

Stephen A. McCartin (TX 13374700)
Mark C. Moore (TX 24074751)
GARDERE WYNNE SEWELL LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
smccartin@gardere.com
mmoore@gardere.com

**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 CERTAIN
DEBTORS TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE
PROTECTION TO PREPETITION LENDERS AND (III) SCHEDULING A
FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(B)**

“OMEGA AND FC DOMINO DEBTORS CASH COLLATERAL MOTION”

The Omega and FC Domino Debtors, as debtors and debtors in possession,¹ hereby file this their *Motion for Interim and Final Orders (I) Authorizing Certain Debtors to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, and (III)*

¹ A list of all of the Debtors in these chapter 11 cases (the “**Debtors**”), along with the last four digits of each Debtor’s federal tax identification number, is attached hereto. The “FC Domino Debtors” are Bowling Green Health Facilities, L.P., Brandenburg Health Facilities, L.P., Cadiz Health Facilities, L.P., Campbellsville Health Facilities, L.P., Elizabethtown Health Facilities, L.P., Fordsville Health Facilities, L.P., Franklin Health Facilities, L.P., Hardinsburg Health Facilities, L.P., Irvine Health Facilities, L.P., Morganfield Health Facilities, L.P., Owensboro Health Facilities, L.P., Paducah Health Facilities, L.P., Pembroke Health Facilities, L.P., Richmond Health Facilities - Kenwood, L.P., Richmond Health Facilities - Madison, L.P., Salyersville Health Facilities, L.P., Somerset Health Facilities, L.P., Springfield Health Facilities, L.P., Stanton Health Facilities, L.P. The “Omega Debtors” are Bloomfield Health Facilities, L.P., Clayton Health Facilities, L.P., Espanola Health Facilities, L.P., Gallup Health Facilities, L.P., Lordsburg Health Facilities, L.P., Raton Health Facilities, L.P., SF Health Facilities-Casa Real, L.P., Silver City Health Facilities, L.P.

Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(B) (the “**Motion**”) 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**”) authorizing the use of cash collateral (“**Cash Collateral**,” as that term is defined in the Bankruptcy Code) of affiliates of Omega Healthcare Investors, Inc. (collectively, “**Omega**”) and FC Domino Acquisition, LLC and its affiliates (“**FC Domino**”) and for 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.

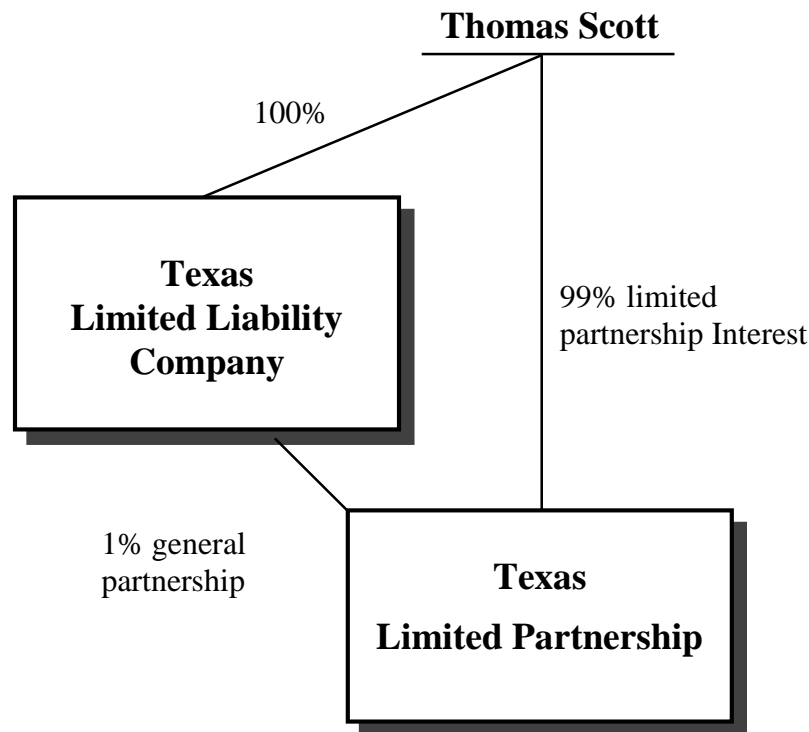
I.
PRELIMINARY STATEMENT

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. Their 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 (the “**Facilities**”) in twelve (12) states (approximately 11,500 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 ²
a) Preferred Care Inc.	None (a holding company of non-Debtor entities).	1 st — HUD 2 nd — Wells Fargo 3 rd — FC Domino

Kentucky

b) “HUD Debtors”	Two (2) facilities in Kentucky lased from FC Domino, which financed the facilities through a program with the Department of Housing and Urban Development (“ HUD ”).	1 st — HUD 2 nd — FC Domino
c) “FC Domino Debtors”	Nineteen (19) facilities in Kentucky leased from FC Domino.	1 st — Extendicare ³ 2 nd — Wells Fargo 3 rd — FC Domino

New Mexico

d) “Omega Debtors”	Eight (8) facilities in New Mexico leased from Omega.	1 st — Wells Fargo 2 nd — Omega ⁴
e) “Remaining Debtors”	Four (4) facilities in New Mexico, two (2) leased from Kading affiliates, and two (2) leased from Thomas Scott affiliates.	1 st — Wells Fargo

33 Total Debtor Facilities

² 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.

³ Extendicare Homes, Inc. (“**Extendicare**”) 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 Extendicare as a result of the transfer of operations to the Preferred Care Group. The Debtors believe that no indebtedness to Extendicare exists as of the Petition Date; thus the asserted liens secure no outstanding indebtedness.

⁴ 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. Wells Fargo DIP Facility

10. Wells Fargo Bank, N.A. (“Wells Fargo”) is providing post-petition debtor-in-possession financing (the “DIP Facility”) to all of the Debtors, other than the two (2) HUD Debtors (which are not included in the pre-petition or post-petition proposed Wells Fargo line of credit). Each of the Debtors, other than the HUD Debtors, will be co-obligors on the proposed Wells Fargo DIP Facility. As explained in more detail in the Weiner Declaration, all of the Debtors’ receipts, other than those of the HUD Debtors, are deposited into a concentration account and applied almost daily to pay down the Wells Fargo line of credit, thereby creating additional availability under the proposed post-petition Wells Fargo DIP Facility. By separate motion, the Debtors, other than the HUD Debtors, are requesting authority to enter into the Wells Fargo DIP Facility.

E. The HUD Debtors' Cash Collateral

11. 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, 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.

F. Use of Cash Collateral of FC Domino and Omega

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

13. Through this Omega and FC Domino Cash Collateral Motion, the Omega and FC Domino Debtors seek authority to use the Cash Collateral of Omega and FC Domino and for authority to grant adequate protection replacement liens to Omega and FC Domino on post-petition assets of the Omega and FC Domino Debtors to the same extent and priority as their pre-petition liens.

II.
JURISDICTION AND VENUE

14. 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.

15. 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

16. 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 Debtors’ Leases of Real and Personal Property from Omega and FC Domino

17. FC Domino leases the Debtors twenty-one (21) Facilities in Kentucky to Preferred Preferred Care pursuant to two (2) master leases. Preferred Care subleases those Facilities to individual partnerships. Omega leases eight (8) Facilities in New Mexico to eight (8) individual leases of the Facilities with the Omega Debtors in New Mexico. The FC Domino Debtors and Omega Debtors have granted FC Domino and Omega, as applicable, security interests in certain of their assets, including their accounts receivable, to secure their rent obligations. To perfect their asserted liens, the FC Domino landlords filed UCC-1 financing statements against the FC Domino Debtors and the Omega landlords filed UCC-1 financing statements against the Omega Debtors. The Omega and FC Domino landlords’ liens are subordinate to the Wells Fargo liens in the assets of the Omega and FC Domino Debtors.

C. Cash Management System

18. The Preferred Care Group utilizes a centralized cash management system (the “**Cash Management System**”) similar to those commonly employed by corporate enterprises of comparable size and complexity. All revenues collected by each of the entities in the Preferred Care Group are eventually consolidated into Facility Support Funding, LLC (“**FSF**”) accounts located at Wells Fargo Bank, N.A. (“**Wells Fargo**”).⁵ Eighty-five percent (85%) of collections are from Medicare, Medicaid, and private insurers, which are deposited directly into a FSF concentration account at Wells Fargo (the “**Concentration Account**”). Fifteen percent (15%) of collections are private-pay receipts deposited into local facility-level accounts (the “**Depository Accounts**”), which are then transferred periodically into the Concentration Accounts. All amounts in the Concentration Account are then applied to the Wells Fargo line of credit as discussed below. FSF then draws on the Wells Fargo line of credit and uses those funds as needed for payroll and other operating expenses of the Preferred Care Group. A detailed accounting of the collections on behalf of each entity in the Preferred Care Group into the Concentration Account along with the subsequent application of such funds to the Wells Fargo line of credit and each advance from the Wells Fargo line of credit to Facility Support Funding on behalf of each entity in the Preferred Care Group is maintained by PCPMG Consulting, LLC (“**PCPMG Consulting**”), the Debtors’ management company.⁶ 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.

⁵ The HUD Debtors utilize a similar cash management structure using FSF II, LLC (“**FSF II**”), including a concentration account located at Wells Fargo. Three(3) non-debtor facilities in Florida utilize stand-alone cash management systems and do not use either FSF or FSF II. The HUD Debtors are not obligated on the Wells Fargo pre-petition debt and have not granted any security interests to Wells Fargo.

⁶ PCPMG Consulting also provides management services to the HUD Debtors and keeps similar records for FSF II.

19. The Cash Management System permits the Debtors to accurately monitor cash availability at all times and also permits the Debtors to manage and track the collection and transfer of funds, including intercompany transfers, thereby reducing administrative burdens and expenses. The Debtors maintain current and accurate records of all transactions processed through the Cash Management System, including intercompany obligations. All intercompany transactions and intercompany claims incurred after the Petition Date will be documented in the Debtors' books and records through their ordinary course accounting process. Critically, Medicare, Medicaid, and private insurers know to pay amounts due to the Debtors through the Cash Management System, and, in particular, into the Wells Fargo Concentration Account.

D. The Pre-Petition Financing

20. On March 10, 2017, the Preferred Care Group (excluding the HUD Debtors) and FSF entered into that certain *Credit Agreement* dated as of March 10, 2017 (as amended by that certain *First Amendment to Credit Agreement* dated as of May 16, 2017 and as otherwise amended, modified and restated from time to time, the "**Credit Agreement**,") with Wells Fargo as Administrative Agent (the "**Pre-Petition Agent**") for Wells Fargo and other associated lenders (the "**Pre-Petition Lender**" and/or "**Pre-Petition Lenders**," as applicable). Pursuant to the Credit Agreement, Wells Fargo agreed to make a \$60 million revolving loan, subject to availability under the agreement, to FSF and the Preferred Care Group (collectively, the "**Borrowers**," and excluding the HUD Debtors), secured by a first priority security interest in, among other things, all of the accounts receivable of the Borrowers.⁷ As of the Petition Date, the Borrowers owed Wells Fargo approximately \$40 million under the revolving line of credit (the "**Pre-Petition Obligations**"), secured by, among other assets, accounts receivable of

⁷ Omega/AVIV REIT affiliates lease real and personal property to certain Debtors and non-debtors; these lessor entities have agreed to subordinate their first priority lien on the assets of their lessees in order to provide Wells Fargo a first priority lien on those receivables.

approximately \$80 million. The Pre-Petition Obligations are evidenced by the Credit Agreement, promissory notes, security agreements, guaranties (the “**Guaranties**”), and related documents (collectively, the “**Loan Documents**”). Pursuant to the Loan Documents, each of the Borrowers is jointly and severally liable for the Pre-Petition Obligations.

E. Use of Cash Collateral

21. The Omega and FC Domino Debtors propose to continue the use of their Cash Management System⁸ pursuant to which the Cash Collateral of Omega and FC Domino (as applicable) will be deposited in the FSF concentration account and applied to the Wells Fargo line of credit, thereby creating availability for additional draws on the Wells Fargo line of credit. Accordingly, the Omega and FC Domino Debtors hereby seek authority to use Cash Collateral as described above in order to continue the Cash Management System and to prevent significant and costly disruptions of the their businesses.

IV.
RELIEF REQUESTED

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

- a. authorization for the Omega and FC Domino Debtors to use Cash Collateral and the granting of adequate protection to the Omega 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;

⁸ For more information on the critical nature of the Cash Management System, see the Cash Management Motion.

- 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

23. The Omega and FC Domino Debtors bring this Motion on an emergency basis given the immediate and irreparable harm that the Omega and FC Domino 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.

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

VI.
APPLICABLE AUTHORITY

A. Adequate Protection and Cash Collateral

25. 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).

26. 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).

27. Omega and FC Domino assert liens on the Cash Collateral of the Omega and FC Domino Debtors, as applicable. As adequate protection for such Debtors' use of the Cash Collateral, the Omega and FC Domino Debtors are proposing to provide Omega and/or FC Domino, as applicable, with the following forms of adequate protection ("**Adequate Protection**"), to the extent of any diminution in value of Omega and FC Domino's pre-Petition Date security interests in Omega and FC Domino Debtors' pre-petition collateral, if any.

- a. The Omega and FC Domino Debtors will remain current on their regularly scheduled rental payments to Omega and FC Domino (through January 31, 2018, unless otherwise extended by written agreement between the Omega and FC Domino Debtors and the Secured Parties, as

applicable);

- b. Omega and FC Domino shall be entitled to any periodic reports for Wells Fargo Bank, N.A. as “DIP Lender” and/or “DIP Agent” pursuant to any debtor-in-financing order entered with respect to the Omega and FC Domino Debtors. The Omega and FC Domino Debtors shall also permit representatives, agents, or employees of Omega and FC Domino (as applicable) or their affiliates upon written notice to have reasonable access to personnel employed at the Omega and FC Domino Debtors and provide Omega and FC Domino, as applicable, non-privileged information as they may reasonably request with respect to the such Facilities.
- c. The Debtors shall maintain appropriate insurance on the Debtors’ assets in amounts consistent with prepetition practices.
- d. The 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 such Debtors, now existing or hereinafter arising, of any kind whatsoever, as provided under 507(b) of the Bankruptcy Code, subordinate **only** to any superpriority claims granted to Wells Fargo Bank, N.A. pursuant to an order of this Court relating to post-petition debtor-in-possession financing and any “Carve-Out” defined therein;
- 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 Omega and FC Domino Debtors after the Petition Date, specifically including all cash proceeds arising from such accounts and inventory acquired by the 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 Omega and FC Domino Debtors, their successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by Debtors or the Secured Parties 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 Omega and FC Domino 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 subordinate **only** to any liens granted to Wells Fargo Bank, N.A. on the same property pursuant to an order of this Court relating to post-petition debtor-in-possession financing.
- 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.

28. Here, the proposed Adequate Protection, outlined hereinabove and set forth in the Proposed Order attached hereto as **Exhibit A**, is sufficient to secure the Omega and FC Domino Debtors' projected use 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 Omega 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.

29. It is essential that the Omega and FC Domino Debtors 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 Omega and FC Domino Debtors' businesses, the maintenance of continued relationships with the Omega and FC Domino Debtors' vendors and service providers, and also to satisfy actual or procedurally necessary working requirements for the Omega and FC Domino Debtors' businesses. This Motion is intended as a backstop to the separate debtor-in-possession financing motion that will be or has been filed by the Borrowing Debtors. This Motion will allow the continuation of the Debtors' existing operations and lending relationships.

C. Interim Approval Should Be Granted

30. 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 a debtor's estate.

31. 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 Omega and FC Domino 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 Omega and FC Domino Debtors' businesses and their estates.

32. The Omega and FC Domino Debtors request that the Court conduct an emergency preliminary hearing on the Motion and authorize the Omega and FC Domino 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 Omega and FC Domino 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

33. As noted above, pursuant to Bankruptcy Rules 4001(b)(2), the Omega and FC Domino 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 to this bankruptcy case.

34. The Omega and FC Domino 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 Omega and FC Domino Debtors respectfully request that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001.

VII.
CONFERENCE WITH LENDER

35. Counsel for the Debtors, Omega, and FC Domino have conferred on the relief requested herein. Omega and FC Domino agree to the Omega and FC Domino Debtors' use of Cash Collateral under the terms requested herein.

VIII.
CHECKLIST

36. 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

37. No trustee, examiner, or statutory creditors' committee has been appointed in these Chapter 11 Cases. Notice of the relief requested herein has been provided to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) Omega and FC Domino; (iii) counsel to Omega 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.

38. The pleadings in these Bankruptcy Cases and supporting papers are available on the Debtors' website at 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. 23rd Avenue, Suite 275, Denver, Colorado, 80238, 855-812-6112 (toll-free), (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).

WHEREFORE, the 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)

Mark C. Moore (TX 24074751)

GARDERE WYNNE SEWELL LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: (214) 999-3000

Facsimile: (214) 999-4667

smccartin@gardere.com

mmoore@gardere.com

**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

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

EXHIBIT A
Interim Order

**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)
	§	

**INTERIM ORDER (I) AUTHORIZING CERTAIN 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 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)* [Docket No. ____], (the “**Motion**”)¹ filed by the Omega and FC Domino Debtors,² as debtors and

¹ Capitalized terms not otherwise defined herein have the definition ascribed in the Motion.

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 Omega and FC Domino Debtors to use Cash Collateral and the granting of adequate protection to the Omega 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 Omega Debtors and FC Domino 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 Omega Debtors and FC

² The parties requesting relief in the Motion are defined as the Omega and FC Domino Debtors.

Domino 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 Omega and FC Domino Debtors filed their voluntary petitions under chapter 11 of the United States Bankruptcy Code.

2. The Omega Debtors and FC Domino 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 Omega Debtors and FC Domino 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 Omega and FC Domino 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.* Preferred Care Inc. ("**Preferred Care**"), the Omega Debtors, and the FC Domino Debtors assert that they are parties to the following agreements with the Secured Parties, and that the Secured Parties claim security interest in assets of certain Debtors organized into groups of facilities within the Debtors' corporate structure:

FC Domino Group ("**FC Domino Group**"). Preferred Care is party to that certain Amended and Restated Master Lease Agreement, dated as of July 1, 2015, (the "**FC Domino 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 FC Domino Debtors are parties to certain Sublease Agreements, dated as of July 1, 2012 and October 1, 2012 (as applicable), (the "**FC Domino Subleases**" and together with the FC Domino Master Lease, the "**FC Domino Group Documents**") between the applicable Debtor, as sublessee, and Preferred Care, as sublandlord, pursuant to which the FC Domino Debtors granted the FC Domino affiliate lessors a security interest in certain assets, including the accounts receivable from operation of the leased Kentucky facilities.

Omega Group (the "**Omega Group**"). The Omega Debtors are parties to certain lease agreements (the "**Omega Leases**") between the applicable Debtor, as lessee and affiliates of Omega pursuant to which the Omega Debtors granted the Omega affiliate lessors a security interest in certain assets, including the accounts receivable from operation of the leased New Mexico facilities.

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

9. The use of cash collateral by the Omega and FC Domino Debtors is reasonable and necessary to prevent irreparable injury, loss, or damage to their estates. This Court concludes, and the parties agree, 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 Omega and FC Domino Debtors' existing businesses and preservation of value for all constituents.

10. At the present time, the Omega and FC Domino Debtors have a need to use cash collateral as set forth below.

11. The Secured Parties have agreed to the Omega and FC Domino Debtors' use of cash collateral under the terms set forth in this Interim Order.

ACCORDINGLY, IT IS HEREBY ORDERED:

12. **Use of Cash Collateral.** The Omega and FC Domino Debtors are authorized to use the cash collateral of the Secured Parties to continue the use of their Cash Management System pursuant to which the Cash Collateral of the Secured Parties will be deposited in the Concentration Account and applied to the claims of Wells Fargo (at the discretion of the Wells Fargo in its capacity as "DIP Agent" under the Debtors' debtor in possession financing facility with Wells Fargo); *provided, however*, that the 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).

13. . Nothing contained in the Order authorizing the 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 the FC Domino Master Lease, the FC Domino Subleases, or with respect to the Debtors' use of Cash Collateral during the period prior to the Petition Date.

14. **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 Omega and FC Domino 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 Debtors and assets thereof that are encumbered under each such Secured Party's respective prepetition agreements (i.e., FC Domino's adequate protection liens and claims shall be against the FC Domino Debtors and Omega's adequate protection liens and claims shall be against the Omega Debtors) not withstanding anything to the contrary in the following subparagraphs:

- a. The Omega and FC Domino Debtors will remain current on their regularly scheduled rental payments to Omega and FC Domino (through January 31, 2018, unless otherwise extended by written agreement between the Omega and FC Domino Debtors and the Secured Parties, as applicable);
- b. Omega and FC Domino shall be entitled to any periodic reports for Wells Fargo Bank, N.A. as "DIP Lender" and/or "DIP Agent" pursuant to any debtor-in-financing order entered with respect to the Omega and FC Domino Debtors. The Omega and FC Domino Debtors shall also permit representatives, agents, or employees of Omega and FC Domino (as applicable) or their affiliates upon written notice to have reasonable access to personnel employed at the Omega and FC Domino Debtors and provide

Omega and FC Domino, as applicable, non-privileged information as they may reasonably request with respect to the such Facilities.

- c. The Omega and FC Domino Debtors shall maintain appropriate insurance on the Omega and FC Domino Debtors' assets in amounts consistent with prepetition practices.
- d. The Omega and FC Domino 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 Omega and FC Domino Debtors, now existing or hereinafter arising, of any kind whatsoever, as provided under 507(b) of the Bankruptcy Code, subject and junior **only** to any superpriority claims granted to Wells Fargo Bank, N.A. pursuant to an order of this Court relating to post-petition debtor-in-possession financing and any "Carve-Out" defined therein;
- 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 Omega and FC Domino Debtors after the Petition Date, specifically including all cash proceeds arising from such accounts and inventory acquired by the 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, subordinate **only** to any liens granted to Wells Fargo Bank, N.A. ("**Wells Fargo**") on the same property pursuant to an order of this Court relating to post-petition debtor-in-possession financing (the "**DIP Liens**") and/or Wells Fargo's pre-petition liens.
- 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 Omega and FC Domino Debtors, their successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by Debtors or the Secured Parties 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 Omega and FC Domino 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 subordinate **only** to the DIP Liens and/or Wells Fargo's pre-petition liens.
- 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, the Omega and FC Domino Debtors' agreements with Wells Fargo, and otherwise.

15. **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, the Omega Debtors, and the FC Domino Debtors (or any of them) 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, the Omega Debtors, and the FC Domino Debtors (or any of them) 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 Preferred Care, the Omega Debtors, and the FC Domino Debtors (or any of them), as applicable, business is appointed in the Omega or FC Domino Debtors' chapter 11 proceedings without the consent of the applicable Debtors and FC Domino or Omega, as applicable;
- d. If Preferred Care, the Omega Debtors, and the FC Domino Debtors' (or any of them), as applicable, cases are converted to a case under chapter 7; or
- e. If Preferred Care, the Omega Debtors, and the FC Domino Debtors' (or any of them), as applicable, cases are dismissed.

16. **Remedies Upon Default.** The authorization to use Cash Collateral granted herein shall automatically and immediately terminate five (5) business days after the provision of written notice to the Omega and FC Domino Debtors (with a copy of such notice provided to

counsel for the Debtors, counsel for Wells Fargo, 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 Omega and FC Domino Debtors’ use of the Secured Parties’ cash collateral;
- b. the entry of an order prohibiting or limiting the Omega and FC Domino 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.

17. The automatic stay under section 362(a) of the Bankruptcy Code shall be automatically vacated and modified as provided in paragraph 16 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 Debtors shall cooperate fully with the Secured Parties in any permitted exercise of rights and remedies.

18. **Term.** Unless otherwise ordered by the Court or extended by written agreement between the Omega and FC Domino Debtors and the Secured Parties, the Omega and FC

Domino Debtors' right to use Lender's cash collateral hereunder shall commence on the date hereof and expire at a time to be agreed upon by the Omega and FC Domino Debtors and the Secured Parties. 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 Omega and FC Domino Debtors have used the Secured Parties' cash collateral following the date hereof.

19. **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.

20. **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) the Omega and FC Domino Debtors to grant the adequate protection liens and incur the superpriority claims; (b) permit the Omega and FC Domino Debtors to perform such acts as may be needed to assure the perfection and priority of the liens granted herein; (c) permit the Omega and FC Domino Debtors to incur all liabilities and obligations under the terms of this Order; and (d) authorize the Debtors to pay, and Omega and FC Domino to retain and apply, any payments made in accordance with the terms of this Order.

21. **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 Omega and FC Domino 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.

22. **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.

23. **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.

24. 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.

25. Notwithstanding anything in this Order, all rights, protections, claims, and liens, granted to the Secured Parties herein, shall be, in all respects, subject to that certain Intercreditor Agreement dated as of June 12, 2017 by and among Wells Fargo and those certain Landlords

(affiliates of FC Domino Acquisition, LLC) party thereto (the “**FC Domino Intercreditor**”) and that certain Subordination and Intercreditor Agreement dated as of November 10, 2017, by and among Wells Fargo and those Landlords (affiliates of Omega Healthcare Investors, Inc.) party thereto (the “**Omega Intercreditor**,” and together with the FC Domino Intercreditor, the “**Intercreditor Agreements**”), and to the extent of any inconsistency with respect to the claims, rights, and liens of Wells Fargo under this Order and the Intercreditor Agreements, the Intercreditor Agreements shall govern.

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)

GARDERE WYNNE SEWELL LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: (214) 999-3000

Facsimile: (214) 999-4667

smccartin@gardere.com

mmoore@gardere.com

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

EXHIBIT B

Checklist

Stephen A. McCartin (TX 13374700)
Mark C. Moore (TX 24074751)
GARDERE WYNNE SEWELL LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: (214) 999-3000
Facsimile: (214) 999-4667
smccartin@gardere.com
mmoore@gardere.com

**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**

“OMEGA AND FC DOMINO DEBTORS CASH COLLATERAL MOTION”

The Debtors¹ hereby file this *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 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 Debtors Cash Collateral Motion**”), filed by certain Debtors on November 13, 2017. This is to certify that the 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:

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.

		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 ²
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.
	(i) If so, is agreement attached?.....	N/A.	N/A.

² 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.

		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 ²
	(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-collateralization?.....	No.	N/A.
	(c) Is the priority of post-petition liens equal to or higher than existing liens?.....	No.	The 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, subordinate to Wells Fargo.	See Order at 6-7.

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 ²
	(b) Is administrative priority higher than § 507(a)?	No.	N/A.
	(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, subordinate to post-petition liens of Wells Fargo Bank, N.A.	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	No.	The Order provides a 5-

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 ²
	order?.....		day notice period, <i>see</i> Order at 6-7.
	(c) Are there any other remedies exercisable without further order of court?	No.	N/A.
	(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. <i>See</i> 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	<i>See</i> 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

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 ²
		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
(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	

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

DATED: November 13, 2017

Respectfully submitted by:

/s/ Stephen A. McCartin

Stephen A. McCartin (TX 13374700)

Mark C. Moore (TX 24074751)

GARDERE WYNNE SEWELL LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: (214) 999-3000

Facsimile: (214) 999-4667

smccartin@gardere.com

mmoore@gardere.com

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

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

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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

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

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<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

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

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