residents, the Debtors wish to avoid imposing such a hardship. Accordingly, as set forth below, the Debtors are seeking authority, but not direction, to continue paying the Employee Benefit Obligations in the ordinary course of business, regardless of whether such obligations arose pre- or postpetition, and to continue providing the Employee Benefit Obligations in the ordinary course of business postpetition.

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<sup>10</sup> Variable hour employees must first complete an initial measurement period of 11 months that begins the first of the month following the date of hire. At the end of the initial measurement period, if the variable hour employee is determined to be eligible based on his or her average hours worked, such employee would be eligible to enroll for benefits. The Debtors also track the average hours worked each week by Employees from October 15 to October 14 each year. An Employee may become eligible if he or she averages 30 or more hours of work per week during the measurement period. An Employee may lose eligibility if he or she averages less than 30 hours during the measurement period.

<sup>11</sup> As discussed below, Full and Part-Time Employees who work a minimum of 20 hours per week are eligible to participate in voluntary disability benefits, including short- and long-term disability insurance, accident insurance, critical illness insurance, and group legal services.

**i. Health Benefit Programs**

41. The Debtors provide Eligible Employees and their dependents with medical, dental, vision, and prescription drug benefits (collectively, the “Health Benefit Programs”). Coverage is effective the first day of the month following 60 days of employment.

**1. Medical Plans**

42. The Debtors provide their Employees with medical benefits pursuant to three different medical plans through Leading Edge Administrators (“Leading Edge”). Employees of the Facilities other than Executive Directors and Directors of Clinical Services, are eligible to participate in three medical plans, the \$3,500 high deductible health plan (the “\$3,500 HDHP Plan”), the \$5,500 high deductible health plan (the “\$5,500 HDHP Plan”), and the minimal essential coverage health plan (the “MEC Plan”). Part-Time Employees that work at least twenty hours per week are also eligible to participate in the MEC Plan. Executive Directors, Directors of Clinical Services, and CMC III Employees are eligible to participate in two health plans, the \$3,500 HDHP Plan and the health savings account health plan (the “HSA Plan” and, together with the \$3,500 Plan, the \$5,500 Plan, and the MEC Plan, the “Medical Plans”). As of the Petition Date, approximately 1,444 Employees have elected coverage under the Medical Plans, with 990 Employees covered by the \$3,500 HDHP Plan, 295 Employees in the \$5,500 HDHP Plan, 159 Employees electing coverage under the MEC Plan, and 18 Employees covered by the HSA Plan.

43. The Medical Plans are funded through contributions by participating Employees and by the Debtors. Employees contribute to the Medical Plans through payroll deductions to pay for the balance of the Medical Plan cost. The Debtors collect Employee contributions as a prorated amount each payroll period. The Debtors self-insure their obligations under the Medical Plans. Leading Edge provides the Debtors with claim reports weekly for claims paid on behalf of the

Debtors. The Debtors wire funds each week to cover the reported claims. The Debtors also maintain a stop-loss policy for claims that exceed \$500,000 with Voya Financial (“Voya”). The stop-loss policy is paid as part of the monthly payment to Leading Edge. The total cost of the Medical Plans to the Debtors was approximately \$1.1 million for the first quarter of 2024. For 2024 the Debtors estimate that the total annual cost of the Medical Plans will be approximately \$4.5 million.

44. As of the Petition Date, the Debtors estimate that there are approximately \$1.4 million in liabilities on account of outstanding prepetition claims submitted under the Medical Plans, \$260,000 of which will come due and owing within the first 30 days of the Chapter 11 Cases. The Debtors also pay Leading Edge on average approximately \$100,000 a month in fees to provide the Medical Plans, including administration fees and expenses due to claims management.

45. By the Motion, the Debtors seek authorization to continue to provide the Medical Plans, including paying any prepetition amounts that may be owed in connection therewith and paying amounts related thereto on a postpetition basis in the ordinary course of business. In addition, the Debtors seek authority to remit any funds withheld from participants’ Employee Compensation on account of prepetition obligations for Medical Plans, to continue deducting and withholding premiums from participants’ Employee Compensation for Medical Plans, and to continue remitting such withheld amounts on a postpetition basis in the ordinary course of business.

## **2. Health Savings Plans**

46. Corporate Employees and certain directors also have the option to enroll in a Healthcare Savings Account (each, an “HSA”), administered by Optum Bank (“Optum”). Under the HSA, the Debtors offer their Eligible Employees the ability to contribute a portion of their pre-

tax compensation to pay for health benefits and eligible out-of-pocket health care premiums and expenses. The Debtors do not match Employee contributions to the HSA. Approximately 18 Eligible Employees have an HSA. The Employees' contributions to the HSA are withheld through payroll deductions.

47. Optum obtains its fees from Employee-withholdings. To the extent there are any withholdings that are to be remitted to Optum as part of the HSA of the Petition Date, the Debtors seek authority, but not direction, to remit such prepetition withholdings under the Health Savings Plans as and when they come due and to continue to honor their obligations thereunder in the ordinary course of business during the Chapter 11 Cases.

### **3. COBRA**

48. The Debtors maintain an account with WEX, Inc. ("Wex") to provide health insurance benefits (the "COBRA Benefits") under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") to employees who have been terminated. Approximately eight former employees are currently receiving medical insurance through COBRA and 13 former employees are receiving dental insurance through COBRA. The Debtors do not pay for the COBRA Benefits; rather, such costs are paid by the former employees. The Debtors do not believe they currently owe any administrative fees to Benefit Express.

49. As of the Petition Date, the Debtors do not owe any amounts on account of COBRA Benefits. Out of an abundance of caution, by the Motion, the Debtors seek authorization to continue to provide the COBRA Benefits on a postpetition basis in the ordinary course of business and pay any obligations related thereto.

### **4. Employee Assistance Program**

50. The Debtors provide an employee assistance program (the "Employee Assistance Program") at no cost to Eligible Employees. Eligible Employees are automatically entitled to

receive a variety of benefits and support under the Employee Assistance Program provided through Unum Group (“Unum”). The standard Employee Assistance Program does not require a fee beyond what the Debtors pay UNUM for other services. The Debtors pay a small fee for certain onsite counseling. On average, the Debtors pay approximately \$30,000 a year for the onsite counseling services. The Debtors estimate that \$2,200 are or will be due and owing related to the Employee Assistance Program. By the Motion, the Debtors seek authorization to continue to provide the Employee Assistance Program on a postpetition basis in the ordinary course of business and pay any obligations related thereto.

### **5. Dental Plan**

51. The Debtors offer two voluntary dental plans, including a basic dental plan and an advanced dental plan with orthodontia (collectively, the “Dental Plans”) through Unum, the cost of which is borne by the Eligible Employees through payroll deductions. Approximately 1,643 Eligible Employees participate in the Dental Plans. The Debtors withhold from participants’ Employee Compensation between \$8.00 and \$80.00 per month on account of the Dental Plans, depending on the number of dependents covered under the Dental Plans. The Debtors remit that amount to Unum. In total, the Debtors withhold on average approximately \$34,000 per month to provide the Dental Plans.

52. As of the Petition Date, the Debtors estimate that they owe approximately \$23,500 in connection with the Dental Plans (the “Unpaid Dental Plan Amount”), all of which will become due and owing within the first 30 days of the Chapter 11 Cases. By the Motion, the Debtors seek authorization to continue to provide the Dental Plans on a postpetition basis in the ordinary course of business, including remitting the Unpaid Dental Plan Amount to Unum.

## **6. Vision Plan**

53. The Debtors offer a vision plan (the “Vision Plan”) through EyeMed (“EyeMed”), the cost of which is borne by the Eligible Employees through payroll deductions. Approximately 1,182 Eligible Employees participate in the Vision Plan. The Debtors withhold from participants’ Employee Compensation between \$2.81 and \$16.48 per month on account of the Vision Plan, depending on the number of dependents covered under the Vision Plan. The Debtors remit that amount to EyeMed. In total, the Debtors withhold on average approximately \$7,316 per month to provide the Vision Plan.

54. As of the Petition Date, the Debtors estimate that they owe approximately \$5,100 in connection with the Vision Plan (the “Unpaid Vision Plan Amount”), all of which will become due and owing within the first 30 days of the Chapter 11 Cases. By the Motion, the Debtors seek authorization to continue to provide the Vision Plan on a postpetition basis in the ordinary course of business, including remitting the Unpaid Vision Plan Amount to EyeMed.

### **ii. Insurance Benefits**

55. The Debtors provide Eligible Employees access to certain insurance benefit programs (collectively, the “Insurance Programs”). Coverage is effective the first day of the month following 60 days of employment.

#### **1. Life and AD&D Insurance**

56. Eligible Employees automatically receive basic life insurance coverage and basic accidental death and dismemberment insurance (the “Life and AD&D Insurance”) through Unum at no cost to the Employee. The Debtors provide Executive Directors, Director of Clinical Services, and corporate employees of CMC III with a life insurance policy that is one times their salary. The Debtors automatically provide all other full time non-bargaining unit employees a Life and AD&D Insurance policy in the amount of \$10,000 except for Union employees that are



provided Life and AD&D Insurance pursuant to their CBA. The Debtors pay Unum approximately \$10,815 a month to administer the Life and AD&D Insurance.

57. As of the Petition Date, the Debtors believe that they do not owe any amounts on account of the Life and AD&D Insurance (the “Unpaid Life and AD&D Insurance Obligations”), of which all will become due and owing within the first 30 days of the Chapter 11 Cases. By the Motion, the Debtors seek authorization to continue to provide the Life and AD&D Insurance on a postpetition basis in the ordinary course of business, including paying the Unpaid Life and AD&D Insurance Obligations.

## **2. Supplemental Life and AD&D Insurance**

58. Eligible Employees, as well as Full and Part-Time Employees who work more than 20 hours per week, also may purchase additional coverage for voluntary life and accidental death and dismemberment insurance and dependent life and accidental death and dismemberment insurance (the “Supplemental Life and AD&D Insurance”) through Unum, all at the Employee’s cost. Such amounts are withheld by the Debtors from the Employee Compensation. Approximately 850 Eligible Employees elect to participate in the Supplemental Life and AD&D Insurance program.

59. As of the Petition Date, the Debtors estimate that they currently hold approximately \$26,500 on account of the Supplemental Life and AD&D Insurance (the “Unpaid Supplemental Life and AD&D Insurance Obligations”), all of which will become due and owing within the first 30 days of the Chapter 11 Cases. By the Motion, the Debtors seek authorization to continue to provide the Supplemental Life and AD&D Insurance on a postpetition basis in the ordinary course of business, including remitting the Unpaid Supplemental Life and AD&D Insurance Obligations to Lincoln.

### **3. Disability Insurance Plans**

60. Eligible Employees, as well as Full and Part-Time Employees who work a minimum of 20 hours per week, have the option of enrolling in employee-paid short term or long-term disability insurance (together, the “Disability Insurance Plans”), which are offered through Aflac Group Insurance (“Aflac”) and paid by Employees through payroll deductions. The Debtors withhold from participants’ Employee Compensation between \$2.91 and \$260.84 per month on account of the Disability Insurance Plans, depending on the coverage selected and the number of dependents covered under the Disability Insurance Plans. Approximately 847 Eligible Employees participate in the Disability Insurance Plans. The Debtors spend approximately \$42,000 each month for the Disability Insurance Plans.

61. As of the Petition Date, the Debtors owe approximately \$30,400 on account of the Disability Insurance Plans (the “Unpaid Disability Insurance Obligations”), all of which will become due and owing within the first 30 days of the Chapter 11 Cases. By the Motion, the Debtors seek authorization to continue to provide the Disability Insurance Plans on a postpetition basis in the ordinary course of business, including paying the Unpaid Disability Insurance Obligations to Aflac.

### **4. Other Voluntary Insurance Programs**

62. Eligible Employees, as well as Full and Part-Time Employees who work more than 20 hours per week, also may purchase additional coverage for voluntary accident insurance, voluntary critical illness insurance, and term life insurance, and Hyatt legal services insurance (collectively, the “Other Voluntary Insurance Programs”) through Aflac, all at the Employee’s cost. Approximately 2,412 Eligible Employees participate in the Other Voluntary Insurance

Programs. The Debtors withhold approximately \$58,500 from their Employees' payrolls each month on account of the Other Voluntary Insurance Programs.

63. As of the Petition Date, the Debtors hold or owe approximately \$41,100 on account of the Other Voluntary Insurance Programs (the "Unpaid Other Voluntary Insurance Obligations"), all of which will become due and owing within the first 30 days of the Chapter 11 Cases. By the Motion, the Debtors seek authorization to continue to provide the Other Voluntary Insurance Programs on a postpetition basis in the ordinary course of business, including remitting the Unpaid Other Voluntary Insurance Obligations to Aflac.

**iii. Employee Bonus Programs**

64. The Debtors maintain several bonus programs, as outlined below, to incentivize their Employees and to recognize quality services performed by the Employees (collectively, the "Employee Bonus Programs"). The Debtors seek approval of their Employee Bonus Programs as part of the Final Order.

65. The Debtors provide a signing bonus (the "Sign-On Bonus") to new employees to ensure that the Debtors are competitive and able to hire well qualified employees. The Sign-On Bonus are typically designed with an initial up-front payment to a new hire that is paid at the time of hire and then one or more payments that are paid after a certain period of time, generally that does not extend over one year. The Debtors historically average approximately \$242,000 in Signing Bonus obligations each month. The Debtors estimate that they owe approximately \$706,500 in prepetition amounts as of the Petition Date on account of the Sign-On Bonus, \$161,813 of which will come due and owing within the first 30 days of the Chapter 11 Cases.

66. To ensure sufficient staffing levels, the Debtors provide a bonus to incentivize certain nursing Employees to take additional shift work where additional Employees are required

(the “Pick-Up Shift Bonus”). The Pick-Up Shift Bonus is in addition to the wages that the Employee earns during the “picked-up” shift. The amount of the Pick-Up Shift Bonus paid to an Employee taking such a shift varies and may depend on the desirability of the shift and needs of the Facility. The Debtors estimate approximately \$15,248 in prepetition amounts is due and owing as of the Petition Date on account of the Pick-up Shift Bonus.

67. To ensure sufficient staffing levels of direct care nurses, the Debtors provide a bonus for exempt nurses for picking up shifts in addition to their normal 40 hours per week (the “PBJ Bonus”). Nurses must be performing direct care duties such as working the med cart during these additional hours. An eligible Employee earns a bonus of \$250 for picking up a shift that is greater than six hours and \$125 for picking up a shift that is greater than two hours, but less than six hours. The Debtors historically incur approximately \$55,000 in PBJ Bonus obligations each month. The Debtors estimate approximately \$25,088 in prepetition amounts is due and owing as of the Petition Date on account of the PBJ Bonus.

68. To ensure consistent staffing levels, the Debtors provide bi-weekly bonuses to employees who meet certain attendance standards, such as timely clocking in and out and not missing a scheduled shift (the “Perfect Punch Bonus”). The Perfect Punch Bonus provides a \$250 bonus per pay period for certain eligible Employees who work at least 75 hours in a pay period. The Debtors estimate approximately \$2,416 in prepetition amounts is due and owing as of the Petition Date on account of the Perfect Punch Bonus.

69. To ensure consistent quality at the Facilities, the Debtors provide bonus for following standard practices and providing consistent care (the “Quality Bonus”). The Quality Bonus provides for a team member to qualify for up to \$6,500 per year, which is paid out in \$250 per pay period over 26 pay periods. To receive a Quality Bonus, an Employee must meet

attendance, document retention, and training requirements. The Debtors estimate approximately \$9,000 in prepetition amounts is due and owing as of the Petition Date on account of the Quality Bonus.

70. Each of the Facilities has an Executive Director and a Director of Clinical Services (together, the “Participating Directors”). The Debtors maintain a program to encourage the Participating Directors to comply with relevant regulations and provide excellent resident care by providing them an annual bonus related to such standards (the “Care Center Leadership Incentive Plan”). The Care Center Leadership Incentive Plan is tied to the quality and performance of the Facilities and provides an annual bonus with quarterly payments for Participating Directors as part of their compensation. Executive Directors are eligible to earn up to 4% of each dollar of positive adjusted EBITDAR, with 70% of earned bonuses being paid out following the quarter in which it is earned and the remaining 30% being held back until after year end. The withheld 30% is only paid if the center has positive adjusted EBITDAR for the year. Directors of Clinical Services are eligible to earn up to 3% of each dollar of positive adjusted EBITDAR with 70% of earned bonuses being paid out following the quarter in which it is earned and the remaining 30% being held back until after year end. The withheld 30% is only paid if the center has positive adjusted EBITDAR for the year. The Care Center Leadership Incentive Plan provides that the bonuses may be disqualified or reduced in certain circumstances, such as a Facility receiving, among other things, any penalties, substandard care tag, or poor performance reviews. While the Participating Directors’ titles include the label “director”, the Participating Directors are not responsible for formulating the Debtors’ corporate strategy. None of the Participating Directors (a) were appointed by the board of directors, (b) exercise managerial control over the Debtors’ overall operations, or (c) direct the Debtors’ corporate policy or governance. Accordingly, none of the

Participating Directors are “insiders” as that term is defined by the Bankruptcy Code. The Debtors estimate that approximately \$800,000 in prepetition amounts is owed on account of the Care Center Leadership Incentive Plan, none of which will come due and owing within the first 30 days of the Chapter 11 Cases.

71. To ensure that the Debtors continue to meet their staffing requirements and retain well-qualified employees, the Debtors offer a referral bonus for current Employees who refer new employees (the “Employee Referral Bonus”) at one of the Facilities. For Employees who refer a new employee who is subsequently hired and remains beyond sixty days as an employee, such referring Employee will receive a raffle ticket to participate in a drawing for three prizes of a value of \$1,500, \$1,000, and \$500, respectively. The Debtors estimate approximately \$98,125 in prepetition amounts is due and owing as of the Petition Date on account of the Employee Referral Bonus of which approximately \$28,500 will come due and owing within the first 30 days of the Chapter 11 Cases.

72. To incentivize sales and marketing, the Debtors have provided a bonus plan tied to sales and marketing to the regional vice president of sales and marketing (the “Sales and Marketing Bonus Plan”). The Sales and Marketing Bonus Plan provides for a bonus for growth of occupancy and average daily census (“ADC”). For regions below budget for skilled mix ADC and occupancy ADC, the bonus is \$1,500 for 2% growth in skilled mix ADC month over month, \$750 for each additional 1% of skilled mix ADC, \$500 for 2% growth in occupancy ADC, and an additional \$250 for each additional 1% in occupancy ADC. For regions that are at or above both the skilled mix ADC and occupancy ADC, the bonus is \$2,000 for 2% growth in skilled mix ADC month over month, \$1,000 for 2% growth in occupancy ADC month over month, and \$500 for 90%

occupancy. The Debtors have incurred less than \$1,000 a month in obligations relating to the Sales and Marketing Bonus Plan.

**E. Workers' Compensation Programs**

73. In the ordinary course of business, the Debtors maintain high-deductible workers' compensation insurance at the levels required by statute by each state in which the Debtors conduct business (the "Workers' Compensation Program"). The current Workers' Compensation Program is placed with AXA XL ("AXA XL"). The Debtors fund into a collateral account (the "Collateral Account") held and controlled by AXA XL (the "Collateral Account"). The Debtors made a downpayment as part of renewing their policy on May 31, 2024, and are required to make monthly installments into the Collateral Account over a nine-month period. Claims made through the Workers' Compensation Program are paid from the Collateral Account. AXA XL evaluates the Collateral Accounts annually and determines whether the balance is sufficient for expected claims. Davies Group ("Davies") is the AXA XL-approved third-party administrator that assists managing the Workers' Compensation Program. Davies and Synergy work together to process Workers' Compensation Program claims.

74. As of the Petition Date, the Debtors owe approximately \$10 million in prepetition amounts, including fees due to Davies, in connection with the Debtors' obligations under the Workers' Compensation Program, approximately \$150,000 of which will come due and owing within the first 30 days of the Chapter 11 Cases. As of May 30, 2024, total current assets held in the Collateral Account equal approximately \$4.1 million. To ensure that the Debtors remain in compliance with applicable states' laws, the Debtors seek authority to continue to maintain the Workers' Compensation Program postpetition in the ordinary course of business and to pay any prepetition amounts related thereto.

**F. 401(k) Plan & Severance Obligations**

**i. 401(k) Plan**

75. The Debtors offer certain Employees the ability to participate in a 401(k) plan (the “401(k) Plan”), administered by Ameritas BlueStar (the “401(k) Plan Administrator”), which provides Employees with a tax-effective way to save for retirement. Full-Time and Part-Time Employees, who are at least 21 years of age and employed for three months, are eligible to participate. Employees may make elective contributions to the 401(k) Plan (the “Employee 401(k) Contributions”) and such contributions are 100% vested.<sup>12</sup> By the Motion, the Debtors are requesting authorization to continue the 401(k) Plan on a postpetition basis in the ordinary course of business, including withholding and remitting Employee 401(k) Contributions.

**ii. Employee Severance Program**

76. In the ordinary course of business, CMC III has historically maintained the practice of offering severance benefits to all its full-time Employees whose jobs are eliminated without cause (the “Employee Severance Program”). Pursuant to the Employee Severance Program, terminated Employees receive severance pay based on their position and years of service as outlined below.

<b>Severance Payments</b>	
<b>Position/Years of Service</b>	<b>Severance Pay Equal</b>
Staff < 5 years LOS	2 weeks
Staff ≥ 5 years LOS	3 weeks
Manager	4 weeks
Director / Vice President	6 weeks

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<sup>12</sup> The Debtors do not provide a matching contribution.



77. The Debtors understand that the amount of payment that management Employees of CMC III would not receive a severance that is greater than ten times the amount of the mean severance pay given to nonmanagement employees during the calendar year as part of the Employee Severance Program. The Debtors estimate that the potential severance payments would not exceed \$100,000.

78. As of the Petition Date, no terminated Employees are receiving payments pursuant to the Employee Severance Program. Upon entry of the Final Order, the Debtors seek authority to continue the Employee Severance Program postpetition for the benefit of non-insider terminated Employees and pay non-insider terminated Employees severance in the ordinary course. For the avoidance of doubt, the Debtors do not seek authority to pay any prepetition obligations on account of the Employee Severance Program on an interim basis.

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79. In total, the Debtors estimate that the following prepetition amounts related to the Prepetition Employee Obligations are outstanding as of the Petition Date:

<b>Relief Sought</b>	<b>Approximate Prepetition Amount Due Within 30 Days of the Petition Date</b>	<b>Approximate Total Prepetition Amount Outstanding</b>
<b><i>Employee Compensation</i></b>		
Employee Compensation <sup>13</sup>	\$5,750,867	\$5,750,867
Independent Contractors	\$140,000	\$159,532
Payroll Taxes – Employer Portion	\$420,000	\$420,000
Union Obligations – Employer Portion	\$4,700	\$4,700
Reimbursable Business Expenses	\$171,000	\$171,000

<sup>13</sup> The Employee Compensation figures include any amounts withheld from Employee Compensation by the Debtors, including, but not limited to, Employee contributions to the Medical Plans, Dental Plans, Vision Plan, Health Savings Plans, 401(k) Plans, Supplemental Life and AD&D Insurance, Disability Insurance Plans, and Other Voluntary Insurance Programs, and Employee Taxes.

<b>Relief Sought</b>	<b>Approximate Prepetition Amount Due Within 30 Days of the Petition Date</b>	<b>Approximate Total Prepetition Amount Outstanding</b>
<b><i>Employee Benefit Obligations</i></b>		
Medical Claims	\$260,000	\$1,400,000
Medical Plan Administration Fees	\$100,000	\$100,000
Workers' Compensation Program	\$150,000	\$10,000,000 <sup>14</sup>
Life and AD&D Insurance	\$10,815	\$10,815
<b><i>Time-Off Benefits</i></b>		
PTO	\$0.00 <sup>15</sup>	\$330,000
<b><i>Miscellaneous</i></b>		
Payactiv Advance Obligations	\$160,000	\$160,000
Care Center Leadership Incentive Plan	\$0.00	\$800,000
Sign-On Bonus	\$161,813	\$706,500
PBJ Bonus	\$25,088	\$25,088
Pick-Up Shift Bonus	\$15,248	\$15,248
Perfect Punch Bonus	\$2,416	\$2,416
Quality Bonus	\$9,000	\$9,000
Employee Referral Bonus	\$28,500	\$98,125
Sales & Marketing Bonus	\$1,000	\$1,000
Employee Severance Program	\$100,000	\$100,000
<b>Total Prepetition Employee Obligations<sup>16</sup></b>	<b>\$7,510,445</b>	<b>\$20,264,290</b>

80. By the Motion, the Debtors seek authority to pay these prepetition amounts, including all amounts owed to the Employment Agencies. The Debtors also seek authority, but not direction, to continue, modify, change, or discontinue the various programs, policies, and benefits described herein in the ordinary course of business during the pendency of the Chapter 11 Cases.

<sup>14</sup> Approximately \$4.1 million of collateral is held in the Collateral Account related to the Workers' Compensation Program.

<sup>15</sup> The Debtors do not know of any prepetition amounts that would be due within 30 days of the Petition Date. However, in the ordinary course of business an Employee may resign and would be entitled to unpaid PTO pursuant to the relevant PTO policy of the resigning Employee's Facility.

<sup>16</sup> As noted above, in addition to prepetition amounts owed to Employees and Independent Contractors, the Debtors also owe approximately \$520,000 to their Employment Agencies, all of which will come due in the first 30 days of the Chapter 11 Cases.

**BASIS FOR RELIEF REQUESTED**

**I. Sufficient Cause Exists to Authorize the Debtors to Honor the Prepetition Employee Obligations.**

**A. Certain Prepetition Employee Obligations Are Entitled to Priority Treatment.**

81. Bankruptcy Code sections 507(a)(4) and 507(a)(5) entitle a substantial portion of the Prepetition Employee Obligations to priority treatment. Bankruptcy Code section 507(a)(4) grants priority to employee claims for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date up to \$15,150 per employee. 11 U.S.C. § 507(a)(4). Similarly, Bankruptcy Code section 507(a)(5) provides that claims for contributions to certain employee benefit plans also are afforded priority treatment to the extent of the number of employees covered by each plan multiplied by \$15,150, less any amounts paid pursuant to Bankruptcy Code section 507(a)(4), plus any amounts paid by the estate on behalf of such employees to any other employee benefit plan. *Id.* § 507(a)(5). To the extent such claims are afforded priority status, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B). Thus, granting the relief sought herein should only affect the timing of certain payments to the Employees and should not negatively affect recoveries for general unsecured creditors.

**B. Payment of Certain Prepetition Employee Obligations is Appropriate Under Bankruptcy Code Section 541(d) and is Required by Law.**

82. The Debtors seek authority to pay the Employee Taxes, Payroll Taxes, and Union Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees’ paychecks. The payment of Employee Taxes, Payroll Taxes, and Union Obligations will not prejudice the Debtors’ estates because such withholdings are held in trust for the benefit

of the related payees and, thus, do not constitute property of the Debtors' estates. *See* 11 U.S.C. § 541(d). Further, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Indeed, certain of these deductions are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b). Because the Employee Taxes, Payroll Taxes, and Union Obligations are not property of the Debtors' estates, the Debtors request that the Court authorize them, through third-party administrators (as applicable), to transmit the Employee Taxes, Payroll Taxes, and Union Obligations to the proper parties in the ordinary course of business.

83. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all amounts associated with the Workers' Compensation Program, whether incurred before or after the Petition Date, is therefore crucial to the Debtors' continued operations and the success of the Debtors' Chapter 11 Cases.

**C. Payment of the Prepetition Employee Obligations and Prepetition Claims of Employment Agencies is Proper Pursuant to the Doctrine of Necessity.**

84. A bankruptcy court's power to authorize the pre-plan satisfaction of prepetition claims whose payment is critical to the debtor's business is firmly established under the "doctrine of necessity," which "recognizes the existence of the judicial power to authorize a debtor in a

reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).<sup>17</sup> Although the “doctrine of necessity” pre-dates the Bankruptcy Code, *see Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286, 309 (1882), the modern application of the doctrine of necessity is grounded in specific provisions of the Bankruptcy Code, including sections 105(a), 1107(a), and 1108. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (fiduciary duties implicit in Bankruptcy Code section 1107(a) justify the “preplan satisfaction of a prepetition claim” where necessary to preserve going concern value). As described herein, payment of the Prepetition Employee Obligations and the prepetition amounts owed to Employment Agencies is essential to the continued operation of the Debtors’ businesses.

85. This Court has similarly approved the payment of prepetition claims of employees for wages, salaries, expenses, and benefits on the grounds that the payment of such claims was necessary to effectuate a successful reorganization or liquidation. *See, e.g., In re The Krystal Company*, Case No. 20-61065 (PWB) (Bankr. N.D. Ga. Jan. 22, 2020) [Docket No. 34]; *In re Jack Cooper Ventures, Inc.*, Case No. 19-62393 (PWB) (Bankr. N.D. Ga. Aug. 8, 2019) [Docket No. 66]; *In re LakePoint Land, LLC*, Case No. 18-41337 (BEM) (Bankr. N.D. Ga. June 13, 2018) [Docket No. 27]; *In re Beaulieu Grp., LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 20,

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<sup>17</sup> *See also In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *In re Friedman’s Inc.*, No. 09-10161 CSS, 2011 WL 5975283, at \*3 (Bankr. D. Del. Nov. 30, 2011) (“[N]ormally, a debtor only pays pre-petition, unsecured claims through a confirmed plan of reorganization . . . most courts will allow such payments under the ‘doctrine of necessity,’ if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor’s business.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (“The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit the pre-plan payment of prepetition obligations when essential to the continued operation of the debtor.”); *In re Eagle-Pitcher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

2017) [Docket No. 35]; *In re AstroTurf, LLC*, Case No. 16-41504 (PWB) (Bankr. N.D. Ga. June 29, 2016) [Docket No. 31]; *In re S. Reg'l Health Sys., Inc.*, Case No. 15- 64266 (WLH) (Bankr. N.D. Ga. Aug. 5, 2015) [Docket No. 39]; *In re Cagle's, Inc.*, Case No. 11- 80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011) [Docket No. 30]; *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (MGD) (Bankr. N.D. Ga. Nov. 16, 2007) [Docket No. 39]; *In re Allied Holdings, Inc.*, Case No. 05-12515 (WHD) (Bankr. N.D. Ga. Aug. 2, 2005) [Docket No. 58].

86. The Employees include, among others, nurses, certified nursing assistants, licensed practical nurses, caregivers, groundskeepers, receptionists, corporate-level personnel, and other Facility staff who provide care to the Debtors' residents on a daily basis, as well as other Facility staff members who maintain the operations of the Debtors' Facilities in the ordinary course. The Independent Contractors are individuals who provide necessary services for the operations of the Debtors' Facilities, the majority of which are medical directors, who provide a myriad of services to the Debtors, including providing guidance on medical policy at the Facilities, overseeing the medical services provided to the residents, and consulting with nurses with respect to the condition of the residents at the Facilities. Without the services of the Employees and Independent Contractors, the Debtors simply would not be able to operate and care for their residents.

87. The majority of the Employees and Independent Contractors rely exclusively on the Prepetition Employee Obligations to satisfy their daily living expenses. If amounts owed are not received or other benefits are delayed, the Employees and Independent Contractors may be exposed to significant financial hardship and, in some cases, will be unable to meet their basic needs, which may make it impossible for them to continue working for the Debtors. This would be particularly detrimental to the Debtors as they transition into these bankruptcy cases. Failure to pay the Prepetition Employee Obligations likely would cause a significant exodus of Employees

and an inability to retain the services of the Independent Contractors, which would effectively shut down the Debtors' operations and risk the health and safety of the residents under their care. Therefore, in order to maintain Employee morale, limit attrition, protect the health and safety of Facility residents, and generally minimize the adverse effects of the commencement of the Chapter 11 Cases, it is necessary to continue providing ordinary course wages and benefits to the Employees and compensation to the Independent Contractors.

88. Similarly, as described in the First Day Declaration, while the Debtors' reliance on Agency Workers has significantly decreased over time, the Agency Workers (including nurses, licensed practical nurses, and certified nursing assistants) are still significant to enable the Debtors to meet their daily staffing needs in each Facility and to comply with the requirements established by Medicare and Medicaid to maintain a certain ratio of staff to residents. The Debtors anticipate the continued need to rely on staffing agencies to meet staffing ratio requirements. If the Employment Agencies are unable or unwilling to provide the Debtors with the necessary Agency Workers, the Debtors may not have sufficient staffing to maintain current resident occupancy levels, which obviously would have a substantial and adverse impact on the Debtors' business and prospects in the Chapter 11 Cases. Therefore, the Debtors believe that payment of the prepetition amounts owed to the Employment Agencies is a necessary and critical element of the Debtors' efforts to preserve value and will provide the Debtors with the requisite staffing support needed to maintain their operations and care for their residents during the Chapter 11 Cases. Accordingly, the Debtors request that the Court authorize the Debtors to pay all prepetition amounts due to the Employment Agencies, and to continue to use the Employment Agencies to provide necessary staffing on a postpetition basis.

**II. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims is Appropriate Here.**

89. Bankruptcy Code section 362(a)(1) operates to stay:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of this title . . .

11 U.S.C. § 362(a)(1). Bankruptcy Code section 362, however, permits a debtor or other party-in-interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

90. The Debtors seek authorization, under Bankruptcy Code section 362(d), to permit their Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying their Employees' workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to unnecessary attrition. In addition, and as noted above, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Workers' Compensation Program to proceed in the ordinary course of business after the Petition Date.

**III. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.**

91. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment, and to honor all electronic payment requests made by the Debtors, related to the obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the



Petition Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to the Motion. The Debtors represent that they have sufficient availability of funds to pay any amounts described herein.

### **EMERGENCY CONSIDERATION**

92. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. Here, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these Chapter 11 Cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

### **WAIVER OF ANY APPLICABLE STAY**

93. The Debtors seek a waiver of any stay of the effectiveness of the order granting this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein.

Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

**RESERVATION OF RIGHTS**

94. Nothing in the Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; or (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

**NOTICE**

95. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) the United States Attorney for the Northern District of Georgia; (d) the Attorney General for the State of Georgia; (e) the Georgia Department of Revenue; (f) the Centers for Medicare and Medicaid Services; (g) the states attorneys general for states in which the Debtors conduct business; (h) the parties included on the Debtors' list of their 30 largest unsecured creditors; (i) counsel to the Debtors' prepetition lenders; (j) counsel to the proposed DIP Lenders; (k) the Debtors' benefit providers; (l) the Unions; and (m) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice is required.

**NO PRIOR REQUEST**

96. No previous request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim and Final Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Atlanta, Georgia  
June 2, 2024

**MCDERMOTT WILL & EMERY LLP**

*/s/ Daniel M. Simon*

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- and -

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*Proposed Counsel for the Debtors and  
Debtors-in-Possession*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date a true and correct copy of the foregoing Motion was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 Cases through CM/ECF. Subject to the Court's approval of their retention and access to filing privileges, the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants LLC, will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing Motion.

Dated: Atlanta, Georgia  
June 2, 2024

**MCDERMOTT WILL & EMERY LLP**

/s/ Daniel M. Simon

Daniel M. Simon (Georgia Bar No. 690075)

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*Proposed Counsel for the Debtors and  
Debtors-in-Possession*

**EXHIBIT A**

**Proposed Interim Order**

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

	)	
In re:	)	Chapter 11
	)	
LAVIE CARE CENTERS, LLC, <i>et al.</i> <sup>1</sup>	)	Case No. 24-55507 (PMB)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Related to Docket No. ____

**INTERIM ORDER AUTHORIZING DEBTORS TO (I) PAY PREPETITION WAGES, COMPENSATION, AND EMPLOYEE BENEFITS, (II) CONTINUE CERTAIN EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY COURSE, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the Debtors for entry of an interim order (this “Order”) and a Final Order, authorizing, but not directing, the Debtors (i) to pay, perform, and/or honor, as applicable, the Employee Compensation Claims and the prepetition claims of the Employment

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<sup>1</sup> The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

Agencies, the Employee Benefit Obligations, the Employee Expense Obligations, the Employee Tax Obligations, the Workers' Compensation Obligations, the Union Obligations, the 401(k) Obligations, the Employee Bonus Obligations, and the Employee Severance Obligations and (ii) to honor and continue their Employee benefit plans, programs, policies, and procedures in the ordinary course of business in accordance with prepetition practices, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2024, at \_\_: \_\_.m. (prevailing Eastern Time). Any objections or responses to the entry of the proposed Final Order shall be filed with the Court and served on the following no later 4:00 p.m.

(prevailing Eastern Time) on \_\_\_\_\_, 2024: (a) LaVie Care Centers, LLC, c/o Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, NY 10017 (Attn: M. Benjamin Jones); (b) proposed counsel to the Debtors, McDermott Will & Emery LLP, 1180 Peachtree St. NE, Suite 3350, Atlanta, GA 30309 (Attn: Daniel M. Simon), and 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Emily C. Keil); (c) counsel to the Prepetition Omega Secured Parties and proposed DIP Lenders, Scroggins & Williamson, P.C., 4401 Northside Parkway, Suite 450, Atlanta, GA 30327 (Attn: Matthew W. Levin), and Goodwin Proctor LLP, The New York Times Building, 620 Eighth Avenue, New York, NY 10018 (Attn: Robert J. Lemons), and Ferguson Braswell Fraser Kubasta PC, 2500 Dallas Parkway, Suite 600, Plano, TX 75093 (Attn: Leighton Aiken); (d) counsel to the Debtors' prepetition ABL lender, Proskauer LLP, One International Place, Boston, MA 02110 (Attn: Charles A. Dale) and Vedder Price LLP, 222 North LaSalle Street, Chicago, IL 60601 (Attn: Kathryn L. Stevens); (e) counsel to the Debtors' proposed DIP Lenders, DLA Piper LLP, 1900 N. Pearl St., Suite 2200, Dallas, TX 75201 (Attn: James Muenker) and 1251 Avenue of the Americas, New York, NY 10020 (Attn: Kira Mineroff); (f) the United States Trustee for Region 21, 75 Ted Turner Drive, S.W., Room 362, Atlanta, GA 30303 (Attn: Jonathan S. Adams); (g) counsel to the official committee of unsecured creditors (if any) appointed in these Chapter 11 Cases; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. If no objections to entry of the Final Order are filed and served, the Court may enter such Final Order without further notice or hearing.

3. The Debtors are authorized, but not directed, in their sole discretion, to pay, perform, and/or honor, as applicable, the Employee Compensation Claims, the Employee Benefit Obligations, the Employee Expense Obligations, the Employee Tax Obligations, the Workers' Compensation Obligations, and the 401(k) Obligations (collectively, the "Prepetition Employee



Obligations”), including payment to any third parties that provide or aid in the monitoring, processing, or administration of the Prepetition Employee Obligations, as and when such obligations are due; *provided, however*, no Employee shall be paid in excess of \$15,150 on account of prepetition Employee Compensation.

4. The Debtors are authorized to pay prepetition amounts owed to Independent Contractors.

5. The Debtors are authorized, but not directed, in their sole discretion, to pay the prepetition claims of the Employment Agencies.

6. The Debtors are authorized, but not directed, to continue the Time Off Benefits, including Holiday Time, PTO, Medical Leave, Other Time Off Policies, and Military Leave policies, and; *provided, however*, that nothing herein shall be deemed to authorize the Debtors to pay in cash any unpaid Personal Holidays or Vacation Time unless required by applicable non-bankruptcy law.

7. Pursuant to Bankruptcy Code section 362(d), Employees are authorized to proceed with their claims under the Workers’ Compensation Program in the appropriate judicial or administrative forum, and the Debtors are authorized, but not directed, to continue the Workers’ Compensation Program and pay all prepetition amounts relating thereto in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers’ Compensation Program.

8. Subject to the limitations contained in this Order, the Debtors are authorized, but not directed, in their sole discretion, to continue their Employee benefit plans, programs, policies, and procedures, in the ordinary course of business and in accordance with prepetition practices, and to modify or discontinue such plans, programs, policies, and procedures as necessary or

prudent in the Debtors' business judgment; *provided, however*, that nothing herein authorizes the incurrence or payment of bonus or severance obligations, including obligations that implicate Bankruptcy Code section 503(c); *provided further, however*, that nothing herein shall prejudice the Debtors' ability to seek approval of relief with respect to such obligations at a later time.

9. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

10. The Debtors (including through ADP and CMC III, as applicable) may pay any and all withholdings, including social security, FICA, federal, state, and local income taxes, garnishments, health care premiums, retirement fund withholding, and other types of withholdings, whether or not these relate to the period prior to the Petition Date.

11. The Debtors are authorized, but not directed, to remit the Union Obligations in the ordinary course of business consistent with past practice and to continue collecting and remitting the Union Obligations in the ordinary course of business on a postpetition basis.

12. The Debtors' request to maintain the Employee Severance Program in the ordinary course of business and consistent with past practice shall be considered at the Final Hearing, and nothing herein shall be deemed to authorize the Debtors to incur obligations relating to the Employee Severance Program pending the Final Hearing.

13. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in the Interim DIP Order, including, for the avoidance of doubt, the Approved DIP Budget. To the extent of any conflict (but solely to

the extent of such conflict) between the terms of this Order and the terms of the Interim DIP Order, the terms of the Interim DIP Order will govern.

14. The Banks on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

15. The Debtors are authorized to issue postpetition checks, or to effect postpetition electronic fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to payments authorized pursuant to this Order.

16. Nothing in the Motion, this Order, or the relief granted herein (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; or (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

17. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), the Local Rules, and the Complex Case Procedures are satisfied by such notice.

19. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

20. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

21. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

22. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER

Prepared and presented by:

/s/ Daniel M. Simon

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**EXHIBIT B**

**Proposed Final Order**

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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In re:	)	
	)	Chapter 11
LAVIE CARE CENTERS, LLC, <i>et al.</i> <sup>1</sup>	)	Case No. 24-55507 ( <u>PMB</u> )
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Related to Docket No. ____

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**FINAL ORDER AUTHORIZING DEBTORS TO (I) PAY PREPETITION WAGES, COMPENSATION, AND EMPLOYEE BENEFITS, (II) CONTINUE CERTAIN EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY COURSE, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for entry of an Interim Order and a final order (this "Order") (a) authorizing, but not directing, the Debtors (i) to pay, perform, and/or honor,

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<sup>1</sup> The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

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



as applicable, the Employee Compensation Claims and the prepetition claims of the Employment Agencies, the Employee Benefit Obligations, the Employee Expense Obligations, the Employee Tax Obligations, the Workers' Compensation Obligations, the Union Obligations, the 401(k) Obligations, the Employee Bonus Obligations, and the Employee Severance Obligations, and (ii) to honor and continue their Employee benefit plans, programs, policies, and procedures in the ordinary course of business in accordance with prepetition practices, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration and the Interim Order entered on \_\_\_\_\_, 2024; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay, perform, and/or honor, as applicable, the Employee Compensation Claims and the prepetition

claims of the Employment Agencies, the Employee Benefit Obligations, the Employee Expense Obligations, the Employee Tax Obligations, the Workers' Compensation Obligations, the Union Obligations, the 401(k) Obligations, the Employee Bonus Obligations, and the Employee Severance Obligations (collectively, the "Prepetition Employee Obligations"), including payment to any third parties that provide or aid in the monitoring, processing, or administration of the Prepetition Employee Obligations, as and when such obligations are due; *provided, however*, no Employee shall be paid in excess of \$15,150 on account of prepetition Employee Compensation.

3. The Debtors are authorized to pay prepetition amounts owed to Independent Contractors.

4. The Debtors are authorized, but not directed, in their sole discretion, to pay the prepetition claims of the Employment Agencies.

5. The Debtors are authorized, but not directed, to continue the Debtors' Time Off Benefits, including Holiday Time, PTO, Medical Leave, Other Time Off Policies, and Military Leave policies.

6. Pursuant to Bankruptcy Code section 362(d), Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and the Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

7. The Debtors are authorized, but not directed, in their sole discretion, to continue their Employee benefit plans, programs, policies, and procedures, in the ordinary course of

business and in accordance with prepetition practices, and to modify or discontinue such plans, programs, policies, and procedures as necessary or prudent in the Debtors' business judgment.

8. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices. The Debtors are authorized, but not directed, to reimburse CMC III for the ADP Processing Fees.

9. The Debtors (including through ADP and CMC III, as applicable) may pay any and all withholdings, including social security, FICA, federal, state and local income taxes, garnishments, health care premiums, retirement fund withholding, and other types of withholdings, whether or not these relate to the period prior to the Petition Date.

10. The Debtors are authorized, but not directed, to remit the Union Obligations in the ordinary course of business consistent with past practice and to continue collecting and remitting the Union Obligations in the ordinary course of business on a postpetition basis.

11. The Debtors are authorized, but not directed, to maintain the Employee Severance Program in the ordinary course of business and consistent with past practice.

12. The Debtors are authorized, but not directed, to maintain the Employee Bonus Programs in the ordinary course of business and consistent with past practice and to pay the Employee Bonus Obligations associated therewith.

13. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in the Final DIP Order, including, for the avoidance of doubt, the Approved DIP Budget. To the extent of any conflict

(but solely to the extent of such conflict) between the terms of this Order and the terms of the Final DIP Order, the terms of the Final DIP Order will govern.

14. The Banks on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

15. The Debtors are authorized to issue postpetition checks, or to effect postpetition electronic fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to payments authorized pursuant to this Order.

16. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; or (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

17. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), the Local Rules, and the Complex Case Procedures are satisfied by such notice.

19. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

20. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

21. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

22. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

END OF ORDER

Prepared and presented by:

/s/ Daniel M. Simon

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