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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.,

Debtors.

Chapter 11

Case No. 13-22840 (RDD)

(Jointly Administered)

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**MOTION OF DEBTORS PURSUANT TO 11 U.S.C. § 1121(D) TO
EXTEND EXCLUSIVITY PERIODS IN WHICH THE DEBTORS MAY
FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THERETO**

Sound Shore Medical Center of Westchester ("SSMC"), and its debtor affiliates (each a "Debtor" and together, the "Debtors") in the above chapter 11 cases (the "Chapter 11 Cases"), hereby file this Motion (the "Motion") for the entry of an Order, substantially in the form attached hereto as Exhibit A, pursuant to 11 U.S.C. § 1121(d) extending the exclusivity periods in which the Debtors may file a Chapter 11 plan and solicit acceptances thereto, to January 24, 2013 and March 25, 2013 respectively. In support of the Motion, the Debtors respectfully represent as follows:

SUMMARY OF RELIEF REQUESTED

1. By this Motion, the Debtors seeks the entry of an Order, pursuant to Section 1121(d) of Title 11, United States Code (the "Bankruptcy Code"), extending for one hundred

twenty (120) days both: (i) the exclusive period within which the Debtors may file a Chapter 11 plan (the “**Exclusive Filing Period**”) through and including January 24, 2013, and (ii) the exclusive period within which the Debtors may solicit acceptances to any such plan (the “**Exclusive Solicitation Period**,” which, together with the Exclusive Filing Period, are collectively referred to as the “**Exclusivity Periods**”) through and including March 25, 2013.

2. The filing of a plan of reorganization would be premature at this time. Thus far, the Debtors’ efforts have been focused on addressing immediate concerns stemming from these filings and the anticipated sale of substantially all assets to Montefiore Medical Center’s designees (“**MMC**”), many of must be resolved prior to the formulation of a plan. Among other things, the Debtors must attend not only to the ongoing administration of the estates and these cases, but cash management and the continued viability of operations, the myriad of information requests from the creditor constituencies, and the legal, operational and transitional issues relating to the sale and post closing process (the “**Sale**”). A transition of the magnitude contemplated by the Sale places an incredible stress on any organization. Here, this process is further complicated by the heavy regulatory overlay under which the Debtors must effectuate the Sale, as well as the rigors of the bankruptcy process. Thus, the Debtors will need additional time to effectively negotiate and file a plan of reorganization and develop a strategy for the successful confirmation of these cases. This is the Debtors’ first request for an extension of the Exclusivity Periods. The Debtors submit that the extension is reasonable under the circumstances.

JURISDICTION

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. On May 29, 2013 (the "**Petition Date**"), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered for procedural purposes only. The Debtors remain in possession of their assets and continue to manage their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On June 10, 2013, the United States Trustee for the Southern District of New York (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Committee**") pursuant to section 1102 of the Bankruptcy Code. The Committee has engaged Alston & Bird LLP as its counsel. No trustee or examiner has yet been appointed in these cases.

6. The factual background relating to the Debtors' commencement of these chapter 11 cases, including their business operations, their capital and debt structure, and the need to sell substantially all of their assets, is set forth in detail in the Affidavit of John Spicer Pursuant to Local Bankruptcy Rule 1007-2 and in Support of First Day Motions and Applications, [Docket No. 18] filed on the Petition Date and incorporated herein by reference.

RELIEF REQUESTED

7. The Debtors request an extension of the Exclusive Filing Period pursuant to section 1121(d) of the Bankruptcy Code, through and including January 24, 2013, and the Exclusive Solicitation Period through and including March 25, 2013, without prejudice to the Debtors' rights to seek additional extension of such periods.

8. Section 1121 of the Bankruptcy Code provides a debtor with the exclusive right to file a Chapter 11 plan for an initial period of 120 days after the commencement of a chapter 11

case. *See* 11 U.S.C. § 1121(b). Section 1121(c)(3) of the Bankruptcy Code provides that if a debtor files a plan within the 120 day Exclusive Filing Period, it then has an exclusive period of 180 days from the commencement date to solicit acceptances for its plan. During these exclusive periods, no other party in interest may file a competing chapter 11 plan. *See* 11 U.S.C. § 1121(c)(3). The Debtors' Exclusive Filing Period and Exclusive Solicitation Period are currently set to expire on September 26, 2013 and November 25, 2013, respectively.

9. An extension of the Exclusivity Periods is warranted and appropriate herein given the size and complexity of these cases. The relief sought herein will allow the Debtors to continue focusing on preserving and enhancing going concern values and addressing essential conditions to the Sale to MMC while ensuring continuity in patient care. Through the requested extensions, the Debtors will be afforded a full and fair opportunity, as contemplated by the Bankruptcy Code, to develop a viable, comprehensive and fair plan of reorganization or liquidation, in conjunction with the Creditors' Committee and other relevant parties in these cases. The extensions will permit sufficient time to negotiate, propose and solicit acceptances for a plan which will maximize value and benefit the interests of all creditors and parties in interest.

Legal Basis for Relief Requested

10. Pursuant to section 1121(d) of the Bankruptcy Code,

“on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.”

11 U.S.C. § 1121(d).

11. However, the 120-day period “may not be extended beyond a date that is 18 months after the [commencement] date” and the 180-day period “may not be extended beyond a date that is 20 months after the [commencement] date.” 11 U.S.C. § 1121(d)(2).

12. The Exclusivity Periods established by Congress were incorporated in the Bankruptcy Code to afford a full and fair opportunity to propose a chapter 11 plan and enable solicitation of acceptances of the plan without the deterioration and disruption of a debtors’ business that might be caused by the filing of multiple competing plans. Indeed, the primary objective of a chapter 11 case is the formulation, confirmation, and consummation of a consensual chapter 11 plan. Given the size and complexity of these cases and the timing of the Sale and non-bankruptcy regulatory approval process, the initial 120- and 180-day Exclusivity Periods provided under the Bankruptcy Code provide an unrealistic time frame for the filing of a viable plan of reorganization. To terminate the Exclusivity Periods in these chapter 11 cases before the Debtors have sufficient opportunity to finalize the approved Sale and negotiate a consensual plan with all creditor constituencies will effectively deprive the Debtors of their entitlement to a full and fair opportunity to formulate and prosecute a viable chapter 11 plan.

13. Section 1121(d) of the Bankruptcy Code empowers a Bankruptcy Court to extend the Exclusivity Periods “for cause” where the initial 120-day and 180-day periods provided for in the Bankruptcy Court prove to be an unrealistic time frame for proposal and solicitation of a plan. Although the term “cause” is not defined in the statute, legislative history indicates that it is a flexible standard intended to balance competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231-32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963. This flexibility is intended to give Bankruptcy Courts significant discretion in protecting a debtor’s interests by allowing a debtor unimpeded opportunity to negotiate settlement of debts without interference

from other parties in interest. It also provides debtors with an adequate opportunity to stabilize their business operations at the outset of the case and to negotiate with creditors an effective plan of reorganization. See *In re McLean Indus., Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987); *In re Texaco, Inc.*, 81 B.R. 806, 809 (Bankr. S.D.N.Y. 1987). Here, ample cause exists to extend the Exclusivity Periods.

14. In determining whether cause exists to extend the Exclusivity Periods, courts may consider a variety of factors to assess the totality of the circumstances in each case. See *In re Borders Group, Inc.*, 460 B.R. 818, 821-22 (Bankr. S.D.N.Y. 2011) (“The determination of cause under section 1121(d) is a fact-specific inquiry and the court has broad discretion in extending or terminating exclusivity.”); *In re Adelphia Commc’ns Corp.*, 352 B.R. 578, 687 (Bankr. S.D.N.Y. 2006) (identifying objective factors courts historically have considered in determining whether cause exists to extend or terminate exclusivity); see also *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997); *In re Express One Int’l Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re McLean Indus.*, 87 B.R. at 834 (identifying factors used by courts to determine whether cause exists to extend exclusivity).

15. Among the factors utilized by courts to determine whether “cause” exists for the purpose of extending a debtor’s exclusive periods include:

- (a) the size and complexity of the debtor’s case;
- (b) the existence of good faith progress towards reorganization;
- (c) a finding that the debtor is not seeking to extend exclusivity merely for the purpose of pressuring creditors to consent to the debtor’s reorganization demands;
- (d) the existence of an unresolved contingency; and
- (e) the fact that the debtor is paying its bills as they become due.

Adelphia Commc'ns, 352 B.R. at 587 (noting that nine factors listed above are “objective factors which courts historically have considered in making determinations of this character”); *see also Borders*, 460 B.R. at 822 (evaluating the nine factors set forth in *Adelphia* to hold that debtor established cause to extend exclusivity); *McLean Indus. Inc.*, 87 B.R. at 834; accord *In re Express One Int'l*, 194 B.R. at 100 (identifying all of the nine factors as relevant in determining whether “cause” exists to extend exclusivity); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr.D.C. 1986) (holding that debtor showed cause to extend exclusive period based upon certain of the nine factors). The exercise of the Court’s discretion is not simply a check-off process but is based on the totality of circumstances. In addition, the above factors are not exclusive bases for the exercise of such discretion.

16. Other courts have examined whether the debtor has sufficient time to negotiate a chapter 11 plan and prepare a disclosure statement containing adequate information as required by the Bankruptcy Code. Also considered is the extent of any harm to the debtor’s creditors. *See, e.g. In re Adelphia Communications Corp.*, 336 B.R. at 674-75 (Bankr.S.D.N.Y. 2006) (considering harm to creditors as well as factors mentioned in *McLean*); *In re Gen. Bearing Corp.*, 136 B.R. 361, 367 (Bankr.S.D.N.Y. 1992); *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409-10 (Bankr. E.D.N.Y. 1989).

Ample Cause Exists for an Extension of the Exclusive Periods

17. The Debtor submits that adequate cause exists for an extension of the Exclusivity Periods under the aforementioned standards. The Debtors’ cases are relatively complex and involve an interplay of sale conditions and operational and transitional issues which the Debtor, with third party decision making, must resolve prior to a plan being filed. Additionally, the intent behind the Debtors’ request for an extension is not improper in any manner and is instead

designed to provide the Debtors with sufficient time and opportunity obtain certain mandatory governmental approvals required for the consummation of the Sale and ultimately, the proposed plan of reorganization.

18. As healthcare providers, the Debtors are constrained by a heavily regulated environment which often requires the Debtors to obtain non-bankruptcy approval for all major business decisions – including any proposed sale or transfer of its assets, as contemplated herein. The Debtors' operations are thus subject to oversight and regulation by a number of federal, state and local governmental and administrative agencies in addition to the New York State Department of Health.

19. Moreover, as not-for-profit entities, the Debtors are also required to address the concerns of the patients and community that the Debtors' service. Thus, in addition to its traditional creditor constituencies, the Debtors must also evaluate the impact of the transition process on employees, patients and the surrounding communities. The presence of two unions at its hospital facility adds further complication to the varied mix of parties in interest which the Debtors must consider during the transition process.

20. The Debtors are also undertaking substantial efforts to implement a process to estimate the aggregate amount of all malpractice claims and develop a uniform, cost-efficient and expeditious process for fixing and determining the amounts of such claims which must be dealt with as part of the plan formulation.

21. As is evident, the nature and complexity of the Debtors' Chapter 11 cases alone justifies granting the relief requested in this Motion. The number and intricacy of the tasks that must be completed and the diversity of interests which must be taken into account before

formulating a plan of reorganization are far greater than what one encounters in ordinary for-profit Chapter 11 cases. The extension requested is reasonable under the circumstances and warranted since the Debtor must balance the dual requirements of maximizing the value of their estates with a concurrent duty to comply with their regulatory and not-for-profit obligations. Notwithstanding, additional factors also exist which favor the granting of the requested extension. The extensions are thus necessary and appropriate in order for the Debtors to have the opportunity contemplated by the Bankruptcy Code to propose a chapter 11 plan and solicit acceptances thereto.

22. Courts in this district have routinely granted extensions of the Exclusivity Periods in cases of similar complexity. *See In re Mesa Air Group, Inc.*, Case No. 10-10018 (MG) (Bankr. S.D.N.Y. Apr. 15, 2010) (exclusivity initially extended for 120 days); *In re FairPoint Commc'ns Inc.*, Case No. 09-16335 (BRL) (Bankr. S.D.N.Y. Mar. 22, 2010) (exclusivity initially extended for 180 days); *In re Finlay Enters., Inc.*, Case No. 09-14873 (JMP) (Bankr. S.D.N.Y. Dec. 17, 2009) (exclusivity initially extended for 180 days).

(a) **The Size and Complexity of these Cases Provides
Sufficient Cause to Extend the Exclusivity Periods**

23. It is well established that the size and complexity of a debtor's case alone may constitute cause to extend the Exclusivity Periods. The legislative history provides that "if an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement." H.R. Rep. No. 95-595, at 232 (1978), *reprinted* in 1978 U.S.C.C.A.N. 5963. Similarly, this Court has stated: "The large size of a debtor and the consequent difficulty in formulating a plan..for a huge debtor with complex financial structure are important factors which generally constitute cause for extending

the exclusivity periods.” *In re Texaco Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987). As detailed above, the Debtors’ cases, in addition to being large and complex, are further complicated by a regulatory overlay by virtue of their status as not-for-profit and healthcare institutions.

24. Additionally, as noted above, due to the underlying nature of the Debtors’ businesses, their priority has been, and remains, maintaining high quality patient care while navigating the bankruptcy process and simultaneously ensuring a proper transition of their operations to the proposed buyer upon the closing of the Sale. These actions are in addition to the substantial time devoted by the Debtors to the efficient administration of their estates and continued viability of operations. All of these factors warrant an extension of the Exclusivity Periods.

(b) **The Debtor is Not Seeking to Extend the Exclusive Period to Impose Undue Pressure Upon its Creditors to Accede to Their Demands**

25. This is the Debtors’ first request for extensions of the Exclusivity Periods. The Debtors are not seeking these extensions to artificially delay the conclusion of these Chapter 11 cases or for the purposes of coercing creditor consent or for any other improper motive. Rather, the Debtors desire to maintain the status quo until such time as the Sale has closed and they have had adequate opportunity to negotiate, propose and file a viable plan, which will provide a meaningful recovery to the Debtors’ creditors.

26. The requested extensions of the Exclusivity Periods will not prejudice parties in interest. To the contrary, the time will be used to develop and build consensus for a feasible chapter 11 plan. A failure to extend the Exclusivity Periods as requested herein would defeat the very purpose of section 1121 of the Bankruptcy Code, *i.e.*, to afford the Debtors a meaningful and reasonable opportunity to negotiate with their economic stakeholders and propose a confirmable

chapter 11 plan. Further, should the Exclusivity Periods not be extended at this time, any party in interest will be able to file a plan. This could result in an extreme waste of the resources of the estate in possibly dealing with multiple plans, resources which should more properly be devoted toward attempting to come to terms on a consensual plan with the Creditors' Committee and other significant constituents in these cases.

(c) **The Existence of Unresolved Contingencies
Prevents the Filing of a Plan at the Present time**

27. Substantive discussions and negotiations relating to the proposed plan cannot be held until the proposed Sale has been completed and all necessary approvals related thereto have been granted. The consummation of the Sale will allow the Debtors to assess the extent of their available funds and resources with which to fund the proposed plan of reorganization. In addition, since the Debtors have not yet fully ascertained the universe of claims filed against their estates, many of which still remain unliquidated the full extent of their outstanding pre-petition liabilities has not yet been determined.

(d) **The Debtors are Paying Their Debts as They Become Due**

28. The Debtors have been and are continuing to pay their vendor debts as and when they become due. The Debtors believe they have sufficient liquidity under their existing postpetition financing arrangement to carry on their normal business operations. Therefore, an extension of the Exclusivity Periods will not jeopardize its ordinary course of business.

CONCLUSION

29. As described above, the Exclusivity Periods are designed to provide a debtor with a full and fair opportunity to rehabilitate its business and to negotiate, develop, propose, confirm and consummate a plan of reorganization. The Debtors have been diligently working towards this goal

while maintaining their relationships with their various creditor constituencies, staff, employees, nurses, physicians and the community which relies on the Debtors for vital medical services. While the Debtors have made substantial progress in responding to the exigent demands of these cases, the filing of a plan at the current time is neither viable nor feasible. However, the Debtors believe that by extending the Exclusivity Periods, they will be able to implement a viable plan with the consensus of their major creditor constituencies. Indeed, the requested extension will allow the plan process to proceed in a rational and thoughtful manner while simultaneously maximizing value for all parties.

30. Given the foregoing, it is submitted that the extension of the Exclusivity Periods requested in this Motion is warranted and entirely consistent with the intent and purpose of the Bankruptcy Code. The extension will provide the Debtors with a meaningful opportunity to negotiate, propose, file and solicit acceptances for a chapter 11 plan. Therefore, it is requested that the Exclusive Filing Period be extended through and including January 24, 2013 and the Exclusive Solicitation Period be extended through and including March 25, 2013.

NOTICE

31. Notice of this Motion has been provided to all parties in interests in accordance with the Administrative Order Establishing Case Management and Scheduling Procedures (the “**Case Management Order**”), entered on June 4, 2013, notice of this Motion has been given to the parties identified on the General Service List and the Master Service List (as such terms are identified in the Case Management Order). The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request entry of the attached Order granting the relief requested herein and that the Court grant such other and further relief as is just and proper.

Dated: September 13, 2013
Great Neck, New York

Respectfully submitted,

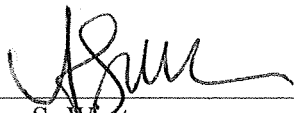
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SOUND SHORE MEDICAL CENTER OF
WESTCHESTER, et al.

Case No. 13-22840 (RDD)

Debtors

(Jointly Administered)

-----X

**ORDER PURSUANT TO 11 U.S.C. §1121(d) EXTENDING
EXCLUSIVE PERIODS WITHIN WHICH DEBTORS MAY FILE A
CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THERETO**

Upon the motion (the “**Motion**”) of Sound Shore Medical Center of Westchester (“**SSMC**”), and its debtor affiliates (each a “**Debtor**” and together, the “**Debtors**”) in the above chapter 11 cases (the “**Chapter 11 Cases**”), dated September 13, 2013, to extend the exclusive periods within which the Debtors may file a Chapter 11 plan (the “**Exclusive Filing Period**”) through and including January 24, 2014, and the exclusive period within which the Debtors may solicit acceptances to such plan (the “**Exclusive Solicitation Period**”) through and including March 25, 2014; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion being in the best interests of the Debtors, their estates, and creditors; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the

Motion and at the Hearing establish just cause for the relief granted herein; and upon all prior proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, that pursuant to section 1121(d) of the Bankruptcy Code, the Exclusive Filing Period is extended through and including January 24, 2014; and it is further

ORDERED, that the Exclusive Solicitation Period is extended through and including March 25, 2014; and it is further

ORDERED, that the entry of this Order is without prejudice to the right of the Debtors or any party in interest, for cause shown, and upon notice and hearing, to seek further orders from this Court further extending the Exclusivity Periods.

Dated: White Plains, New York
December __, 2013

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE