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HONORABLE MARY JO HESTON

HEARING DATE: TBD
HEARING TIME: TBD
LOCATION: 1717 Pacific Avenue
Tacoma WA
Courtroom H
RESPONSE DATE: TBD

SHORTENED TIME REQUESTED

Attorneys for Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

In re:

PNW HEALTHCARE HOLDINGS,
LLC, *et al.*,¹

Chapter 11
Lead Case No. 19-43754-MJH
(Joint Administration Requested)

DEBTOR

**SECOND MOTION TO EXTEND
EXCLUSIVE PERIODS FOR FILING AND
CONFIRMING PLAN**

¹ The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PNW Healthcare Holdings, LLC (9801); North Auburn Health, LLC *dba* North Auburn Rehabilitation & Health Center (3159); Sequim Health, LLC *dba* Sequim Health & Rehabilitation (7737); Bremerton Health, LLC *dba* Bremerton Convalescent & Rehabilitation Center (3188); Crestwood Convalescent-Port Angeles, LLC *dba* Crestwood Health & Rehabilitation Center (6565); Fir Lane Health-Shelton, LLC *dba* Fir Lane Health & Rehabilitation Center (7798); Forest Ridge Health-Bremerton, LLC *dba* Forest Ridge Health & Rehabilitation Center (4019); Meadow Park Health-St Helen, LLC *dba* Meadow Park Health & Specialty Care Center (9109); Cherrywood Place-Spokane, LLC *dba* Cherrywood Place (7776); Riverside Nursing-Centralia, LLC *dba* Riverside Nursing & Rehabilitation Center (3792); PNW Master Tenant I, LLC (9824); Franklin Hills Health-Spokane, LLC *dba* Franklin Hills Health & Rehabilitation Center (1763); Aldercrest Health-Edmonds, LLC *dba* Aldercrest Health & Rehabilitation Center (3827); PNW Master Tenant II, LLC (5319); Gardens on University-Spokane Valley, LLC *dba* The Gardens on University (1917); Puget Sound Healthcare-Olympia, LLC *dba* Puget Sound Healthcare Center (4419); Care Center East Health-Portland, LLC *dba* Care Center East Health & Specialty Care Center (8950); LaCrosse Health-Coeur d'Alene, LLC *dba* LaCrosse Health & Rehabilitation Center (8594); Ivy Court-Coeur d'Alene, LLC *dba* Ivy Court (3197); Cornerstone Healthcare Services, LLC (1265); and CRN Pool, LLC (9083).

SECOND MOTION TO EXTEND EXCLUSIVITY PERIOD

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I. INTRODUCTION

PNW Healthcare Holdings, LLC and its affiliates, as debtors and debtors in possession (collectively, the “Debtors” or “Cornerstone Healthcare”), in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), hereby submit this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), to extend the exclusivity periods under §§ 1121(b) and (c)(3) of the Bankruptcy Code. By and through the Motion, the Debtors seek to extend the time provided in 11 U.S.C. § 1121(b) by an additional sixty (60) days to allow the Debtors until July 20, 2020 (the “Exclusive Filing Period”), to file their plan of reorganization (“Plan”) and to extend the time provided in 11 U.S.C. § 1121(c)(3) until September 20, 2020, to solicit acceptances of the Plan (the “Exclusive Solicitation Period,” and together with the Exclusive Filing Period, the “Exclusive Periods”). Currently, the Exclusive Filing Period expires on May 20, 2020. This Motion is based on the records and files herein.

The Debtors request a brief further extension of exclusivity in order to provide necessary time to continue negotiations with numerous parties in furtherance of filing a plan of reorganization that maximizes recoveries for all creditors. This is only the Debtors second request for an extension of the Exclusive Periods, following a brief extension of only 60 days on the Debtors first motion. The Debtors initially requests a 120-day extension in their first motion, but agreed to shorter 60-day initial extension in order to avoid the need to litigate the motion. While the Debtors have made substantial progress, they now need the additional 60 days for a number of reasons. In particular, the COVID-19 crises significantly interfered with the Debtors ability to file a plan during the initial extension period, necessitating this second motion. The issues connected with proposing a plan are extremely complicated, involving reorganizing debts of 21 interrelated debtor entities, including fifteen active operating entities, one non-operational operating entity, two master tenants, a holding company, an administrative services company, and an employee pooling entity.

The clear Congressional intent behind the exclusivity provisions of Chapter 11 was to provide the debtor with the opportunity to negotiate with creditors, and to propose a plan of

1 reorganization without interference from competing plans. The Debtors have done a remarkable
2 job of managing the Debtors business and protecting resident and employee health through the
3 COVID-19 crises, but the crises has caused inevitable delays in being able to present a plan. The
4 Debtors are, however, continuing to negotiate with potential plan sponsors, and are evaluating the
5 impact of additional funding received in the past two on potential plan structures, including the
6 possibility that this funding may allow for a plan that does not require third party financing.

7 Under these circumstances, the Debtors believe that a brief extension is appropriate, and in
8 the best interests of the estates and their creditors.

9 10 **II. JURISDICTION**

11 The United States Bankruptcy Court for the Western District of Washington (the “Court”)
12 has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 ad 1334. This matter is a core
13 proceeding with the meaning of 28 U.S.C. § 157(b)(2). The Debtors confirm their consent,
14 pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with
15 this Motion to the extent that it is later determined that the Court, absent consent of the parties,
16 cannot enter final orders or judgments in connection herewith consistent with Article III of the
17 United States Constitution.

18 Venue of these Chapter 11 Cases and this Motion in this District is proper under 28 U.S.C.
19 §§ 1408 and 1409.

20 The statutory basis for the relief requested herein is section 1121 of title 11 of the United
21 States Code (the “Bankruptcy Code”).

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28 SECOND MOTION TO EXTEND EXCLUSIVITY PERIOD
Page 2

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1 **III. BACKGROUND**

2 **A. Background of the Chapter 11 Cases**

3 Cornerstone Healthcare operates a community of fourteen skilled nursing facilities and one
4 assisted living center throughout Washington, as well as in Oregon and Idaho.² These facilities
5 range from 52 to 135 operational-resident beds, with most in the 80 to 120-bed range. In total, the
6 facilities have capacity to provide skilled-nursing services to approximately 1,508 residents.
7 Currently, the facilities provide care to more than 1,100 residents on a daily basis, and employ
8 more than 1,500 people in their local communities.

9 On November 22, 2019 (the "Petition Date"), nineteen of the Debtors filed petition with
10 the Court under chapter 11 of the Bankruptcy Code. On January 20, 2020, two additional Debtors
11 filed petition with this Court under chapter 11 of the Bankruptcy Code. The Court has approved
12 joint administration of these Chapter 11 Cases [Docket Nos. 73, 307, and 308]. No party has
13 requested the appointment of a trustee or examiner in these Chapter 11 Cases. The Debtors
14 continue to operate their businesses and manage their properties as debtors in possession pursuant
15 to sections 1107(a) and 1108 of the Bankruptcy Code. On December 12, 2019, the United States
16 Trustee for the Western District of Washington (the "U.S. Trustee") appointed the Official
17 Committee of Unsecured Creditors [Docket No. 145] (the "Committee").

18 On November 24, 2019, the Debtors filed the *Declaration of Will Masterson in Support of*
19 *First-Day Motions* [Docket No. 5] (the "First Day Declaration"), which is incorporated by
20 reference herein. The First Day Declaration provides a more complete description of the
21 Cornerstone Healthcare business and the events leading to the Chapter 11 reorganization.

22 Currently, the Exclusive Filing Period extends through and including May 20, 2020, and
23 the Exclusive Solicitation Period extends through and including July 19, 2020.

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27 ² One additional skilled nursing facility in Oregon was closed pre-petition.

1 **B. The Debtor's Post-Petition Activities and Case Progress**

2 The Debtors and their advisors have been active and engaged since the commencement of
3 these Chapter 11 Cases. During the first few months of these chapter 11 Cases, the Debtors'
4 primary focus was on stabilizing their businesses, working with key creditor groups for consensual
5 orders for the allowed use of cash collateral, and as necessary obtaining use of cash collateral
6 through a contested hearing and obtaining necessary relief with respect to, among other things, the
7 Debtors' cash management system [Docket No. 71], employee compensation and benefit programs
8 [Docket No. 70], and utility providers [Docket No. 240]. During this time, the Debtors engaged
9 their employees and key vendors to ensure that the Debtors could continue to perform the
10 necessary, high-quality services to their residents. All of these efforts enabled the debtors to
11 minimize the disruptions often attendant to the commencement of a chapter 11 case.

12 In addition, the Debtors filed their schedules of assets and liabilities and statements of
13 financial affairs (the "Schedules and Statements") within the first 50 days of these Chapter 11
14 Cases. Filing Schedules and Statements for nineteen Debtors was a significant task for the Debtors
15 and their advisors and took substantial time and efforts by these parties.

16 The Debtors also engaged the Committee and secured lenders, prepared and shared with
17 the parties a 45-page business plan, and engaged various parties in discussions regarding potential
18 exit strategies. In connection with this effort, the Debtors and their financial advisors prepared a
19 due diligence data room, and actively solicited proposal for financing or plan sponsorship. The
20 Debtors received a more than a dozen NDA's, and have received several tentative proposals that
21 they believe are serious, and could provide substantial benefit to creditors.

22 **C. COVID-19**

23 The disruption created by COVID-19 cannot be ignored, and is a significant contributor to
24 the need for a brief further extension of exclusivity. COVID-19 became a serious crises in
25 Washington State in February, just as the Debtors were shifting their focus from addressing the
26 initial issues in the case to the exit plan. Managing the Debtors through the pandemic required all
27 of the focus of the Debtors' management over the past three months.

1 The Debtors have done an exceptional job of managing the impact of the COVID-19 crises
2 on both the Debtors business, and most critically on the health of residents and employees. The
3 Debtors immediately initiated thorough protocols to prevent disease spread. These protocols are
4 discussed further in the Patient Care Ombudsman’s second report [Docket No. 464] (the “PCO
5 Second Report”). To date, it remains the case that the Debtors are one of the few skilled nursing
6 operators in the state of Washington without any confirmed or suspected COVID-19 cases among
7 their residents. The PCO Second Report states that “the debtor facilities should be commended
8 for their role in helping to slow the spread of this virus.” PCO Second Report, p. 4. Through the
9 hard work of management and employees, the Debtors have also avoided major disruptions to
10 operation of the facilities. Although there has been a small decrease in census numbers as a result
11 of a decrease in non-emergency medical procedures, operations have remained stable overall.

12 In addition, the short-term cash position of the Debtors has actually improved. This is the
13 result of additional funding the Debtors were able to obtain from CMS and the State of
14 Washington.

15 The reality is that COVID-19 has delayed the Debtors’ ability to propose a plan for a
16 number of reasons. As noted above, the focus of the Debtors’ management has had to be entirely
17 on managing the business through the crises. The crises also created substantial uncertainty for
18 potential plan funding sources and the Debtors’ principals. There were understandable concerns
19 regarding the implications if one or more Debtor facilities were to have a COVID-19 outbreak.
20 The additional funding received also substantially changed the Debtors financial position, albeit
21 for the better. All of this is of course, on top of the general logistical challenges presented by
22 working through the pandemic.

23 The Debtors respectfully submit that these circumstances alone would well justify the brief
24 extension sought by the Debtors.

25 **D. Current Status**

26 During this time, the Debtors and their advisors are continuing to develop the Debtors
27 business plan for the Debtors’ operating skilled nursing facilities and analyze various value-

1 maximizing transactions for all constituencies, in light of the Debtors' current circumstances and
2 financial position. The Debtors and the Committee are engaged in active discussions with various
3 parties regarding potential plan terms and structure.

4 On May 14, 2020, the Court entered a consensual Seventh Interim Order authorizing
5 continued use of cash collateral. The Seventh Interim Order extends the Debtors' authorization to
6 use cash collateral through June 13, 2020.

7 The Debtors and the Committee have been actively investigating potential claims against
8 the Canyon Landlords, and will be filing an adversary complaint alleging, among other things
9 preference, fraudulent transfer, and declaratory relief regarding characterization of the purported
10 leases. In addition, the Debtors are actively working with multiple potential plan sponsors to
11 finalize proposed term sheets for plan financing. While significant progress has been made that
12 the Debtors believe will allow filing a plan in the near future, the Debtors will not be able to file
13 before the current expiration of the Exclusive Filing Period on May 20, 2020.

14 The Debtors are administering these Chapter 11 Cases as expeditiously as possible, but, as
15 is clear, there are a number of financial and operational concerns that must be addressed, and
16 additional work that is necessary in connection with the formulation and negotiation of the Plan.
17 Under the circumstances of these Chapter 11 Cases, the requested extensions of the Exclusive
18 Periods clearly are warranted and, in fact, necessary and appropriate to afford the Debtors the
19 opportunity to achieve the objectives of chapter 11—a full and fair opportunity to negotiate with
20 their various stakeholders and propose a confirmable plan as contemplated by the Bankruptcy
21 Code.

22 23 **IV. BASIS FOR RELIEF**

24 The Exclusive Filing Period and the Exclusive Solicitation Period set forth in section 1121(b)
25 and (c) of the Bankruptcy Code are set to expire absent further order of the Court.

26 Pursuant to section 1121(d) of the Bankruptcy Code, the Court may extend the Exclusive
27 Periods for cause. *See* 11 U.S.C. § 1121(d) (“on request of a party in interest made within the

1 respective periods specified in subsections (b) and (c) of this section and after notice and a hearing,
2 the court may for cause reduce or increase the 120-day period or the 180-day period referred to in
3 this section”). However, the 120-day period “may not be extended beyond a date that is 18 months
4 after the [commencement] date” and the 180-day period “may not be extended beyond a date that
5 is 20 months after the [commencement] date.” 11 U.S.C. § 1121(d)(2).

6 The Exclusive Periods established by Congress were incorporated in the Bankruptcy Code
7 to afford a debtor a full and fair opportunity to propose a chapter 11 plan and enable solicitation
8 of acceptances of the plan without the deterioration and disruption of a debtor’s business that might
9 be caused by the filing of multiple competing plans. Indeed, the primary objective of a chapter 11
10 case is the formulation, confirmation, and consummation of a consensual chapter 11 plan. To
11 terminate the Exclusive Periods in these Chapter 11 Cases just as meaningful and substantive plan
12 negotiations are beginning would be to defeat the very purpose of section 1121 of the Bankruptcy
13 Code, i.e., affording a debtor the full and fair opportunity to formulate and prosecute its proposed
14 chapter 11 plan. The current Exclusive Periods simply provide an unrealistic time frame for
15 chapter 11 cases of the size and complexity of these Chapter 11 Cases.

16 As stated, section 1121(d) of the Bankruptcy Code empowers a bankruptcy court to extend
17 the Exclusive Periods “for cause.” The Bankruptcy Code neither defines the term “cause” for
18 purposes of section 1121(d) nor establishes formal criteria for an extension. The legislative history
19 of section 1121 indicates, however, that it is intended to be a flexible standard to balance the
20 competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231-32 (1978),
21 reprinted in 1978 U.S.C.C.A.N. 5963 (noting that Congress intended to give bankruptcy courts
22 great flexibility to protect a debtor’s interests by allowing a debtor unimpeded opportunity to
23 negotiate settlement of debts without interference from other parties in interest).

24 In exercising its broad discretion, the bankruptcy court may consider a variety of factors to
25 assess the totality of circumstances in each case. *See In re Henry Mayo Newhall Mem'l Hosp.*, 282
26 B.R. 444, 452 (B.A.P. 9th Cir. 2002) (“The question [of § 1121(d) cause] is inherently fact-specific
27 and calls for a delicate exercise of judgment about which seasoned judges could differ.”); *In re*

1 *Borders Grp., Inc.*, 460 B.R. 818, 821–22 (Bankr. S.D.N.Y. 2011) (“The determination of cause
2 under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or
3 terminating exclusivity.”); *In re Adelpia Commc ’ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y.
4 2006) (identifying objective factors courts historically have considered in determining whether
5 cause exists to extend or terminate exclusivity); *In re Dow Corning Corp.*, 208 B.R. 661, 664
6 (Bankr. E.D. Mich. 1997); *In re Express One Int’l, Inc.*, 194 B.R. 98 (Bankr. E.D. Tex. 1996).

7 Those factors include, without limitation:

- 8 i. the size and complexity of the debtor’s case;
- 9 ii. the necessity for sufficient time to permit the debtor to negotiate a chapter 11
10 plan and prepare adequate information;
- 11 iii. the existence of good faith process towards reorganization;
- 12 iv. the fact that the debtor is paying its bills as they become due;
- 13 v. whether the debtor has demonstrated reasonable prospects for filing a viable
14 plan;
- 15 vi. whether the debtor has made progress in negotiations with its creditors;
- 16 vii. the amount of time which has elapsed in the case;
- 17 viii. whether the debtor is seeking an extension of exclusivity in order to pressure
18 creditors to submit to the debtor’s reorganization demands; and
- 19 ix. whether an unresolved contingency exists.

20 *In re New Meatco Provisions, LLC*, No. 2:13-BK-22155-PC, 2014 WL 917335, at *3 (Bankr. C.D.
21 Cal. Mar. 10, 2014); *In re Catholic Bishop of N. Alaska*, No. F08-00110-DMD, 2009 WL 8412171,
22 at *1 (Bankr. D. Alaska Sept. 11, 2009); *Adelpia Commc ’ns*, 352 B.R. at 587 (noting that the nine
23 factors listed above are “objective factors which courts historically have considered in making
24 determinations of this character”); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y.
25 1987); *accord In re Express One*, 194 B.R. at 100 (identifying all of the nine factors as relevant in
26 determining whether cause exists to extend exclusivity); *In re United Press Int’l, Inc.*, 60 B.R. 265,
27 269 (Bankr. D.C. 1986) (holding that debtor showed cause to extend exclusive period based upon

1 certain of the nine factors). The exercise of the Court’s discretion is not simply a check-off
2 process, but is based upon the totality of the circumstances. The above factors are not the exclusive
3 bases for the exercise of the Court’s discretion to extend the exclusive periods, nor must they all
4 be satisfied.

5 Application of the identified standards to the indisputable facts of these Chapter 11 Cases
6 demonstrates that more than ample cause exists to grant the Debtors’ requested extensions of the
7 Exclusive Periods. The extensions are necessary and appropriate in order for the Debtors to have
8 the opportunity contemplated by the Bankruptcy Code to propose a chapter 11 plan and solicit
9 acceptances of such plan.

10 **A. The Debtors’ Chapter 11 Cases are Large and Complex**

11 It is well-established that the size and complexity of a debtor’s case alone may constitute
12 cause to extend the Exclusive Periods. The legislative history provides that “if an unusually large
13 company were to seek reorganization under chapter 11, the court would probably need to extend
14 the time in order to allow the debtor to reach an agreement.” H.R. Rep. No. 95-595, at 232 (1978),
15 reprinted in 1978 U.S.C.C.A.N. 5963. Similarly, courts have recognized that “[t]he large size of
16 a debtor and the consequent difficulty in formulating a plan . . . for a huge debtor with a complex
17 financial structure are important factors which generally constitute cause for extending the
18 exclusivity periods.” *In re Texaco Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987).

19 These Chapter 11 Cases are significant in both size and complexity. The Debtors—with
20 approximately 1,500 employees—include 15 companies engaged in provided skilled nursing
21 facility services to approximately 1,100 residents. Reorganizing 15 operating skilled nursing
22 facilities raises, among other things, issues of healthcare regulatory law, labor law, and bankruptcy
23 law. Moreover, there are also many issues that arise in simply maintaining the Debtors’ operations
24 pending resolution of these Chapter 11 Cases. As a result, the Debtors and their advisors have
25 been and will continue to address and evaluate all strategic alternatives and potential restructuring
26 opportunities facing their large, complex businesses.

1 Moreover, the size and complexity of the Debtors’ enterprise, the regulatory framework in
2 which they operate, and the intense competition they face are not mere stagnant factors but instead
3 constantly change. Thus, it is not merely the Debtors’ size and complexity, but also the fact that
4 the Debtors’ business and the environment in which that business operates continues to evolve,
5 that makes these Chapter 11 Cases complex and challenging. This is especially true in light of the
6 COVID-19 situation.

7 The Debtors also have engaged in discussions with all stakeholder constituencies—
8 including, the Committee, the Debtors’ secured creditors, the Landlords, as well as other individual
9 creditors. The Debtors have successfully managed the concerns of their various stakeholders such
10 that very few matters have required court intervention, other than the disputes with the Landlords
11 resulting from the Landlords’ aggressive positions. Nonetheless, the Debtors’ “behind-the-scenes”
12 administration of these Chapter 11 Cases (and operation of their businesses) is extremely active
13 and complicated.

14 **B. The Debtors’ Have Made Significant Progress Negotiating with Creditors**

15 Importantly, the Debtors and their major creditor constituencies—including the
16 Committee, the Debtors’ secured creditors, and the Landlord—have been in regular
17 communications throughout the early stages of these Chapter 11 Cases. Including an “all hands”
18 in-person meeting and numerous telephone conferences, the Debtors and their advisors have been
19 in regular contact with the Committee and the Debtors’ secured creditors and Landlord on all
20 material matters.

21 The Debtors, the Committee, the Debtors’ secured creditors, and Landlord have worked
22 (and continued to work) collaboratively to agree upon a number of matters without having to resort
23 to litigation, including, among other things, consensual resolutions of the Debtors’ Cash Collateral
24 Orders. The Debtors’ collaboration with their primary creditor constituencies includes the input
25 of these constituencies on various processes and pleadings. Although there have been disputes on
26 issues regarding use of cash collateral, and with regard to the leases, the Debtors are continuing to
27 actively provide information and negotiate with the Committee and secured creditors.

1 Simply put, although the Debtors and their major stakeholders do not necessarily agree on
2 everything, there can be no reasonable complaint that the Debtors are less than forthcoming in
3 diligence, analysis, and collaboration.³

4 **C. The Debtors' Have Made Good-Faith Progress Toward Reorganization, But**
5 **Need More Time to Propose a Plan of Reorganization**

6 The Debtors have been engaged a strategic review to consider the appropriate path forward
7 that will lead to the maximization of value of the Debtors' estates for the benefit of all parties in
8 interest. This analysis requires, among other things, addressing various regulatory and financial
9 concerns at the Debtors' skilled nursing facilities.

10 This analysis, for 15 operating skilled nursing facilities, is complex and time-consuming.
11 The Debtors and their advisors are analyzing the Debtors' contractual relationships and services
12 performed by various service providers. This analysis, along with the Debtors' broader strategic
13 analysis and *pro forma* business plan, will continue to require significant legal and operational
14 diligence, time, and input from the Debtors' creditor constituencies.

15 As described above, the Debtors the Debtors are actively working with multiple potential
16 plan sponsors to finalize proposed term sheets for plan financing. While significant progress has
17 been made that the Debtors believe will allow filing a plan in the near future, the Debtors will not
18 be able to file before the current expiration of the Exclusive Filing Period on May 20, 2020.

19 **D. The Debtors Have Demonstrated Reasonable Prospects for Filing a Viable**
20 **Plan**

21 The Debtors see no impediment to their ability to formulate, file, and confirm a viable plan.
22 Indeed, at this stage, the debtors have preserved their ability to pursue one of a number of viable
23 alternatives and have engaged various parties in interest regarding these alternatives.⁴ The

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25 ³ It should be noted that Canyon has filed a motion seeking relief from stay and stated an intent to force the Debtors
26 to transition the facilities to a new operator. This full-on assault on the ability to reorganize does somewhat limit the
ability to collaborate.

27 ⁴ Please note that the Debtors have not executed any definitive documentation regarding any of these potential
28 alternative proposals and are not in a position to disclose any discussions regarding some alternatives at this time.

1 collaboration with which the Debtors have already accomplished in these Chapter 11 Cases
2 demonstrates the Debtors' prospects for confirming a feasible chapter 11 plan are strong. If the
3 Court were to take away the Debtors' exclusivity to file and pursue confirmation of a Plan, the
4 work the Debtors have performed for a value-maximizing reorganization may be lost.

5 **E. An Extension of the Exclusive Periods Will Not Prejudice Creditors**

6 The Debtors seek to maintain exclusivity so parties with competing interests do not derail
7 the Debtors' efforts to formulate a consensual restructuring that maximizes value for all of the
8 Debtors' stakeholders. Maintaining the debtors' exclusivity also fosters the stability that the
9 Debtors already have created following their "soft landing" into chapter 11. And all stakeholders
10 benefit from continued stability and predictability that comes with engaging the Debtors as the
11 only potential plan proponents—rather than multiple unknown parties with potentially diverging
12 interests—as they proceed toward a value-maximizing restructuring. Even if the Court approves
13 an extension of the Exclusive Periods, nothing prevents parties in interest from later arguing to the
14 Court that cause supports termination of the Debtors' exclusivity.

15 **F. The Debtors Are Paying Their Bills as They Come Due**

16 Since the Petition Date, the Debtors have paid their employees, vendors, landlord, and
17 utilities providers in the ordinary course of business or as otherwise provided by Court order. In
18 addition, the Debtors have worked diligently to maintain open lines of communication and access
19 to information for those parties in interest that have questions or concerns regarding these Chapter
20 11 Cases, fielding hundreds of inquiries on the Debtors' restructuring hotline to date.

21 The Debtors have also paid substantial administrative expenses, while maintaining positive
22 cash flow. The level of administrative fees remains a concern, and the Debtors believe it is
23 essential to move quickly in order to minimize further professional fees.

24 **G. Little Time Has Elapsed in These Chapter 11 Cases**

25 This request for an extension of the Exclusive Periods is the Debtors' second and comes
26 just under six months into these Chapter 11 Cases. As discussed above, in the time since the
27

1 Petition Date, the Debtors have accomplished a great deal and continue to work diligently toward
2 a consensual plan of reorganization.

3 An objective analysis of the relevant factors demonstrates that the Debtors are doing
4 everything that they should be doing as chapter 11 debtors in possession to facilitate a successful
5 conclusion to these Chapter 11 Cases. The Debtors focused their efforts in the first days of these
6 Chapter 11 Cases on ensuring a soft landing into chapter 11, maximizing liquidity, and filing
7 Bankruptcy Code-required disclosures in the Debtors' Schedules and Statements. The Debtors
8 subsequently had to address management of the facilities through the unprecedented crises of a global
9 pandemic.

10 Under any circumstances, the eight month total exclusive period requested herein is not an
11 unusual amount of time to propose a plan in cases as large and complicated as these. Under the
12 actual circumstances given COVID-19, the Debtors submit that the requested extension is
13 extremely reasonable.

14 **H. Important Contingencies Must Be Resolved by the Debtors**

15 Despite the fact that the Debtors have been doing everything they should be doing to
16 facilitate an expeditious exit from chapter 11, there remains much work to do. There are a number
17 of open issues the Debtors are actively addressing with their stakeholders. For example, the
18 Debtors and their advisors and the Committee are analyzing the lease agreements between the
19 Debtors and their Landlords and the appropriate treatment of such leases. The Debtors and the
20 Committee have been actively investigating potential claims against the Canyon Landlords, and
21 will be filing an adversary complaint alleging, among other things preference, fraudulent transfer,
22 and declaratory relief regarding characterization of the purported leases. Further, the Debtors and
23 their advisors are continuing their diligent efforts to evaluate the need for debtor-in-possession
24 financing, exit financing, and strategic alternatives with interested parties. All of these efforts are
25 critical to achieving the Debtors' primary goals: efficiency, consensus, and value-maximization.
26 To address these issues and develop the broadest base of support for a Plan, the Debtors require
27 the extension of the Exclusive Periods.

1 The Debtors have responded to the exigent demands of these Chapter 11 Cases and have
2 worked diligently with the Committee and other key economic stakeholders to advance the
3 reorganization process. The Debtors should be afforded a full, fair, and reasonable opportunity to
4 negotiate, propose, file, and solicit acceptances of a Plan. This second requested extension of the
5 Exclusive Periods is warranted and necessary to afford the Debtors a meaningful opportunity to
6 pursue the chapter 11 reorganization process and build a consensus among their economic
7 stakeholders, all as contemplated by chapter 11 of the Bankruptcy Code.

8 9 **V. NOTICE**

10 The Debtors have provided notice of this Motion to: (a) the U.S. Trustee; (b) counsel to the
11 Committee; (c) counsel to MidCap Funding IV Trust; (d) counsel to Ziegler Financing
12 Corporation; (e) counsel to Canyon Z, LLC and Canyon NH, LLC; (f) counsel for the US
13 Department of Justice on behalf of the Department of Housing and Urban Development; and (g)
14 all parties who have requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that,
15 in light of the nature of the relief requested, no other or further notice need be given.

16 17 **VI. PRIOR REQUEST**

18 The Debtors requested one prior extension of the Exclusive Periods. This prior request
19 was granted pursuant to the agreement of the Debtors and all objecting parties for a very brief 60-
20 day initial extension, without prejudice to the Debtors' right to seek further extensions.

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28 SECOND MOTION TO EXTEND EXCLUSIVITY PERIOD
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VII. CONCLUSION

Based upon the foregoing, the Debtors respectfully request an order granting (a) the relief requested herein for cause shown and as being in the best interest of their estates, creditors, and all other parties of interest, and (b) such other and further relief as the Court may deem just and appropriate.

Date: May 14, 2020

Foley & Lardner LLP
BY: /s/ Ashley M. McDow
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