

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
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In re:	Case No. 17-20469 (VFP)
BELLEVILLE DEVELOPMENT GROUP, LLC,	Chapter 11
Debtor.	Hearing Date: February 14, 2018 Hearing Time: 10:00 a.m.

**MEMORANDUM OF LAW IN SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF  
AN ORDER PURSUANT TO 11 U.S.C. § 1121(d) FURTHER EXTENDING EXCLUSIVE  
PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT VOTES THEREON**

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Belleville Development Group, LLC (the “Debtor”), debtor and debtor-in-possession, in the above-captioned proceeding, by and through its undersigned counsel, hereby submits this memorandum of law in support of its *Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) Further Extending Exclusive Periods to File a Chapter 11 Plan and Solicit Votes Thereon* (the “Motion”). In support of the Motion, the Debtor respectfully states as follows:

### **RELEVANT BACKGROUND**

On May 23, 2017 (the “Petition Date”), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”). The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in the Chapter 11 Case, and no statutory committee has been appointed or designated.

The Debtor’s sole asset is the real property located at 620-632 Washington Avenue, Belleville, New Jersey (the “Real Property”). After the Petition Date, the Debtor conducted an auction of the Property at the conclusion of which, Anthony Marchigiano or his designee (“Purchaser”) was deemed the successful purchaser of the Real Property.

On July 26, 2017, this Court entered an order approving the sale of the Real Property to the Purchaser (the “Sale Order”) [D. I. 51]. Subsequent to entry of the Sale Order, the Debtor filed a Notice of Termination informing the Court, creditors and all parties in interest that the Purchaser terminated the asset purchase agreement with the Debtor and the proposed sale of the Real Property to Purchaser was terminated [D.I. 52].

Ultimately, on November 16, 2017, this Court entered a subsequent sale order approving the sale of the Real Property to JCR Benelli, LLC (“Benelli”). [D.I. 73] (the “Benelli Sale”).

Order”). Since entry of the Benelli Sale Order, the Debtor and Benelli have fulfilled the conditions to proceed with a closing, and a closing is currently scheduled for January 17, 2018.

Pursuant to this Court’s October 19, 2017 Order, the exclusive period within which the Debtor may file a chapter 11 plan expires on January 17, 2018 (the “Exclusive Filing Period”) and the exclusive period within which the Debtor may solicit votes on a chapter 11 plan expires on March 18, 2018 (the “Exclusive Solicitation Period” and together with the Exclusive Filing Period, the “Exclusivity Periods”) (the “Extension Order”). *See* Extension Order [D.I. 63].

### **RELIEF REQUESTED**

By this Motion, the Debtor requests, pursuant to section 1121(d) of the Bankruptcy Code, a further extension of 60 days of (a) the Exclusive Filing Period through and including March 18, 2018 and (b) the Exclusive Solicitation Period through and including May 17, 2018, in each case, without prejudice to the Debtor’s right to seek additional extensions of such periods. As noted above, absent the requested relief, the Debtor’s Exclusive Filing Period will expire on January 17, 2018, and the Exclusive Solicitation Period will expire on March 18, 2018.

### **BASIS FOR RELIEF REQUESTED**

Sections 1121(b) and (c) of the Bankruptcy Code provide, respectively, that a debtor has the exclusive right to propose a chapter 11 plan for the first 120 days of a chapter 11 case and the exclusive right to solicit votes for its plan for an additional 60 days.

Pursuant to section 1121(d) of the Bankruptcy Code, a court may extend the Exclusive Periods for “cause” by as much as 18 months to file a plan and 20 months to solicit votes on such plan. *See* 11 U.S.C. § 1121(d). The Bankruptcy Code neither defines the term “cause” for purposes of section 1121(d) nor establishes formal criteria for an extension of the Exclusive Periods. The legislative history of section 1121 indicates that courts should employ a flexible

standard when analyzing “cause” under section 1121(d). See H.R. Rep. No. 95-595, at 231-32 (1978), reprinted in 1978 U.S.C.C.A.N. 5963.

Bankruptcy courts are authorized to extend the exclusive periods set forth in section 1121 of the Bankruptcy Code for “cause.” *See* 11 U.S.C. § 1121(d)(1) (“[O]n request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.”); see also Matter of All Seasons Indus., Inc., 121 B.R. 1002, 1004 (Bankr. N.D. Ind. 1990). See also In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989); In re Texaco, Inc., 76 B.R. 322 (Bankr. S.D.N.Y. 1987); First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986). The moving party bears the burden of demonstrating the existence of “cause.” Matter of Newark Airport/Hotel Ltd. P’ship, 156 B.R. 444, 450 (Bankr. D.N.J. 1993), affd, FGH Realty Credit Corp. v. Newark Airport/Hotel Ltd. P’ship, 155 B.R. 93 (D.N.J. 1993).

The “cause” standard referred to in section 1121 of the Bankruptcy Code has been referred to as a general standard that allows the Bankruptcy Court “maximum flexibility to suit various types of reorganization proceedings.” Gibson & Cushman, 101 B.R. at 409 (quoting In re Pub. Serv. Co. of N.H., 88 Bankr. 521, 534 (Bankr. D.N.H. 1988)).

When faced with a request to extend the initial exclusivity periods set forth in section 1121 of the Bankruptcy Code, bankruptcy courts consider a variety of factors. While one single factor is not dispositive, bankruptcy courts look at the following factors in determining whether “cause” exists under section 1121(d) of the Bankruptcy Code: (i) the size and complexity of the case; (ii) the necessity of sufficient time to negotiate and prepare adequate information; (iii) the existence of good faith progress; (iv) whether the debtor is paying its debts as they become due;

(v) whether the debtor has demonstrated reasonable prospects of filing a viable plan; (vi) whether the debtor has made progress negotiating with creditors; (vii) the length of time a case has been pending; (viii) whether the debtor is seeking an extension to pressure creditors; and (ix) whether unresolved contingencies exist. In re Cent. Jersey Airport Servs., LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002) (citing In re Serv. Merch. Co., 256 B.R. 744, 751 (Bankr. M.D.Tenn. 2000)); In re Crescent Mfg., 122 B.R. 979, 982 (Bankr. N.D. Ohio 1990); McLean, 87 B.R. at 834. Other factors bankruptcy court take into consideration include: (i) the likelihood of a consensual plan if the debtor retains control; (ii) the prejudice to an alternate competing plan if the extension is granted; and (iii) the general balance of the equities. See, e.g., Pub. Serv. Co. of N.H., 88 B.R. at 537.

As stated above, no single factor is dispositive in determining whether to extend exclusivity. “[A]lthough there are a large number of potential factors that have been identified by various courts as being pertinent to a determination of whether cause has been shown, many courts have chosen to rely upon relatively few factors - albeit different ones - to determine whether the necessary cause exists to alter the statutory time period set forth in 11 U.S.C. §1121.” See Official Comm. of Unsecured Creditors v. The Elder-Beerman Stores Corp. In re The Elder-Beerman Stores Corp., 1997 WL 1774880, at \*4 (S.D. Ohio June 23, 1997).

At the outset of this case, the Debtor’s goal was to consummate a sale of the Real Property that would maximize recoveries for all of the Debtor’s stakeholders. Upon closing with Benelli, the Debtor believes this goal would be achieved. As noted above, since termination of the sale agreement with the Purchaser, the Debtor negotiated a new asset purchase agreement with Benelli and is just days away from a closing on the Real Property that will result in funds to the Debtor’s bankruptcy estate. As the Debtor could not, and cannot, afford Benelli terminating

its sale agreement, the Debtor has focused its efforts to fulfill all open closing conditions. Upon closing, the Debtor will be in a better position to formulate a proposed plan of liquidation. The Debtor requests the extension of the Exclusivity Period to close on the Real Property and finalize all open issues related to the sale of the Real Property.

Under these circumstances, the Debtor does not believe any party would be prejudiced by the requested extension of the Exclusivity Periods and the Debtor believes that extending the Exclusivity Periods will permit the plan process to proceed in a rational and thoughtful fashion. Accordingly, good cause exists for the Court to grant an extension of the Exclusivity Periods.

### **CONCLUSION**

Based on the foregoing, the Debtor respectfully requests that the Court enter an Order granting the Motion and such other relief as the Court deems just and appropriate under the circumstances.

Dated: January 16, 2018

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