

IN THE UNITED STATES BANKRUPTC COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re: ) Chapter 11  
)  
THOMAS HEALTH SYSTEM, INC., et al. ) Case No. 20-20007 (FWV)  
) (Jointly Administered)  
Debtors<sup>1</sup> )

**DEBTORS' SECOND MOTION FOR ENTRY AN ORDER  
EXTENDING THE TIME TO ASSUME OR REJECT  
UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY**

Thomas Health System, Inc. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby file this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), granting a thirty (30) day extension, through and including August 7, 2020, of time for the Debtors to assume or reject any of the leases, subleases or any other agreements to which the Debtors are lessees that may be considered an unexpired lease of nonresidential real property (the “Unexpired Leases”). In support of the motion, the Debtors state as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§157 and 1334. This is a core proceeding under 28 U.S.C. §157(b) and Debtors consent to entry of a final order by this Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this District pursuant to 28 U.S.C. §§1408 and 1409.

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Thomas Health System, Inc. (0674); Herbert J. Thomas Memorial Hospital Association (4900); Charleston Hospital, Inc. (2692); THS Physician Partners, Inc. (5947); and TMH Services, Inc. (6607).

3. The predicates for the relief sought are sections 365(d)(4)(B)(i) of Title 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) and Rule 9006-1 of the Local Rules of the United States Bankruptcy Court for the Southern District of West Virginia.

### **Factual Background**

4. On January 10, 2020 (the “Petition Date”),<sup>2</sup> each of the Debtors filed a voluntary petition for relief under chapter 11 the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. By order of this Court entered on January 12, 2020 (Docket No. 28), these Chapter 11 Cases are being jointly administered for procedural purposes only.

6. On January 29, 2020, the United States Trustee appointed an official committee of unsecured creditors in the Chapter 11 Cases. No trustee or examiner has been appointed.

7. A full description of the Debtors’ business operations, corporate structures, capital structures, and reasons for commencing the Chapter 11 Cases is set forth in the *Declaration of Daniel J. Lauffer in Support of Chapter 11 Petitions and First Day Motions and Applications* (Docket No. 20) and the *Supplemental Declaration of Daniel J. Lauffer in Support of Additional First Day Motions and Applications* (Docket No. 41), which is incorporated herein by reference.

8. The Debtors operate two hospitals and provide care to thousands of residents in Charleston, West Virginia and surrounding counties. As part of their operations, the Debtors are party to numerous Unexpired Leases as of the Petition Date.

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<sup>2</sup> On May 22, 2020, TMH Services, Inc. filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By Order dated May 29, 2020 (Docket No. 713), the TMH Services, Inc. bankruptcy case in being jointly administered for procedural purposes only with the Chapter 11 Cases.

9. The Unexpired Leases include ground leases relating to Thomas Memorial Hospital as well as various physician offices and outpatient facilities.

10. On May 8, 2020, the Debtors filed their *Motion for Entry of an Order Extending the Time to Assume or Reject Unexpired Leases of Non-Residential Real Property* (Docket No. 681) requesting a sixty (60) day extension of time for the Debtors to assume or reject any Unexpired Leases (the “Assumption/Rejection Period”).

11. On May 15, 2020, the Court entered an Order extending the time within which the Debtors must assume or reject any Unexpired Leases to July 8, 2020 (Docket No. 688) (the “Extension Order”).

12. On June 18, 2020, the Debtors filed the *Debtors’ Disclosure Statement for Joint Chapter 11 Plan of Reorganization* (Docket No. 740) (as amended from time to time, the “Disclosure Statement”) and the *Debtors’ Joint Chapter 11 Plan of Reorganization* (Docket No. 741) (as amended from time to time, the “Plan”).

13. On June 19, 2020, the Debtors filed their *Motion for Entry of an Order (I) Granting Conditional Approval of the Debtors’ Disclosure Statement; (II) Consolidating the Disclosure Statement Hearing with the Plan Confirmation Hearing; (III) Establishing the Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan; (IV) Approving Form of Ballots, Voting Deadline, and Solicitation Procedures; and (V) Approving Form and Manner of Notice* (Docket No. 743), which is currently scheduled for hearing on July 8, 2020 at 1:30 p.m. (Docket No. 769).

14. The Plan provides for the assumption or rejection of the Unexpired Leases and executory contracts. (Plan, Art. V). Accordingly, the Debtors believe that it is premature to assume or reject the Unexpired Leases at this time. The Debtors desire to maintain flexibility with respect to the Unexpired Leases through the Plan confirmation process.

**RELIEF REQUESTED**

15. The Debtors seek entry of the Proposed Order extending the time for Debtors to assume or reject the Unexpired Leases. Specifically, the Debtors seek to extend the time by thirty (30) days, through August 7, 2020, without prejudice to their rights to seek further extensions.

16. Under section 365(d)(4) of the United States Bankruptcy Code, the Debtors have 120 days from the Petition Date to assume or reject Unexpired Leases, unless this period is extended. The Court may extend this deadline for up to an additional 90 days, and even longer upon consent of the lessors. The 120-day period established by section 365(d)(4)(A) to assume or reject leases on nonresidential real property expired on May 9, 2020, and was extended pursuant to the Extension Order to July 8, 2020.

17. The Court may extend the Assumption/Rejection Period upon motion by the debtor for “cause.” 11 U.S.C. 365(d)(4)(B)(i).

18. The term “cause” is not defined in the Bankruptcy Code. Courts have, however, cited a number of factors. *See In re Perfectlite Co.*, 116 B.R. 84 (Bankr. N.D. Ohio 1990). “A number of factors should be taken into account in determining whether or not cause exists for extending the [120]0-day period in subsection (d)(4): (a) Is the Lease a primary asset central to the reorganization? (b) Does the Debtor need additional time to act intelligently in making the judgment to assume or reject? (c) Is the lease in question one of a number of business properties whose acceptance or rejection requires additional time for study and determination? (d) Has the

Debtor complied with its post petition obligations under the Lease pursuant to section 365(d)(3)?  
(e) How will the Debtor's continued possession of the premises affect the Lessor?" *Id.* at 85-86.

19. The Debtors believe that the requested thirty (30) day extension of the Assumption/Rejection Period will not materially prejudice the Debtors' lessors since the requested additional time is not lengthy.

20. The Debtors, accordingly, aver that cause exists for the Court to grant the requested extension of the Assumption/Rejection Period for an additional thirty (30) days, through and including August 7, 2020, without prejudice to the Debtors' right to request further extensions of the deadline.

### **RESERVATION OF RIGHTS**

21. Nothing contained in this Motion should be construed as an admission that any particular instrument is or is not an Unexpired Lease. If the Court grants the relief sought, any and all of the Debtors' rights, claims and defenses with respect to characterizations of the instruments pursuant to section 365(d)(3) and 365(d)(4) of the Bankruptcy Code or otherwise are expressly reserved.

### **NOTICE**

22. The Debtors, with the assistance of their claims and noticing agent, will provide notice of this Motion pursuant to the Case Management Procedures approved by the Court (Docket. No. 87) to (i) the Core Parties, (ii) the 2002 List Parties and (iii) the lessors of Unexpired Leases identified on **Exhibit B**. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

23. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the extension of time to assume or reject the Unexpired Leases, and such other relief as may be deemed proper.

Dated: July 2, 2020

Respectfully Submitted

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# **EXHIBIT A**

IN THE UNITED STATES BANKRUPTC COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In re: ) Chapter 11  
)  
THOMAS HEALTH SYSTEM, INC., et al. ) Case No. 20-20007 (FWV)  
) (Jointly Administered)  
Debtors<sup>1</sup> )

**ORDER GRANTING DEBTORS' SECOND MOTION FOR  
ENTRY OF AN ORDER EXTENDING THE TIME TO ASSUME OR  
REJECT UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY**

Upon the motion (the "Motion") of the above captioned Debtors<sup>2</sup> for entry of an order extending the time within which the Debtors must assume or reject unexpired leases ("Unexpired Leases") of nonresidential real property and granting related relief, as set forth more fully in the Motion, and the Court having jurisdiction under 28 U.S.C. §§1408 and 1409, and consideration of the Motion and the relief requested being a core proceeding as defined by 28 U.S.C. §157(b), and due and proper notice having been given to the parties listed in the Motion, and the Court having determined that just cause has been established for the relief sought in the Motion, and it appearing that the relief sought in the Motion is in the best interest of the Debtors, their estates and creditors

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Thomas Health System, Inc. (0674); Herbert J. Thomas Memorial Hospital Association (4900); Charleston Hospital, Inc. (2692); THS Physician Partners, Inc. (5947); and TMH Services, Inc. (6607).

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

and upon it appearing that no other or further notice need be given, and sufficient cause having been established, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as forth therein.
2. The time within which Debtors must assume or reject the Unexpired Leases is extended through and including August 7, 2020.
3. Nothing in the Motion or this Order shall be deemed or construed as (a) an assumption or rejection of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or (b) an admission with respect to whether any of the Debtors' contracts or leases is an unexpired lease of nonresidential real property within the meaning of Section 365 of the Bankruptcy Code.
4. Notice of the Motion shall be deemed sufficient notice as to the Motion, and the notice requirements of the Bankruptcy Rules and Local Rules are satisfied by such notice.
5. This Order is without prejudice to the right of Debtors to request an additional extension of time to assume or reject the Unexpired Leases in accord with section 365(d)(4) of the Bankruptcy Code.
6. The Court retains exclusive jurisdiction as to all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Presented By:

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# **EXHIBIT B**

**Landlord Contacts Address**

City of South Charleston  
Office of the Mayor  
401 D St  
South Charleston, WV 25303

D&G Enterprises, LLC  
506 Chestnut Street  
South Charleston, WV 25309

Crystal Heatherman Bastin, M.D.  
4820 Kentucky Street  
South Charleston, WV 25309

Williams Scotsman, Inc.  
322-B Call Road  
Charleston, WV 25312

Donnally Street Partners, LLC  
4605 MacCorkle Avenue, S. W.  
South Charleston, WV 25309

Boustany Properties, LLC  
4702 Kanawha Avenue, S.E.  
Charleston, WV 25304

Donnally Street Partners, LLC  
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TMH Services, Inc.  
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