

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

In re:

LAVIE CARE CENTERS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-55507 (PMB)

(Jointly Administered)

Re: Docket Nos. 177, 274, 356

**UNITEDHEALTHCARE INSURANCE COMPANY’S LIMITED OBJECTION AND RESERVATION OF RIGHTS TO DEBTORS’ NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND NOTICE OF REVISED LIST OF POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND RELATED CURE COSTS**

UnitedHealthcare Insurance Company (collectively with its affiliates, subsidiaries, and parents, “United”) hereby submits this limited objection and reservation of rights to the Debtors (defined below) (i) *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 274] (the “Original Contract Assumption Notice”) and (ii) *Notice of Revised List of Potentially Assumed Executory Contracts and Unexpired Leases and Related Cure Costs* [Docket No. 356] (the “Revised Assumption Notice”, collectively, the “Cure Notices”).

In support of this limited objection and reservation of rights, United states as follows:

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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, which are being jointly administered for procedural purposes only. 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’ claims and noticing agent at <https://www.veritaglobal.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.



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## **I. BACKGROUND**

### **A. The Agreements**

1. United provides health care insurance benefits to members insured under its fully insured group medical policies through a network of providers who contract with United to render medical services to members. United also administers self-insured health plans of third parties, by which the members of those self-insured plans may also access medical care through United's network of providers. United also provides health insurance benefits to members under certain governmental plans, including, but not limited to, Medicaid in certain states and Medicare Advantage plans. LaVie Care Centers, LLC (the "Debtor") has entered into various Agreements (as defined below) with United, by which the Debtors in this case are "in network" providers of medical services to United's members.

2. United, contracting on behalf of itself, UnitedHealthcare of Florida, Inc., and the other entities that are United's Affiliates (as defined therein) and the Debtor entered into an Ancillary Provider Participation Agreement with an effective date of April 1, 2023, as amended from time to time (the "APPA").

3. United, contracting on behalf of itself and Optum Public Sector Solutions, Inc., and the Debtor also entered into a Veteran's Affairs Community Care Network Participation Agreement with an effective date of April 1, 2023, as amended from time to time (the "VACCNPA").

4. United, contracting on behalf of itself, UnitedHealthcare of Florida, Inc., and the other entities that are United's Affiliates (as defined therein) and the Debtor also entered into an Ancillary Provider Participation Agreement with an effective date of December 1, 2021, as amended from time to time ("FLMCD APPA").

5. United, contracting on behalf of itself and the other entities that United's Affiliates (as defined therein) and the Debtor also entered into an Ancillary Provider Participation Agreement with an effective date of April 1, 2023, as amended from time to time (the "PAMCD APPA").

6. United, contracting on behalf of itself, UnitedHealthcare of North Carolina, Inc. and the other entities that are United's Affiliates (as defined therein) and the Debtor also entered into an Ancillary Provider Participation Agreement with an effective date of July 1, 2019 ("NCMCD APPA").

7. United, contracting on behalf of itself, UnitedHealthcare of the Mid-Atlantic, Inc. and the other entities that are United's Affiliates (as defined therein) and the Debtor also entered into an Ancillary Provider Participation Agreement with an effective date of July 1, 2017 ("VAMCD APPA", and together with the APPA, VACCNPA, FLMCD APPA, PAMCD APPA, and NCMCD APPA, the "Agreements").

8. Pursuant to the Agreements, the Debtors agreed to provide certain covered medical services to United's members in exchange for certain fees. In connection with paying claims submitted by the Debtors under the Agreements, United may periodically overpay a claim for a variety of reasons. When this occurs, United has the right to be reimbursed for such overpayments and may recoup such overpayments by an offset against future payment due to the Debtor under the terms of the Agreements and applicable law.

**B. Bankruptcy Filing and United's Proofs of Claims**

9. On June 2, 2024 (the "Petition Date"), the Debtor and certain of its affiliates and subsidiaries (collectively, the "Debtors") filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court.

10. United has filed various proofs of claim in the Debtors' cases for amounts due to

United under the Agreements, including but not limited to amounts due in connection with pre-petition overpayments that the Debtors must reimburse to United. As a result of ongoing submission and adjudication of claims for pre-petition dates of service as well as audits of the payment of claims with a pre-petition date of service, United's proofs of claim against the Debtors may be amended from time to time over the course of these bankruptcy proceedings.

11. Additionally, the Debtors have continued to operate and to do business with United after the Petition Date. As a result, additional post-petition overpayments may occur and must be reimbursed to United under the Agreements.

**C. The Revised Assumption Notice**

12. On June 10, 2024, the Debtors filed *Debtors' Motion for Entry of an Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines With Respect Thereto, (III) Approving Form and Manner of Notice Thereof; (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets* [Docket No. 104] (the "Bid Procedures Motion") requesting an order approving procedures (the "Bidding Procedures") to solicit proposals for one or more potential sales of all, substantially all, or a portion of the Debtors' assets (the "Sale(s)") to to-be-determined purchaser(s).

13. By the *Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines With Respect Thereto, (III) Approving Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets* dated June 27, 2024 [Docket No. 177] (the "Bidding Procedures

Order”), this Court approved the Bidding Procedures, including procedures for the assumption and assignment of certain of Debtors’ executory contracts as part of the Sale(s).

14. On July 23, 2024, the Debtors filed the Original Contract Assumption Notice, identifying, in its Exhibit A, a schedule of executory contracts and unexpired leases that could potentially be assumed and assigned (the “Potential Assumed Contracts”) to the Successful Bidder,<sup>2</sup> and the proposed Cure Payments, if any, that the Debtors believe necessary for the assumption and assignment of such Potential Assumed Contract. *See* Docket No. 274.

15. As set forth below, Exhibit A attached to the Original Contract Assumption Notice appears to have identified the Agreements, each with a Cure Payment, reflected as a “Proposed Cure Settlement Amount”, as it relates to certain of the Debtors and their facilities. *See id.*

#	Case Number	Debtor	Contract Counterparty	Address	Description	Proposed Cure Settlement Amount
540	24-55507	LaVie Care Centers, LLC	United HealthCare Insurance Company	22561 NETWORK PLACE Chicago, IL, 60527	Facility Participation (Contract No. 13-MAS-UNI-01799; 14-AMD-UNI-01810; 14-AMD-UNI-06133; 14-AMD-UNI-06139; 14-AMD-UNI-21409; 15-AMD-UNI-21410; 17-AMD-UNI-21411; 17-AMD-UNI-21412; 17-AMD-UNI-21413; 19-AMD-UNI-21420; 19-AMD-UNI-21237; 19-AMD-UNI-21414; 19-AMD-UNI-21418; 19-AMD-UNI-21419; 19-AMD-UNI-21421; 20-AMD-UNI-21422)	\$62.00
541	24-55507	LaVie Care Centers, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$62.00
1013	24-55522	Ashland Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Bidding Procedures Order.

1056	24-55536	Augusta Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1107	24-55600	Cardinal North Carolina HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1169	24-55612	Cary HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1228	24-55737	Clay County HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1314	24-55580	Emerald Ridge HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1373	24-55726	Forrest Oakes HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1433	24-55746	Gateway HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1472	24-55761	Glenburney HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1518	24-55746	Grayson Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1561	24-55776	Hilltop Mississippi HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1610	24-55519	Hunter Woods HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1670	24-55544	Kannapolis HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
1726	24-55564	Kings Daughters Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00

1837	24-55507	LaVie Care Centers, LLC	United Behavioral Health	425 Market Street 14th Floor, San Francisco, CA, 94105-2426	Benefits (Contract No. 16-IND-UNI-15372; 17-AMD-UNI-17037)	\$0.00
1838	24-55507	LaVie Care Centers, LLC	United HealthCare Services, Inc.	ATTN REFUND DEPT P O BOX 30884 SALT LAKE CITY, UT, 84130-0884	Administrative Services Agreement (Contract No. 17-IND-UNI-15832)	\$0.00
1910	24-55602	Locust Grove Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2021	24-55685	Manor at St. Luke Village Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2074	24-55688	McComb HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2126	24-55722	Newport News Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2200	24-55728	Norfolk Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2235	24-55744	Oak Grove HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2296	24-55515	Oaks at Sweeten Creek HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2359	24-55623	Pavilion at St. Luke Village Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2420	24-55627	Penn Village Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2489	24-55631	Pennknoll Village Facility	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00



		Operations, LLC				
2530	24-55661	Pheasant Ridge Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2587	24-55724	Riley HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2625	24-55759	Skyline Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2669	24-55766	Starkville Manor HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2707	24-55573	Valley View HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2758	24-55621	Walnut Cove HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2821	24-55636	Wellington HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2878	24-55665	Westwood HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2936	24-55771	Williamsburg Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
2975	24-55781	Willowbrook HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
3038	24-55782	Wilora Lake HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
3091	24-55783	Windsor Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
3110	24-55784	Winona Manor HealthCare, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00



3165	24-55787	Woodstock Facility Operations, LLC	UnitedHealthcare Insurance Company	11020 Optum Circle - MN102-0400 Eden Prairie, MN, 55344	Commercial / Medicare / Medicare ISNP / Veteran's Affairs Community Care Network	\$0.00
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16. The Original Contract Assumption Notice provides that to the extent a party in interest disagrees with the proposed Cure Payments, or object to a proposed assignment to the Successful Bidder of any Executory Contract or Unexpired Lease, or dispute the ability of the Successful Bidder to provide adequate assurance of future performance with respect to any Contract, a written objection must be filed by September 5, 2024, at 4:00 p.m. (prevailing Eastern Time) (the “Objection Deadline”).

17. Upon its receipt of the Original Contract Assumption Notice, United reached out to the Debtors’ counsel by email to advise that, among other things, there are amounts outstanding for overpayments under the Agreements and, that given the ongoing submission and adjudication of claims, United expects that the amounts owed will change over time. In its communication, United requested an extension of time to file an objection to the proposed Cure Payments. The Debtors have agreed to provide United with an extension to September 19, 2024, to file an objection or otherwise respond to the proposed Cure Payments while the parties work cooperatively to seek a resolution on these issues.

18. On August 28, 2024, the Debtors filed the Revised Assumption Notice. *See* Docket No. 356. The Revised Assumption Notice states that it provides a revised list of potentially assumed Executory Contracts and Unexpired Leases and related Cure Payments. *See id.* While the Revised Assumption Notice does not yet reflect the cure amounts owed to United under the Agreements, United and the Debtors continue to discuss the Cure Payments related to the Agreements.

## **II. LIMITED OBJECTION AND RESERVATION OF RIGHTS<sup>3</sup>**

19. United hereby reserves its rights to object to the assumption and assignment of the Agreements (i) to the extent that Debtors seek to assume and assign the Agreements without the provision of adequate assurance that the Successful Bidder will be able to perform thereunder, (ii) to the extent that Debtors seek to bifurcate the Agreements as a part of any of the Sale(s), and (iii) to the extent that Debtors seek to sell accounts receivable free from United's right of recoupment for overpayments under the Agreements.

### **A. Adequate Assurance Reservation of Rights**

20. United reserves its right to object to the assignment of the Agreements to the Successful Bidder to the extent that the Debtors fail to provide United with adequate assurance that such purchaser will be able to perform the core, material obligations thereunder. Section 365(f) of the Bankruptcy Code requires the Debtors to provide the counterparty to any assumed and assigned executory contracts with "adequate assurance of future performances by the assignee of such contract . . . ." To date, the Debtors have not provided any financial information or other information to United to allow it to evaluate whether the Successful Bidder will be able to perform under the Agreements. While United acknowledges that bids are not due until September 5, 2024 and the auction, if any, will be held on September 9, 2024, United reserves its right to raise an objection once the Successful Bidder is chosen as United entitled to be provided information within a reasonable period of time and with reasonably sufficient details whereby it can confirm

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<sup>3</sup> As set forth above, the Debtors have granted United an extension of time to September 19, 2024 to object or otherwise respond to the Cure Payment outlined in the Cure Notices. United is in discussions with the Debtors regarding the Cure Payments and will continue to work cooperatively with the Debtor to seek a resolution on these issues. Accordingly, this limited objection and reservation of rights does not address the Cure Payments. For the avoidance of doubt, United reserves its right to file a written objection to the Cure Payments by United's extended deadline of September 19, 2024.

that the Successful Bidder is qualified as an assignee and/or counterparty to the Agreements and to object if the Successful Bidder is not so qualified.

**B. Agreements Must Be Assumed and Assigned in Their Entirety**

21. Additionally, United reserves its right to object to the assumption and assignment of the Agreements to the extent that Debtors seek to bifurcate the Agreements as a part of the Sale(s). The Agreement may cover multiple Debtor-owned facilities. For example, the APPA covers all sixteen facilities identified in the contract assumption notice. Similarly, the state-specific Agreements, such as the VACCNPA, FLMCD APPA, PAMCD APPA, NCMCD APPA, and the VAMCD APPA, apply to multiple facilities in those states. The Bid Procedures Motion and Bid Procedures Order contemplate that there may be more than one Successful Bidder in connection with the Sale(s) contemplated thereunder. *See generally* Docket Nos. 104 and 177. However, any attempt to bifurcate the Agreements for the purpose of assumption and assignment in connection with such Sale(s) is contrary to 11 U.S.C. § 365.

22. It is well-established that when a debtor assumes an executory contract under Section 365, it cannot excise parts of the contract; that is, if the debtor wants the benefits of the contract, it must assume all of the burdens. *See Thompkins v. Lil' Joe Recs., Inc.*, 476 F.3d 1294, 1306 (11th Cir. 2007) (holding that “a debtor must either assume an executory contract in its entirety or completely reject it”); *In re Aneco Elec. Const., Inc.*, 326 B.R. 197, 200 (Bankr. M.D. Fla. 2005) (“It is fundamental that an executory contract may not be assumed in part and rejected in part.”); *In re Ecoventure Wiggins Pass, Ltd.*, 406 B.R. 123, 128 (Bankr. M.D. Fla. 2009) (executory contract must be either assumed in its entirety or completely rejected); *In re Beverage Canners Int’l Corp.*, 255 B.R. 89, 95 (Bankr. S.D. Fla. 2000) (“It is black letter law that an executory contract must be either assumed in its entirety, *cum onere*, or completely rejected.”); *In*

*re Hamilton Roe Int'l, Inc.*, 162 B.R. 590, 596 (Bankr. M.D. Fla. 1993) (“If a contract is executory, it may be assumed only in whole and not in part, and that principle applies to rejection.”)

23. Accordingly, any assumption and assignment of the Agreement must be in full and United reserves its right to object to any assumption and assignment of the Agreements to more than one Successful Bidder.

**C. Reservation of Rights that Sale Cannot be Free and Clear of United’s Right of Recoupment**

24. Recoupment is an equitable defense that may be used to apply debts arising from the same transaction against one another. *See In re Howard*, 653 B.R. 693, 711 (Bankr. S.D. Fla. 2023) (citing *Smith v. American Financial Systems, Inc. (In re Smith)*, 737 F.2d 1549, 1553 (11th Cir. 1984)). And it is often the case that one of those debts is a prior overpayment. *See In re Jones*, 289 B.R. 188, 193 (Bankr. M.D. Fla. 2002); *In re Graves*, 234 B.R. 149, 150 (Bankr. M.D. Fla. 1999) (“Courts frequently permitted insurers to recoup pre-petition overpayments from post-petition amounts owed to debtors, holding that the pre-petition overpayments and post-petition deductions were part of the same transaction, thus, it was recognized to be a recoupment.”). Because recoupment is a defense, it is not a “claim” or “interest” from which an asset can be sold free and clear under § 363(f). *See In re Black*, 280 B.R. 680, 687 (Bankr. N.D. Ala. 2001) (citing *Folger Adam Security, Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252 (3rd Cir.2000)) (holding that “[t]he doctrine of recoupment is not a claim in the bankruptcy context” and concluding that court’s order enjoining estate from commencing any claim or cause of action asserted in a related state court proceeding did not prohibit estate from raising defense of recoupment); *see also Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 261–62 (3d Cir. 2000); *In re Pers. Commc’ns Devices, LLC*, 556 B.R. 45, 54–55 (Bankr. E.D.N.Y. 2016); *Hispanic Indep. Television*

*Sales, LLC v. Kaza Azteca Am. Inc.*, No. 10 CIV. 932 SHS, 2012 WL 1079959, at \*5 (S.D.N.Y. Mar. 30, 2012) (“As recoupment is a defense, it is not extinguished by a section 363(f) sale.”).

25. It is unknown at this point if the Debtors intend to sell the accounts receivable. However, to the extent the Debtors are seeking to sell their accounts receivable owed under the Agreements to the Successful Bidder free and clear of United’s right to recoup the pre- and post-petition overpayments owed to United (as described above), such relief should be denied

26. United reserves its right to further or modify this limited objection and reservation of rights upon any further amendments, revisions, or clarifications to the Cure Notices.

Dated: September 5, 2024

**CAIOLA & ROSE, LLC**

By: /s/ Elizabeth B. Rose  
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***Attorneys for UnitedHealthcare  
Insurance Company***

**CERTIFICATE OF SERVICE**

I, Elizabeth B. Rose, hereby certify that on September 5, 2024, I caused a true and correct copy of the forgoing *Limited Objection And Reservation Of Rights To Debtors' Notice To Contract Parties To Potentially Assumed Executory Contracts And Unexpired Leases And Notice Of Revised List Of Potentially Assumed Executory Contracts And Unexpired Leases And Related Cure Costs* to be served electronically via the Court's CM/ECF electronic noticing system on all parties registered to receive electronic service in the above cases and via email and first class U.S. Mail on the parties set forth below.

**The Debtors**

LaVie Care Centers, LLC  
c/o Ankura Consulting Group, LLC  
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**US Trustee**

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Atlanta, GA 30303  
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