UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	Case No. 18-07762-JJG-11
FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC. d/b/a FAYETTE REGIONAL HEALTH SYSTEMS, Debtor.	)	

OMNIBUS MOTION FOR ORDER AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES

Fayette Memorial Hospital Association, Inc., d/b/a Fayette Regional Health Systems ("**Fayette**" or the "**Debtor**") by the undersigned proposed counsel, herby files its Motion, pursuant to Sections 105(a) and 365 of Title 11 of the United States Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure, for entry of an order fixing cure amounts, and authorizing the Debtor to assume and assign certain executory contracts and leases to the Successful Bidder(s). In support of the Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. On October 10, 2018 (the "**Petition Date**"), the Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**").

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

BACKGROUND FACTS RELEVANT TO THIS MOTION

3. The Debtor is an Indiana not-for-profit corporation that does business as Fayette Regional Health Systems. [¶ 3, *Declaration of Samantha Bell-Jent in Support of First Day Motions* – DN17 (the "**1st Day Declaration**").

4. The Debtor operates a 112-bed acute care hospital, and provides both inpatient, outpatient, emergency, and other ancillary services from its locations in Connersville, Fayette County, Indiana. The hospital and the primary business operations of the Debtor are located at 1941 Virginia Avenue, Connersville, Indiana 47331. [¶ 4, 1st Day Declaration]

5. The Debtor provides both inpatient and outpatient services ranging from the typical hospital services to more specialized services. Services include: Physical Therapy & Rehabilitation, Ambulatory Care, Express Care, Hospice, Hospitalist services, Laboratory, Pharmacy, Pediatrics, Sleep Lab, Pain Management, Primary Care, Surgical Care, Pulmonology, ENT, Child/Adolescent Behavioral Health, Medical Detoxification, Dermatology, Cancer Care, Facial & Cosmetic procedures, Diagnostic Imaging, Emergency Care, Fitness & Wellness, Heart Care, and Women's Health. [¶ 10, 1st Day Declaration]

6. As of the Petition Date, the Debtor was party various contracts and agreements which may be deemed executory contracts and leases within the meaning of 11 U.S.C. § 365 (the "**Contracts and Leases**"). The Contracts and Leases that have not been previously rejected by the Debtor are identified on the attached Exhibit A.

7. On or about March 1, 2019, the Debtor filed its *Motion for Orders: (A) Scheduling a Bid Procedures Hearing; (B) Authorizing and Approving Bid Procedures and Approving Notice of Sale Hearing; and (C) Authorizing the Sale of Substantially all of the Debtor's Assets Fee and Clear of Claims, Liens, Rights, Interests and Encumbrance*s [DN 268] (the "**Sale Motion**") by which the debtor seeks to facilitate a sale of substantially all of the Debtor's assets (the "**Sale**") to one or more Successful Bidder(s) (as defined in the Sale Motion).

8. The Debtor files this Motion as a companion to the Sale Motion and seeks to fix cure amounts for each of the Contracts and Leases (the "**Cure Obligations**"), and authorize the Debtor to assume and assign certain of the Contracts and Leases to a Successful Bidder as part of the Sale, subject to election by the Successful Bidder to assume a particular agreement, and the Successful Bidder(s)' obligation to pay the Cure Obligations applicable to any assumed Contract or Lease.

RELIEF REQUESTED BY THIS MOTION

9. By this Motion, the Debtor seeks entry of an Order: (1) fixing the Cure Obligations for each of the Contracts and Leases in the amounts set forth on the attached Exhibit A; and (2) authorizing the Debtor to assume and assign certain of the Contracts and Leases to a Successful Bidder as part of the Sale, subject to: (a) election by the Successful Bidder to assume a particular Contract or Lease; and (b) the Successful Bidder(s)' obligation to pay the Cure Obligations applicable such assumed Contract or Lease.

BASIS FOR RELIEF REQUESTED

10. Section 365(a) of the Bankruptcy Code provides that a debtor "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365. The assumption or rejection of an unexpired lease or executory contract by a debtor is subject to review under the business judgment standard. In applying the "business judgment" standard, courts show great deference to a debtor's decision to reject. See *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (finding that absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

11. Section 365 requires that if there has been a default under the executory contract or unexpired lease, in order to assume that agreement, the debtor must provide adequate assurance that the default will be cured and provide adequate assurance of future performance under the terms of the agreement. 11 U.S.C. § 365(b)(1).

12. By this motion, the Debtor seeks to fix the Cure Obligations on each of the Contracts and Leases to determine the amount necessary to cure any defaults.

13. Additionally, the words "adequate assurance of future performance" must be given a "practical and pragmatic construction" in light of the existing facts and circumstances. *See, In re Fleming Cos., Inc.*, 499 F. 3d 300, 307 (3d Cir. 2007). "Although no single solution will satisfy in every case, the required assurance will fall considerably short of an absolute guaranty of performance." *In re: Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985).

14. Adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, In re: Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986). In the instant case, the Successful Bidder(s) will have demonstrated such financial health and experience in order to be designated as a Qualified Bidder (as defined in the Sale Motion). Section 3(J) of the proposed Bid Procedures require that a bidder provide adequate assurance of future performance information.

15. The Contracts and Leases are identified on Exhibit A, together with the proposed Cure Obligation for each such agreement.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order: (1) fixing the Cure Obligations for each of the Contracts and Leases as set forth on Exhibit A; and (2) authorizing the Debtor to assume and assign certain of the Contracts and Leases to a Successful Bidder as part of the Sale, subject to: (a) election by the Successful Bidder to assume a particular Contract or Lease; and (b) the Successful Bidder(s)' obligation to pay the Cure Obligations applicable such assumed Contract or Lease.

Respectfully submitted this 22nd day of March, 2019,

/s/ Wendy D. Brewer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion* was filed electronically this 22nd day of March, 2019. Notice of this filing will be sent to all parties registered to receive such notice by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system. Notice of this motion is also being served by U.S. Mail to the counter parties to the Contracts and Leases identified on Exhibit A.

/s/ Wendy D. Brewer
Wendy D. Brewer (#22669-49)

In re: Fayette Memorial Hospital Association, Inc.

Exhibit A to Motion to Authorize Assumption and Assignment of Executory Contracts an

Name	Description	Cure Obligation
ADP	ADP Workforce Now Payroll and Time Services Agreement dated 12/14/17	$11,137.40
Advanced Data Systems Corp.	ADS Comprehensive InPatient Mental Health ASP Solution Agreement - dated 12/28/17 ($3,980/mo) - 36 months.	$15,800.00
Alliant Purchasing, LLC	Medical supplies purchase and distribution agreement with Cardinal Health, through Alliant Purchasing, LLC, originally dated 1/1/06.	$0.00
Alpha Imaging	Service Agreement for Selenia Dimensions 3D 6000 package- dated 03/04/17 $18909.00/quarterly.	$18,909.00
Amanda Keipper, N.P.	Nurse Practitioner Agreement	$0.00
American Health Network	Oncology Services Agreement dated May 5, 2010.. Contract for inpatient and outpatient oncology services.	$168,000.00
American Telepsychiatry Associates, LLC	Professional Services Agreement, Fayette Regional Health System - North Star Recovery dated 8/10/18. Agreement to provide physicians and other qualified providers to assess and evaluate prospective patients for the North Star Recovery program, and to provide psychiatric and medical services for program patients.	$0.00
American Telepsychiatry Associates, LLC	Professional Services Agreement Fayette Regional Health System - Adolescent Detox executed 8/7/18. Agreement to provide physicians and other qualified providers to assess and evaluate prospective patients for the adolexcent detoxification program, and to provide psychiatric and medical services for program patients.	$0.00
Associated Bank, N.A.	Lease of VitalBeam Radiotherapy System, et al. - dated 4/6/17 - $25,111/month (and $500,000 down payment) - FMV buyout option. Assigned from Leasing Associates of Barrington.	$0.00
Athenahealth, Inc.	AthenaHealth Master Services Agreement for billing and collection services dated September 29, 2017.	$30,611.16
Azubike Nwokedi, N.P.	Nurse Practitioner Agreement	$0.00

Name	Description	Cure Obligation
Baxter Healthcare	Baxter Healthcare/Fayette Regional Health System Letter of Participation dated 09/04/13.	$9,145.39
Canon Financial Services, Inc.	Lease of Copiers and Printers. $10,511.66/monthly. FMV purchase option at end of lease.	$12,478.07
Cardinal Healthcare, Inc.	Medical supplies purchase and distribution agreement, through Alliant Purchasing, LLC, originally dated 1/1/06.	$16,180.53
Carefusion Solutions, Inc.	84 month Rental and Support Agreement dated 2/26/18.	$72,230.00
Centers for Medicare & Medicaid Services	Provider Agreement	$0.00
CIT	Lease agreement dated 6/21/11 for Baxter IV Pump System with FMV purchase option. Monthly rent of $4,684.96 - 60 months, then addendum extending for 2 years (with $101 end of term buyout option).	$0.00
Claimaid	Eligibility Services Agreement dated 10/7/08, as amended. Patient Medicaid eligilbity processing and screening services. 1 year renewable terms.	$41,132.00
Dell Financial Services L.L.C.	Master Lease Agreement - No. 54197-2763. For computer equipment and software. Dated effective 6/24/14.	$0.00
Dennis K. Zawadski, M.D.	Physician Professional Services Agreement dated 9/15/14, as amended 9/16/16. Respiratory Services Medical Director Agreement dated 1/29/15.	$19,450.00
Emergency Staffing Solutions	Coverage Services Agreement dated October 8, 2018. To provide emergency department physician staffing services. 3 Year term from 11/1/18 with 1 year renewal terms.	$0.00
Fayette County EMS	Lease of 212 W. 20th Street, Connersville, IN 47331 to Fayette County EMS - $600/mo. Debtor is landlord.	$0.00
Fayette Regional Health System Pain Mgmt	Lease Agreement for office and clinic space at 1941 Virginia Ave originally dated 9/1/15, Amended 1/1/17. Debtor is landlord.	$0.00

Name	Description	Cure Obligation
First Midwest Bank	Originally with Leasing Associates of Barrington assigned to First Midwest Bank - Lease of Mammography Equipment - 60 months - $10,579/month. Dated 3/24/17 - typo corrected by addendum). FMV buyout option. Addendum dated 9/17/17 adding Konica Radiology Detectors, et al. - increased payment to $14,020/mo.	$0.00
Hospital Care Consultants	Hospitalist Services Agreement	$0.00
IARCA	IARCCA Membership Software License Agreement dated 2009 - softward license agreement for EON Software.	$0.00
India Samuels, N.P.	Nurse Practitioner Agreement	$0.00
Joseph Webster M.S.	Physicist Services Agreement. Independent contractor agreement with Joseph Webster M.S. to provide radiation therapy physics services. Dated 8/1/18 for a 1 year term, renewable for 1 year terms through 7/31/21.	$46,231.48
Jules & Associates	On assignment from NEC Corporation. Lease of phone equipment. Dated 3/23/12.	$18,739.00
Koorsen Fire & Security	Agreement for required fire extinguisher, hood, fire alarm, and sprinkler inspection services. Dated 3/24/16.	$5,860.93
McKesson Health Solutions, LLC	License Agreement dated 3/8/08 for software, clinical content, and services provided by McKesson to Debtor.	$5,372.59
Medline Industries, Inc.	Medline Industries, Inc./Fayette Regional Health System Corporate Program Agreement dated 2/19/18.	$181,192.02
Nancy Hinds, N.P.	Nurse Practitioner Agreement	$0.00
NEC Corporation of America	Fixed Price Statement of Work for upgrade of NEC Based PBX Voice Network	$0.00
Northwest Radiology Network	Agreement for Physician Services dated 4/1/17. To provide phyisician services for patients in need of certain radiological services and procedures. 2 Year term, with renewable 1 year terms..	$148,641.86
Orchard Software Corporation	Orchard Software Corporation Laboratory Information System Purchase Agreement for Fayette Regional Health System dated 10/27/17. Termination on mutual agreement or upon 30 days notice for cause.	$16,579.91

Name	Description	Cure Obligation
Philips Healthcare	Phillips RightFit Service Agreement - for MRI Service. Dated 9/15/17 for 48 months. $8,366/month.	$33,464.00
Philips Healthcare	Phillips RightFit Service Agreement - for CT Service Dated 11/26/13 for 60 months. $8,024/month	$32,096.00
Philips Healthcare	Phillips RightFit Service Agreement - for iU22 Ultrasound system $2,485/month	$4,970.00
Philips Healthcare	Phillips RightFit Service Agreement - for iE33 Ultrasound system $2,485/month	$4,970.00
Pitney Bowes	Postage Machine Lease Agreement Dated 08/29/13	$6,099.04
Sheryl Myers Bookkeeping	Lease of 1936 Virginia Ave., Connersville, IN 47331 to Sheryl Myers Bookkeeping. $450/mo. Debtor is Landlord.	$16,268.35
Shiv Kapoor	Rental Agreement	$0.00
Shred-It	Paper Shredding Lease Agreement Dated 05/09/16	$852.18
Siemens Medical Solutions USA	Gold Contract Service Agreement for SIemens Symbia S. Dated 1/20/18. 60 months. $39,044 annually, but billed monthly.	$35,712.66
SIHO Insurance Services	Facility Agreement with Southeastern Indiana Health Operations/Organization, Inc., and SIHO Network, Inc., as Amended. Self-insured medical claims processing services.	$0.00
St. Vincent Medical Group	Timeshare Lease Agreement 1st Floor Cardiology Space to St. Vincent. $2,559.42/month (dated 5/30/15 for renewable 1 years terms) - Debtor is Landlord	$0.00
St. Vincent Medical Group	Telemedicine Services Agreement - to provide telemedicine consultations by specialist physicians for Debtor's patients (Dated 6/15/15 for renewable 1 year terms)	$0.00
St. Vincent Medical Group	Support Staff Lease Agreement - lease of support staff services from Debtor (dated 5/30/15 for renewable 1 year terms)	$0.00
St. Vincent Medical Group	Agreement for Medical Director Services - to provide cardiologists as medical directors for Debtor (dated 9/5/11 for 2 years with renewable 1 year terms)	$0.00

Name	Description	Cure Obligation
St. Vincent Medical Group	Exclusive Agreement for Cardiology Services (dated 9/5/11 for 2 years with renewable 1 year terms)	$0.00
TGX Medical	Alex Gold v7 Support Software Agreement dated 12/11/13	$4,950.00
Universal Linen	Medical COG Service Agreement Dated 01/28/19	$12,282.02
UPS	Carrier Agreement dated 03/14/09	$344.57
US Foods, Inc.	Use of Equipment Agreement - undated, lacks description of equipment or fee obligations.	$107,055.28
Varian Medical Systems, Inc.	Vitalbeam Radiotherapy Essentials agreement - 5 year term - dated 1/9/17	$283,600.00