



**serve a copy** on (i) LaVie Care Centers, LLC, c/o Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, NY 10017 (Attn: M. Benjamin Jones); (ii) counsel to the Debtors, McDermott Will & Emery LLP, 1180 Peachtree St. NE, Suite 3350, Atlanta, Georgia 30309 (Attn: Daniel M. Simon) and 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Emily C. Keil); (iii) counsel to the Committee, Troutman Pepper Hamilton Sanders LLP, 600 Peachtree St. NE, Suite 3000, Atlanta, GA 30308 (Attn: Matthew R. Brooks and Pierce E. Rigney) and 3000 Two Logan Square, Eighteenth and Arch St., Philadelphia, PA 19103 (Attn: Francis J. Lawall) and 875 Third Avenue, New York, NY 10022 (Attn: Deborah Kovsky-Apap); and (iv) the United States Trustee of the Northern District of Georgia, 362 Richard B. Russell Building, 75 Ted Turner Drive, S.W., Atlanta, GA 30303 (Attn: Jonathan S. Adams) in advance of the Hearing. **If you do not file a response or objection or raise your objection on the record at the Hearing, the Court may grant the relief requested in the Motion without further notice.**

**PLEASE TAKE FURTHER NOTICE THAT** copies of the Motion and other related documents are available free of charge on the Debtors' case information website (<https://www.veritaglobal.net/lavie>) or can be requested from Kurtzman Carson Consultants, LLC d/b/a Verita by calling (877) 709-4750 (United States/Canada toll-free) or +1 (424) 236-7230 (International) or by clicking the "Submit an Inquiry" option at <https://www.veritaglobal.net/lavie/Inquiry>.

**PLEASE TAKE FURTHER NOTICE THAT your rights may be affected by the relief requested in the Motion. You should read the Motion carefully and discuss it with your attorney, if you have one in these bankruptcy cases. If you do not have an attorney, you may wish to consult one.**

Dated: Atlanta, Georgia  
September 16, 2024

**MCDERMOTT WILL & EMERY LLP**

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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)
	)				
	)				

**DEBTORS’ MOTION FOR ENTRY OF ORDER  
EXTENDING TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY PURSUANT TO 11 U.S.C. § 365(d)(4)**

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”)<sup>2</sup> for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), granting the relief described below. In further support of the Motion, the Debtors respectfully state as follows:

**RELIEF REQUESTED**

1. By the Motion, the Debtors respectfully request entry of the Proposed Order extending the 120-day period (the “365(d)(4) Period”) within which the Debtors may assume or reject nonresidential real property leases, subleases, and other agreements under which any of the

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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.

<sup>2</sup> Capitalized terms used but not immediately defined are defined later in this Motion. Capitalized terms used but not otherwise defined herein shall have the meanings attributed to such terms in the First Day Declaration or the Combined Disclosure Statement and Plan, as applicable and each as defined herein.

Debtors is a lessee and that may be considered unexpired leases of non-residential real property under applicable law (collectively, the “Real Property Leases”) by 90 days, through and including December 30, 2024, without prejudice to the Debtors’ right to seek further extension(s). Without the requested extension, the 365(d)(4) Period will expire on September 30, 2024.

### **JURISDICTION AND VENUE**

2. 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. The legal predicate for the relief requested herein is section 365(d)(4)(B) of title 11 of the United States Code (the “Bankruptcy Code”).

### **BACKGROUND**

3. On June 2, 2024 (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 are operating their businesses and managing their property as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. On June 13, 2024, the Office of the United States Trustee for Region 21 (the “U.S. Trustee”) appointed an official committee in the Chapter 11 Cases (the “Committee”). *See Appointment and Notice of Appointment of Committee of Creditors Holding Unsecured Claims* [Docket No. 112]. To date, no trustee or examiner has been appointed in the Chapter 11 Cases.

5. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) [Docket No. 17].

6. As discussed in the First Day Declaration, the Debtors do not own any real property, but rather, they lease their facilities from various landlords, including the Omega Landlords, the Welltower Landlords, the Elderberry Landlords, and the Harts Harbor Landlord. As such, the Debtors are party to several Real Property Leases, including the Omega Master Lease, the Welltower Master Lease, the Elderberry Leases, and the Harts Harbor Lease. As of the date of this filing, none of the Real Property Leases have expired.

**BASIS FOR RELIEF AND APPLICABLE AUTHORITY**

7. Pursuant to Bankruptcy Code section 365(d)(4), debtors have an initial 120-day period following the filing of a bankruptcy petition in which to elect to assume or reject unexpired leases of non-residential real property under which any of the debtors is a lessee. *See* 11 U.S.C. § 365(d)(4). Bankruptcy Code section 365(d)(4)(B) provides, however, that, upon a motion by the debtors, the Court may extend the initial 120-day deadline by ninety (90) days “for cause.” 11 U.S.C. § 365(d)(4)(B). Any subsequent extensions of the deadline to assume or reject unexpired leases of non-residential real property under which any of the debtors is a lessee may only be granted with the prior written consent of the affected lessors. *See* 11 U.S.C. § 365(d)(4)(B)(ii). Under Bankruptcy Code section 365(d)(4), if the debtors fail to assume or reject an unexpired lease of non-residential real property under which any of the debtors is a lessee prior to the applicable deadline, such lease will automatically be deemed rejected. *See* 11 U.S.C. § 365(d)(4)(A).

8. Although not defined in the Bankruptcy Code, courts have relied on the following factors in determining whether “cause” exists under section 365(d)(4):

- (a) whether the lease is the primary asset of the debtor;
- (b) whether the lessor has a reversionary interest in the building built by the debtor on the landlord’s land;

- (c) whether the debtor has had time to intelligently appraise its financial situation and the potential value of its assets in terms of the formulation of a plan;
- (d) whether the lessor continues to receive the rent required in the lease;
- (e) whether the lessor will be damaged beyond the compensation available under the Bankruptcy Code due to the debtor's continued occupation;
- (f) whether the case is exceptionally complex and involves a large number of leases;
- (g) whether the need exists for a judicial determination of whether the lease is disguised as a security interest;
- (h) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so; and
- (i) any other factors bearing on whether the debtor has had a reasonable amount of time in which to decide whether to assume or reject the lease.

*In re Serv. Merch. Co., Inc.*, 256 B.R. 744, 748 (M.D. Tenn. 2000); *see also In re Panaco, Inc.*, 2002 WL 31990368, \*5 (Bankr. S.D. Tex. Dec. 10, 2002); *In re Victoria Station, Inc.*, 88 B.R. 231, 236 n.7 (9th Cir. BAP 1988); *In re Wedtech Corp.*, 72 B.R. 464, 471–73 (Bankr. S.D.N.Y. 1987); *In re Columbus Parcel Serv., Inc.*, 138 B.R. 194, 195 (Bankr. S.D. Ohio 1992). “This list is not exclusive, and a great deal of discretion is left to the court to weigh all relevant factors related to the requested extension.” *Serv. Merch.*, 256 B.R. at 748 (citing *In re Ernst Home Center, Inc.*, 221 B.R. 243 (9th Cir. BAP 1998)); *see also S. St. Seaport Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761 (2d Cir. 1996).

9. The Debtors submit that ample cause exists to extend the 365(d)(4) Period as requested herein. *First*, these cases are large and complex and involve several Real Property Leases. Since the Petition Date, the Debtors have worked diligently to ensure a smooth transition into chapter 11 and to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders. To that end, the Debtors have, among other things: (a) conducted a robust

marketing and sale processes of substantially all of their assets pursuant to the Court-approved bidding procedures [Docket No. 177]; (b) filed their schedules of assets and liabilities and statements of financial affairs; (c) pursuant to an order of the Court [Docket No. 218] established claims bar dates for pre-petition claims and claims pursuant to section 503(b)(9) of the Bankruptcy Code; (d) obtained entry of interim [Docket No. 49] and final orders [Docket No. 189] (together, the “Financing Orders”) approving the Debtors’ postpetition debtor-in-possession financing; (e) retained professionals; (f) filed the *Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 273] (as amended, supplemented, or otherwise modified, the “Combined Disclosure Statement and Plan”); and (g) handled various other tasks related to the administration of the Debtors’ estates and these Chapter 11 Cases. As evidenced by the foregoing, the Debtors have labored to preserve and maximize the value of the Debtors’ estates for the benefit of all stakeholders since these cases commenced. The Debtors continue to do so, and that includes analyzing their assets, including any Real Property Leases, justifying an extension of the 365(d)(4) Period.

10. *Second*, pursuant to the *Joint Motion for Order Authorizing and Directing Mediation* [Docket No. 347], the Debtors, the Committee, and the DIP Lenders participated in a mediation before the Honorable Jeffery W. Cavender on September 9 and September 11, 2024. The parties are still engaged in good-faith, arm’s-length settlement discussions in furtherance of the Debtors’ efforts to maximize value for all stakeholders. Given that these discussions remain ongoing, the Debtors and their advisors require more time to determine whether it is in the best interests of the estates to assume or reject the Real Property Leases in connection with a proposed chapter 11 plan.

11. *Third*, due to the inherent fluidity in these Chapter 11 Cases, circumstances may arise that would cause the Debtors to re-evaluate the need to continue leasing a particular property. In the absence of an extension of the 365(d)(4) Period, the Debtors would be prematurely forced to assume Real Property Leases before they crystallize the path forward in these Chapter 11 Cases, which could give rise to unnecessary administrative expense claims against the Debtors' estates, and jeopardize the Debtors' ability to successfully prosecute these Chapter 11 Cases. Alternatively, the Debtors could be prematurely forced to reject certain Real Property Leases that ultimately could benefit the Debtors' estates or, in the event that the Real Property Leases are not assigned, the Debtors may need to continue using the Real Property Leases until applicable facility operations are wound down. Most importantly, forced rejection of the Real Property Leases may jeopardize continuity of care to the Debtors' residents and employee retention, as the Debtors would be forced to quickly transition the facilities to new operators following such rejection. Among other things, the extension of the 365(d)(4) Period requested herein will decrease the risk of such negative outcomes for the Debtors' estates, and will therefore benefit all stakeholders.

12. *Fourth*, if and when any Real Property Leases are assumed in connection with the Chapter 11 Cases, the Debtors, through the Combined Disclosure Statement and Plan, will cure any defaults under such Real Property Leases and will provide adequate assurance of future performance, as required by the Bankruptcy Code.

13. *Fifth*, the Debtors are paying their administrative obligations as they become due and owing, including all rent obligations due under the Real Property Leases.

14. *Finally*, the requested extension of the Assumption/Rejection Period is consistent with the goals of the Bankruptcy Code, and will not unduly prejudice any lessors under any Real Property Leases (collectively, the "Lessors"). Pending their election to assume or reject any Real

Property Leases, the Debtors will perform their undisputed obligations arising from and after the Petition Date in a timely fashion and as required by the Bankruptcy Code. As a result, the requested extension will afford the Debtors the opportunity to preserve and maximize estate value, without prejudicing the rights of the Lessors.

15. In sum, for the foregoing reasons, the Debtors submit that the circumstances in these Chapter 11 Cases warrant the requested extension of the 365(d)(4) Period for an additional 90 days through and including December 30, 2024.

**NOTICE**

16. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (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) counsel to the Committee; (i) counsel to the Debtors' prepetition lenders; (j) counsel to the DIP Lenders; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice is required.

**NO PRIOR REQUEST**

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

*[Remainder of Page Intentionally Left Blank]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Atlanta, Georgia  
September 16, 2024

**MCDERMOTT WILL & EMERY LLP**

*/s/ Daniel M. Simon*

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

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2024, all ECF participants registered in this case were served electronically with the foregoing Motion through the Court's ECF system at their respective e-mail addresses registered with this Court. The Debtors' claims and noticing agent will be filing a supplemental certificate of service on the docket to reflect any additional service of the foregoing Motion, including on the Limited Service List.

Dated: Atlanta, Georgia  
September 16, 2024

**MCDERMOTT WILL & EMERY LLP**

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**EXHIBIT A**

**Proposed Order**

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

<p>In re:</p> <p>LAVIE CARE CENTERS, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Debtors.<sup>1</sup></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 24-55507 (PMB)</p> <p>(Jointly Administered)</p> <p><b>Related to Docket No. ____</b></p>
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**ORDER EXTENDING TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY PURSUANT TO 11 U.S.C. § 365(d)(4)**

Upon consideration of the motion (the “Motion”),<sup>2</sup> filed on September 16, 2024 at Docket No. \_\_, of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (this “Order”) extending the deadline by which the Debtors may assume or reject

<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.

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

non-residential real property leases pursuant to section 365(d)(4) of the Bankruptcy Code by 90 days through and including December 30, 2024, as set forth more fully in the Motion; 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 considered the Motion and all other matters of record; and the Court having determined that the legal and factual bases set forth in the Motion 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 as set forth herein.
2. Pursuant to Bankruptcy Code section 365(d)(4), the deadline under Bankruptcy Code section 365(d)(4) for the Debtors to assume or reject any Real Property Leases is hereby extended through and including December 30, 2024 (the “365(d)(4) Period”).
3. This Order shall be without prejudice to the Debtors’ rights to seek an extension of the 365(d)(4) Period with the consent of the affected Lessors.
4. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).
5. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

7. Counsel to the Debtors shall, within three days of the entry of this Order, cause a copy of this Order to be served by electronic mail or first-class mail, as applicable, on all parties served with the Motion and the attached distribution list, and shall, via their claims and noticing agent, promptly file a certificate of service reflecting the same.

END OF ORDER

Prepared and presented by:

/s/ Daniel M. Simon

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