

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

MIDWEST CHRISTIAN VILLAGES, INC.
et al.,¹

Debtors.

Chapter 11

Case No. 24-42473-659

(Jointly Administered)

Hearing Date: November 6, 2024
Hearing Time: 10:00 a.m. (CT)
Hearing Location: Courtroom 7 North

**DEBTORS' MOTION FOR AUTHORITY TO EXTEND THE TIME TO ASSUME OR
REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

The above-captioned debtors and debtors-in-possession (the “Debtors”), by and through their proposed counsel, respectfully state as follows in support of this motion (the “Motion”):

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order pursuant to § 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”) granting (a) an extension of the period of time to assume or reject the Leases (as defined below) for an additional ninety (90) days up to and including February 11, 2025 (the “Assumption/Rejection Deadline”) and (b) related relief. Such

¹ The address of the Debtors headquarters is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors' federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living, LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Wabash Estates, LLC [8743], (xviii) Safe Haven Hospice, LLC [6886], (xix) Heartland Christian Village, LLC [0196], (xx) Midwest Senior Ministries, Inc. [3401]; (xxi) Shawnee Christian Nursing Center, LLC [0068]; and (xxii) Safe Haven Hospice, LLC [6886].



an extension would be without prejudice to the Debtors' rights to seek further extensions with the consent of the affected landlord, as provided by § 365(d)(4)(B)(ii) of the Bankruptcy Code.

BACKGROUND

2. On July 16, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri (the "Court").

3. The Debtors continue in the operation and management of their business as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. The U.S. Trustee appointed an official committee of unsecured creditors (the "Committee") on August 8, 2024 [Docket No. 121].

4. A detailed description of the Debtors' business and the events leading up to the filing of these chapter 11 cases can be found in the *Declaration of Kathleen (Kate) Bertram in Support of the Debtors' Chapter 11 Petition and First Day Motions* [Docket No. 3] (the "First Day Declaration"), incorporated by reference herein.

5. The Debtors filed Chapter 11 cases to pursue one or more going concern sales and/or going concern affiliates for each of their facilities.

6. As further described in the *Notice of Proposed Stalking Horse Bidders and Stalking Horse Asset Purchase Agreements* [Docket No. 393] (the "Notice of Stalking Horse Bidders"), the Debtors selected Ambassador Healthcare LLC, CH Arcadia Holdco, LLC, RNG BEH CN CL MG LLC, and Ocean Healthcare Services LLC and Erez Senior Living, LLC as Stalking Horse Bidders for certain of the Debtors' facilities.

JURISDICTION AND VENUE

7. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

8. The statutory predicate for the relief sought herein is § 365(d)(4) of the Bankruptcy Code.

THE DEBTORS' LEASES

9. The Debtors currently lease certain nonresidential real properties, located at 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141 (the “2 Cityplace Lease”), 1112 Oak Street, Carmi, Illinois 62821 (the “Carmi Leases”)², and 112 W. Washington Street, Suite 2A, Monticello, IL 61856 (the “Monticello Lease”) (collectively, the “Leases”).

10. This Court has already approved the rejection of two (2) leases pursuant to the *Order Granting Debtors' Motion to Reject Certain Executory Contracts and Unexpired Leases* [Docket No. 161].

11. However, with respect to the Leases, the Debtors have determined that more time is necessary to determine whether to assume or reject. In particular, as noted above, the Debtors commenced these chapter 11 cases to pursue one or more going concern sales. While working through the sale process, the Debtors will need access to the Leases to continue to operate their business. As such, the Debtors are seeking an extension of the Assumption/Rejection Deadline in order to fully and effectively see through the sale process.

² The Debtor Midwest Christian Villages, Inc. is the lessor under the Carmi Leases. While § 365(d)(4) does not set a time limit for action in a case in which the debtor is the lessor of nonresidential real property, the Debtors are including the Carmi Leases in this Motion to be prudent.

BASIS FOR RELIEF

12. Section 365(d)(4) of the Bankruptcy Code provides both a 120-day window—and a discretionary 90-day extension—for the assumption or rejection of an unexpired nonresidential lease:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential property under which the debtor is the lessee shall be deemed rejected and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of

- (i) the date that is 120 days after the date of the order for relief; or
- (ii) the date of the entry of an order confirming the plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

11 U.S.C. § 365(d)(4). Thus, absent the relief requested herein, a debtor's lease that is not assumed within the initial 120 days of these chapter 11 cases and that is not the subject of a motion to assume such lease will be deemed rejected.

13. In determining whether cause exists to extend the time to assume or reject unexpired leases of nonresidential real property, courts have considered the following non-exhaustive factors:

- a. whether the debtor was paying for the use of the property;
- b. whether the debtors' continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
- c. whether the debtor has had sufficient time to formulate a plan of reorganization;
- d. whether the bankruptcy case is large; and
- e. the number of leases the debtor must evaluate.

See, e.g., In re S&M Food Servs., Inc., 117 B.R. 497, 498 (Bankr. E.D. Mo. 1990) *citing In re 611 Sixth Avenue Corp.*, 191 B.R. 295 (Bankr. S.D.N.Y. 1996); *see also In re Gateway Apparel, Inc.*,

210 B.R. 567, 57' (Bankr. E.D. Mo. 1997); *S. St. Seaport Ltd. P 'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761-62 (2d Cir. 1996) (citing *Theatre Holding Corp. v. Mauro*, 681 F.2d 102, 105-06 (2d Cir. 1982), and noting that the list of factors "is by no means exhaustive"); *In re Adelphia Commc'ns Corp.*, 291 B.R. 283, 293 (Bankr. S.D.N.Y. 2003).

14. Application of these factors to the circumstances of these chapter 11 cases demonstrates that cause exists to extend the Assumption/Rejection Deadline. The Debtors are undertaking a review of their books and records to determine whether the postpetition obligations under the Leases have been paid, and, if not paid, then pursuant to § 365(d)(3), the Debtors intend to pay such postpetition obligations. An extension will permit the Debtors to continue to operate their business effectively and potentially market the Leases to interested purchasers during the sale process. Accordingly, the Debtors need additional time to finalize and consummate their election to assume or reject the Leases.

15. Pending the Debtors' assumption or rejection the Leases, the Debtors will have performed, and will continue to perform, in a timely fashion all of their obligations under the Leases due from and after the Petition Date to the extent required by § 365(d)(3) of the Bankruptcy Code. No party in interest will be prejudiced by the relief requested in this Motion. Accordingly, the relief requested in the Motion should be granted.

16. For the foregoing reasons, an extension of the Assumption/Rejection Deadline as to the Leases to February 11, 2025, is necessary, appropriate, and in the best interest of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should authorize the extension.

RESERVATION OF RIGHTS

17. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in any order granting this Motion is intended or should be construed as (i) an assumption or rejection of the Leases under § 365(a) of the Bankruptcy Code or (ii) an admission by the Debtors that a particular instrument is or is not a true lease. If the Court grants the relief sought herein, any and all of the Debtors' rights, claims, and defenses with respect to the characterization of the Leases under §§ 365(d)(3) and 365(d)(4) of the Bankruptcy Code or otherwise are expressly reserved.

NO PREVIOUS REQUEST

18. No previous application for the relief sought herein has been made to this or any other Court.

NOTICE

19. This Motion and notice of this Motion will be served respectively on Master Service List, Master Notice List, and the counterparties to the Leases. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein, together with such other and further relief as the Court deems just and proper.

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Dated: October 15, 2024
St. Louis, Missouri

Respectfully submitted,

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/s/ Stephen O'Brien

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