

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](mailto:smccartin@gardere.com)  
[mmoore@gardere.com](mailto: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 THE 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**

---

**“WELLS FARGO DIP FINANCING MOTION”**

---

Preferred Care Inc. and certain of its debtor affiliates, as debtors and debtors in possession (the “**Debtors**”)<sup>1</sup> file this their *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* (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

---

<sup>1</sup> Debtors, as defined in this Motion, includes all of the Debtors on the attached list except for Elsemere Health Facilities, L.P. and Henderson Health Facilities, L.P. (the “**HUD Debtors**”).

incorporated herein by reference.

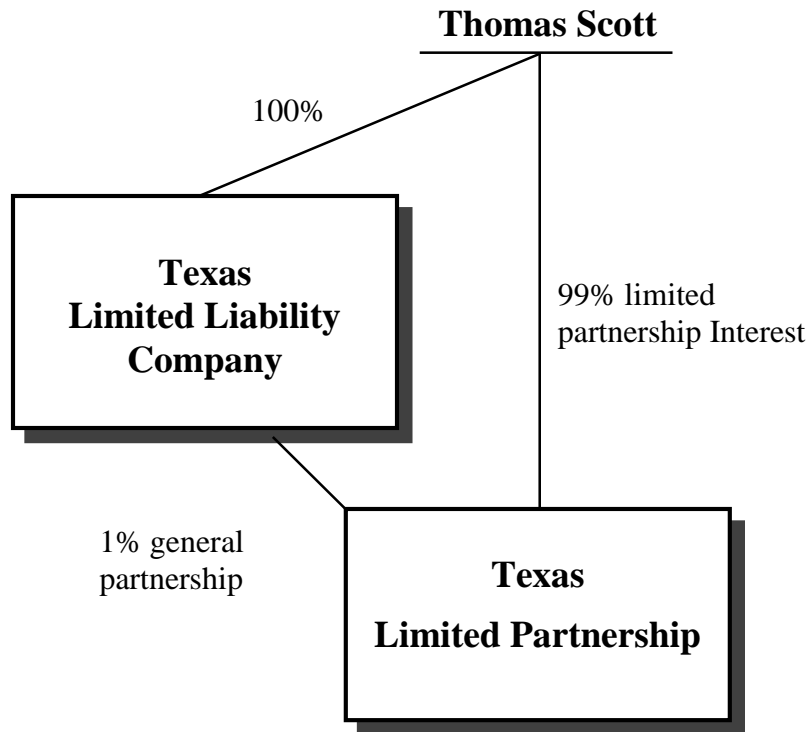
**I.**  
**PRELIMINARY STATEMENT**

**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 Inc. is the master-lessee of the real property upon which the twenty-one (21) Kentucky facilities are located. Preferred Care sub-leases 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. 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. Preferred Care has also been named as a defendant in most of the pending litigation described in the Weiner Declaration 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**

7. 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 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 lased 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 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
		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**

8. 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**

9. 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.

**E. The Wells Fargo DIP Motion.**

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

11. Through this Wells Fargo DIP Motion, the Debtors seek authority to continue the use of their Cash Management System and to incur post-petition debtor-in-possession financing through the continued use of the Wells Fargo line of credit in order to continue operating their businesses. The Debtors also seek authority to grant related post-petition security interests and administrative-expense priorities to Wells Fargo.

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

12. 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.

13. 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 Bankruptcy Case**

14. 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 these bankruptcy cases (the “**Chapter 11 Cases**”) and creating their respective bankruptcy estates (the “**Estates**”).

**B. Cash Management System**

15. 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**”).<sup>5</sup> 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.<sup>6</sup> FSF then draws on that line of credit and deposits the drawn funds into its Master Operating Account, also at Wells Fargo. Those funds are then transferred as needed into FSF’s Payroll and Accounts Payable accounts for the payment of 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’

---

<sup>5</sup> 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.

<sup>6</sup> Because the HUD Debtors are not obligated on the Wells Fargo pre-petition indebtedness, their revenues, which are deposited into a FSF II, LLC concentration account, are not applied to the outstanding Wells Fargo line of credit.



management company.<sup>7</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.

16. 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.

### **C. The Pre-Petition Financing**

17. 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**," a copy of which is available upon request to Debtors' counsel) 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 (excluding the HUD Debtors and collectively, the "**Borrowers**"),

---

<sup>7</sup> PCPMG Consulting also provides management services to the HUD Debtors and keeps similar records for FSF II.

secured by a first priority security interest in, among other things, all of the accounts receivable of the Borrowers.<sup>89</sup> 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 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.

18. Wells Fargo asserts that the Pre-Petition Obligations are secured by a first priority, properly perfected lien in substantially all of the Debtors’ assets (the “**Pre-Petition Collateral**”) that was perfected by filing substantially similar UCC-1 financing statements against all of the Debtors (except the HUD Debtors). The chart above indicates the relative priority of the liens asserted on all of the Debtors’ assets, including accounts receivable, as of the Petition Date based on UCC-1 financing statements filed by various parties, including certain affiliates of FC Domino Acquisition, LLC. Such affiliates filed UCC-1 financing statements against all of the Debtors (including Preferred Care and the HUD Debtors), claiming liens on all or substantially all of their assets. Ziegler Financing Corporation, a mortgage lender on the facilities leased to the HUD Debtors, also filed two UCC-1 financing statements against Preferred Care alleging liens in, among other things, Preferred Care’s accounts receivable.

---

<sup>8</sup> 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 receivables of their lessees in order to provide Wells Fargo a first priority lien on those receivables.

<sup>9</sup> The Department of Housing and Urban Development

**D. The Proposed DIP Facility**

19. As described above and in the Cash Management Motion,<sup>10</sup> the Debtors and the non-debtor Borrowers require regular advances of funds from FSF, which are obtained by FSF from the Wells Fargo line of credit. Approximately 85% of the payments to the Debtors come from Medicare, Medicaid, and private insurers, each of which wire payments directly into the Wells Fargo Concentration Account. FSF and each of the Preferred Care Group entities (excluding the HUD Debtors) is a co-borrower and jointly and severally liable for the Pre-Petition Obligations. Therefore, the Borrowers are continually paying down and drawing upon the Wells Fargo line of credit to fund their operations. The Debtors do not expect the outstanding indebtedness to Wells Fargo to exceed forty million dollars (\$40,000,000) during the next thirteen (13) week post-petition period. *See* the Consolidated Budget for the Preferred Care Group (excluding the HUD Debtors) attached hereto as **Exhibit A**, and as modified and extended from time to time by agreement between the debtors and Wells Fargo and as filed with the Court (the “**Approved Budget**”).

20. For these reasons, the Debtors seek authority to continue the use of their Cash Management System and to incur post-petition debtor-in-possession financing (the “**DIP Loan**”) through the continued use of the Wells Fargo line of credit in order to continue operating their businesses. Specifically, all collections from the Preferred Care Group (excluding the HUD Debtors) will be paid and applied to the line of credit, creating availability for FSF to draw additional funds and to provide such funds to the Preferred Care Group to operate their businesses. The continued use of the Cash Management System and the Wells Fargo line of credit will result in the timely collection of pre-petition accounts receivable, which will first be

---

<sup>10</sup> For more information on the Cash Management System, see the Cash Management Motion and the Weiner Declaration.

applied to the pre-petition indebtedness with all future draws on the line of credit constituting post-petition debtor in possession financing (as co-obligors on the Wells Fargo line of credit). The specific terms of the DIP Loan are set forth in the Credit Agreement as modified by this Order and the Final Order (the “**DIP Credit Agreement**”) negotiated with Wells Fargo as both Administrative Agent (the “**DIP Agent**”) and post-petition lender (together with its successors and assigns and the other lenders party thereto, the “**DIP Lender**”).

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

21. This Motion requests entry of an order substantially in the form of the interim order attached hereto as **Exhibit B** (the “**Interim Order**”) and, at the appropriate time, a final order (the “**Final Order**”) authorizing the Debtors to obtain interim financing and incur post-petition indebtedness pursuant to the DIP Facility (as defined below). Specifically, the proposed DIP Order:<sup>11</sup>

- a. Authorizes the Debtors to obtain post-petition financing pursuant to §§ 363 and 364 of the Bankruptcy Code, through the DIP Credit Agreement and other DIP Financing Documents (as may be amended, supplemented or otherwise modified from time to time, the “**DIP Facility**”) pursuant to which the Debtors, along with certain non-debtors, shall be jointly and severally liable for all post-petition advances under the Wells Fargo line of credit to FSF and the Preferred Care Group (excluding the HUD Debtors);
- b. Authorizes and directs the Debtors to continue applying proceeds from the collection of their accounts receivable to the Wells Fargo line of credit for the payment of principal, interest, fees, expenses, and other amounts payable under the DIP Credit Agreement as such become due, including, without limitation, reasonable fees incurred and disbursements made by DIP Lender for attorneys, advisors, accountants, and other consultants, in accordance with the DIP Order;
- c. Approves, as applicable, Debtors’ grant of mortgages, security interests, liens and superpriority administrative-expense claims to the DIP Lender including:

---

<sup>11</sup> The Interim Order and the Final Order are collectively referred to herein as the “**DIP Order**.”

- (i) an allowed super-priority administrative-expense priority claim pursuant to section 364(c)(1) of the Bankruptcy Code with priority over all administrative expenses including, without limitation, of the kinds specified in or arising or ordered under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1102, 1104, 1113, or 1114 of the Bankruptcy Code or other applicable law to the extent the DIP Lender advances and/or loans funds post-petition to the Debtors, subject only to the Carve Out (as hereinafter defined); and
  - (ii) valid, binding, continuing, enforceable, unavoidable, and automatically perfected liens and security interests (the “**DIP Liens**”) that are: (a) with respect to all of the Debtors’ assets acquired **after** the Petition Date (the “**Post-Petition Collateral**”), senior to all other liens and encumbrances and subject and junior only to the Carve-Out (defined below) in the Approved Budget, (b) with respect to all of the Debtors’ assets acquired **prior** to the Petition Date, subject and junior only to valid, enforceable, and properly perfected liens of other parties existing on the Petition Date in such assets, and (c) with respect to the non-Debtor Borrowers’ assets, subject and junior only to valid, enforceable, and properly perfected liens of other parties existing on the Petition Date in such assets. The DIP Liens granted herein shall not be deemed to “prime” any valid, binding, continuing, enforceable, fully-perfected liens of any other party. The DIP Liens shall not encumber any causes of action that could be brought under §§ 510, 522, and 544-553 of the Bankruptcy Code or any applicable state fraudulent-transfer statute or similar statute (the “**Avoidance Actions**”) and shall not be deemed to “prime” any valid, binding, continuing, enforceable, fully-perfected liens of any other party.
- d. Modifies the automatic stay, under § 362 of the Bankruptcy Code, to permit DIP Lender to accelerate the repayment of amounts due; and, among other things;
  - e. Limits the Debtors’ right to surcharge against collateral pursuant to § 506(c) of the Bankruptcy Code; and,
  - f. Schedules a final hearing (the “**Final Hearing**”) to consider entry of a Final Order granting the relief requested in this Motion on a final basis.

22. In accordance with Bankruptcy Rule 4001(b), the following is a concise statement of the material provisions of the DIP Facility and DIP Order:

<b>CONCISE STATEMENT OF MATERIAL PROVISIONS</b>	
<b>DIP Credit Agreement Parties:</b>	<p><b>Borrowers:</b> The Debtors and certain non-debtor entities as set forth in the DIP Credit Agreement.</p> <p><b>DIP Agent:</b> Wells Fargo Bank, N.A.</p> <p><b>DIP Lender:</b> Wells Fargo Bank, N.A.</p>
<b>DIP Financing Documents:</b>	<p>(i) The Loan Documents;</p> <p>(iii) The Interim Order;</p> <p>(iv) The Final Order;</p> <p>(v) All other documents executed in connection with the DIP Facility.</p>
<b>Amount and Type of Facility:</b>	<p>After entry of the Interim Order, the DIP Facility will consist of: a revolving credit line of up to \$50,000,000.00 (the “<b>Maximum DIP Loan Amount</b>”), subject to availability under the DIP Credit Agreement.</p> <p>The Maximum DIP Loan Amount approved in the Interim Order or Final Order may be further modified and amended from time to time: 1) with the written consent of the Debtors and the DIP Agent, or 2) by order of the Court.</p>
<b>Borrowing Availability:</b>	All borrowings under the DIP Facility shall be limited by the borrowing Availability as calculated in the DIP Credit Agreement.
<b>Pre-Petition Obligations and Roll-Up:</b>	<p>The Debtors owe certain obligations under the Credit Agreement and other Loan Documents.</p> <p>All post-petition collections of pre-petition and post-petition receivables by the Debtors shall be applied first to reduce the Pre-Petition Obligations under the Credit Agreement and Loan Documents before any such amounts shall be applied to reduce any DIP Facility obligations.</p>
<b>Super-Priority Administrative Claim:</b>	Subject to the Carve-Out, post-petition amounts owed by any of the Debtors to the DIP Agent pursuant to the DIP Facility (including all accrued interest, fees, costs and expenses) shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code (as defined below), a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 326, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code. The foregoing superpriority claim in favor of the DIP Agent shall not be payable from any claims or causes of action arising under any causes of action owned by the Debtors that could be brought under §§ 510, 522, and 544-553 of the Bankruptcy Code or any applicable state fraudulent-transfer statute or similar statute (the “ <b>Avoidance Actions</b> ”).
<b>Collateral Security:</b>	The DIP Facility (including accrued interest, fees, costs and expenses relating thereto) shall be secured by first-priority senior liens (the “ <b>DIP Liens</b> ”) on: (a) with respect to all of the Debtors’ assets acquired after the Petition Date, senior to all other liens and encumbrances and subject and junior only to the Carve-Out (defined below) in the Approved Budget, (b) with respect to all of the Debtors’ assets acquired prior to the Petition Date, subject and junior only to valid, enforceable, and properly perfected liens

	<p>of other parties existing on the Petition Date in such assets, and (c) with respect to the non-Debtor Borrowers' assets, subject and junior only to valid, enforceable, and properly perfected liens of other parties existing on the Petition Date in such assets.. The DIP Liens shall not encumber any causes of action that could be brought under §§ 510, 522, and 544-553 of the Bankruptcy Code or any applicable state fraudulent-transfer statute or similar statute and shall not be deemed to "prime" any valid, binding, continuing, enforceable, fully-perfected liens of any other party.</p>
<p><b>Lien Validation and Perfection and "Challenge Period":</b></p>	<p>All liens authorized and granted pursuant to the Interim Order or the Final Order entered by the Bankruptcy Court approving the DIP Facility or with respect to adequate protection shall be deemed effective and perfected as of the Petition Date, and no further filing, notice or act will be required to effect such perfection.</p> <p>The Debtors shall stipulate in the Interim Order and Final Order that (i) the DIP Agent's liens securing the Pre-Petition Collateral are valid, perfected and have first priority, and such liens encumber substantially all assets of the Debtors and (ii) the Debtors possess no claims, offsets or any other type of causes of action against the DIP Agent or DIP Lender that would impair, in any manner, the liens of the DIP Agent or DIP Lender against the Debtors' assets or the obligations of the Debtors to the Pre-Petition Agents and Pre-Petition Lenders under the Pre-Petition Credit Facility. <u>The Debtors' stipulations shall be binding on all parties in interest in the Chapter 11 Cases, including any Committee that is appointed, unless (i) an adversary proceeding is filed prior to the expiration of sixty (60) days after the Petition Date (the "Challenge Period") against the Pre-Petition Agent and/or Pre-Petition Lender challenging the Pre-Petition Agent and/or Pre-Petition Lendor's liens or otherwise asserting estate claims against the Pre-Petition Agent and/or Pre-Petition Lendor, and (ii) a final, non-appealable judgment is entered against the Pre-Petition Agent and/or Pre-Petition Lendor in such adversary proceeding; provided, however, any party-in-interest that fails to file an adversary proceeding within the Challenge Period shall be forever barred from asserting any claims against the Pre-Petition Agent and/or Pre-Petition Lendor on behalf of any of the Debtors' estates, or challenging in any manner the liens and claims of the Pre-Petition Agent and/or Pre-Petition Lendor against the any of the Debtors.</u></p>
<p><b>506(c) Surcharge</b></p>	<p><u>As part of any Final Order:</u></p> <p>(i) the Debtors shall waive any right to surcharge the prepetition collateral securing the Pre-Petition Credit Facility or DIP Collateral, whether pursuant to Bankruptcy Code sections 506(c) or 105(a) or under any other applicable law;</p> <p>(ii) The DIP Agent and/or DIP Lender shall not be subject to the "equities-of-the case" exception of Bankruptcy Code section 552(b), or to the equitable doctrines of "marshaling" or any similar claim or doctrine with respect to any DIP Collateral or collateral securing the Pre-Petition Credit Facility.</p>
<p><b>Remedies:</b></p>	<p>Upon the occurrence of an Event of Default or the Termination Date, and the transmission of written notice thereof to counsel for the Debtors, any Committee, and the U.S. Trustee, the DIP Agent shall be fully authorized, in its sole discretion to: (i) cease making DIP Facility loans to Debtors; (ii) revoke its consent to Debtors' use of the DIP Collateral (including, without limitation, cash collateral), and/or (iii) immediately terminate the DIP Facility and demand immediate repayment, in cash, of the DIP Facility obligations then outstanding. The foregoing remedies (i)-(iii) of DIP Agent</p>

	<p>shall not be subject to any Restraint on Remedies (as defined below), including the five business day (5) advanced notice of DIP Agent’s intent to exercise any such remedies.</p> <p>Additionally, upon the occurrence of an Event of Default or the Termination Date, the DIP Agent will also have other customary remedies, including, without limitation, the ability to foreclose upon and/or sell the DIP Collateral and the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court; provided, however, that the DIP Agent shall provide the Debtors and Committee (if any) with five (5) business days written notice of the DIP Agent’s intent to exercise such other customary remedies, subject to the right of the Debtors or any Committee appointed by the Bankruptcy Court to seek an injunction (such an injunction, and the five business day (5) notice of intent to exercise remedies, a “<b>Restraint on Remedies</b>”), provided, further, however, that the collection and application of proceeds remitted to one or more lockbox accounts, controlled accounts, or other accounts subject to DIP Agent’s control shall not be subject to any Restraint on Remedies, and nothing herein shall impair or restrict DIP Agent’s rights to collect or apply any proceeds remitted to one or more lockbox accounts, controlled accounts, or other accounts subject to DIP Agent’s control. Section 362 relief from the stay in favor of DIP Agent shall be embodied in any order approving the DIP Facility and/or the use of cash collateral.</p>
<b>Events of Default:</b>	The DIP Credit Agreement includes customary defaults and Events of Default, each of which constitutes a Termination Event.

**V.**  
**BASIS FOR THE RELIEF REQUESTED**

23. As described above, it is essential to the Debtors’ operations that they be granted immediate access to funds. Absent access to the working-capital financing that will be available to the Debtors under the proposed DIP Credit Agreement on an interim and final basis, the Debtors will be unable to maintain their business operations or preserve the value of their assets.

24. The Debtors believe that the terms and conditions of the DIP Facility, the DIP Financing Documents, and the DIP Order, and the related relief requested herein are fair, reasonable, and in the best interests of the Debtors, their estates, and the creditors thereof.

**A. The Debtors Should be Authorized to Obtain Post-Petition Financing Under § 364 of the Bankruptcy Code**

25. The Court should authorize the Debtors to enter into the DIP Financing Documents and obtain access to the DIP Facility as an exercise of Debtors’ sound business judgment in obtaining post-petition credit. *See In re Barbara K. Enters., Inc.*, Case No. 08-



11474, 2008 WL 2439649, at \*14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("Cases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) ("[T]he applicable factors can be synthesized as follows ... [t]hat the proposed financing is an exercise of sound and reasonable business judgment ...").

26. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under the terms described in this Motion, stating:

- (a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.
- (b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.
- (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title; (2) secured by a lien on property of the estates that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estates that is subject to a lien.

- (d) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estates that is subject to a lien only if (A) the trustee is unable to obtain such credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estates on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(a)-(d).

27. Section 364's provisions provide sequential alternatives for a debtor seeking post-petition financing. Under subsection (a), a debtor may obtain unsecured credit in the ordinary course of its business that is allowable as an administrative expense. *Id.* at § 364(a). If that is unavailable, subsection (b) provides that a debtor may obtain unsecured credit outside of the ordinary course of its business after notice and a hearing. *Id.* at § 364(b). If unsecured credit is wholly unavailable, the debtor may incur debt by granting such debt special priority, encumbering previously unencumbered property, or through a junior lien on encumbered property. *Id.* at § 364(c). Subsection (d) provides the final alternative: after notice and a hearing, the Court may authorize the Debtor to grant equal or "priming" liens on encumbered property provided that the lienholder is adequately protected and the debtor has no other choice.

28. To satisfy the requirements of § 364(a)-(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). A debtor does not have a duty to "to seek credit from every possible lender before concluding that such credit is unavailable." *Id.*; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to

conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); *see also Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of § 364(c) where it approached four lending institutions, was rejected by two, and selected the more favorable of the two offers it received).

29. Here, the Debtors seek authority to enter into the DIP Financing Documents, which will provide the DIP Lender certain liens on the DIP Collateral as set forth above. The DIP Financing Documents satisfy each of above factors:

- a. First, the Debtors and their advisors explored a variety of possible financing sources, and ultimately determined that alternative post-petition financing was not available. The Debtors conducted arm’s-length negotiations with the DIP Lender regarding the terms of the DIP Facility, and the DIP Financing Documents reflect the most favorable terms on which the DIP Lender was willing to offer financing. No alternative financing at the favorable terms offered in the DIP Facility was available to the Debtors, and the Debtors are not able to obtain financing from the DIP Lender other than financing secured by senior-secured, first-priority liens. In light of the unavailability of other financing with which to fund their ongoing operations and preserve the value of their assets, the Debtors determined that accessing the DIP Facility from the DIP Lender would best maximize estate value.
- b. Second, providing the Debtors with the liquidity necessary to preserve their going-concern value through the pendency of the Chapter 11 Cases is in the best interests of all stakeholders. The DIP Facility will provide the Debtors the funds necessary to preserve the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Facility, the Debtors will be unable to operate their business or prosecute these Chapter 11 Cases, which will threaten the Debtors’ significant going-concern value.
- c. Third, the terms of the DIP Financing Documents are reasonable and adequate to ensure the Debtors’ ongoing ability to operate in Chapter 11 and ultimately emerge as a stronger enterprise. Indeed, the DIP Facility will provide the Debtors with access to up to \$60

million in post-petition financing, which the Debtors and their advisors have independently determined is sufficient and, as discussed in greater detail below, necessary to allow the Debtors to maintain their operations and their relationships with key constituents during these bankruptcy proceedings. Accordingly, the terms of the DIP Facility are reasonable and the DIP Facility is sufficient to support the Debtors' operations and restructuring activities through the pendency of these Chapter 11 Cases.

- d. Fourth, the Debtors and the DIP Lender negotiated the DIP Facility in good faith and at arm's-length, and the Debtors' entry into the DIP Financing Documents is an exercise of their sound business judgment and is in the best interests of their estates, creditors and other parties in interest.
- e. Finally, as described below, the Debtors will provide adequate protection for the Pre-Petition Lenders' liens on and security interests in the pre-petition collateral as well as any decline in, or diminution of, the value of the Pre-Petition Lenders' liens or security interests under the Pre-Petition Loan Documents. Moreover, as of the filing of this Motion, certain, if not all, of the Pre-Petition Lenders have consented to the terms of the DIP Facility subject to the terms and conditions of the Final Order.

30. The Bankruptcy Court should therefore (a) authorize the Debtors to provide the DIP Lender senior liens on the DIP Collateral as provided in § 364(d)(1) of the Bankruptcy Code; and (b) grant the DIP Lender superpriority administrative expense status pursuant to § 364(c)(1) of the Bankruptcy Code.

31. Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed post-petition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York stated:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part

of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009).

32. The Debtors believe that the Court's consideration of non-economic factors, as permitted by *ION Media*, is especially appropriate here. First, absent the DIP Lender's willingness and ability to fund the DIP Facility, the Debtors would not be able to fund their operations, would run out of cash, and would be forced to shut down their operations. Second, the DIP Facility provides a certain financing arrangement, which is particularly important in light of third-party lenders' unwillingness to extend financing and the Debtors' need to fund ongoing operations. The Debtors submit that the certainty afforded by the DIP Facility—with respect to both its consensual nature and the DIP Lender's support of the Debtors' restructuring efforts—provides additional and ample reason to authorize it.

33. Accordingly, the Debtors and their advisors determined in their sound business judgment that the DIP Facility provides a greater amount of financing on more favorable terms than any other reasonably available alternative. As noted above, the DIP Facility will provide the Debtors with access to the necessary liquidity, which the Debtors and their advisors have independently determined should be sufficient to support the Debtors' ongoing operations and reorganization activities through the pendency of these Chapter 11 Cases. Thus, the Debtors submit that entering into the DIP Financing Documents constitutes an exercise of the Debtors' sound business judgment that should be approved by the Court.

**B. The Interests of the Pre-Petition Lender Are Adequately Protected**

34. A debtor may obtain post-petition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides

“adequate protection” to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). By requiring Debtors to provide adequate protection to those creditors whose liens are being primed, the Bankruptcy Code seeks to protect a secured creditor from diminution in the value of its interest in the particular collateral. *See In re Cont’l Airlines, Inc.*, 146 B.R. 536, 539-40 (Bankr. D. Del. 1992) (secured creditor only entitled to adequate protection to the extent the collateral declined in value); *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (if there is no diminution in the value of the secured creditor’s collateral and the debtor can operate profitably postpetition, the secured creditor is adequately protected against the use of cash collateral); *see also In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (“The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization.”).

35. Courts decide sufficient adequate protection is decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at \*2 (Bankr. D. Del. Feb. 18, 1992); *In re Monroe Park*, 17 B.R. 934 (D. Del. 1982) (concept of adequate protection requires a debtor to propose some form of relief that will preserve the secured creditor’s interest in collateral pending the outcome of the bankruptcy proceedings); *see also Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994); *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).

36. As adequate protection and in consideration for being primed by the DIP Lender’s claims and liens, the DIP Facility provides the Pre-Petition Lenders with (a) priority claims and/or expenses subject to allowed claims paid under the Carve-Out and superpriority administrative claims of the DIP Lender granted in respect of the DIP Facility, (b) valid, binding,

enforceable, and perfected replacement liens in all DIP Collateral, subject to the DIP Lender's liens and the Carve-Out; and (c) Adequate Protection Cash Payments for reasonable, out-of-pocket fees and expenses of the Term Loan Agent and interest when due on the Fourth Amendment Term Loan, as described in further detail above and in the DIP Term Sheet.

37. Here, the Pre-Petition Lenders are adequately protected. The adequate protection provided by the Debtors as described above is fair and reasonable, and is sufficient to satisfy the requirements of § 364(d)(1)(B) of the Bankruptcy Code. Further, as of the filing of this Motion, all of the Pre-Petition Lenders have consented to the terms of the DIP Facility, including the adequate protection provided therein. Accordingly, the Bankruptcy Court should approve the DIP Facility.

**C. The Debtors Should be Authorized to Pay the Fees Associated with the DIP Facility**

38. As described above, the Debtors have agreed to pay certain fees to the DIP Lender as consideration for providing the DIP Facility, subject to the Court's approval. Specifically, the Debtors propose to pay to the DIP Lender all reasonable costs and expenses of the counsel, financial advisors, and any other third parties engaged by the DIP Lender, its counsel, or its financial advisor to assist such parties regarding the DIP Facility.

39. The fees and other provisions of the DIP Financing Documents represent the most favorable terms to the Debtors on which the DIP Lender would agree to make the DIP Facility available. The Debtors considered the fees described above when determining in their sound business judgment that the DIP Facility constituted the best terms on which the Debtors could obtain the post-petition financing necessary to continue their operations and prosecute their Chapter 11 Cases. The Debtors believe that paying these fees to obtain the DIP Facility is in the best interests of the Debtors' estates, creditors and other parties in interest. Accordingly, the

Bankruptcy Court should authorize the Debtors to pay the fees provided under the DIP Credit Agreement in connection with entering into those agreements.

**D. The DIP Lender Should be Deemed a Good Faith Lender under § 364(e) of the Bankruptcy Code**

40. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, § 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

41. Section 364(e) of the Bankruptcy Code was designed to “encourage the extension of credit” to debtors by allowing lenders to “rely on a bankruptcy court’s authorization of the transaction.” *In re EDC Holding Co.*, 676 F.2d 945, 947 (7th Cir. 1982) (the purpose of § 364(e) is to “overcome people’s natural reluctance to deal with a bankrupt firm whether as a purchaser or lender by assuring them that so long as they are relying in good faith on a bankruptcy judge’s approval of the transaction they need not worry about their priority merely because some creditor is objecting to the transaction and is trying to get the district court or the court of appeals to reverse the bankruptcy judge.”). *See also In re North Atlantic Millwork Corp.*, 155 B.R. 271, 279 (Bankr. D. Mass. 1993) (“The purpose of section 364(e) is to allow good-faith lenders to rely upon conditions at the time they extend credit and to encourage lenders to lend to bankrupt entities.”).



42. As explained above, the DIP Facility is the result of the Debtors' reasonable and informed determination that the DIP Lender offered the most favorable terms on which to obtain needed post-petition financing, and of extended arm's-length, good faith negotiations between the Debtors and the DIP Lender. The terms and conditions of the DIP Facility are fair and reasonable, and the proceeds under the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Facility other than as described herein.

43. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of § 364(e) of the Bankruptcy Code, and is entitled to all of the protections afforded by that section.

**E. Interim Approval of the DIP Facility**

44. Bankruptcy Rule 4001(c)(2) provides that a final hearing on a motion to obtain credit pursuant to § 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. However, upon request, the Bankruptcy Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

45. Pursuant to Bankruptcy Rules 4001(c) and (d), the Debtors hereby request that the Bankruptcy Court conduct an emergency interim hearing as soon as practicable under the circumstances to consider entry of the Interim Order authorizing the Debtors to borrow an amount sufficient to fund their operating expenses pending a final hearing on the DIP Facility.

46. The Debtors also respectfully request that the Bankruptcy Court schedule a final hearing on this Motion in sufficient time for the Debtors to obtain a final order approving the DIP Facility no later than twenty-five (25) days from the Petition Date. Such relief is necessary

in order to maintain ongoing operations and avoid immediate and irreparable harm and prejudice to the Debtors' estates.

## **VI. CHECKLIST**

47. 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 C**.

## **VII. NOTICE**

48. No trustee, examiner, or statutory creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) the Debtors' secured lender; (iii) counsel to the Debtors' secured lender (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.

49. 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.txnb.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, 855-612-3123 (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 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](mailto:smccartin@gardere.com)

[mmoore@gardere.com](mailto: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
<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**  
**Approved Budget**

**Wells Fargo**  
**13 Week Cash Flow**  
 (for facilities in LOC)

DRAFT 11/13/17  
 12:30 PM

	Week Ending						
	Nov 17	Nov 24	Dec 1	Dec 8	Dec 15	Dec 22	Dec 29
<b>INFLOWS</b>							
Cash Collections	10,201,134	19,278,986	9,633,552	13,532,532	15,022,752	9,558,110	17,912,789
Texas QIPP program	-	-	-	-	-	-	-
Less Bad Debt (2%)	(204,023)	(385,580)	(192,671)	(270,651)	(300,455)	(191,162)	(358,256)
Other	-	-	-	-	-	-	-
<b>Total Inflows</b>	<b>9,997,111</b>	<b>18,893,406</b>	<b>9,440,881</b>	<b>13,261,881</b>	<b>14,722,297</b>	<b>9,306,947</b>	<b>17,554,533</b>
<b>EXPENDITURES</b>							
Operating Expenses, Net of Budgeted Bad Debt	1,000,000	1,000,000	7,000,000	1,500,000	6,000,000	4,800,000	6,000,000
Payroll	1,488,500	9,652,000	1,788,500	10,097,000	1,568,500	9,652,000	1,488,500
Health Insurance Premiums and Fees	-	600,780	-	-	-	-	800,780
Health Insurance Claim Payments	1,118,600	1,088,500	984,800	459,800	459,800	459,800	459,800
General & Prof Liability/Property Ins. Premiums	-	344,100	-	-	-	176,700	-
Workers Compensation Premiums	-	737,500	-	-	-	251,872	-
Property Taxes	-	414,166	-	664,961	-	-	-
Bad Taxes/Provider Fees/Gross Receipts Tax	-	900,000	291,080	291,080	-	650,000	500,000
Management Fees	-	2,008,997	-	-	-	-	2,523,846
Rent	-	-	-	4,787,501	-	-	-
Interest Expense	-	-	157,952	-	-	-	-
Other (contingency)	58,125	58,125	46,500	46,500	46,500	46,500	46,500
<b>Total Operating Expenses</b>	<b>3,645,125</b>	<b>16,784,168</b>	<b>10,248,832</b>	<b>17,846,842</b>	<b>8,074,800</b>	<b>16,036,872</b>	<b>11,599,426</b>
<b>NON-OPERATING COSTS</b>							
Routine Repairs and Maintenance	93,000	93,000	74,400	74,400	74,400	74,400	74,400
Capital Expenditures on Projects	195,300	195,300	111,600	111,600	111,600	111,600	111,600
A/P Owed to Vendors and Deposits	990,450	1,740,450	1,146,180	896,180	396,180	396,180	396,180
Note Payments	-	-	38,130	-	-	-	-
<b>Total Non-Operating Costs</b>	<b>1,278,750</b>	<b>2,028,750</b>	<b>1,370,310</b>	<b>1,082,180</b>	<b>582,180</b>	<b>582,180</b>	<b>582,180</b>
<b>Net Cash Inflow (Outflow) Before BK Costs</b>	<b>5,073,236</b>	<b>80,488</b>	<b>(2,178,262)</b>	<b>(5,667,141)</b>	<b>6,065,317</b>	<b>(7,252,105)</b>	<b>5,372,927</b>
<b>EXPENDITURES - Critical Non-Operating Filing Costs</b>							
Utility Deposits	475,000	-	-	-	-	-	-
Professional Fees - Gardere-Deblors Counsel	-	-	-	-	-	200,000	-
Professional Fees - Focus Mgmt., Deblors FA	-	-	-	-	-	80,000	-
Professional Fees - Regulatory Counsel	-	-	-	-	-	20,000	-
Professional Fees - JNDLA, Deblors claims/noticing agent	-	-	-	-	-	20,000	-
Professional Fees - US Trustee	-	-	-	-	-	-	-
Creditors Committee Counsel	-	-	-	-	-	-	-
Creditors Committee FA	-	-	-	-	-	-	-
Wells Fargo Legal Fees	100,000	-	-	-	-	25,000	-
Other	-	-	-	-	-	-	-
<b>Total Non-Operating Filing Costs</b>	<b>575,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>345,000</b>	<b>-</b>
<b>Total Disbursements</b>	<b>5,498,875</b>	<b>18,812,918</b>	<b>11,619,142</b>	<b>18,929,022</b>	<b>8,656,980</b>	<b>16,964,052</b>	<b>12,181,606</b>
<b>Net Cash Inflow/(Outflow)</b>	<b>4,498,236</b>	<b>80,488</b>	<b>(2,178,262)</b>	<b>(5,667,141)</b>	<b>6,065,317</b>	<b>(7,597,105)</b>	<b>5,372,927</b>
<b>Cumulative Net Cash Inflow/(Outflow)</b>	<b>4,498,236</b>	<b>4,578,724</b>	<b>2,400,463</b>	<b>(3,266,678)</b>	<b>2,798,639</b>	<b>(4,798,466)</b>	<b>574,461</b>
<b>BEGINNING CASH BALANCE</b>	<b>1,350,000</b>	<b>1,350,000</b>	<b>1,350,000</b>	<b>1,350,000</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Cash used to cover loan availability shortfall</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(1,350,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>ENDING CASH BALANCE</b>	<b>1,350,000</b>	<b>1,350,000</b>	<b>1,350,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Draw on secondary DIP Loan</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,346,216</b>	<b>-</b>	<b>2,033,924</b>	<b>-</b>
<b>Borrowing Base Analysis</b>							
		bb change		bb change			
Total Accounts Receivable	83,936,021	83,179,272	83,179,272	83,179,272	82,469,462	82,469,462	82,469,462
Ineligible	26,587,813	26,348,103	26,348,103	26,348,103	26,390,228	26,390,228	26,390,228
Net Eligible	57,348,208	56,831,169	56,831,169	56,831,169	56,079,234	56,079,234	56,079,234
Eligible AR after Expected Net Value Factor	56,053,737	55,548,398	55,548,398	55,548,398	54,957,649	54,957,649	54,957,649
Advance Rate	85%	85%	85%	85%	85%	85%	85%
AR Availability before Reserves	47,645,677	47,216,139	47,216,139	47,216,139	46,714,002	46,714,002	46,714,002
Credit Reserves	2,603,798	2,603,798	2,603,798	2,603,798	2,603,798	2,603,798	2,603,798
Net Availability	45,041,879	44,612,341	44,612,341	44,612,341	44,110,204	44,110,204	44,110,204
Liquidity Reserve	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
Available to Borrow	39,041,879	38,612,341	38,612,341	38,612,341	38,110,204	38,110,204	38,110,204
Loan Balance	34,543,642	34,463,155	38,641,416	38,612,341	32,547,024	38,110,204	32,737,278
Loan Availability	4,498,236	4,149,186	1,970,925	(0)	5,563,180	(0)	5,372,926

**Wells Fargo**  
**13 Week Cash Flow**  
 (for facilities in LOC)

DRAFT 11/13/17  
 12:30 PM

	Week Ending						Total
	Jan 5	Jan. 12	Jan 19	Jan, 26	Feb. 2	Feb. 9	
<b>INFLOWS</b>							
Cash Collections	9,413,921	19,887,994	10,064,259	16,519,228	6,671,240	16,824,324	174,320,820
Texas QIPP program	-	-	-	175,000	-	-	175,000
Less Bad Debt (2%)	(188,278)	(393,760)	(201,285)	(330,385)	(133,425)	(336,486)	(3,488,418)
Other	-	-	-	-	-	-	-
<b>Total Inflows</b>	<b>9,225,643</b>	<b>19,294,235</b>	<b>9,862,974</b>	<b>16,363,843</b>	<b>6,537,815</b>	<b>16,487,837</b>	<b>171,009,403</b>
<b>EXPENDITURES</b>							
Operating Expenses, Net of Budgeted Bad Debt	4,000,000	5,000,000	2,000,000	4,000,000	2,000,000	9,000,000	53,300,000
Payroll	9,740,000	1,535,000	10,740,000	1,800,000	9,740,000	1,535,000	70,565,000
Health Insurance Premiums and Fees	-	-	-	600,780	-	-	1,802,340
Health Insurance Claim Payments	418,500	418,500	418,500	418,500	418,500	418,500	7,522,000
General & Prof Liability/Property Ins. Premiums	-	-	-	334,800	-	-	855,600
Workers Compensation Premiums	-	-	-	251,872	-	-	1,241,244
Property Taxes	-	489,029	-	-	-	312,480	1,880,637
Bad Taxes/Provider Fees/Gross Receipts Tax	487,155	331,080	650,000	616,125	363,850	363,850	5,444,220
Management Fees	-	-	-	2,633,461	-	-	7,166,305
Rent	-	4,788,077	-	-	-	4,185,504	13,761,082
Interest Expense	167,952	-	-	-	167,952	-	473,857
Other (contingency)	58,125	58,125	58,125	58,125	58,125	58,125	697,500
<b>Total Operating Expenses</b>	<b>14,861,732</b>	<b>12,619,811</b>	<b>13,866,825</b>	<b>10,513,663</b>	<b>12,738,427</b>	<b>15,873,459</b>	<b>164,709,785</b>
<b>NON-OPERATING COSTS</b>							
Routine Repairs and Maintenance	93,000	93,000	93,000	93,000	93,000	93,000	1,116,000
Capital Expenditures on Projects	201,113	201,113	201,113	201,113	120,900	120,900	1,994,850
A/P Owed to Vendors and Deposits	-	-	-	-	-	-	5,961,800
Note Payments	38,130	-	-	-	38,130	-	114,390
<b>Total Non-Operating Costs</b>	<b>332,243</b>	<b>294,113</b>	<b>294,113</b>	<b>294,113</b>	<b>252,030</b>	<b>213,900</b>	<b>9,187,040</b>
<b>Net Cash Inflow (Outflow) Before BK Costs</b>	<b>(5,968,332)</b>	<b>6,380,311</b>	<b>(4,297,764)</b>	<b>5,556,067</b>	<b>(6,452,643)</b>	<b>400,478</b>	<b>(2,887,421)</b>
<b>EXPENDITURES - Critical Non-Operating Filing Costs</b>							
Utility Deposits	-	-	-	-	-	-	475,000
Professional Fees - Gardere-Debtors Counsel	-	-	160,000	-	-	-	360,000
Professional Fees - Focus Mgmt, Debtors FA	-	-	60,000	-	-	-	140,000
Professional Fees - Regulatory Counsel	-	-	20,000	-	-	-	40,000
Professional Fees - JNDLA, Debtors claims/noticing agent	-	-	15,000	-	-	-	35,000
Professional Fees - US Trustee	-	-	-	-	-	-	-
Creditors Committee Counsel	-	-	100,000	-	-	-	100,000
Creditors Committee FA	-	-	100,000	-	-	-	100,000
Wells Fargo Legal Fees	-	-	25,000	-	-	-	150,000
Other	-	-	-	-	-	-	-
<b>Total Non-Operating Filing Costs</b>	<b>-</b>	<b>-</b>	<b>480,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,400,000</b>
<b>Total Disbursements</b>	<b>15,193,975</b>	<b>12,913,924</b>	<b>14,640,738</b>	<b>10,807,776</b>	<b>12,990,457</b>	<b>16,087,359</b>	<b>175,296,825</b>
<b>Net Cash Inflow/(Outflow)</b>	<b>(5,968,332)</b>	<b>6,380,311</b>	<b>(4,777,764)</b>	<b>5,556,067</b>	<b>(6,452,643)</b>	<b>400,478</b>	<b>(4,287,421)</b>
<b>Cumulative Net Cash Inflow/(Outflow)</b>	<b>(5,393,871)</b>	<b>986,440</b>	<b>(3,791,324)</b>	<b>1,764,743</b>	<b>(4,687,699)</b>	<b>(4,287,421)</b>	
<b>BEGINNING CASH BALANCE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Cash used to cover loan availability shortfall</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>ENDING CASH BALANCE</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Draw on secondary DIP Loan</b>	<b>595,406</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,975,546</b>

Borrowing Base Analysis	bb change					
	Jan 5	Jan. 12	Jan 19	Jan, 26	Feb. 2	Feb. 9
Total Accounts Receivable	82,469,462	85,009,177	85,009,177	85,009,177	85,009,177	85,009,177
Ineligible	26,390,228	27,202,937	27,202,937	27,202,937	27,202,937	27,202,937
Net Eligible	56,079,234	56,079,234	56,079,234	56,079,234	56,079,234	56,079,234
Eligible AR after Expected Net Value Factor	54,857,649	56,650,115	56,650,115	56,650,115	56,650,115	56,650,115
Advance Rate	85%	85%	85%	85%	85%	85%
AR Availability before Reserves	46,714,002	48,152,598	48,152,598	48,152,598	48,152,598	48,152,598
Credit Reserves	2,603,798	2,603,798	2,603,798	2,603,798	2,603,798	2,603,798
Net Availability	44,110,204	45,548,800	45,548,800	45,548,800	45,548,800	45,548,800
Liquidity Reserve	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
Available to Borrow	38,110,204	39,548,800	39,548,800	39,548,800	39,548,800	39,548,800
Loan Balance	38,110,204	31,729,893	36,507,656	30,951,589	37,404,232	37,003,754
Loan Availability	0	7,818,907	3,041,144	8,597,211	2,144,568	2,545,046



**EXHIBIT B**  
**Proposed Interim Order**

**[TO BE PROVIDED PRIOR TO HEARING]**

**EXHIBIT C**  
**Checklist**

**[TO BE PROVIDED PRIOR TO HEARING]**