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**PROPOSED 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**  
§  
**Debtors.** § **(Joint Administration Requested)**  
§

**MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE HUD  
DEBTORS TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE  
PROTECTION TO PREPETITION LENDERS AND (III) SCHEDULING A FINAL  
HEARING PURSUANT TO BANKRUPTCY RULE 4001(B)**

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**“HUD DEBTORS CASH COLLATERAL MOTION”**

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Elsemere Health Facilities, L.P. and Henderson Health Facilities, L.P. (the “**HUD Debtors**”), as debtors and debtors in possession<sup>1</sup> file this their *Motion for Interim and Final Orders (I) Authorizing the HUD Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)* requesting that the Court enter an order pursuant to 11 U.S.C. §§ 105, 361, and 363 of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”)

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<sup>1</sup> A list of all 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.

authorizing the use of cash collateral (“**Cash Collateral**,” as that term is defined in the Bankruptcy Code) of FC Domino Acquisition, LLC and its affiliates (“**FC Domino**”) and Ziegler Financing Corporation (“**Ziegler**”), as lender for the Department of Housing and Urban Development (“**HUD**”) and granting related relief (the “**Motion**”). Contemporaneously with the filing of this Motion, the Debtors have filed the *First Day Declaration of Alan Weiner* (the “**Weiner Declaration**”), which contains additional background information on the Debtors and their operations and is incorporated herein by reference.

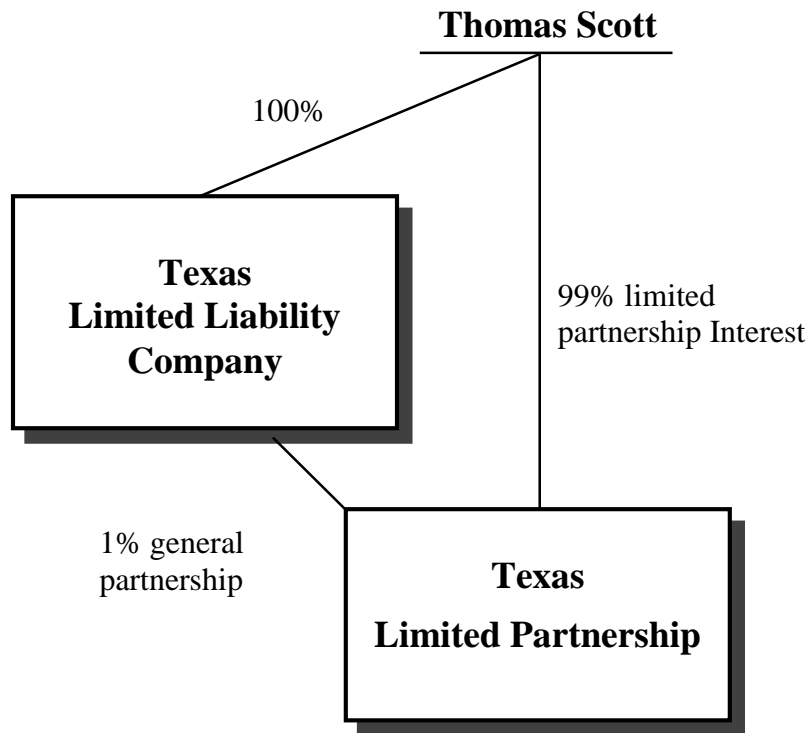
**I.**  
**PRELIMINARY STATEMENT**

**A. Description of the Debtors**

1. The Debtors, other than Preferred Care Inc., (“**Preferred Care**”) operate thirty-three (33) skilled nursing facilities in the states of Kentucky and New Mexico. The Debtors’ non-debtor affiliates operate an additional seventy-five (75) skilled nursing facilities in ten additional states. Accordingly, the Debtors and their non-debtor affiliates (collectively, the “**Preferred Care Group**”) operate one hundred and eight (108) skilled nursing, assisted living and independent living facilities (each a “**Facility**” and collectively, the “**Facilities**”) in twelve (12) states (approximately 11,500 total beds). There are currently approximately 9,300 residents in the Preferred Care Group Facilities. The Preferred Care Group constitutes one of the largest nursing home groups in the United States. The business goal of the Preferred Care Group is to provide local communities with high quality skilled nursing home and rehabilitation care in a patient-friendly, cost effective setting.

2. The Debtors do not own the Facilities themselves, but rather each of the Debtors leases the Facility it operates from a third party.

3. Each of the Debtors, other than Preferred Care is a Texas limited partnership. A Texas limited liability company functions as the 1% general partner and Mr. Thomas Scott is the 99% limited partner. The generic organizational chart for each Debtor limited partnership is represented below:



**Kentucky Facilities**

4. Twenty-one (21) of the Debtors operate twenty-one (21) skilled nursing facilities in Kentucky, as reflected in the organizational chart attached to the Weiner Declaration as Exhibit A. Preferred Care is the master-lessee of the real property upon which the twenty-one (21) Kentucky facilities are located. Preferred Care’s affiliates sub-lease the Kentucky Facilities to the Debtor partnerships that operate the Kentucky Facilities.

**New Mexico Facilities**

5. Twelve (12) of the Debtors operate twelve (12) skilled nursing facilities in New Mexico, as reflected in the organizational chart attached to the Weiner Declaration as Exhibit B. The Debtor partnerships that operate the New Mexico Facilities are the tenants under the lease agreements covering the New Mexico Facilities. Preferred Care has guaranteed ten (10) of the twelve (12) leases of the New Mexico Facilities.

**Preferred Care Inc.**

6. Preferred Care is a Delaware corporation owned by Mr. Thomas Scott. Preferred Care is a holding company for numerous wholly owned, non-debtor subsidiaries. Preferred Care, indirectly through its subsidiaries, owns four (4) mental health facilities located in Mississippi, a developmental facility in Florida, and a management contract for a skilled nursing home in Texas.

7. Preferred Care is named as a defendant in certain litigation pending against the Debtors, as described in the Weiner Declaration in more detail despite the fact that it does not own any interest in, nor participate in the management of, the limited partnerships that own and operate the Facilities.

**B. Asserted Pre-Petition Liens and Priorities**

8. The Debtors have granted liens and security interests on certain of their assets to various parties. In order to analyze the asserted liens and their priorities for purposes of cash collateral and debtor-in-possession financing motions, the following chart is helpful:

Debtor(s)	Operations	Asserted Liens & Priorities <sup>2</sup>
a) Preferred Care Inc.	None (a holding company of non-Debtor entities).	1 <sup>st</sup> — HUD/Ziegler 2 <sup>nd</sup> — Wells Fargo 3 <sup>rd</sup> — FC Domino
<b><u>Kentucky</u></b>		
b) “HUD Debtors”	Two (2) facilities in Kentucky leased from FC Domino, which financed the facilities through a program with the Department of Housing and Urban Development (“ <b>HUD</b> ”).	1 <sup>st</sup> — HUD/Ziegler 2 <sup>nd</sup> — FC Domino
c) “FC Domino Debtors”	Nineteen (19) facilities in Kentucky leased from FC Domino.	1 <sup>st</sup> — Extencicare <sup>3</sup> 2 <sup>nd</sup> — Wells Fargo 3 <sup>rd</sup> — FC Domino
<b><u>New Mexico</u></b>		
d) “Omega Debtors”	Eight (8) facilities in New Mexico leased from Omega.	1 <sup>st</sup> — Wells Fargo 2 <sup>nd</sup> — Omega <sup>4</sup>
e) “Remaining Debtors”	Four (4) facilities in New Mexico, two (2) leased from Kading affiliates, and two (2) leased from Thomas Scott affiliates.	1 <sup>st</sup> — Wells Fargo

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33 Total Debtor Facilities

<sup>2</sup> The liens listed above are those for which UCC-1 financing statements were filed as of the Petition Date. The Debtors reserve the right to dispute the validity, enforceability, and/or priority of these liens.

<sup>3</sup> Extencicare Homes, Inc. (“**Extencicare**”) and/or its affiliates filed UCC-1 financing statements against all of the FC Domino Debtors except Owensboro Health Facilities, L.P. on or about November 16, 2012 to secure obligations owed to Extencicare as a result of the transfer of operations to the Preferred Care Group. The Debtors believe that no indebtedness to Extencicare exists as of the Petition Date; thus the asserted liens secure no outstanding indebtedness.

<sup>4</sup> Affiliates of Omega Healthcare Investors, Inc. (collectively, “**Omega**”) filed UCC-1 financing statements against the Omega Debtors on or about March 23, 2015, prior to Wells Fargo’s UCC-1 filed in March 2017. The Debtors have entered into an agreement with Omega which provides, in part, for Omega to subordinate its pre-petition security interests to those of Wells Fargo.

**C. Cash Collateral and DIP Financing Motions**

9. Accordingly, the Debtors are filing three (3) separate pleadings related to their use of Cash Collateral and/or their request for authority to incur additional DIP financing:

- a. *Motion for Interim and Final Order (I) Authorizing Debtors to Obtain Post-Petition Financing; (II) Granting Liens, Security Interests and Superpriority Status; (III) Affording Adequate Protection; (IV) Scheduling a Final Hearing; and (V) Modifying Automatic Stay (the “Wells Fargo DIP Motion”);*
- b. *Motion for Interim and Final Orders (I) Authorizing Certain Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the “Omega and FC Domino Cash Collateral Motion”); and,*
- c. *Motion for Interim and Final Orders: (I) Authorizing the HUD Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) (the “HUD Debtors Cash Collateral Motion”).*

**D. The HUD Debtors’ Cash Collateral**

10. As stated above, the two (2) HUD Debtors are not included in the Wells Fargo pre-petition or post-petition line of credit. Accordingly, the HUD Debtors by separate motion are proposing to use the cash collateral of their alleged secured creditors, Ziegler (as lender for HUD) and FC Domino, to operate their facilities in the normal course of business utilizing their traditional cash management system, as more fully described in the Weiner Declaration and the HUD Debtors Cash Collateral Motion.

**E. Use of Cash Collateral of HUD and FC Domino.**

11. This Motion is the HUD Cash Collateral Motion. The Wells Fargo DIP Motion and the Omega and FC Domino Debtors Cash Collateral Motion are being filed separately but contemporaneously with this Motion.

12. Through this HUD Cash Collateral Motion, the HUD Debtors seek authority to use the Cash Collateral of Ziegler (as lender for HUD) and FC Domino and for authority to grant replacement liens to Ziegler (as lender for HUD) and FC Domino on post-petition assets of the HUD Debtors to the same extent and priority as their pre-petition liens.

## **II.** **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this chapter 11 case and the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The statutory bases for the relief requested herein are sections 105(a), 362, 363, 364, 503, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rules 4001-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “**Bankruptcy Local Rules**”), and the United States Bankruptcy Court for the Northern District of Texas Procedures for Complex Chapter 11 Cases (the “**Complex Case Procedures**”).

## **III.** **BACKGROUND**

### **A. The Chapter 11 Cases**

15. On November 13, 2017 (the “**Petition Date**”), the Debtors filed their respective voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), thereby initiating their bankruptcy cases (the “**Chapter 11 Cases**”) and creating their respective bankruptcy estates (the “**Estates**”).

**B. The HUD Debtors' Leases of Real Property Financed by HUD from FC Domino**

16. The HUD Debtors' leases of their respective Facilities are financed through agreements between their non-debtor landlords, which are affiliates of FC Domino, and HUD. Pursuant to sublessee security agreements executed by and between the HUD Debtors and Ziegler (as lender for HUD), the HUD Debtors granted Ziegler security interests in substantially all of the HUD Debtors' assets, including accounts receivable. The HUD Debtors also granted FC Domino's affiliates security interests in the HUD Debtors' assets to secure the rent obligations owed to such affiliates. To perfect their asserted liens, Ziegler filed UCC-1 financing statements on behalf of itself and HUD against the HUD Debtors, and FC Domino's affiliates filed their UCC-1 financing statements against the HUD and FC Domino Debtors.

**C. Cash Management System**

17. The HUD Debtors utilize a similar centralized cash management system (the "**Cash Management System**") to the other Debtors in this case and the Preferred Care Group at large.<sup>5</sup> All revenues collected by each of the HUD Debtors are eventually consolidated into an account (the "**Concentration Account**") owned by a non-debtor affiliate, FSF II, LLC ("**FSF II**") located at Wells Fargo Bank, N.A. ("**Wells Fargo**"). FSF II then transfers the deposited funds into its Master Operating Account, also at Wells Fargo. Those funds are then transferred as needed into FSF II's Payroll and Accounts Payable accounts for the payment of payroll and other operating expenses of the HUD Debtors. A detailed accounting of the collections on behalf of the HUD Debtors along with the subsequent lending of such funds back to the HUD Debtors is maintained by PCPMG Consulting, LLC ("**PCPMG Consulting**"), the company that provides

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<sup>5</sup> Preferred Care utilizes the same Cash Management System as the non-HUD Debtors in these cases through Facility Support Funding, LLC ("**FSF**").



management services to the Debtors, including the HUD Debtors.<sup>6</sup> Additionally, PCPMG Consulting provides accounting for each entity in the Preferred Care Group for expenses, including payroll, paid on their behalf by FSF and/or FSF II.

**D. Use of Cash Collateral**

18. Through the collection-sweep process at FSF II, the HUD Debtors constantly “use” Ziegler’s and FC Domino’s Cash Collateral by paying it to FSF II before reborrowing therefrom. As a result, though the funds actually used by the Debtors for operations are not Cash Collateral, but rather are funds lent by FSF II and/or FSF, continuing the HUD Debtor’s operations post-petition in the same manner as pre-petition requires the use of the Security Parties’ Cash Collateral.

19. Nevertheless, despite the fact that the Cash Collateral is not directly used for the Debtors’ operations, the maintenance of the Cash Management System is critical to the operations of both the HUD Debtors and their non-debtor affiliates.<sup>7</sup> As such the Debtors hereby seek authority to allow Cash Collateral to be used as described above in order to ensure the continuance of the Cash Management System and to prevent significant and costly disruptions of the businesses of the HUD Debtors and non-debtors alike.

**IV.**  
**RELIEF REQUESTED**

20. By this Motion, pursuant to 11 U.S.C. §§ 105, 361, and 363, and Bankruptcy Rules 2002, 4001, and 6004, the HUD Debtors seek, among other things, the following:

- a. authorization for the HUD Debtors to use Cash Collateral and the granting of adequate protection to Ziegler and FC Domino (the “**Secured Parties**”) and the granting of adequate protection to

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<sup>6</sup> PCPMG Consulting keeps similar records for FSF II.

<sup>7</sup> For more information on the critical nature of the Cash Management System, see the Cash Management Motion.

Ziegler and FC Domino (the “**Secured Parties**”) for, among other things, such use of Cash Collateral and all any diminution in value of the their respective interests in their Cash Collateral, whether existing on the Petition Date or arising pursuant to this Order;

- b. pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the this Order;
- c. authorization to vacate the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Order;
- d. that this Court schedule a final hearing (the “**Final Hearing**”) to consider entry of a Final Order authorizing the use of Cash Collateral and the grant of adequate protection on a final basis; and,
- e. waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

**V.**

**BASIS FOR EMERGENCY RELIEF**

21. The HUD Debtors bring this Motion on an emergency basis given the immediate and irreparable harm that the HUD Debtors will potentially suffer if they are denied the ability to use Cash Collateral, which is necessary to sustain ongoing business operations, through the operation of the Cash Management System, and to achieve their future business objectives.

22. Absent the continued operation of the Cash Management System, the HUD Debtors would likely have to cease business operations to the material detriment of their creditors, stakeholders and other parties in interest. Therefore, the HUD Debtors need to ensure the availability of such working capital now. This liquidity is particularly necessary for the HUD Debtors to demonstrate to its customers, suppliers, vendors, and stakeholders that they have sufficient capital to ensure ongoing operations.

**VI.**  
**APPLICABLE AUTHORITY**

**A. Adequate Protection and Cash Collateral**

23. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor-in-possession may not use cash collateral without the consent of the secured party or court approval. *See* 11 U.S.C. § 363(c)(2). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in property to be used by the debtor, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. *See* 11 U.S.C. § 363(e).

24. At this time, Ziegler has not consented to the HUD Debtors' use of its Cash Collateral in these cases (on behalf of itself or the insurer of its mortgages, HUD). Debtors' counsel has been in contact with counsel for Ziegler and has attempted to contact the appropriate persons at HUD, but an agreement has not yet been reached. The HUD Debtors submit that the treatment proposed herein and in the Proposed Order attached hereto as **Exhibit A** is more than sufficient to adequately protect HUD's interests in its alleged pre-petition collateral on an interim basis.

25. What constitutes adequate protection must be decided on a case-by-case basis. *See In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D. N.Y. 1996); *In re Realty Southwest Assocs.*, 140 B.R. 360 (Bankr. S.D. N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D. N.Y. 1986). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re 495 Central Park Avenue Corp.*, 136 B.R. 626, 631 (Bankr. S.D. N.Y. 1992); *In re Beker*, 58 B.R. at 736; *In re Hubbard Power & Light*, 202 B.R. 680 (Bankr. E.D. N.Y. 1996).

26. Ziegler and FC Domino assert liens on the Cash Collateral. As adequate protection for the use of the Cash Collateral, the HUD Debtors are proposing to provide Ziegler and FC Domino with the following forms of adequate protection (“**Adequate Protection**”), to the extent of any diminution in value of the Secured Parties’ pre-Petition Date security interests in the HUD Debtors’ pre-petition assets, if any.

- a. The HUD Debtors will remain current on their regularly scheduled rental payments to FC Domino (through January 31, 2018, unless otherwise extended by written agreement between the HUD Debtors and the Secured Parties, as applicable);
- b. The HUD Debtors shall permit representatives, agents, or employees of FC Domino or their affiliates upon written notice to have reasonable access to personnel employed at the HUD Debtors and provide FC Domino non-privileged information as they may reasonably request with respect to such facilities.
- c. The HUD Debtors shall maintain appropriate insurance on the HUD Debtors’ assets in amounts consistent with prepetition practices.
- d. The HUD Debtors shall maintain appropriate and necessary licensing with respect to operating the facilities consistent with prepetition practices.
- e. The Secured Parties are hereby granted, from and after the Petition Date, allowed administrative expense claims with priority over any and all administrative expenses, adequate protection claims, and all other claims against the HUD Debtors, now existing or hereinafter arising, of any kind whatsoever, as provided under 507(b) of the Bankruptcy Code.
- f. The Secured Parties are hereby granted, from and after the Petition Date, replacement liens and security interests in all accounts and inventory acquired by the HUD Debtors after the Petition Date, specifically including all cash proceeds arising from such accounts and inventory acquired by the HUD Debtors after the Petition Date, in the same nature, extent, priority, and validity that any such liens asserted by the Secured Parties existed on the Petition Date;
- g. As of the Petition Date, said replacement liens and security interests granted to the Secured Parties shall be valid, perfected, enforceable and effective against the HUD Debtors, their

successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by the HUD Debtors, Ziegler (as lender for HUD), or FC Domino and without the execution, delivery, filing or recordation of any promissory notes, financing statements, security agreements or other documents. Notwithstanding the foregoing, this Interim Order shall be deemed a security agreement and may be filed as a financing statement and the HUD Debtors shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that the Secured Parties shall reasonably request to further evidence the liens and security interests granted hereby.

- h. Said replacement liens and security interests in favor of the Secured Parties shall constitute paramount and perfected first priority liens and security interest in such property.
- i. The Secured Parties shall have all the rights and remedies of a secured creditor in connection with the liens and security interests granted by this Order in all collateral, except to the extent that such rights and remedies may be affected by the Bankruptcy Code and otherwise.

27. Here, the proposed Adequate Protection, outlined hereinabove and set forth in the Proposed Order, is sufficient to secure the HUD Debtors' projected uses of Cash Collateral because the projected diminution in value, if any, from the use of Cash Collateral is less than the value of the Adequate Protection proposed to Ziegler and FC Domino. In fact, the use of Cash Collateral is itself a form of Adequate Protection by preserving the value of the Debtors' operations and assets as a going concern, rather than liquidating value.

**B. The Use of Cash Collateral is Necessary to Preserve Assets of the Estate.**

28. It is essential that the HUD Debtors, in particular, immediately instill their vendors, service providers, and customers with confidence in their ability to transition their businesses smoothly to the chapter 11 process and to operate normally in that environment. The use of Cash Collateral is necessary to continue, among other things, the orderly operation of the HUD Debtors' businesses, the maintenance of continued relationships with the HUD Debtors'

vendors and service providers, and also to satisfy actual or procedurally necessary working requirements for the HUD Debtors' businesses.

**C. Interim Approval Should Be Granted**

29. Pursuant to Bankruptcy Rule 4001(b)(2), a final hearing on a motion to use cash collateral may not be commenced before 14 days after service of that motion. Fed. R. Bankr. P. 4001. This Court may, however, conduct a preliminary hearing before the expiration of that fourteen-day period and likewise authorize the use of Cash Collateral, if necessary, to the extent necessary to avoid immediate and irreparable harm to the debtor's estate.

30. In examining requests under this Bankruptcy Rule, courts apply the same business-judgment standard as is applicable to other business decisions. *See In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D. N.Y. 1990). The HUD Debtors submit that, for the reasons set forth herein, the immediate use of Cash Collateral, on an interim basis, as requested in this Motion is necessary to avert immediate and irreparable harm to the HUD Debtors' businesses and their Estates.

31. The HUD Debtors request that the Court conduct an emergency preliminary hearing on the Motion and authorize the HUD Debtors, from and after the entry of the Interim Order until a Final Hearing on the relief requested herein, to use Cash Collateral, as necessary. Such authorization will ensure that the HUD Debtors maintain ongoing operations and avoids immediate and irreparable harm and prejudice to their Estates and all parties in interest pending the Final Hearing.

**D. Request for Final Hearing**

32. As noted above, pursuant to Bankruptcy Rules 4001(b)(2), the HUD Debtors respectfully request that the Court set a date for the Final Hearing at the earliest date and time of

the Court's convenience that will ensure adequate notice and due process to all parties-in-interest in these cases.

33. The HUD Debtors respectfully request that they be authorized to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, if any, by first-class mail on the Notice Parties (as defined below) and to any other party that has filed a request for notices with this Court and to any Committee, or Committee Counsel, if same shall have filed a request for notice. The HUD Debtors respectfully request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001.

**VII.**  
**CONFERENCE WITH THE SECURED PARTIES**

34. Counsel for the Debtors, Ziegler (HUD's lender), and FC Domino have conferred on the relief requested herein. FC Domino agrees to the HUD Debtors' use of Cash Collateral under the terms requested herein. Ziegler has not yet consented to the HUD Debtors' use of Cash Collateral on behalf of itself or HUD as of the filing of this Motion.

**VIII.**  
**CHECKLIST**

35. The *Attorney Checklist Concerning Motions and Orders Pertaining to Use of Cash Collateral* in a format conforming to Appendix H of the Bankruptcy Local Rules is attached hereto as **Exhibit B**.

**IX.**  
**NOTICE**

36. No trustee, examiner, or statutory creditors' committee has been appointed in these Chapter 11 Cases. This Motion has been provided to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) Ziegler and FC Domino; (iii) counsel to Ziegler and FC Domino (iv) the thirty (30) largest unsecured creditors of the Debtors' bankruptcy estates

on a consolidated basis; (v) the Internal Revenue Service; and (vi) all parties in interest who have formally appeared and requested notice. The Debtors respectfully submit that no further notice of this Motion is required.

37. The pleadings in these Bankruptcy Cases and supporting papers are available on the Debtors' website at [www.jndla.com/cases/preferred](http://www.jndla.com/cases/preferred) or on the Bankruptcy Court's website at <https://ecf.txeb.uscourts.gov/>. You can request any pleading you need from (i) the proposed noticing agent at: JND Corporate Restructuring, 8269 E. 23<sup>rd</sup> Avenue, Suite 275, Denver, Colorado, 80238, 855-812-6112 (toll-free), ([PreferredInfo@jndla.com](mailto:PreferredInfo@jndla.com)) or (ii) counsel for the Debtors at: Gardere Wynne Sewell LLP, c/o Mark C. Moore, 2021 McKinney Avenue, Suite 1600, Dallas, Texas 75201 ([mmoore@gardere.com](mailto:mmoore@gardere.com)).

WHEREFORE, the HUD Debtors respectfully request the entry of an order granting the relief requested herein, and granting such other and further relief as is just and proper.

DATED: November 13, 2017

Respectfully submitted by:

/s/ Stephen A. McCartin

Stephen A. McCartin (TX 13374700)

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 13, 2017, 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**

<b>Debtor</b>	<b>Last Four Digits of Federal Tax I.D. No.</b>
<b>Preferred Care Inc.</b>	<b>7040</b>
<b><u>Kentucky LP Debtors</u></b>	
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
<b><u>New Mexico LP Debtors</u></b>	
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

**EXHIBIT A**  
**Interim Order**

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

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>PREFERRED CARE INC., et. al.</b>	§	<b>Case No.: 17-44642</b>
	§	
<b>Debtors.</b>	§	<b>(Joint Administration Requested)</b>
	§	

**INTERIM ORDER (I) AUTHORIZING THE HUD DEBTORS TO USE CASH  
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION  
LENDERS AND (III) SCHEDULING A FINAL HEARING  
PURSUANT TO BANKRUPTCY RULE 4001(b)**

Pending before the Court is the *Motion for Interim and Final Orders (I) Authorizing the HUD Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)* (the “**Motion**”)<sup>1</sup> filed by Elsemere Health Facilities, L.P. and Henderson Health Facilities, L.P.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the definition ascribed in the Motion.

(together, the “**HUD Debtors**”), as debtors and debtors in possession for interim and final orders under sections 105, 361, 362, 363, 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), seeking:

- a. authorization for the HUD Debtors to use Cash Collateral and the granting of adequate protection to Ziegler (as lender for HUD) and FC Domino (the “**Secured Parties**”) for, among other things, such use of Cash Collateral and all any diminution in value of the their respective interests in their Cash Collateral, whether existing on the Petition Date or arising pursuant to this Order;
- b. pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the this Order;
- c. authorization to vacate the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Order;
- d. that this Court schedule a final hearing (the “**Final Hearing**”) to consider entry of a Final Order authorizing the use of Cash Collateral and the grant of adequate protection on a final basis; and,
- e. waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

The Interim Hearing having been held by this Court on November 15, 2017; and upon the record made by the HUD Debtors at the Interim Hearing (including, without limitation, the First Day Declaration; and this Court having heard and resolved or overruled all objections to the interim relief requested in the Motion; and it appearing that the interim relief requested in the Motion is in the best interests of the HUD Debtors, their estates and creditors; and after due deliberation and consideration and sufficient cause appearing therefor,

**IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED**, that:

1. On November 13, 2017 (the "**Petition Date**"), the HUD Debtors filed their voluntary petitions under chapter 11 of the United States Bankruptcy Code.

2. The HUD Debtors are in possession of their property and continues to operate and manage their businesses as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. *The Motion.* The Motion is granted on an interim basis as set forth herein (this "**Interim Order**"). Any objection to the Motion to the extent not withdrawn or resolved is hereby overruled.

4. *Jurisdiction.* This Court has core jurisdiction over the cases commenced on the Petition Date, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The predicates for relief granted pursuant to this Order are sections 105(a), 362, 363, 364, 503, and 507 of the Bankruptcy Code, Rules 6003 and 6004 of the Bankruptcy Rules, and Rules 4001-1, 4002-1, and 9013-1 of the Bankruptcy Local Rules. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. *Committee Formation.* A statutory committee of unsecured creditors (if appointed, the "**Committee**") has not been appointed in the Cases.

6. *Notice.* Notice of the Motion, the relief requested therein and the Interim Hearing was served by the HUD Debtors, whether by telecopy, email, overnight courier or hand delivery, on (i) the Office of the United States Trustee for the Northern District of Texas; (ii) the Secured Parties; (iii) counsel to the Secured Parties (iv) the thirty (30) largest unsecured creditors of the Debtors' bankruptcy estates on a consolidated basis; (v) the Internal Revenue Service; and (vi) all parties in interest who have formally appeared and requested notice. Under the circumstances,

the notice given by the HUD Debtors of the Motion, the relief requested therein and of the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 2002, 4001(b), (c) and (d).

7. *Debtors' Assertions.* The HUD Debtors assert that they are parties to the following agreements with the Secured Parties, and that the Secured Parties claim security interests in assets of the HUD Debtors: (i) Preferred Care is party to that certain Amended and Restated Master Lease Agreement, dated as of July 1, 2015, (the "**FC Domino HUD Master Lease**") between Preferred Care, as lessee, and certain affiliates of FC Domino, as lessors, pursuant to which Preferred Care granted the FC Domino affiliate lessors a security interest in certain assets, including the accounts receivable from operation of the leased Kentucky facilities. The HUD Debtors are parties to certain Sublease Agreements, dated as of July 1, 2012 and October 1, 2012 (as applicable), (the "**FC Domino HUD Subleases**") between the applicable Debtor, as sublessee, and Preferred Care, as sublandlord, pursuant to which the HUD Debtors granted the FC Domino affiliate lessors a security interest in certain assets, including the accounts receivable from operation of the leased Kentucky facilities.

8. The terms of the use of Cash Collateral, including the grant of the proposed adequate protection to the Secured Parties set forth below, are fair and reasonable, proposed in good faith, and reflect the HUD Debtors' exercise of prudent business judgment.



9. The operating expenses proposed to be paid by the HUD Debtors are reasonable and necessary to prevent irreparable injury, loss, or damage to their estates. This Court concludes that entry of this Order is in the best interests of the estate at this time because its implementation will, among other things, allow for the continued operation of HUD Debtors' existing businesses and preservation of value for all constituents.

10. At the present time, the HUD Debtors have a need to use cash collateral in order to fund working capital, operating expenses, capital expenditures, fixed charges, payroll, and other general corporate purposes arising in the ordinary course of business of the HUD Debtors, each as necessary for the orderly maintenance and operation of the their businesses as a going concern.

11. FC Domino has agreed to the HUD Debtors' use of cash collateral under the terms set forth in this Interim Order.

12. It is in the best interests of the HUD Debtors, their estates, and creditors that the HUD Debtors be authorized to use the cash collateral of Ziegler (as lender for HUD) under the terms set forth in this Interim Order.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

13. **Use of Cash Collateral.** The HUD Debtors are authorized to use the cash collateral of the Secured Parties to fund working capital, operating expenses, capital expenditures, fixed charges, payroll, and all other general corporate purposes arising in the HUD Debtors' ordinary course of business, and to pay the costs and expenses related to the administration of the HUD Debtors' bankruptcy cases, including reasonable professional fees and certain other expenses consistent with and for the purposes set forth herein, through and including a date to be agreed by the HUD Debtors and the Secured Parties, 2017; *provided,*

*however*, that the HUD Debtors' authorization to use Cash Collateral shall immediately terminate upon the expiration of the Default Notice Period (as defined below) following the occurrence of an Event of Default (as defined below).

14. Nothing contained in this Order authorizing the HUD Debtors' use of Cash Collateral during the period after the Petition Date shall constitute a consent or waiver of any rights, claims, causes of action, or remedies of FC Domino or its affiliates under their applicable leases, or subleases, or with respect to the HUD Debtors' use of Cash Collateral during the period prior to the Petition Date.

15. **Adequate Protection.** The adequate protection provided to the Secured Parties in this Order is only to the extent (i) that the asserted liens and security interests by the Secured Parties in the HUD Debtors' pre-Petition Date property interests are perfected, valid, and not avoidable as of the Petition Date and (ii) of a decrease in the value of such entity's asserted pre-Petition Date security interests has occurred. The following adequate protection ("**Adequate Protection**") is provided to the Secured Parties as adequate protection of their asserted pre-Petition Date security interests *nunc pro tunc* to the Petition Date, in each case solely against the HUD Debtors and assets thereof that are encumbered under each such Secured Party's respective prepetition agreements notwithstanding anything to the contrary in the following subparagraphs:

- a. The HUD Debtors will remain current on their regularly scheduled rental payments to FC Domino (through January 31, 2018, unless otherwise extended by written agreement between the HUD Debtors and the Secured Parties, as applicable);
- b. The HUD Debtors shall permit representatives, agents, or employees of FC Domino or their affiliates upon written notice to have reasonable access to personnel employed at the HUD Debtors and provide FC Domino non-privileged information as they may reasonably request with respect to such facilities.

- c. The HUD Debtors shall maintain appropriate insurance on the HUD Debtors' assets in amounts consistent with prepetition practices.
- d. The HUD Debtors shall maintain appropriate and necessary licensing with respect to operating the facilities consistent with prepetition practices.
- e. The Secured Parties are hereby granted, from and after the Petition Date, allowed administrative expense claims with priority over any and all administrative expenses, adequate protection claims, and all other claims against the HUD Debtors, now existing or hereinafter arising, of any kind whatsoever, as provided under 507(b) of the Bankruptcy Code.
- f. The Secured Parties are hereby granted, from and after the Petition Date, replacement liens and security interests in all accounts and inventory acquired by the HUD Debtors after the Petition Date, specifically including all cash proceeds arising from such accounts and inventory acquired by the HUD Debtors after the Petition Date, in the same nature, extent, priority, and validity that any such liens asserted by the Secured Parties existed on the Petition Date;
- g. As of the Petition Date, said replacement liens and security interests granted to the Secured Parties shall be valid, perfected, enforceable and effective against the HUD Debtors, their successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by the HUD Debtors, Ziegler (as lender for HUD), or FC Domino and without the execution, delivery, filing or recordation of any promissory notes, financing statements, security agreements or other documents. Notwithstanding the foregoing, this Interim Order shall be deemed a security agreement and may be filed as a financing statement and the HUD Debtors shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that the Secured Parties shall reasonably request to further evidence the liens and security interests granted hereby.
- h. Said replacement liens and security interests in favor of the Secured Parties shall constitute paramount and perfected first priority liens and security interest in such property.
- i. The Secured Parties shall have all the rights and remedies of a secured creditor in connection with the liens and security interests granted by this Order in all collateral, except to the extent that such rights and remedies may be affected by the Bankruptcy Code and otherwise.

16. **Events of Default.** The following shall constitute events of default under this Interim Order (“**Events of Default**”):

- a. If any representation made by Preferred Care or the HUD Debtors after the commencement of this chapter 11 case in any report or financial statement delivered to the Secured Parties proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading);
- b. Preferred Care or the HUD Debtors fail to provide any reports or accounting information when due or access to its books and records within a reasonable time after such access is requested;
- c. If a trustee or examiner, with authority to affect the operation of the businesses of Preferred Care or the HUD Debtors is appointed in these chapter 11 proceedings without the consent of the HUD Debtors, or either of them
- d. If the bankruptcy cases of Preferred Care or the HUD Debtors are converted to a case under chapter 7; or
- e. If the bankruptcy cases of Preferred Care or the HUD Debtors are dismissed.

17. **Remedies Upon Default.** The HUD Debtor's authorization to use Cash Collateral shall automatically and immediately terminate five (5) business days after the provision of written notice to the HUD Debtors (with a copy of such notice provided to counsel for the HUD Debtors, counsel to the Committee, and the U.S. Trustee) (the "**Default Notice Period**") of an Event of Default. Upon the occurrence of an Event of Default, the Debtors shall be entitled to an emergency hearing with the Bankruptcy Court to occur within the Default Notice Period. Upon the occurrence of an Event of Default (and following the expiration of the Default Notice Period), the automatic stay provisions of section 362 of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit the Secured Parties, as applicable, to exercise all rights and remedies provided in this Order and to take any or all of the following actions, as applicable, without further order of or application to this Court:

- a. the immediate termination of the HUD Debtors' use of the Secured Parties' cash collateral;

- b. the entry of an order prohibiting or limiting the HUD Debtors' further use of the Secured Parties' cash collateral; and,
- c. such further or other relief as provided in the Bankruptcy Code, this Interim Order or applicable non-bankruptcy law.

18. The automatic stay under section 362(a) of the Bankruptcy Code shall be automatically vacated and modified as provided in paragraph 17 above, effective following the expiration of the Default Notice Period, unless the Court has determined that an Event of Default has not occurred and/or is not continuing. The rights and remedies of the Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that the Secured Parties may respectively have under the prepetition agreements, as applicable, or otherwise. The HUD Debtors shall cooperate fully with the Secured Parties in any permitted exercise of rights and remedies.

19. **Term.** Unless otherwise ordered by the Court or extended by written agreement between the HUD Debtors, Ziegler, and FC Domino, the right to use Cash Collateral granted hereunder shall commence on the date hereof and expire at a time to be agreed upon by the HUD Debtors, Ziegler, and FC Domino. Notwithstanding such expiration or other termination, or modification hereof, the Secured Parties shall be entitled to the liens, priorities and other rights provided herein to the extent that the HUD Debtors have used the Secured Parties' cash collateral following the date hereof.

20. **Continuing Effect of Order.** If an order dismissing any of the cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the superpriority claims and the adequate protection liens granted herein shall continue in full force and effect and shall maintain their priorities as provided in this Order until all adequate

protection obligations shall have been paid and satisfied in full (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all persons), and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

21. **Modification of Automatic Stay.** The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Order, including, without limitation, to: (a) permit the HUD Debtors to grant the adequate protection liens and incur the superpriority claims; (b) permit the HUD Debtors to perform such acts as may be needed to assure the perfection and priority of the liens granted herein; (c) permit the HUD Debtors to incur all liabilities and obligations under the terms of this Order; and (d) authorize the HUD Debtors to pay, and Ziegler (as lender for HUD) and/or FC Domino to retain and apply, any payments made in accordance with the terms of this Order.

22. **Notice and Hearing; Reservation of Rights to Object.** A final hearing (the “**Final Hearing**”) shall be scheduled for [\_\_\_\_\_] at [\_\_]:[\_]0 [\_\_].m. to consider further relief. This Interim Order shall be binding upon, and inure to the benefit of the Secured Parties, the HUD Debtors, any official committee(s) that may be appointed and their respective successors and assigns including, without limitation, any trustee appointed in this chapter 11 case or any superseding chapter 7 case.

23. **Notices.** Except as otherwise stated herein, all notices and demands hereunder shall be in writing and shall be deemed given when addressed as follows: on the earlier of (a) when they are actually delivered to the addressees by hand delivery, facsimile transmission, e-mail or otherwise, or (b) at 11:00 a.m. Chicago time on the Banking Day next following the deposit thereof with any recognized national overnight delivery service properly addressed to the

addressees.

24. **Other.** The findings of fact and conclusions of law of this Court pursuant to this Interim Order shall be deemed effective upon the entry of this Order. To the extent that such findings may constitute conclusions, and vice versa, they hereby are deemed such.

25. To the extent necessary, the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

26. This Interim Order is immediately valid and fully effective upon its entry by the Court.

### End of Order ###

Respectfully submitted by:

/s/ Stephen A. McCartin

Stephen A. McCartin (TX 13374700)

Mark C. Moore (TX 24074751)

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

# **EXHIBIT B**

## **Checklist**



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**PROPOSED 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**  
§  
**Debtors.** § **(Joint Administration Requested)**  
§

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS  
PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION FINANCING**

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**“HUD DEBTORS CASH COLLATERAL MOTION”**

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Elsemere Health Facilities, L.P. and Henderson Health Facilities, L.P. (the “**HUD Debtors**”), as debtors and debtors in possession,<sup>1</sup> hereby file this their *Attorney Checklist Concerning Motions and Orders Pertaining to Use of Cash Collateral and Post-Petition Financing* (this “**Checklist**”) with respect the interim debtor-in-possession financing sought in that certain *Motion for Interim and Final Orders (I) Authorizing the HUD Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B)* (the “**HUD Debtors Cash Collateral Motion**”), filed by certain Debtors on November 13, 2017. This is to certify that the

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<sup>1</sup> A list of all 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.

following Checklist fully responds to the Bankruptcy Court’s inquiry concerning material terms of the interim financing motion and/or preliminary form of proposed interim financing order:

		Yes, at Page/Exhibit Y means yes; N means no; N/A means not applicable (Page Listing Optional)	References to Motion, Credit Agreement, and/or Interim Order <sup>2</sup>
1.	Identification of Proceedings:		
	(a) Preliminary or final motion/order (circle one).....	Interim	See Order at 10, § 1.
	(b) Continuing use of cash collateral (§ 363).....	Yes	
	(c) New financing (§ 364).....	No	N/A.
	(d) Combination of §§ 363 and 364 financing (with respect to adequate protection).....	No	N/A.
	(e) Emergency interim financing hearing (immediate and irreparable harm) .....	Yes	See Motion at 12; Order at 8, § J; 9, § N; 10, § 1.
2.	Stipulations:		
	(a) Brief history of debtor’s businesses and status of debtor’s prior relationship with lender? .....	Yes.	See Order at 4.
	(b) Brief statement of purpose and necessity of financing? .....	Yes.	See Order at 5-6.
	(c) Brief statement of type of financing (i.e., accounts receivable, inventory)? .....	N/A.	N/A.
	(d) Are lender’s pre-petition security interest(s) and liens deemed valid, fully perfected and non-avoidable?.....	No	N/A.
	(i) Are there provisions to allow for objections to above? .....	N/A.	N/A.
	(e) Is there a post-petition financing agreement between lender and debtor? .....	No	N/A.

<sup>2</sup> References to the “Motion” herein shall mean the *Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing; (II) Granting Liens, Security Interests and Superpriority Administrative Expense Status; (III) Scheduling a Final Hearing; and (IV) Modifying Automatic Stay* filed at Docket No. \_\_\_\_ in the above-enumerated bankruptcy case. References to the “Order” shall mean that proposed *Interim Order Granting Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing; (II) Granting Liens, Security Interests and Superpriority Administrative Expense Status; (III) Scheduling a Final Hearing; and (IV) Modifying Automatic Stay* filed with the Motion and attached hereto as **Exhibit A** for convenience.

		Yes, at Page/Exhibit Y means yes; N means no; N/A means not applicable (Page Listing Optional)	References to Motion, Credit Agreement, and/or Interim Order <sup>2</sup>
	(i) If so, is agreement attached?.....	N/A.	N/A.
	(f) If there is an agreement, are lender’s post-petition security interests and liens deemed valid, fully perfected and non-avoidable?.....	Yes	See Order at 5.
	(g) Is lender undersecured or oversecured? (circle one) ..	Unknown.	
	(h) Has lender’s non-cash collateral been appraised?.....	No	N/A
	(i) Insert date of latest appraisal? .....	N/A	
	(i) Is debtor’s proposed budget attached? .....	No.	N/A.
	(j) Are all pre-petition loan documents identified? .....	N/A.	N/A.
	(k) Are pre-petition liens on single or multiple assets? (circle one) .....	Multiple	
	(l) Are there pre-petition guaranties of debt? .....	Unknown	Unknown.
	(i) Limited or unlimited? (circle one) .....	Unlimited	
3.	Grant of Liens:		
	(a) Do post-petition liens secure pre-petition debts? .....	No.	N/A.
	(b) Is there cross-collaterization?.....	No.	N/A.
	(c) Is the priority of post-petition liens equal to or higher than existing liens?.....	No	The HUD Debtors are not granting priming liens.
	(d) Do post-petition Liens have retroactive effect?.....	No	No
	(e) Are there restrictions on granting further liens or liens of equal or higher priority? .....	No.	N/A.
	(f) Is lender given liens on claims under §§ 506(c), 544-50 and §§ 522? .....	No.	N/A.
	(i) Are lender's attorneys' fees to be paid?.....	No.	N/A.
	(ii) Are debtors' attorneys' fees excepted from § 506(c)?.....	N/A.	N/A.
	(g) Is lender given liens upon proceeds of causes of action under §§ 544, 547 and 548?.....	No.	N/A.
4.	Administrative priority Claims:		
	(a) Is lender given an administrative priority?.....	Yes, as adequate protection.	See Order at 6-7.
	(b) Is administrative priority higher than § 507(a)? .....	No.	N/A.

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION FINANCING, ETC.**

		Yes, at Page/Exhibit Y means yes; N means no; N/A means not applicable (Page Listing Optional)	References to Motion, Credit Agreement, and/or Interim Order <sup>2</sup>
	(c) Is there a conversion of pre-petition secured claim to post-petition administrative claim by virtue of use of existing collateral?.....	No.	N/A.
5.	Adequate Protection (§ 361):		
	(a) Is there post-petition debt service?.....	Only to the extent the Debtors will continue making lease payments.	N/A.
	(b) Is there a replacement/addition 361(l) lien? (circle one or both).....	Yes.	See Order at 15.
	(c) Is the lender's claim given super-priority? (§ 364(c) or (d) [designate]).....	No.	N/A.
	(d) Are there guaranties?.....	No.	N/A.
	(e) Is there adequate Insurance coverage?.....	Yes.	
	(f) Other?.....	N/A.	
6.	Waiver/Release Claims v. Lender:		
	(a) Debtor waives or release claims against lender, including, but not limited to, claims under §§ 506(c), 544-550, 552, and 553 of the Code?.....	No.	N/A.
	(b) Does the debtor waive defenses to claim or liens of lender?.....	No.	N/A.
7.	Source of Post-Petition Financing (§ 364 Financing):		
	(a) Is the proposed lender also the pre-petition lender?...	Yes	Yes
	(b) New post-petition lender?.....	No	No
	(c) Is the lender an insider?	No	No
8.	Modification of Stay:		
	(a) Is any modified lift of stay allowed?.....	Yes	See Order at 6-7.
	(b) Will the automatic stay be lifted to permit lender to exercise self-help upon default without further order?.....	No	The Order provides a 5-day notice period, see Order at 6-7.
	(c) Are there any other remedies exercisable without further order of court?.....	No.	N/A.

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION FINANCING, ETC.**

		Yes, at Page/Exhibit Y means yes; N means no; N/A means not applicable (Page Listing Optional)	References to Motion, Credit Agreement, and/or Interim Order <sup>2</sup>
	(d) Is there a provision that any future modification of order shall not affect status of debtor's post-petition obligations to lender? .....	No.	N/A.
9.	Creditors' Committee:		
	(a) Has creditors' committee been appointed? .....	No	No
	(b) Does creditors' committee approve of proposed financings? .....	N/A	N/A
10.	Restrictions on Parties in Interest:		
	(a) Is a plan proponent restricted in any manner, concerning modification of lender's rights, liens and/or causes? .....	No.	N/A.
	(b) Is the debtor prohibited from seeking to enjoin the lender in pursuit of rights? .....	No	No - The Order provides a 5-day cure period during which debtor may seek Court intervention. See Order at 8-9.
	(c) Is any party in interest prohibited from seeking to modify this order? .....	No.	N/A.
	(d) Is the entry of any order conditioned upon payment of debt to lender? .....	No.	N/A.
	(e) Is the order binding on subsequent trustee on conversion? .....	Yes	See Order at 7-8.
11.	Nunc Pro Tunc:		
	(a) Does any provision have retroactive effect? .....	No	No
12.	Notice and Other Procedures:		
	(a) Is shortened notice requested? .....	Yes	Emergency Relief
	(b) Is notice requested to shortened list? .....	Yes	Yes
	(c) Is time to respond to be shortened? .....	Yes	Yes
	(d) If final order sought, have 15 days elapsed since service of motion pursuant to Rule 4001(b)(2)? .....	N/A	N/A. Motion seeks entry of interim order and setting for final hearing more than 15 days after relief is sought.
	(e) If preliminary order sought, is cash collateral necessary to avoid immediate and irreparable harm to the estate pending a final hearing? .....	Yes	Yes

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION FINANCING, ETC.**

	Yes, at Page/Exhibit Y means yes; N means no; N/A means not applicable (Page Listing Optional)	References to Motion, Credit Agreement, and/or Interim Order <sup>2</sup>
(f) Is a Certificate of Conference included? .....	Joint Stipulation	Stipulated Order
(g) Is a Certificate of Service included?.....	Yes	Yes
(h) Is there verification of transmittal to U.S. Trustee included pursuant to Rule 9034?.....	Yes	Yes
(i) Has an agreement been reached subsequent to filing motion? .....	No	No
(i) If so, has notice of the agreement been served pursuant to Rule 4001(d)(1)?.....	Concurrent with filing of Motion	N/A
(ii) Is the agreement in settlement of motion pursuant to Rule 4001(d)(4)?.....	Concurrent with filing of Motion	N/A
(iii) Does the motion afford reasonable notice of material provisions of agreement pursuant to Rule 4001(d)(4)?.....	Yes	
(iv) Does the motion provide for opportunity for hearing pursuant to Rule 9014? .....	Yes	

DATED: November 13, 2017

Respectfully submitted by:

/s/ Stephen A. McCartin  
 Stephen A. McCartin (TX 13374700)  
 Mark C. Moore (TX 24074751)  
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**PROPOSED COUNSEL TO  
 DEBTORS AND DEBTORS-IN-POSSESSION**

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION FINANCING, ETC.**

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 13, 2017, 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

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH  
COLLATERAL AND POST-PETITION FINANCING, ETC.**

**- PAGE 7**

**Debtors**

<b>Debtor</b>	<b>Last Four Digits of Federal Tax I.D. No.</b>
<b>Preferred Care, Inc.</b>	7040
<b><u>Kentucky LP Debtors</u></b>	
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

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION FINANCING, ETC.**

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<b><u>New Mexico LP Debtors</u></b>	
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

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH COLLATERAL AND POST-PETITION FINANCING, ETC.**

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**EXHIBIT A**  
**Interim DIP Order**

**ATTORNEY CHECKLIST CONCERNING MOTIONS AND ORDERS PERTAINING TO USE OF CASH  
COLLATERAL AND POST-PETITION FINANCING, ETC.**

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