

WEBBER MCGILL LLC

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	:	(Hon. John K. Sherwood)
	:	
FLORHAM PARK SURGERY CENTER, LLC	:	Chapter 11
	:	Case No. 16-16964 (JKS)
Debtor.	:	
	:	

APPLICATION PURSUANT TO D.N.J. LBR 9021-1(b) IN LIEU OF MOTION TO APPROVE CONSENT ORDER FURTHER EXTENDING TIME IN WHICH TO ASSUME OR REJECT LEASE OF NONRESIDENTIAL REAL PROPERTY

TO: HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE

Florham Park Surgery Center, LLC (the “**Debtor**”), the above-captioned debtor and debtor-in-possession, submits this application in lieu of motion (the “**Application**”) for entry of a consent order pursuant to 11 U.S.C. §365(d)(4)(B) further extending the time within which the Debtor may assume or reject a lease between the Debtor and its landlord, Hanover Associates (the “**Landlord**”) for use and occupancy of certain nonresidential real property. In support of the Application, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

GENERAL BACKGROUND

3. On April 11, 2016 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of New Jersey (the "**Bankruptcy Court**"), thereby commencing the above-captioned bankruptcy case (the "**Bankruptcy Case**").

4. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. On or about May 12, 2016, the Office of the United States Trustee formed an official committee of unsecured creditors, pursuant to section 1102 of the Bankruptcy Code.

6. Information regarding the Debtor's business and the circumstances leading to the commencement of this Bankruptcy Case is set forth in the Certification of Kishor D. Solanki (the "**Solanki Certification**") submitted in the support of the Debtor's first day motions, filed with the Court on April 19, 2016 at Docket No. 20.

7. As set forth in the Solanki Certification, the Debtor and Hanover Associates are parties to a certain Agreement of Lease dated October 30, 2007, as amended by that certain First Amendment of Agreement of Lease dated as of October 1, 2008, and as further amended by that certain Second Amendment of Agreement of Lease dated February 2, 2009 (collectively, the "**Lease**").¹

8. Pursuant to the Lease, the Debtor leases the real property commonly known as 83 Hanover Road in Florham Park, New Jersey, from which the Debtor conducts its business as a surgery center.

¹ The Lease is voluminous and is available upon request from the Debtor's undersigned counsel. Alternatively, a copy of the Lease is attached to Hanover Associates' proof of claim, filed on the claims register of this Bankruptcy Case as claim number 13.

9. By Order dated August 4, 2016, this Court extended the time within which the Debtor may assume or reject the Lease, through and including November 7, 2016.

10. By subsequent Order dated November 7, 2016, the Court further extended the time within which the Debtor may assume or reject the Lease, through and including February 15, 2017.

RELIEF REQUESTED AND REASONS THERFOR

11. By this Motion, the Debtor respectfully requests entry of a proposed consent order (the "**Consent Order**") submitted herewith, agreed to between the Debtor and Hanover Associates, further extending the time within which the Debtor may assume or reject the Lease, through March 17, 2017.

12. Section 365(d)(4) of the Bankruptcy Code provides, in pertinent part, that an unexpired lease of nonresidential real property is deemed rejected unless assumed within 120 days after the order for relief, unless, within that 120 day period, the court extends such period. See 11 U.S.C. § 365(d)(4).

13. As noted above, this Court previously extended the initial 120 day period under section 365(d)(4)(B)(i) through and including February 15, 2017.

14. Pursuant to section 365(d)(4)(B)(ii), the Court may, with Hanover Associates' written consent, further extend the time within which to assume or reject the Lease. See 11 U.S.C. § 365(d)(4)(B)(ii).

15. In this case, absent such extension, the Lease will be deemed rejected after February 15, 2017, unless the Debtor assumes the Lease by that date.

16. During this case, the Debtor attempted to stabilize operations following the prepetition mismanagement described in the Solanki Certification. Further, and importantly, the

Debtor is in the midst of negotiating bankruptcy exit strategies with various creditor constituencies. The Lease is a primary asset of the Debtor and any decision to assume or reject the Lease is likely to be central to any plan of reorganization which the Debtor may file. Under the terms of the proposed Consent Order, the Debtor would be obligated to file a plan on or before February 24, 2017.

17. The Debtor submits that a further extension of the time within which to assume or reject the Lease is in the best interests of all parties in interest.

18. Based on the foregoing, the Debtor submits that good cause exists for entry of the Consent Order.

19. As no novel issues of law are raised by the Motion, and the relevant authorities relied upon by the Debtor are set forth herein, the Debtor respectfully requests that the requirement under D.N.J. LBR 9013-2 of filing a brief be waived.

WHEREFORE, the Debtor respectfully requests that the Court enter an order granting the Application and entering the Consent Order, and granting such other and further relief as the Court deems just and proper.

WEBBER MCGILL LLC
Attorneys for Debtor-in-Possession

By: /s/ Douglas J. McGill
Douglas J. McGill

Dated: February 6, 2017
Whippany, New Jersey