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**COUNSEL TO DEBTORS
AND DEBTORS-IN-POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § **Chapter 11**
§
PREFERRED CARE INC., et. al. § **Case No.: 17-44642-mxm11**
§
Debtors. § **Jointly Administered**
§

**SECOND MOTION FOR ORDER EXTENDING THE EXCLUSIVE PERIODS
DURING WHICH ONLY DEBTORS MAY FILE AND CONFIRM A PLAN**

**A HEARING WILL BE CONDUCTED ON THIS MATTER
ON JUNE 5, 2018 AT 10:00 AM.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU
MUST RESPOND IN WRITING, SPECIFICALLY
ANSWERING EACH PARAGRAPH OF THIS PLEADING.
UNLESS OTHERWISE DIRECTED BY THE COURT, YOU
MUST FILE YOUR RESPONSE WITH THE CLERK OF
THE BANKRUPTCY COURT WITHIN TWENTY-FOUR
(24) DAYS FROM THE DATE YOU WERE SERVED WITH
THIS PLEADING. YOU MUST SERVE A COPY OF YOUR
RESPONSE ON THE PERSON WHO SENT YOU THIS
NOTICE; OTHERWISE THE COURT MAY TREAT THE
PLEADING AS UNOPPOSED AND GRANT THE RELIEF
REQUESTED.**

Preferred Care Inc. (“**Preferred Care**”) and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”)¹ files their *Second Motion for Order Extending the Exclusive Periods During Which Only Debtors May File and Confirm a Plan* (the “**Motion**”), requesting an order pursuant to section 1121(d) of the Bankruptcy Code² (the “**Bankruptcy Code**”) extending by ninety (90) days the exclusive period during which only the Debtors may (a) file a plan under sections 1121(b) and (c)(2) (the “**Exclusivity Filing Period**”), and (b) confirm a plan under section 1121(c)(3) (the “**Exclusivity Solicitation Period**”) (collectively, the “**Exclusivity Periods**”), to allow the Debtors additional time to transfer their facilities and negotiate potential restructuring alternatives.

I. **EXECUTIVE SUMMARY**

1. The Debtors, other than Preferred Care, operate thirty-three (33) skilled nursing facilities—twenty-one (21) in Kentucky (the “**Kentucky Facilities**”) and twelve (12) in New Mexico (the “**New Mexico Facilities**”). Their non-debtor affiliates operate an additional seventy-five (75) skilled nursing facilities in ten additional states.³

2. As the Court is aware, the Debtors intend to identify, negotiate terms with, and transfer their facilities to new operators through the course of these Chapter 11 Cases (defined below). The Debtors have already taken significant affirmative steps to identify and negotiate operating transfer agreements (“**OTAs**”) for the transfer of the operations and assets utilized in the options of their Facilities. The Debtors intend to take the next step—seeking approval of

¹ A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto.

² “**Bankruptcy Code**” shall mean 11 U.S.C. § 101 *et seq.*

³ Additional details concerning the Debtors and the circumstances leading to the commencement of this Chapter 11 Case can be found in the *Declaration of Alan Weiner in Support of First-Day Motions* (the “**Weiner Declaration**”) [Docket No. 22]

operations transfer agreements for some or all of their Kentucky and New Mexico Facilities—in the coming weeks and anticipate seeking approval of the proposed transfers in late July. The Debtors also anticipate filing motions to settle certain significant claims held by their estates that should help pave the way for the proposed transfer of their facilities at the same time.

3. Effectuating the Debtors’ plan to transfer their Facilities in the coming weeks and months—while also ensuring continued resident care at those Facilities—has required and will continue to require a tremendous amount of attention from the Debtors’ personnel and representatives, including counsel. As a result, the Debtors and their professionals have not yet formulated a plan of reorganization, and are still weighing their options regarding the filing of a plan or other course of action once their Facilities have been successfully transferred to new operators.

4. Accordingly, the Debtors seek a further extension of the Exclusivity Periods (defined below) to continue working through these issues. This is the Debtors’ second request, and, as of the filing of this Motion, the case has been pending for about one-hundred and seventy-eight (178) days. This requested extension will allow the Debtors time to continue focusing their efforts on transferring their facilities prior to formulating a chapter 11 plan (or other restructuring alternative) that maximizes value of the bankruptcy estates for the benefit of all stakeholders.

I.
JURISDICTION AND VENUE

5. This Court has jurisdiction over these chapter 11 cases and the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b), and venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are 11 U.S.C. § 1121(d)(1) and Local Rule 3016-1.

II.
RELIEF REQUESTED

6. Pursuant to section 1121(d) of the Bankruptcy Code and Rule 3016-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Texas, the Debtors hereby requests that the Court enter an order extending the Exclusivity Periods an additional ninety-one (91) days. Pursuant to the Court's *Order Extending the Exclusive Periods During Which Only the Debtors May File and Confirm a Plan* [Docket No. 496], the Exclusivity Filing Period currently terminates on Monday, June 11, 2018. The relief requested herein would extend such period to Monday, September 10, 2018.⁴ Likewise, the Exclusivity Solicitation Period currently terminates on Friday, August 10, 2018, and the requested extension would mean that the Exclusivity Solicitation Period would terminate on Thursday, November 8, 2018. This request is without prejudice to the Debtors' right to seek additional extensions of the Exclusivity Periods.

III.
BACKGROUND

7. On November 13, 2017 (the "**Petition Date**"), Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby initiating the above-captioned bankruptcy cases and creating their bankruptcy estates (the "**Estates**"). The bankruptcy cases have been procedurally consolidated under Case Number 17-44642 (the "**Chapter 11 Case**") in the Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**").

8. Debtors continue to operate and to manage their business as "debtors-in-possession" pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner

⁴ The 90th day following June 11, 2018 is actually Saturday, August 9, 2018. August 10, 2018, the next business day, is the 91st day.

has been appointed in the Chapter 11 Case pursuant to section 1104 of the Bankruptcy Code.

9. Additional details concerning the Debtors and the circumstances leading to the commencement of these chapter 11 cases can be found in the *Declaration of Alan Weiner in Support of First-Day Motions* (the “**Weiner Declaration**”) [Docket No. 22].

10. The Debtors have been in these chapter 11 cases for just under six (6) months. In that time, the Debtors have used this Chapter 11 Case as a brief breathing spell to continue operations, preserve value for all stakeholders, obtain financing, and to identify and negotiate the to transfer of their facilities to new operators. Once that critical process concludes, the Debtors will be able to turn to various restructuring alternatives, one of which is the filing of a plan in the Chapter 11 Case. Accordingly, the Debtors will need additional time to formulate a plan that takes into account the effect of the necessary transfer of their operations.

II. **BASIS FOR THE RELIEF REQUESTED**

11. The foremost goal of chapter 11 is to reorganize troubled businesses in a manner that, among other things, increases the pool of assets available for distribution to stakeholders. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527 (1984). To that end, Congress codified a number of interwoven provisions that reflect the ultimate goal of rehabilitation through a considered and consensual chapter 11 plan, including a debtor’s exclusive right to a fair amount of time in which only it may propose a plan. *See In re Perkins*, 71 B.R. 294, 297 (W.D. Tenn. 1987) (explaining that extensions of exclusivity periods further the purpose of chapter 11 by providing more time to negotiate a consensual plan “which would inure to the benefit of all.”). At times, it is only by extended exclusivity that a debtor can bring all parties to the bargaining table in hopes of striking a balances and successful plan.

A. The Court May Extend the Exclusivity Periods For “Cause.”

12. Pursuant to Bankruptcy Code section 1121(d) and upon a party’s timely request, the Court may extend the Exclusivity Periods “for cause.” *See* 11 U.S.C. § 1121(d). Although the statute does not define the precise circumstances constituting “cause,” the legislative history of section 1121(d) does make clear that the initial 120-day period established by section 1121(b) merely represents a starting point from which the Court is free to extend more time. *See* H.R. Rep. No. 95-595, at 231, 232 (1978) (noting that Congress intended to give bankruptcy courts flexibility to protect debtors’ interests by allowing an opportunity to negotiate settlements of debtors without interference from other parties in interest); *In re Timbers of Inwood Forest Assoc., Ltd.*, 808 F.2d 363, 372 (5th Cir. 1987) (“Any bankruptcy court involved in an assessment of whether ‘cause’ exists should be mindful of the legislative goal behind § 1121.”).

13. A decision to extend the Exclusivity Periods is committed to the sound discretion of the bankruptcy court and should be based upon the unique facts and circumstances of each particular case. *See e.g., In re Mirant Corp.*, Case No. 04-CV-476-A, 2004 WL 2250986, at * 2-3 (N.D. Tex. Sept. 30, 2004) (“The bankruptcy court must balance the potential harm to creditors and limit the delay that makes creditors hostages of Chapter 11 debtors.”) (citations omitted)); *In re Borders Group, Inc.*, 460 B.R. 818, 821-22 (Bankr. S.D.N.Y. 2011) (“The determination of cause under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity.”); *In re Adelpia Commc’ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006) (identifying objective factors courts historically have considered in determining whether cause exists to extend or terminate exclusivity); *In re Friedman’s, Inc.*, 336 B.R. 884, 888 (Bankr. S.D. Ga. 2005) (identifying the factors used by courts to determine whether cause exists to extend exclusivity); *In re Hoffinger Indus., Inc.*, 292 B.R. 639, 643-44

(B.A.P. 8th Cir. 2003) (same); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (same).

14. In analyzing the meaning of “cause,” courts usually consider the following nine factors:

- (i) the size and complexity of the case;
- (ii) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- (iii) the existence of good faith progress toward reorganization;
- (iv) the fact that the debtor is paying its bills as they become due;
- (v) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (vi) whether the debtor has made progress in negotiations with its creditors;
- (vii) the amount of time which has elapsed in the case;
- (viii) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
- (ix) whether an unresolved contingency exists.

See, e.g. Adelpia Commc'ns, 352 B.R. at 587; *see also Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (citing *In re Washington-St. Tammany Electric Co-op*, 97 B.R. 852, 853 (E.D. La. 1989); *see also In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002) (noting how the *Dow Corning/Adelpia* factors “are standardly considered” in the “cause” analysis).

15. A debtor does not need to show any number of the nine factors above to show “cause.” *Express One Int’l, Inc.*, 194 B.R. at 100. Instead, courts examine all the factors together in the context of a particular case. *See id.*; *see also In re Texas Extrusion Corp.*, 844 F.2d 1142, 1160 (5th Cir. 1988) (discussing “cause” as it relates to § 1121(d) and the reduction of a debtor’s exclusivity time period); *In re Amko Plastics, Inc.*, 197 B.R. 74, 76-77 (Bankr. S.D. Ohio 1996) (notwithstanding that the case was not large and complex, court still granted a five month exclusivity extension because debtor exhibited substantial turn-around efforts). Consideration of an exclusivity motion should also involve “a broader, more global view – focused on what is best for these chapter 11 cases; most in keeping with the letter and spirit of chapter 11; and what is most appropriate under the unique facts” of the case before the court. *In re Adelphia Commc’ns Corp.*, 352 B.R. 578, 582 (Bankr. S.D.N.Y. 2006).

B. “Cause” Exists to Extend the Debtor’s Exclusivity Periods in This Chapter 11 Case.

16. Cause exists to grant a second extension of the Exclusivity Periods for a number of reasons. First, the Debtors’ chapter 11 cases are extremely complex, involving thousands of parties-in-interest, including various secured parties, trade creditors, the Debtors’ residents, and other unsecured creditors. As set forth above, the Debtors operate thirty-three (33) skilled nursing facilities in two states, Kentucky and New Mexico, that face significant individual operational and administrative issues on a daily basis related to their approximately 2,300 current residents. The complex nature of the Debtors’ business operations has carried over into the chapter 11 cases and demanded significant attention from the Debtors’ professionals, particularly as the focus of these cases has been identifying new operators for the Facilities, negotiating appropriate transfer agreements with such operators, and working with the lessors of the Debtors’ facilities at the same time. Though the transfers themselves are relatively simple, the

issues surrounding transferring a skilled nursing facility that utilizes leased real and personal property for its operations are exceedingly complex.

17. Second, while the Debtors have made significant progress toward effectuating their plan to transfer their operations, the transfer process will take time even after the motions to approve the related agreements are filed. The Debtors intend to seek a hearing on their transfer motions in late July in order to give all parties-in-interest more than adequate time to assess the impact and propriety of the proposed transfers, and the Debtors are much more likely to achieve a positive result without looming deadlines relating to the filing and soliciting of a plan of reorganization. The Debtors also intend to file motions to settle or compromise certain significant claims and causes of action owned by their estates to help fund the transfer of operations and orderly cessation of business for those partnerships. Keeping the existing deadlines in place at this time would only detract from the Debtors' efforts.

18. Third, this Chapter 11 Case has only been pending for approximately one-hundred and seventy-eight (178) days as of the date of filing this Motion and this is the Debtor's second request for an extension of the Exclusivity Periods. The Debtors' purpose in seeking extension of the Exclusivity Periods is a good-faith effort to establish a viable chapter 11 exit strategy that takes into account the myriad of interests of the various constituencies involved in the case, particularly the Debtors' residents. The relief requested in the Motion is not intended for the purpose of coercing or strong-arming any creditor but rather to benefit the stakeholders as a whole. The Debtors have consistently maintained that their overarching purpose is to transfer their operations for the benefit of their residents. This Motion is intended solely to allow that transfer process to play out prior to the negotiation and preparation of an exit strategy for the Debtors' bankruptcy cases.

19. Finally, because the Debtors are generally paying their debts as they come due post-petition and have secured financing that should allow them to continue to do so going forward, the extension does not result in prejudice to any creditor or party in interest. Rather, the extension will enable the Debtors to continue focusing on the transfer process, which is intended primarily to protect the Debtors' residents, while also negotiating with key parties-in-interest regarding a global resolution of the issues in this case. The Debtors are committed to working diligently with such parties, including the Official Committee of Unsecured Creditors, to keep their stakeholders updated on the Debtors' progress in this Chapter 11 Case and the steps that the Debtors are taking to achieve their goals.

WHEREFORE, the Debtors respectfully request that this Court enter an Order (a) granting the relief requested herein and (b) awarding the Debtors such other and further relief that this Court deems be just and proper.

DATED: May 10, 2018

Respectfully submitted by:

/s/ Mark C. Moore

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**COUNSEL TO DEBTORS AND
DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

I hereby certify that, on May 10, 2018 a true and correct copy of the foregoing document was served electronically by the Court's PACER system.

/s/ Mark C. Moore _____

Mark C. Moore

Debtors

Debtor	Last Four Digits of Federal Tax I.D. No.
Preferred Care Inc.	7040
<u>Kentucky LP Debtors</u>	
Bowling Green Health Facilities, L.P.	5787
Brandenburg Health Facilities, L.P.	6699
Cadiz Health Facilities, L.P.	7640
Campbellsville Health Facilities, L.P.	4207
Elizabethtown Health Facilities, L.P.	6127
Elsmere Health Facilities, L.P.	7843
Fordsville Health Facilities, L.P.	3299
Franklin Health Facilities, L.P.	7307
Hardinsburg Health Facilities, L.P.	3640
Henderson Health Facilities, L.P.	8067
Irvine Health Facilities, L.P.	7418
Morganfield Health Facilities, L.P.	8320
Owensboro Health Facilities, L.P.	8145
Paducah Health Facilities, L.P.	3350
Pembroke Health Facilities, L.P.	8209
Richmond Health Facilities - Kenwood, L.P.	8235
Richmond Health Facilities - Madison, L.P.	8216
Salyersville Health Facilities, L.P.	8263
Somerset Health Facilities, L.P.	8739

Springfield Health Facilities, L.P.	8310
Stanton Health Facilities, L.P.	8704
<u>New Mexico LP Debtors</u>	
Artesia Health Facilities, L.P.	5383
Bloomfield Health Facilities, L.P.	7640
Clayton Health Facilities, L.P.	3609
Desert Springs Health Facilities, L.P.	2707
Espanola Health Facilities, L.P.	2102
Gallup Health Facilities, L.P.	2562
Lordsburg Health Facilities, L.P.	1449
Pinnacle Health Facilities XXXIII, L.P.	1389
Raton Health Facilities, L.P.	6759
SF Health Facilities, L.P.	2323
SF Health Facilities-Casa Real, L.P.	0716
Silver City Health Facilities, L.P.	6972