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PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

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

<b>In re:</b>	§	<b>CASE NO. 14-32821-11</b>
	§	
<b>SEARS METHODIST RETIREMENT SYSTEM, INC., <i>et al.</i><sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Joint Administration Pending</b>
	§	

**MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a)  
AND 363(b) FOR AN ORDER AUTHORIZING PAYMENT OF  
PREPETITION (I) WAGES, SALARIES AND OTHER COMPENSATION  
OF EMPLOYEES, (II) EMPLOYEE MEDICAL AND SIMILAR BENEFITS,  
(III) REIMBURSABLE EMPLOYEE EXPENSES, AND (IV) OTHER  
MISCELLANEOUS EMPLOYEE EXPENSES AND BENEFITS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) by their proposed attorneys, DLA Piper LLP (US), hereby move (the “Motion”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), for an order authorizing payment of prepetition (i) wages, salaries and other compensation of employees, (ii) employee medical and similar benefits, (iii) reimbursable employee expenses,

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four (4) digits of their taxpayer identification numbers, are: Sears Methodist Retirement System, Inc. (6330), Canyons Senior Living, L.P. (8545), Odessa Methodist Housing, Inc. (9569), Sears Brazos Retirement Corporation (8053), Sears Caprock Retirement Corporation (9581), Sears Methodist Centers, Inc. (4917), Sears Methodist Foundation (2545), Sears Panhandle Retirement Corporation (3233), Sears Permian Retirement Corporation (7608), Sears Plains Retirement Corporation (8233), Sears Tyler Methodist Retirement Corporation (0571) and Senior Dimensions, Inc. (4016). The mailing address of each of the debtors, solely for purposes of notices and communications, is 2100 Ross Avenue 21st Floor, c/o Paul Rundell, Dallas, Texas 75201.

and (iv) other miscellaneous employee expenses and benefits. In support of this Motion, the Debtors respectfully represent as follows:

### **Jurisdiction and Venue**

1. 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).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a) and 363(b).

### **Background**

4. On the date hereof (the “Petition Date”), the Debtors commenced these cases by each filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors remain in possession of their assets and continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. No trustee, examiner or committee of creditors has been appointed in these cases.

7. The factual background regarding each of the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings, is set forth in detail in the Declaration of Paul B. Rundell in Support of First Day Motions and is incorporated herein by reference.

### **The Debtors’ Employees**

8. On a consolidated basis, the Debtors employ approximately 1,369 employees—147 employees are full-time salaried, 959 employees are full-time hourly and 263 employees are temporary hourly (collectively, the “Employees”). None of the Employees are subject to a

collective bargaining agreement.

9. Prior to the Petition Date and in the ordinary course of the Debtors' business, the Debtors provided compensation, reimbursement of business expenses, employee benefits, and other miscellaneous consideration to the Employees.

10. The Employees are the lifeblood of the Debtors' business. The Debtors rely upon the expertise of their senior executives to provide the strategic and operational direction of the company's daily activities. The execution of the Debtors' senior executives' strategies and directives are carried out by senior managers, executive directors and various staff at their corporate offices as well as at the individual facilities. These Employees are therefore vital to the Debtors' ability to accomplish their strategic goals and objectives and carry out their daily operations in order to meet resident expectations for the delivery of outstanding customer service. The Employees' skills and their specialized knowledge and understanding of the Debtors' business are essential to the Debtors' continuing operations and ability to successfully reorganize.

### **Relief Requested**

11. To minimize the personal hardship that the Employees will suffer if prepetition Employee-related obligations are not paid when due or as expected, and to maintain morale and an essential workforce during this critical time, the Debtors, by this Motion, seek authority pursuant to Bankruptcy Code sections 105(a) and 363(b) to pay certain prepetition obligations of the Debtors, including, but not limited to, the following (collectively, the "Prepetition Obligations"):

- (i) amounts owed to Employees for wages, salaries, bonuses and other compensation;

- (ii) reimbursement of employee business expenses incurred in the ordinary course, such as travel, lodging and parking expenses;
- (iii) maintenance of employee health benefits, 401(k)/403(b) plans, and other similar benefits; and
- (iv) other miscellaneous employee expenses and benefits.

12. The Debtors seek authority to honor the Prepetition Obligations because payment of these obligations is critical and essential to the morale of the Employees and the Debtors' future business needs. If the Prepetition Obligations are not honored in the ordinary course, the morale of Employees would suffer, which would adversely impact the Debtors' business. Failure to honor the Prepetition Obligations could also cause Employees to endure personal hardship. This result would impair Employee morale and lead to unmanageable Employee turnover. Indeed, the Debtors will be unable to sustain operations and effectuate a successful reorganization without the ongoing goodwill of their Employees.

13. Consequently, the Debtors seek to continue paying Prepetition Obligations (as set forth below) in the ordinary course and to direct the banks at which the Debtors maintain employee-related accounts to receive, process, honor and pay all payroll and employee benefit-related checks, drafts, wires, or automated clearing house transfers, provided sufficient funds are available to honor all such payments, without regard to when the applicable payroll check was issued.<sup>2</sup> The Debtors propose that all payments of the Prepetition Obligations be paid or otherwise attributable to the Debtor to which the corresponding Employee receiving the related

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<sup>2</sup> Contemporaneously with this Motion, the Debtors are filing a motion seeking an order authorizing, among other relief, the continued maintenance of their bank accounts (the "Cash Management Motion"). To implement fully the relief sought herein, the Debtors, by the Cash Management Motion, seek to authorize the banks at which its employee-related accounts are maintained to continue to honor checks drawn on such accounts.

Prepetition Obligation pertains.<sup>3</sup> In addition, the Debtors request the right to modify, change and discontinue any of the Employee wages and benefits and to implement new Employee wages and benefits in the ordinary course of business during this chapter 11 case in their sole discretion without the need for further Court approval.

### **Prepetition Obligations**

#### **A. Employees' Unpaid Wages, Salaries, Bonuses and Other Compensation**

##### **i. The Debtors' Payroll Obligations**

14. The Debtors seek an order authorizing the Debtors to honor all of their outstanding prepetition payroll obligations. In the ordinary course of business, the Debtors pay their Employees one week in arrears every two weeks. Payroll is processed by the Debtors in two groups – each group alternating with the other on a weekly basis. One group consists of at Sears Permian Retirement Corp, Sears Plains Retirement Corp, Senior Dimensions, Inc. and Texas Senior Management (“Group A”), and the other group consists of Canyons Senior Living LP, Craig Methodist Retirement Community, Sears Caprock Retirement Corp, Sears Methodist Retirement System, Inc., Sears Tyler Methodist Retirement Corp and Wesley Court Methodist Retirement Community (“Group B”). The most recent payroll for Group A was paid on June 5, 2014 and covered Employee compensation for Group A Employees for the period May 18, 2014 through May 31, 2014. The most recent payroll for Group B was paid on May 29, 2014 and covered Employee compensation for Group B Employees for the period May 11, 2014 through May 24, 2014. The Debtors' next scheduled payroll date for Group B is June 12, 2014, and will be for the period beginning May 25, 2014 and ending on June 7, 2014. The Debtors' next

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<sup>3</sup> Contemporaneously with this Motion, the Debtors are filing a series of motions seeking orders authorizing, among other relief, the use by the Debtors of cash collateral in accordance with specified budgets (the “Cash Collateral Motions”). The payments of the Prepetition Obligations by each of the Debtors to their respective Employees will be made as specified in the Cash Collateral Motions and by the Debtor who made such payments in the ordinary course prior to the Petition Date.

scheduled payroll date for Group A is June 19, 2014, and will be for the period beginning June 1, 2014 and ending on June 14, 2014. The Debtors do not utilize third party payroll-processing services.

15. As of the Petition Date, the Debtors estimate that approximately \$1,515,000 in unpaid salary, wages and other compensation is owing to their Employees as of the next pay date (approximately \$353,000 in wages is owed to the salaried Employees, approximately \$950,000 is owed to full-time hourly Employees, and approximately \$212,000 is owed to temporary hourly Employees). Given the critical role of the Employees in the Debtors' business operations, the Debtors seek authority to honor their salary, wage and bonus obligations by paying, in the ordinary course, any prepetition amounts owed to the Employees for services within 180 days of the Petition Date. The Debtors believe there will be no Employees that will be owed more than the \$12,475 priority limit on account of prepetition salaries or wages under Bankruptcy Code section 507(a)(4) (the "Priority Limit"), and are not seeking to pay any individual prepetition salaries or wages in excess of the Priority Limit.

**B. Employees' Reimbursable Business Expenses**

16. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed Employees for certain business expenses incurred in the scope of their employment, including, without limitation, expenses for business travel, such as for mileage, lodging and parking (collectively, the "Reimbursable Expenses"). All of the Reimbursable Expenses were incurred on the Debtors' behalf in connection with employment by the Debtors and in reliance upon the understanding that such expenses would be reimbursed.

17. The Debtors estimate that, as of the Petition Date, the total amount owed by the Debtors for Reimbursable Expenses is approximately \$40,000.00. Accordingly, the Debtors

seek authority to honor the Debtors' Reimbursable Expense obligations by paying, in the ordinary course, any prepetition Reimbursable Expenses owed to their Employees.

C. **Employee Benefits**

18. In the ordinary course of the Debtors' business, and as is customary for most companies, the Debtors provide their Employees with various benefits (collectively, the "Employee Benefits Programs"). The Debtors seek authority to pay and/or honor their unpaid Prepetition Obligations under the Employee Benefits Programs that arose from services rendered within 180 days before the Petition Date (the "Prepetition Benefits"). The Employee Benefits Programs and corresponding unpaid Prepetition Benefits are described below:

i. Health Insurance (Medical, Prescription, Dental, and Vision)

19. The Debtors provide their Employees with medical and dental and vision insurance through third-party providers.

20. The Debtors offer medical and dental insurance to full-time Employees through a self-funded plan provided by Blue Cross Blue Shield with a \$150,000.00 stop limit on any individual claim. A portion of the premiums are paid by the Employees. The total medical/dental premium and prescription payments for insurance payable by the Debtors under the medical plan is approximately \$300,000.00 per month on average, but may fluctuate significantly in any given month, and of which approximately \$100,000.00 is funded from employee payroll deductions monthly.

21. The Debtors provide Vision insurance to full-time Employees through a self-funded plan provided by Ameritas. The premiums are paid by the Employees. The total premium for insurance payable by the Debtor under the vision plan is approximately \$3,700 per month on average, but may fluctuate significantly in any given month.

22. The Debtors seek authority to pay, in the ordinary course of business, any unpaid premiums, deductibles, and prepetition claims relating to the foregoing medical, dental, and vision insurance that arose from services rendered within 180 days prior to the Petition Date (the “Prepetition Health Benefits”).

ii. Life, AD&D, Long-Term Disability Insurance

23. The Debtors provide basic life and long-term disability insurance to all full-time Employees. A portion of the life insurance premium is paid by the Employee. The total premium paid for this insurance is approximately \$20,000 per month on average, but may fluctuate significantly in any given month, of which \$2,000 is funded by employee contributions.

24. The Debtors seek authority to pay, in the ordinary course of business, any outstanding unpaid premiums, deductibles, and prepetition claims relating to life and long-term disability insurance that arose before the Petition Date (the “Prepetition Life & Disability Benefits”).

iii. 401(k)/403(b) Plans

25. The Debtors offer eligible Employees<sup>4</sup> an opportunity to participate in a 401(k) or 403(b) plans (collectively, the “Retirement Plan”). Currently, 65 active Employees participate in the 401(k) plan and 139 active employees participate in the 403(b) plan.<sup>5</sup>

26. As of the Petition Date, the Debtors have not funded its participating Employees’ Retirement Plan contributions for prepetition pay periods. As described below, the Debtors deduct these amounts from paychecks of the Employees. The Debtors believe that such Retirement Plan contributions total approximately \$18,000.00. The Debtors seek authority to pay any accrued but unpaid prepetition Retirement Plan contributions.

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<sup>4</sup> Employees are eligible to enroll in the 401(k) plan upon the first day of the month following hire date. Employees are eligible to enroll in the 403(b) plan immediately upon hire.

<sup>5</sup> These amounts do not include any terminated/retired employees entitled to future benefits.



D. **Payroll Taxes and Other Withheld Amounts**

27. The Debtors deduct flex spending amounts and 401(k) deductions and other miscellaneous amounts from their Employees' paychecks (collectively, the "Employee Deductions"). The Employee Deductions comprise property of the Debtors' Employees and are forwarded by the Debtors to appropriate third-party recipients at varying times.

28. The Debtors are required by law to withhold from an Employee's wages amounts related to federal, state and local income taxes, social security and Medicare taxes, garnishments, child support payments, etc. (together with the Employee Deductions, the "Payroll Taxes") and remit the same to the appropriate taxing authorities (collectively, the "Taxing Authorities"). The Debtors' Payroll Taxes, including both the Employee and the employer portion, for a typical payroll total approximately \$175,000. It is likely that funds have been deducted from Employee wages but have not yet been forwarded to the appropriate third-party recipients. Accordingly, the Debtors seek authority to pay and/or remit to the applicable Taxing Authorities up to \$255,000 in Payroll Taxes attributable to the period before the Petition Date. Absent such authority, the Debtors expose their officers and directors to personal liability, which could be highly disruptive to the Debtors' reorganization efforts.

E. **Paid Vacation or "Personal-Time-Off" Policy**

29. The Debtors offer paid vacation or "personal time off" ("PTO") to eligible Employees. The rate at which Employees earn PTO varies per pay period by the position of the individual employee. They may carry over up to their individual maximum allotment of PTO hours each year. All of the Debtors' PTO policies are referred to collectively as the "PTO Policy."

30. The Debtors estimate that the accrued, outstanding amount of unused time under

the PTO Policy, if it were payable in cash, is approximately \$670,000 as of the Petition Date. The Debtors seek authorization, in their sole discretion, for the Debtors to continue honoring the PTO Policy and to continue their practice of making cash payments for unused PTO that has accrued prepetition where deemed to be justified by individual employee circumstances. In addition, the Debtors seek authorization, in their sole discretion, for the Debtors to make cash payments for unused PTO that has accrued postpetition upon the termination of an Employee to the extent that the Debtors would have done under the PTO Policy before the Petition Date.

F. **Administrative Service Providers**

31. The Debtors utilize certain third-party providers to administer employee benefit plans and payroll services (the “Administrative Service Providers”). The continued support of the Administrative Service Providers is crucial to the Debtors’ ability to maintain accurate and meaningful books and records, including, but not limited to, books and records reflecting the Debtors’ employee benefit and payroll obligations. The Debtors estimate that the average monthly cost of these services is approximately \$300. To the extent that any such amounts remain unpaid or may be characterized as Prepetition Obligations, the Debtors seek to be authorized, but not directed, to pay such amounts.

G. **Miscellaneous Employee-Related Obligations**

32. The Debtors may determine that there are additional de minimis Prepetition Obligations, which have not been identified in the Motion. Consequently, the Debtors request authority to pay any such additional obligations up to an aggregate amount of \$10,000 upon five business days’ prior written notice to counsel to any statutory creditors’ committee appointed herein, counsel to their prepetition secured lenders (or such lenders representative under the applicable loan documents), and the Office of the United States Trustee setting forth the nature

and amount of the additional obligation sought to be paid. If an objection is interposed within such five-day period, and such objection is not resolved consensually, the Debtors will seek authority from this Court to make such payment. The Debtors also reserve the right to seek authority from the Court to pay any obligations in excess of the above-referenced limit.

### **Basis For Relief**

33. Bankruptcy Code sections 105(a) and 363(b) and the “necessity of payment” doctrine provide the basis for the relief requested in this Motion. Section 363(b)(1) of the Bankruptcy Code provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

34. In addition, Bankruptcy Code section 105(a) grants bankruptcy courts broad authority to enter “any order, process or judgment that is necessary or appropriate” to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). Accordingly, the Debtors submit that this Court is authorized to grant the relief requested herein.

35. Courts have recognized the applicability of the “necessity of payment” doctrine with respect to the payment of prepetition employee compensation and benefits. See, e.g., In re CoServ, L.L.C., 273 B.R. 487, 494 (Bankr. N.D. Tex. 2002) (noting that “wage claims typically are payable out of necessity as well as by virtue of their priority”); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 285-86 (S.D.N.Y. 1987), appeal dismissed 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

36. Furthermore, Bankruptcy Code section 507(a) provides that the Prepetition Obligations, subject to certain conditions, are afforded priority distribution up to \$12,475. See 11 U.S.C. §§ 507(a)(4), 507(a)(5). In addition, section 507(a)(4) and 507(a)(5) priority claims

are entitled to payment in full under a chapter 11 plan of reorganization. See 11 U.S.C. § 1129(a)(9)(B). Thus, because the Debtors' Employees may be entitled to a priority distribution for prepetition amounts owed, the relief requested in this Motion should primarily affect the timing of payment of employee claims rather than their treatment for distribution purposes, and should neither prejudice general unsecured creditors nor materially affect the Debtors' estates.

37. Bankruptcy Rule 6003 was amended in December 2007 to set limits on the relief that may be granted by a bankruptcy court during the initial stage of a bankruptcy case. Bankruptcy Rule 6003, as currently in effect, still provides, in pertinent part, that:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003(b) (emphasis added).

38. Application of Bankruptcy Code sections 105(a) and 363(b)(1) and the "necessity of payment" doctrine are warranted here. Additionally, the Debtors satisfy the "immediate and irreparable harm" standard set forth in Bankruptcy Rule 6003. Absent prompt payment of amounts owed in connection with the Prepetition Obligations, it is likely that Employee morale and support will be impaired, the Debtors' business will be immediately and irreparably harmed, and the reorganization of the Debtors will be impossible.

39. The Debtors' inability to pay their outstanding Prepetition Obligations will cause employees to endure significant stress, hardship and suffering. The effect of this disruption in Employee morale will likely have negative effects on all aspects of the Debtors' business operations. Many Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation to pay their daily living expenses. Furthermore, many Employees rely on

their Employee benefits, such as health insurance reimbursement, without which they would be forced to pay for or go without insurance coverage for themselves and their families. As a result, these Employees will be exposed to significant financial and health-related problems if the Debtors are not permitted to honor their unpaid Prepetition Obligations.

40. In addition, amounts withheld by the Debtors from Employees' paychecks represent, in many cases, employee earnings specifically designated by employees or, in the case of garnishments, by judicial authorities, to be deducted from Employee paychecks and paid accordingly. The failure to make these payments will result in hardship to certain Employees. The Debtors expect to be inundated with a multitude of inquiries from garnishors and other designated recipients regarding the Debtors' failure to submit, among other things, taxes, child support and alimony payments which are not the Debtors' property, but rather have been withheld from Employee paychecks. Moreover, if the Debtors are unable to remit certain of these amounts, the Employees could face legal action and/or imprisonment.

41. The Debtors' Employees are an essential component of a successful reorganization. Any deterioration in Employee morale and welfare at this critical time undoubtedly would have a devastating impact on the Debtors, the value of their assets and businesses, and ultimately, the Debtors' ability to reorganize. Accordingly, the relief sought herein is in the best interests of the Debtors' estates and creditors, and will allow the Debtors to continue to operate their business with minimal disruption and proceed with the important task of stabilizing their operations.

42. In other chapter 11 cases, courts in this district and other jurisdictions have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein. See, e.g., In re Reddy Ice Holdings, Inc., Case No. 12-32349

(SGJ) (Bankr. N.D. Tex. Apr. 17, 2012); In re Erickson Retirement Communities, LLC, Case No. 09-37030 (SGJ) (Bankr. N.D. Tex. Oct. 22, 2009); In re Tusa-Expo Holdings, Inc., et al., Case No. 08-45057 (DML) (Bankr. N.D. Tex. Nov. 7, 2008); In re Home Interiors & Gifts, Inc., Case No. 08-31961 (BJH) (Bankr. N.D. Tex. May 2, 2008); In re Manchester, Inc., et al., Case No. 08-30703(BJH) (Bankr. N.D. Tex. Mar. 7, 2008); In re Steve & Barry's Manhattan LLC, et al., Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 10, 2008); In re Fortunoff Fine Jewelry and Silverware, LLC, Case No. 08-10353 (JMP) (Bankr. S.D.N.Y. Feb. 29, 2008); Charys Holding Co., Inc., Case No. 08-10289 (BLS) (Bankr. D. Del. Feb. 15, 2008).

### **Notice**

43. Notice of this Motion has been provided to (a) the Office of the United States Trustee for the Northern District of Texas; (b) the Office of the Attorney General of the State of Texas; (c) each of the Debtor's twenty (20) largest unsecured creditors; (d) counsel to Wells Fargo Bank, N.A. as trustee; (e) counsel to UMB Bank, N.A., as trustee; (f) counsel to the Debtors' prepetition secured lenders. The Debtors submit that, in light of the nature of the relief requested, no other or further notice is necessary or required.

**Conclusion**

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court enter an order substantially in the form annexed hereto as Exhibit A, granting the relief requested herein and such other relief as may be deemed just and proper.

Dated: June 10, 2014  
Dallas, Texas

**DLA PIPER LLP (US)**

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Proposed Attorneys for the Debtors  
and Debtors in Possession

**Exhibit A**

Proposed Order



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

<b>In re:</b>	§	<b>CASE NO. 14-32821-11</b>
	§	
<b>SEARS METHODIST RETIREMENT SYSTEM, INC., et al.<sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	<b>Joint Administration Pending</b>
	§	
<b>Debtors.</b>	§	

**ORDER AUTHORIZING PAYMENT OF  
PREPETITION (I) WAGES, SALARIES AND OTHER COMPENSATION  
OF EMPLOYEES, (II) EMPLOYEE MEDICAL AND SIMILAR BENEFITS,  
(III) REIMBURSABLE EMPLOYEE EXPENSES, AND (IV) OTHER  
MISCELLANEOUS EMPLOYEE EXPENSES AND BENEFITS**

Upon the Debtors' motion for an order authorizing the payment of prepetition (i) wages, salaries and other compensation of employees, (ii) employee medical and similar benefits, (iii) reimbursable employee expenses, and (iv) other miscellaneous employee expenses and benefits, (the "Motion"),<sup>2</sup> dated June 10, 2014; and all as more fully set forth in the Motion; and the Court having jurisdiction over this matter 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 to the necessary parties; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the record of the

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four (4) digits of their taxpayer identification numbers, are: Sears Methodist Retirement System, Inc. (6330), Canyons Senior Living, L.P. (8545), Odessa Methodist Housing, Inc. (9569), Sears Brazos Retirement Corporation (8053), Sears Caprock Retirement Corporation (9581), Sears Methodist Centers, Inc. (4917), Sears Methodist Foundation (2545), Sears Panhandle Retirement Corporation (3233), Sears Permian Retirement Corporation (7608), Sears Plains Retirement Corporation (8233), Sears Tyler Methodist Retirement Corporation (0571) and Senior Dimensions, Inc. (4016). The mailing address of each of the debtors, solely for purposes of notices and communications, is 2100 Ross Avenue 21st Floor, c/o Paul Rundell, Dallas, Texas 75201.

<sup>2</sup> All capitalized terms used but not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

Hearing, and all of the proceedings had before the Court; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that, to the extent not prohibited by any orders approving debtor in possession financing or authorizing the use of cash collateral in these cases, and in accordance with and to the extent set forth in the budgets attached to such orders, the Debtors are authorized, but not directed, to pay:

- a. The outstanding salaries and wages to Employees, including associated payroll processing obligations, withheld amounts, and uncashed payroll checks issued before the Petition Date and to issue new checks to replace any dishonored checks;
- b. The payroll taxes attributable to the period before the Petition Date and remit the same to the applicable taxing authorities;
- c. The reimbursable expenses that were incurred by Employees prior to the Petition Date and make further payments in the ordinary course of business;
- d. The Prepetition Benefits and make further payments in the ordinary course of business;
- e. Matching obligations in respect to the Debtors' Retirement Plan and make further payments in the ordinary course;
- f. Directly to third-parties, applicable deductions, including, but not limited to employee deductions;
- g. Workers' compensation premiums and make further payment in the ordinary course;
- h. Workers' Compensation Obligations and make further payments in the ordinary course;

- i. Personal time off cash payments for unused PTO that has accrued, but only upon the termination of an Employee and only to the extent that Debtor would have done under the policy before the Petition Date;
- j. Administrative service providers for employee benefit plans and payroll services as any such amount remains unpaid or may be characterized as prepetition obligation;
- k. Any additional obligations up to an aggregate amount of \$10,000, without further order of this Court; provided, however, that the Debtors must give at least five (5) business days' prior written notice served upon the United States Trustee and counsel to any statutory creditors' committee appointed herein, and counsel to the Debtors prepetition secured lenders, setting forth the nature and amount of the additional obligation sought to be paid. If an objection is interposed within such five-day period, the Debtors shall not be permitted to pay such additional amounts without further order of this Court.

And it is further

ORDERED that the banks and financial institutions at which the Debtors maintain accounts relating to payroll are directed to honor all checks, drafts or payment requests (provided that such funds are on deposit to cover such checks) without regard to the date of issue of such checks, drafts or payment requests in the same manner that such checks, drafts and payment requests were honored during the prepetition period, including electronic payment requests made by the Debtors related to employee obligations and benefits; and it is further

ORDERED that authorizations given to the Debtors in this Order empower, but do not direct them to effectuate the payments herein, said Debtors retaining the business judgment to make or not make said payments, and in all instances subject to the condition that funds are available to effect any payment and in no event is any person or persons personally liable or shall become personally liable for any amount authorized for payment herein; and it is further

ORDERED that nothing herein shall be deemed an assumption or adoption by the Debtors of any agreements or policies providing for such Prepetition Obligations to the Debtors' Employees; and it is further

ORDERED that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order; and it is further

ORDERED that notwithstanding anything else in this Order, the Debtors are not authorized to pay any amounts in excess of the statutory cap set forth in Bankruptcy Code section 507(a), and to the extent that any payment made pursuant to this Order exceeds the statutory cap set forth in the Bankruptcy Code section 507(a) it shall be subject to recovery provided that to the extent any such payment is made pursuant to a contract that is subsequently assumed pursuant to Order of this Court, such payments shall not be subject to recovery; and it is further

ORDERED that the Debtors shall keep accurate records of all payments made pursuant to this Order.

**###End of Order###**