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Attorneys for the Chapter 11 Debtors and Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF WASHINGTON**

In re

ASTRIA HEALTH, *et al.*,

Debtors and Debtors
 in Possession.¹

Chapter 11
 Lead Case No. 19-01189-11
 Jointly Administered

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
 EXTENDING THE TIME TO ASSUME OR REJECT
 UNEXPIRED LEASES OF NONRESIDENTIAL REAL
 PROPERTY; DECLARATION OF JOHN M.
 GALLAGHER IN SUPPORT THEREOF**

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

**MOTION TO EXTEND TIME TO
 ASSUME/REJECT UNEXPIRED
 NONRESIDENTIAL LEASES**

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1 Astria Health, a Washington nonprofit public benefit corporation (“Astria”),
2 and the above-referenced affiliated debtors and debtors in possession (the
3 “Debtors”) under chapter 11 of title 11 of the United States Code, §§ 101 *et seq.*
4 (the “Bankruptcy Code”),² in these chapter 11 cases (the “Chapter 11 Cases”), by
5 and through the undersigned counsel of record, respectfully request the entry of an
6 order, pursuant to § 365(d)(4)(B)(i) granting a 90-day extension of the current 120-
7 day period to assume or reject the Debtors’ unexpired leases of nonresidential real
8 property from September 3, 2019 to December 2, 2019, and (ii) granting the
9 Debtors such other and further relief as is just. This extension is necessary because
10 the Debtors are not yet in a position to determine what leases will be necessary to
11 their plan of reorganization. Such an extension would be without prejudice to the
12 rights of the Debtors to seek further extensions of the time to assume or reject the
13 unexpired leases with the consent of the affected lessors as contemplated by
14 § 365(d)(4)(B)(ii).

15
16 ² All references to § herein are to sections of the Bankruptcy Code. All references
17 to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy
18 Procedure. All references to “LBR” are to provisions of the Local Bankruptcy
19 Rules of the United States Bankruptcy Court for the Eastern District of Washington
20 (the “Bankruptcy Court”).

21 **MOTION TO EXTEND TIME TO
ASSUME/ REJECT UNEXPIRED
NONRESIDENTIAL LEASES**

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1 **I. JURISDICTION AND VENUE**

2 The Court has subject matter jurisdiction to consider and determine this
3 Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant
4 to 28 U.S.C. § 157(b)(2). The Debtors consent to entry of final orders and
5 judgments by the bankruptcy judge. Venue is proper before this Court pursuant to
6 28 U.S.C. §§ 1408 and 1409.

7 The statutory predicates for the relief sought herein are § 365(a) and (d)(4)
8 and Bankruptcy Rule 6006.

9 **II. BACKGROUND**

10 **A. General Background**

11 1. On May 6, 2019 (the “Petition Date”), each of the Debtors filed a
12 voluntary petition for relief under the Bankruptcy Code. These Chapter 11 Cases
13 are being jointly administered before this Court. [Docket No. 10]. The Debtors are
14 operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

15 2. Debtor Astria, a Washington nonprofit corporation, is the direct or
16 indirect corporate member of several entities that make it the largest non-profit
17 healthcare system based in Eastern Washington. The Astria system is
18 headquartered in the heart of Yakima Valley, Washington, with operating hospitals
19 in Yakima, Sunnyside, and Toppenish, Washington.

1 3. The Astria system includes three hospitals: Astria Regional Medical
2 Center, a 214-bed hospital in Yakima, Washington (“Yakima”); Astria Sunnyside
3 Hospital, a 38-bed critical access hospital in Sunnyside, Washington (“Sunnyside”);
4 and Astria Toppenish Hospital, a 63-bed hospital in Toppenish, Washington
5 (“Toppenish,” and referred to collectively with Sunnyside and Yakima as the
6 “Hospitals”). In addition to collectively having 315 licensed beds, the Hospitals
7 have three active emergency rooms and a host of medical specialties. The Astria
8 system also has outpatient Astria Health Centers (14 medical clinics and 24
9 specialty clinics), the Ambulatory Surgical Center, Astria Hearing and Speech, and
10 Astria Home Health and Hospice.

11 4. The Astria system provides medical treatments to approximately
12 346,400 patients annually, including approximately 7,344 who spend at least one
13 night in its Hospitals during the year. Astria’s necessity to the health and welfare of
14 the people of the Yakima Valley is evidenced by several facts, including having the
15 only open-heart surgery, neurosurgery, and elective cardiac catheterization
16 programs in Yakima County; the only hospitals in Sunnyside and Toppenish,
17 Washington; and the only obstetric services in the Lower Valley (both at Sunnyside
18 and Toppenish).

19 5. The system employs approximately 1,547 employees (making it one of
20
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1 the largest employers in the Yakima Valley), plus an additional 172 contract
2 personnel, and approximately 600 doctors have privileges at the Hospitals.

3 6. On May 24, 2019, the Office of the United States Trustee (the “U.S.
4 Trustee”) appointed an Official Committee of Unsecured Creditors in these Chapter
5 11 Cases.

6 7. Additional background facts on the Debtors, including an overview of
7 the Debtors’ business, information on the Debtors’ capital structure, and events
8 leading up to these Chapter 11 Cases, are contained in the *Declaration of John M.*
9 *Gallagher in Support of Emergency First Day Motions* [Docket No. 21] (the “First
10 Day Declaration”).

11 **B. Progress in theses Chapter 11 Cases**

12 8. As discussed in the First Day Declaration, prior to the bankruptcy
13 filing, Astria contracted with a vendor (the “Vendor”) to provide a new system-
14 wide Electronic Health Record platform for ambulatory and inpatient services for
15 all three Hospitals and their clinics. First Day Declaration, ¶ 55. Shortly thereafter,
16 Astria also contracted with the Vendor for the outsourcing of its revenue cycle,
17 billing and collection functions and extended business office services. *Id.* In
18 connection with the system conversion and the outsourcing of its revenue cycle
19 functions, Astria has experienced certain unexpected challenges including, among
20

1 other things, a significant decline in cash flow from collections on accounts
2 receivable. *Id.*

3 9. Since these Chapter 11 Cases have been filed, the Debtors have
4 continued to generate substantial receivables. The Debtors are in the process of
5 transitioning from the Vendor to a new revenue cycle firm to accelerate collection
6 of the Debtors' significant accounts receivable and oversee the Debtors' revenue
7 cycle, billing and collection functions. The Debtors have retained GAFFEY
8 Healthcare ("Gaffey") to address the systems, cash flow and collections issues
9 experienced in connection with its system conversion and revenue cycle
10 outsourcing to Vendor. Gaffey is in the process of stabilizing collections of
11 outstanding receivables in tranches.

12 10. The transition of the management of the Debtors' revenue cycle,
13 billing and collection functions from the Vendor to Gaffey is 95% complete. To
14 complete the transition, the Debtors need the Vendor to complete certain system
15 updates and provide more data as requested by the Debtor and Gaffey. The Debtors
16 hope to complete this transition in the near future.

17 11. Once this transition is complete and Gaffey is solely managing these
18 functions, the Debtors believe that they will begin to meet or exceed their
19 collections projections. However, the aged receivables have not yet been fully
20 collected.

1 12. On July 16, 2019, the Debtors filed an application to retain Piper
2 Jaffray & Co. ("Piper") to serve as the investment banker to the Debtors and assist
3 in, among other things, obtaining exit financing (the "Piper Application"). [See
4 Docket No. 394]. The Debtors received only one objection to the Piper
5 Application, which was filed by the U.S. Trustee [Docket No. 529], and a hearing
6 on the Piper Application is scheduled for September 10, 2019 [Docket No. 526].
7 Meanwhile, Piper is already working on securing a lender to provide exit financing
8 to the Debtors.

9 **C. The Nonresidential Real Property Leases**

10 13. Individual Debtors are currently lessees under multiple non-residential
11 real-property leases necessary for the operation of the Debtors' business, notably
12 their medical clinics (the "Leases"). The Debtors continue to utilize leased space
13 under the Leases.

14 14. Pursuant to § 365(d)(4), the Debtors' current deadline to assume
15 unexpired leases of nonresidential real property to which a Debtor is the lessee is
16 September 3, 2019. However, the Debtors have not yet made a determination
17 regarding assumption or rejection thereof.

18 15. The Debtors seek an extension of their current deadline with respect to
19 these Leases in order to provide them with time to make a decision regarding
20 assumption or rejection and to move forward with other aspects of these Chapter 11

1 Cases. For example, the Debtors need to complete the transition of their collection
2 vendor before they will be in a position to file a plan of reorganization, which they
3 have not been able to do by the current § 365(d)(4) September 3, 2019 deadline.
4 The Debtors are current on postpetition rent under the Leases and intend to honor
5 their obligations under the Leases until such time as an order is entered providing
6 for their assumption or rejection.

7 **III. ARGUMENT**

8 Bankruptcy Code § 365(d)(4)(A) provides that a debtor is automatically
9 deemed to reject nonresidential real property leases to which it is a party by the
10 earlier of 120 days from the petition date or the date on which a bankruptcy court
11 confirms a plan of reorganization. 11 U.S.C. § 365(d)(4)(A). However,
12 § 365(d)(4)(B) provides that a bankruptcy court may extend the applicable period to
13 assume or reject unexpired nonresidential real property leases for ninety days on the
14 motion of a debtor “for cause.” A pending motion (such as this Motion) seeking an
15 extension under § 365(d)(4)(B) extends the debtor’s deadline to assume or reject a
16 nonresidential lease until the Court rules on the motion. *In re Victoria Station Inc.*,
17 840 F.2d 682, 684 (9th Cir. 1988); *In re Sw. Aircraft Servs., Inc.*, 831 F.2d 848, 853
18 (9th Cir. 1987).

19 Courts have recognized the benefits to granting additional time under §
20 365(d)(4). *See In re Channel Home Ctrs., Inc.*, 989 F.2d 682, 687 88 (3d Cir.

1 1993); *In re GST Telecom Inc.*, 2001 WL 686971 (D. Del. June 8, 2001). As the
2 Third Circuit Court of Appeals stated, “nothing prevents a bankruptcy court from
3 granting an extension because a particular debtor needs additional time to determine
4 whether the assumption or rejection of particular leases is called for by the plan of
5 reorganization that it is attempting to develop.” *Channel Home Ctrs.*, 989 F.2d at
6 689. The Ninth Circuit Court of Appeals has also noted that bankruptcy courts
7 often grant these extensions. *See In re Circle K Corp.*, 127 F.3d 904, 909 (9th Cir.
8 1997).

9 Generally, courts consider the following non-exclusive factors to determine
10 “cause” (undefined under the Bankruptcy Code) for purposes of § 365(d)(4):

11 (1) whether the leases are an important asset of the estate such that the
12 decision to assume or reject would be central to a plan of reorganization;

13 (2) whether the cases are complex and involve large numbers of leases;

14 (3) whether the lessor continues to receive postpetition rental payments;
15 and;

16 (4) whether the debtor has had insufficient time to develop a plan.

17 *South St. Seaport L. P. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755,
18 760-61 (2d Cir. 1996); *In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y.
19 1987); *Channel Home Ctrs.*, 989 F.2d at 689 (“[I]t is permissible for a bankruptcy
20 court to consider a particular debtor’s need for more time in order to analyze leases

1 in light of the plan it is formulating.”) (citing *Wedtech*, 72 B.R. at 471-72).

2 Here, the Debtors submit that sufficient “cause” exists for the requested
3 extension and that all four cause factors are met.

4 First, the Debtors deliver significant health care to the Yakima Valley
5 through the Leases on which many of the Debtors’ clinics operate. Through those
6 clinics, the Debtors deliver primary care and specialty physician services. The
7 Debtors cannot lose these clinics at this stage of the Chapter 11 Cases as it will
8 affect the Debtors’ efforts to reorganize. Thus, the Leases are an important asset of
9 the estate such that the decision to assume or reject may well be central in a plan of
10 reorganization.

11 Second, the Debtors’ cases are complex and involve multiple hospital
12 systems and over tens of millions of dollars in likely claims.

13 Third, the Debtors’ requested extension of time to assume or reject the
14 Leases will not prejudice the Debtors’ landlords. The Debtors are current on their
15 postpetition rent and intend to honor their obligations under the Leases until such
16 time as an order is entered providing for their assumption or rejection.

17 Fourth, the Debtors are still involved in several complex dealings in the
18 Chapter 11 Cases, including those involving accounts receivable collection and Exit
19 Financing, which the Debtors believe should be resolved so the Debtors can
20 formulate and file a plan in these Chapter 11 Cases.

Moreover, the Debtors seek an extension to provide the Debtors with time to make a decision regarding assumption or rejection in order to proceed with their Chapter 11 process. The Chapter 11 Cases only commenced 120 days ago and this is the first request for an extension of this deadline. Additionally, the Debtors recently filed a request for a 60-day extension of the deadline for termination of exclusivity with regard to filing a plan of reorganization [Docket No. 476] and all the major parties in interest in the Chapter 11 Cases had agreed to such an extension. Extending this deadline is consistent with giving the Debtors more time to formulate a plan of reorganization.

IV. CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court grant the Motion and enter an order, pursuant to § 365(d)(4), granting a 90-day extension of the current 120-day period (ending on September 3, 2019) to assume or reject the unexpired leases to December 2, 2019, without prejudice to the rights of the Debtors to seek further extensions of the time to assume or reject the unexpired leases with the consent of the affected lessors as contemplated by § 365(d)(4)(B)(ii), and grant such further relief as the Court deems appropriate.

1 Dated: September 3, 2019

DENTONS US LLP

2 /s/ Samuel R. Maizel
3 SAMUEL R. MAIZEL (Admitted *Pro Hac Vice*)
4 SAM J. ALBERTS (WSBA #22255)

5 BUSH KORNFELD LLP
6 JAMES L. DAY (WSBA #20474)

7 Attorneys for the Chapter 11 Debtors and
8 Debtors In Possession
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**MOTION TO EXTEND TIME TO
ASSUME/ REJECT UNEXPIRED
NONRESIDENTIAL LEASES**

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1. I am the President and Chief Executive Officer (“CEO”) of Astria Health (“Astria”). I am employed by AHM, Inc. (“AHM”), a nondebtor entity that provides management services to Astria and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”).

3. Individual Debtors are currently lessees under multiple non-residential real-property leases necessary for the operation of the Debtors' business, notably their medical clinics (the "Leases").

5. The Debtors seek an extension of their current deadline with respect to these Leases in order to provide the Debtors with time to make a decision regarding assumption or rejection and to move forward with other aspects of these Chapter 11 Cases. For example, the Debtors need to complete the transition of their collection

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1 vendor before they will be in a position to file a plan of reorganization, which they
2 have not been able to do by the current September 3, 2019 deadline to assume or
3 reject the Leases.

4 6. This extension is necessary for several reasons:

5 7. First, the Debtors deliver significant health care to the Yakima Valley
6 through the Leases on which many of the Debtors' clinics operate. Through those
7 clinics, the Debtors deliver primary care and specialty physician services. The
8 Debtors cannot lose these clinics at this stage of the Chapter 11 Cases as it will
9 affect the Debtors' efforts to reorganize. Thus, the Leases are an important asset of
10 the estate such that the decision to assume or reject may well be central in a plan of
11 reorganization.

12 8. Second, the Debtors' cases are complex and involve multiple hospital
13 systems and over tens of millions of dollars in likely claims.

14 9. Third, the Debtors' requested extension of time to assume or reject the
15 Leases will not prejudice the Debtors' landlords. The Debtors are current on their
16 postpetition rent and intend to honor their obligations under the Leases until such
17 time as an order is entered providing for their assumption or rejection.

18 10. Fourth, the Debtors are still involved in several complex dealings in
19 the Chapter 11 Cases, including those involving accounts receivable collection and
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21 **DECLARATION IN SUPPORT OF MOTION
TO EXTEND TIME TO ASSUME/
REJECT UNEXPIRED
NONRESIDENTIAL LEASES**

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1 Exit Financing, which the Debtors believe should be resolved so the Debtors can
2 formulate and file a plan in these Chapter 11 Cases.

3 11. Moreover, the Debtors seek an extension to provide the Debtors with
4 time to make a decision regarding assumption or rejection in order to proceed with
5 their Chapter 11 process. The Chapter 11 Cases only commenced 120 days ago and
6 this is the first request for an extension of this deadline. Additionally, the Debtors
7 recently filed a request for a 60-day extension of the deadline for termination of
8 exclusivity with regard to filing a plan of reorganization and all the major parties in
9 interest in the Chapter 11 Cases had agreed to such an extension. Extending this
10 deadline is consistent with giving the Debtors more time to formulate a plan of
11 reorganization.

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21 **DECLARATION IN SUPPORT OF MOTION
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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3
4 Dated: September 3, 2019

ASTRIA HEALTH

5 By: 
6 John M. Gallagher
Chief Executive Officer

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21 **DECLARATION IN SUPPORT OF MOTION
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