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**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 SEARS METHODIST  
RETIREMENT SYSTEM, INC., SEARS PERMIAN RETIREMENT  
CORPORATION, SEARS METHODIST CENTERS, INC., SEARS  
PANHANDLE RETIREMENT CORPORATION, SEARS METHODIST  
FOUNDATION, SEARS BRAZOS RETIREMENT CORPORATION AND  
SENIOR DIMENSIONS, INC. FOR INTERIM AND FINAL ORDERS UNDER  
11 U.S.C. §§ 105, 361, 362, 363, AND 364 AND BANKRUPTCY RULES 2002,  
4001, AND 9014 (I) AUTHORIZING CERTAIN DEBTORS TO (A) USE CASH  
COLLATERAL AND (B) INCUR POSTPETITION SECURED INDEBTEDNESS,  
(II) GRANTING LIENS AND PROVIDING SUPER-PRIORITY ADMINISTRATIVE  
EXPENSE STATUS; (III) GRANTING ADEQUATE PROTECTION TO WELLS  
FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, (IV) MODIFYING  
THE AUTOMATIC STAY AND (V) SCHEDULING A FINAL HEARING**

Sears Methodist Retirement System, Inc. ("SMRS"), Sears Permian Retirement

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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.

Corporation (“Permian”), Sears Methodist Centers, Inc. (“SMC”), Sears Panhandle Retirement Corporation (“Panhandle”), Sears Methodist Foundation (“SMF”), Sears Brazos Retirement Corporation (“Brazos” and together with SMRS, Permian, SMC, Panhandle and SMF, the “Obligated Group Debtors”), and Senior Dimensions, Inc. (“SDI”), debtors and debtors in possession, by their proposed attorneys, submit this motion (the “DIP/Cash Collateral Motion”) for entry of an interim order (the “Interim Order”), substantially in the form annexed hereto as Exhibit I, and final order (the “Final Order” and together with the Interim Order, the “DIP/Cash Collateral Orders”), pursuant to sections 105(a), 361, 362, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Obligated Group Debtors and SDI (a) to continue to use Cash Collateral (as defined below), as applicable, and (b) to obtain postpetition financing pursuant to section 364 of the Bankruptcy Code, (ii) granting liens and providing super-priority administrative expense status, (iii) granting Wells Fargo Bank, N.A., as Trustee (as defined below), adequate protection, (iv) modifying the automatic stay, and (v) scheduling a final hearing (the “Final Hearing”). In support of this Motion, the Obligated Group Debtors and SDI rely on the Declaration of Paul B. Rundell in Support of First Day Motions (the “Rundell Declaration”). In further support of this Motion, the Obligated Group Debtors and SDI respectfully represent as follows:

### **SUMMARY OF RELIEF REQUESTED**

In the ordinary course of business, the Obligated Group Debtors and SDI require cash on hand and cash flow from their operations to fund their working capital and liquidity needs. In addition, the Obligated Group Debtors and SDI require cash on hand to fund these chapter 11 cases. The Obligated Group Debtors’ use of Cash Collateral (as defined below), as well as the

postpetition financing, is necessary in order for the Obligated Group Debtors and SDI to preserve sufficient liquidity to maintain ongoing day-to-day operations and fund their working capital needs. Absent postpetition financing, the Obligated Group Debtors and SDI will be forced to cease operations of their businesses, thereby jeopardizing their ability to maximize the value of their estates. Such an abrupt cessation of the Obligated Group Debtors' and SDI's businesses would have devastating effects on the residents at the senior living facilities such Debtors own and/or operate, including leaving many residents without food, medical supplies, and the health and support services that they require. In fact, many residents may be forced to immediately relocate, causing extreme hardship and putting both their lives and health at risk. Due to the nature of the Obligated Group Debtors' and SDI's businesses and the impact that prolonged chapter 11 cases would have on the residents, it is imperative that the Obligated Group Debtors and SDI have sufficient working capital and liquidity to preserve and maintain their going concern value.

Additionally, all of the Obligated Group Debtors' deposit accounts, cash and cash proceeds are encumbered by security interests in favor of the Trustee (as defined below) and, as such, constitute "cash collateral" (as such term is defined in Bankruptcy Code section 363(a), "Cash Collateral") of the Trustee. The Obligated Group Debtors have an emergency need for the immediate use of Cash Collateral to effectively and expeditiously manage these chapter 11 cases.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6604, and 9014.

## **BACKGROUND**

4. On the date hereof (the “Petition Date”), the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. No trustee, examiner or creditors’ committee has been appointed in these cases.

5. The Debtors have continued in the possession of their properties and have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. A complete description of the Debtors’ background and businesses is set forth in the Rundell Declaration and is incorporated herein by reference.

### **I. Current Business Operations.**

#### ***A. Obligated Group Debtors***

7. SMRS controls, either directly or indirectly, the activities and business affairs of an affiliated group of corporations comprising the Sears Methodist Retirement System (the “System”) that includes the Obligated Group Debtors, SDI, Odessa Methodist Housing, Inc., Sears Plains Retirement Corporation, Sears Caprock Retirement Corporation, Sears Tyler Methodist Retirement Corporation, Sears Methodist Senior Housing, LLC, Canyons Senior Living, L.P., Texas Senior Management, Inc. (“TSM”), Senior Living Assurance, Inc. (“SLA”) and Southwest Assurance Company, Ltd. (“SWAC”). The System includes: (i) eight senior living communities located in Abilene, Amarillo, Lubbock, Odessa and Tyler, Texas; (ii) three veterans homes (the “VLB Homes”) located in El Paso, McAllen and Big Spring, Texas, managed by SDI pursuant to contracts between SDI and the Veterans Land Board of Texas (the “VLB”); and (iii) TSM, SLA and SWAC, which provide, as applicable, management and insurance services to the System.

8. In addition to owning the various Debtor entities that own or operate the senior living facilities, SMRS provides certain management and oversight services to the facilities. Among other things, SMRS provides payroll, billing, strategic planning and employee benefit plan administration services. Additionally, the executive office of SMRS is responsible for overseeing residency contract templates, vendor contracting, licensing and regulatory filings, policies, corporate governance and compliance.

9. The Obligated Group Debtors own the following facilities (collectively, the “Obligated Group Facilities” and together with the VLB Homes, the “Facilities”): (i) Parks Methodist Retirement Community (“Parks”), a senior living facility located in Odessa, Texas and owned by Permian; (ii) Wesley Court Methodist Retirement Community (“Wesley Court”), a senior living facility located in Abilene, Texas and owned by SMC; and (iii) Craig Retirement Community (“Craig”), a senior living facility located in Amarillo, Texas and owned by Panhandle.

10. The Obligated Group Facilities offer seniors myriad residency options during their retirement years, providing affordable living accommodations and related healthcare and support services to a target market of middle-income seniors aged sixty-two (62) years and older. Each of the Obligated Group Facilities provides unmatched services and top of the line amenities. Specifically, the Obligated Group Facilities include dining experiences in well-appointed dining rooms, scenic Texas views, spacious floor plans, salons and spas, day excursions and top-notch housekeeping services. The Obligated Group Facilities also provide residents with multiple social outlets for all stages of their retirement living including, among other things, movie nights, live music, exercise classes and bible study.

***B. SDI***

11. SDI, a wholly-owned subsidiary of SMRS, operates the VLB Homes pursuant to separate contracts between SDI and the VLB. The VLB Homes are owned by the State of Texas and are designed for veterans. The three VLB Homes are: (i) Alfredo Gonzalez Texas State Veterans Home (“Alfredo Gonzalez”), located in McAllen, Texas; (ii) Ambrosio Guillen Texas State Veterans Home (“Ambrosio Guillen”), located in El Paso, Texas; and (iii) Lamun Lusk Sanchez Texas State Veterans Home (“Lamun Lusk Sanchez”), located in Big Spring, Texas.

12. As of May 2014, Alfredo Gonzalez had 160 units and 149 residents, Ambrosio had 160 units and 154 residents and Lamun Lusk Sanchez had 128 operational units and 114 residents.

**II. Prepetition Debt Structure.**

***A. Obligated Group***

13. The “Obligated Group” was created under that certain Amended and Restated Master Trust Indenture, dated August 1, 1998 and effective as of May 1, 2013 (the “Master Trust Indenture”) between the members of the Obligated Group and Wells Fargo Bank, National Association (the “Master Trustee”). The Obligated Group Debtors and any future members of the Obligated Group are jointly and severally liable for payment and performance under the notes executed in connection with the issuance of the bonds described as follows (collectively, the “Bonds”):

- a. Specifically, between 1998 and 2003, the Obligated Group secured permanent financing through a series of bond offerings by the Abilene Health Facilities Development Corporation in the aggregate principal amount of approximately \$73.1 million, consisting of \$30,435,000 Series 1998A Abilene Health Facilities Development Corporation Bonds (the “Series 1998A Bonds”), \$7,840,000 Series 1999 Abilene Health

Facilities Development Corporation Bonds (the “Series 1999 Bonds”) and \$34,820,000 Series 2003A Abilene Health Facilities Development Corporation Bonds (the “Series 2003A Bonds” and together with the Series 1998A Bonds and Series 1999 Bonds, the “Previously Issued Bonds”). The Previously Issued Bonds mature of various dates, with the next maturity date being November 15, 2018.

b. In April 2013, pursuant to an Offer to Tender and Exchange (the “Offer”), the holders of the Previously Issued Bonds were given the opportunity to tender their Previously Issued Bonds for Series 2013A Retirement Facility Revenue Bonds (the “Series 2013A Bonds”) and Series 2013D Retirement Facility Revenue Bonds (the “Series 2013D Bonds” and together with the Series 2013A Bonds, the “Exchange Bonds”) to be issued by Red River Health Facilities Development Corporation (“Red River”). As a result of the Offer, the principal amount of the Exchange Bonds to be issued in exchange for the Original Bonds was \$69,130,000 (94.54% of the aggregate principal amount outstanding). The holders of \$3,965,000 in aggregate outstanding principal amount of the Previously Issued Bonds chose not to tender their bonds (the “Non-Exchanged Bonds”).

c. On May 9, 2013, pursuant to an Indenture of Trust, dated as of May 1, 2013 (the “Bond Indenture”), between Red River and Wells Fargo Bank, National Association (the “Bond Trustee” and together with the “Master Trustee”, the “Trustee”), Red River issued (i) \$69,130,000 in Exchange Bonds; (ii) \$19,405,000 in Series 2013B Retirement Facility Revenue Bonds (the “Series 2013B Bonds”), (iii) \$2,285,000 in Series 2013C Retirement Facility Revenue Bonds (the “Series 2013C Bonds” and together with the Series 2013B Bonds and the Series 2013D Bonds, the “New Money Bonds”), and (iv) \$765,000 in

Series 2013D Retirement Facility Revenue Bonds (collectively, the “2013 Bonds”). The Series 2013D Bonds were issued in part as New Money Bonds and in part as Exchange Bonds.

14. The proceeds of the New Money Bonds were loaned to SMRS pursuant to a Loan Agreement, dated as of May 1, 2013 (the “SMRS Loan Agreement”), between Red River and SMRS. SMRS used these loan proceeds, together with certain other monies, to, among other things, (a) finance and refinance a portion of the cost of certain System health facilities located in Abilene, Amarillo, Lubbock, Tyler, and Odessa, Texas; (b) fund a debt service reserve fund to secure the 2013 Bonds; (c) satisfy the outstanding balance of a loan between SMRS and Capital One Bank, N.A.; and (d) pay the costs of issuing the 2013 Bonds. The 2013 Bonds mature on various dates, with the first maturity date being November 15, 2046.

15. The New Money Bonds and the interest payable thereon are payable solely from and secured exclusively by the funds pledged thereto under the Bond Indenture, the payments to be made by SMRS pursuant to the SMRS Loan Agreement, and certain notes (the “New Money Bond Notes”) issued by SMRS under the Master Indenture.

16. The New Money Bond Notes and other obligations of the Obligated Group under the Master Indenture are secured under the terms of three separate Deeds of Trust (each including a Security Agreement and Assignment of Rents and Leases) dated as of May 1, 2013 (collectively, the “Deeds of Trust”), between certain members of the Obligated Group and the Trustee, and two separate Subordinate Deeds of Trust (each including a Security Agreement and Assignment of Rents and Leases) dated as of May 8, 2013 (collectively, the “Subordinate Deeds of Trust”), between certain members of the Obligated Group and the Trustee. A promissory note evidencing the obligation of SMRS to repay the loan from Red River with respect to the Series



2013A Bonds (the “Series 2013A Note”) and the notes securing the Previously Issued Bonds are secured on a parity basis with the New Money Bond Notes under the Master Indenture and the Deeds of Trust. Additionally, the New Money Bond Notes and the Series 2013A Note are secured on a parity basis under the Subordinate Deeds of Trust. The aforementioned Master Trust Indenture, Bond Indenture, SMRS Loan Agreement, supplemental bond indentures, promissory notes related to the Bonds, Deeds of Trust and other documents related to the Bonds are referred to herein as the “Bond Documents.”

17. The collateral securing the obligations under the Bond Documents includes (i) all of the Gross Revenues (as defined in the Master Indenture) of the Obligated Group Debtors; (ii) Wesley Court, the Craig, and the Parks, including all Improvements and Personal Property (each as defined in the Deeds of Trust) as well as, without limitation, all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications, or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the respective grantors; and (iii) certain undeveloped land located in Waco, Texas and Abilene, Texas and all Improvements and Personal Property (each as defined in the Deeds of Trust) as well as, including without limitation all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications, or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the respective grantors<sup>2</sup> (collectively, the “Pre-Petition Bond

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<sup>2</sup> Pursuant to each of the Subordinate Deeds of Trust, the liens granted to the Trustee with respect to certain undeveloped land located in Waco, Texas and Abilene, Texas are subordinate to liens granted to TMF.

Collateral”).

18. In addition, certain accounts were established and are held by the Trustee, including, but not limited to, (i) the Debt Service Reserve Fund (as defined in the Master Trust Indenture); (ii) the Operating Reserve Fund (as defined in the Master Trust Indenture); and (iii) the Project Account of the Construction Fund (as defined in the 2013 Bond Indenture). These funds, and any other accounts established by the Bond Documents and held by the Trustee are referred to herein as the “Trustee-Held Funds.”

19. Further, as part of the refinancing, Texas Methodist Foundation (“TMF”) loaned SMRS approximately \$3.5 million (the “TMF Loan”). SMRS owes approximately \$3.2 million in respect of the TMF Loan. In connection with the TMF Loan, Life Care Services LLC (“LCS”) issued a \$1.5 million bank letter of credit (the “Letter of Credit”) for the benefit of TMF. The Letter of Credit has a five-year term, and the amount of the Letter of Credit may be reduced proportionate to the reduction in the principal amount of the TMF Loan over the term of the Letter of Credit. As of the date hereof, no amounts have been drawn on the Letter of Credit.

20. On May 8, 2013, TMF, the Trustee, SMRS and LCS entered into an intercreditor agreement (the “Intercreditor Agreement”) setting forth the relative priorities of TMF, the Trustee and LCS with respect to the collateral securing the obligations of the Obligated Group Debtors with respect to the 2013 Bonds and the TMF Loan. Pursuant to the Intercreditor Agreement, except with respect to liens on certain undeveloped land in Waco (the “Waco Property”) and Abilene (the “Abilene Property” and together with the Waco Property, the “Undeveloped Properties”), the liens and rights of the Trustee under the Bond Documents are superior to the liens and rights of TMF and LCS. Pursuant to the Intercreditor Agreement, the liens and rights of the Trustee under its deeds of trust with respect to the Undeveloped Properties

are subordinate to those of TMF and LCS. Moreover, LCS's rights in the Abilene Property are subordinate to TMF's lien in such property.

***B. SDI***

21. As of January 2014, on a book value basis, SDI had approximately \$5.1 million in assets and \$4.1 million in liabilities. SDI's main assets consist of: (i) approximately \$3.8 million in accounts receivable; and (ii) approximately \$211,000 in property and equipment. SDI's main liabilities are: (i) approximately \$1.8 million in accounts payable; and (ii) approximately \$900,000 in accrued payroll and related taxes.

22. Additionally, in connection with the issuance of certain bonds by Debtor Sears Tyler Methodist Retirement Corporation ("Tyler"), SDI entered into that certain Operating Support Agreement with Tyler, dated as of November 1, 2009, pursuant to which, among other things, SDI (i) agreed to deposit all of its net cash flow from the VLB contracts into an operating support fund, and (ii) granted to Tyler a continuing security interest in and to all right, title and interest of SDI in its right to receive payments of money under the VLB contracts. Based on historical operations and future projections there is no net cash flow distributable to Tyler.

**III. Cash Management System.**

***A. Obligated Group Debtors***

23. The Obligated Group Debtors receive revenue from several sources, which include: (i) daily rates; (ii) monthly fees; and (iii) entrance deposits ("EDs") from those residents living in certain cottages, apartments or executive homes at Craig, Wesley Court, Parks. Monthly and daily fees cover operating expenses and capital costs, and do not include any health care benefits.

24. Prior to the Petition Date and in the ordinary course of business, each of the Obligated Group Debtors maintained its own separate cash management system (together, the

“Obligated Group Cash Management Systems”). Funds in the Obligated Group Cash Management Systems are generally collected into a centralized operating account, which receives cash from various sources. The cash maintained in the operating accounts is generally used to fund operating expenses. Additionally, the funds in the operating account of: (i) SMF are also used to pay for various projects related to donations; (ii) SMC are also used to pay certain payroll taxes; and (iii) SMRS are also used to pay for corporate expenses, payroll and shared services.

25. The Obligated Group Cash Management Systems also contain accounts other than the operating accounts. Specifically, Permian, SMC and Panhandle maintain resident trust accounts funded from social security payments for Medicaid residents and other personal deposits of residents living at Parks, Wesley Court and Craig. The funds in the resident trust accounts are used to pay for miscellaneous personal expenses of such residents. Additionally, SMRS maintains: (i) an account used to pay Blue Cross Blue Shield health claims and (ii) four separate accounts established pursuant to the debt documents of the Obligated Group. Finally, SMC maintains a payroll account to fund certain payroll expenses of Wesley Court.

26. Moreover, the Obligated Group Cash Management System contains a daily sweep component to maximize interest. Specifically, each night funds from the operating accounts of SMRS, SMF, Panhandle, Permian, SMC and SDI, the health claims account of SMRS and the payroll account of SMC (collectively, the “Swept Accounts”) that have positive balances are swept into a sweep account held in the name of SMC (the “Sweep Account”) and the next day funds are swept out of the Sweep Account into the Swept Accounts that have negative balances after (i) deposits are made into such accounts and (ii) checks written on such accounts clear. As

such, each of the Swept Accounts have a \$0 balance at the end of each night except for SMRS's operating account which is required to have a minimum balance of \$175,000.

***B. SDI***

27. Prior to the Petition Date and in the ordinary course of business SDI maintained its own separate cash management system (the "SDI Cash Management System"). Funds from landlord payments and the Sweep Account are collected into a centralized operating account and are used to fund operating expenses. As described above, funds remaining in SDI's operating account are transferred automatically on a daily basis into the Sweep Account. Additionally, SDI maintains resident trust accounts for each VLB Home funded from Social Security payments for Medicaid residents as well as personal deposits. The funds in the resident trust accounts are used to pay for miscellaneous personal expenses of the residents at the VLB Homes.

**IV. Events Leading To Chapter 11**

28. Senior living facilities have experienced substantial declines in occupancy recently as a result of the market changes. Prospective residents are faced with: (i) difficulty selling their homes due to uncertainty in value and (ii) significant declines in their equity portfolio value. This has made it difficult, if not impossible, for seniors to move into or remain in senior housing facilities due to, among other things, the upfront payment of EDs. These market conditions have contributed to decreased revenue and lower than anticipated occupancy rates at certain of the Debtors' Facilities.

29. To address these issues, the Debtors sought to implement a number of restructuring initiatives over the last year, including making appropriate adjustments in staffing and increasing negotiations with creditors. Additionally, in the past four months, the Debtors retained Cain Brothers & Company, LLC to provide restructuring and other investment advisory services, DLA Piper LLP (US) to provide legal advice in connection with a potential

restructuring, and Alvarez & Marsal Healthcare Industry Group, LLC to provide a Chief Restructuring Officer and other personnel.

30. The relationship between the System and LCS became strained during the course of LCS's management and the management agreements between LCS and the Debtors were terminated on April 8, 2014. Additionally, around that time the Corporate Chief Executive Officer was terminated by the System. After a detailed search the Debtors hired an interim chief executive officer who remains employed by the System.

**V. The Obligated Group Debtors' and SDI's Need For Postpetition Financing and the Obligated Group Debtors' Need for Cash Collateral.**

31. The Obligated Group Debtors require both the use of Cash Collateral and the financing proposed herein to continue to operate their businesses during these chapter 11 cases. Additionally, SDI requires the financing proposed herein to continue managing the VLB Homes.

32. If the Obligated Group Debtors and SDI are unable, on a consistent basis, to maintain their businesses and demonstrate financial stability to existing and future residents, the Facilities will lose existing residents, employees, and vendors, will be unable to attract new residents and will be forced to cease operations. Such a result will not only cause harm to the Obligated Group Debtors and SDI, but it will also cause harm to the residents of the Facilities, who will not receive proper care and may be forced to move. Therefore, post-petition financing and the use of Cash Collateral is essential to the Obligated Group Debtors' and SDI's continued ability to operate, to maintaining the value of their assets, and to the success of these chapter 11 cases.

33. The Debtors have determined that the Obligated Group Debtors and SDI will not be able to adequately finance their business operations by using only cash collateral and therefore they require immediate access to additional financing. To fund this shortfall, the

Debtors solicited offers from several entities before the Petition Date to provide financing to the Obligated Group Debtors and SDI during these cases. In exchange for providing post-petition financing, each of these entities would have required a first-priority priming lien on all of the assets of the Obligated Group Debtors securing all amounts advanced by such lender. In addition, SDI could not obtain post-petition financing on a stand-alone basis on more favorable terms. After careful consideration, the Obligated Group Debtors and SDI ultimately decided, in their business judgment, that the proposal for debtor in possession financing advanced by the Trustee was the best available under the circumstances and adequately addressed the Obligated Group Debtors' and SDI's reasonably foreseeable working capital needs in the near term.

34. Immediate access to postpetition financing and, with respect to solely the Obligated Group Debtors, the use of Cash Collateral, is necessary to enhance the Obligated Group Debtors' and SDI's liquidity, provide necessary working capital during the pendency of these chapter 11 cases, and provide residents, employees, vendors, suppliers, regulatory agencies and other key constituencies with confidence that the Obligated Group Debtors and SDI have sufficient resources available to maintain their operations in the ordinary course. If the Obligated Group Debtors and SDI are unable to access this postpetition financing and, with respect to the Obligated Group Debtors, use Cash Collateral, the Obligated Group Debtors' and SDI's business operations and ability to provide proper resident care will be irreparably harmed. For the foregoing reasons, entry of the Interim Order is in the best interests of the Obligated Group Debtors' and SDI's estates, creditors, residents and other parties in interest.

#### **THE DIP FINANCING**

35. The Obligated Group Debtors and SDI have negotiated an agreement to receive debtor-in-possession financing, the terms of which are memorialized in the Interim Order, attached hereto as Exhibit I (as amended, restated, or otherwise modified from time to time in

accordance with the terms thereof and in the DIP/Cash Collateral Orders). Specifically, the Trustee, on behalf of the holders of the Bonds (the “Bondholders”), has agreed to provide the requested financing from the Trustee-Held Funds as advances under the Bond Documents up to an interim maximum amount of \$600,000 (the “DIP Loans”) on a senior secured, super-priority basis solely for the use (“Permissible Uses”) by the Obligated Group and SDI pursuant to the budget attached to the Interim Order as Exhibit A (the “Budget”) through the period ending July 12, 2014 (the “Interim Period”). At the expiration of the Interim Period, the Trustee, in its sole and absolute discretion and subject to entry of the Final Order, may continue to advance funds up to a maximum amount as established and agreed to between the parties. Similarly, the Obligated Group Debtors and SDI reserve all rights to seek replacement or alternative financing.

36. Consistent with Bankruptcy Rule 4001(c)(1), the principal terms of the DIP Loans and Interim Order are as follows:<sup>3</sup>

<u>Borrowers:</u>	Sears Methodist Retirement System, Inc., Sears Permian Retirement Corporation, Sears Methodist Centers, Inc., Sears Panhandle Retirement Corporation, Sears Methodist Foundation, Sears Brazos Retirement Corporation and Senior Dimensions, Inc. (together, the “ <u>Borrowers</u> ”).
<u>DIP Lender:</u>	Wells Fargo Bank, National Association, not individually but as master trustee and bond trustee for the Bonds.
<u>DIP Loans:</u>	A credit facility made available to the Borrowers as advances under the Bond Documents from the Trustee-Held Funds in an interim aggregate principal amount of \$600,000. The DIP Loans shall be available to the Obligated Group Debtors and SDI as set forth in the Budget solely for the Permissible Uses.
<u>Use of Proceeds:</u>	The DIP Loans shall be used by the Obligated Group Debtors and SDI in the amounts and categories of the budget attached to the Interim Order as <u>Exhibit A</u> (the “ <u>Budget</u> ”), solely for the use by the Obligated Group Debtors and SDI pursuant to such Budget (“ <u>Permissible Uses</u> ”).  Except as expressly provided in the Interim Order, no proceeds of Cash Collateral or

<sup>3</sup> The terms and conditions of the DIP Loans set forth in this Motion are intended solely for informational purposes to provide the Court and interested parties with a brief overview of the significant terms thereof and should only be relied upon as such. This summary is qualified in its entirety by the provisions of the Interim Order. The Obligated Group Debtors reserve all rights in connection with the Interim Order.



	<p>any DIP Loan shall be used for the purpose of: (i) objecting to, or contesting in any manner, or raising any defense to, the validity, amount, extent, perfection, priority, or enforceability of the Bonds, the Pre-Petition Bond Collateral, amounts due and owing under the Bond Documents for (i) unpaid principal and (ii) accrued but unpaid interests on the Bonds (together, the “<u>Bond Claim</u>”), the DIP Loans or any liens or security interests with respect thereto, or any other rights or interests of the Trustee therein; (ii) asserting any claims or defenses or causes of action against the Trustee or any holder of the Bonds or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, including with respect to payments made pursuant to the Interim Order or the Bond Documents; (iii) seeking to modify any of the rights granted to the Trustee under the Interim Order; (iv) paying any amounts not included in the Budget; (v) paying any amounts on account of claims arising before the Petition Date, except to the extent provided for in the Budget and approved by the Court; or (vi) paying any amounts for or on behalf of any entity that is not an Obligated Group Debtor or SDI. Notwithstanding the foregoing, not more than \$10,000 of the Cash Collateral may be made available to reimburse any committee appointed in these cases under section 1102 of the Bankruptcy Code (the “<u>Committee</u>”), upon appropriate application therefor, for the Committee’s fees and expenses solely for the purposes of investigating the validity, priority, perfection and enforceability of the Trustee’s liens in the Pre-Petition Bond Collateral.</p>
<u>Maturity Date:</u>	July 12, 2014.
<u>Interest Rates</u>	<p>The DIP Loans will bear interest at the rate of 6.25%.</p> <p>From and after the occurrence of a Termination Event and until such time as any and all DIP Obligations are satisfied in full in cash, the DIP Loan shall accrue interest at a rate of 8.25%</p>
<u>Security</u>	<p>As security for the DIP Obligations, effective and perfected upon the date of entry of the Interim Order, and without the necessity of the execution or recordation of filings by the Obligated Group Debtors or SDI, of security agreements, pledge agreements, fixture filings, mortgages, hypothecs, deeds of trust, control agreements, financing statements or other similar documents, or the possession or control by the Trustee, the following security interests in and liens are granted to the Trustee on and over all property and other assets of the Obligated Group Debtors, SDI and their respective estates of every kind or type whatsoever, tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, and whether or not encumbered prior to the Petition Date, wherever located: all property of the Obligated Group Debtors and SDI within the meaning of section 541 of the Bankruptcy Code; and all proceeds, rents and products of the foregoing (collectively, all of the foregoing property and assets of the Obligated Group Debtors, SDI and/or their estates, “<u>Obligated Group/SDI Property</u>”), which Obligated Group/SDI Property includes but is not limited to: (i) all accounts generated post-petition and proceeds thereof, including all escrowed entrance fees (to the extent of the interests of the Obligated Group Debtors and/or SDI) (ii) all pre-petition accounts and proceeds thereof, including all escrowed entrance fees (to the extent of the interests of the Obligated Group and/or SDI Entities) (iii) all intangibles, (iv) all real property, the improvements, fixtures thereon and all real property leases, (v) all other assets of</p>

	<p>the Obligated Group Debtors and SDI including but not limited to inventory and equipment, (vi) any and all cash of the Obligated Group Debtors and SDI, (vii) all other property of the Obligated Group Debtors, SDI and their estates, and (viii) the proceeds of all the foregoing (clauses (i) through (vii) collectively, the “<u>Obligated Group/SDI Collateral</u>”), provided, that (a) the term “<u>Obligated Group/SDI Collateral</u>” shall not include claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 (exclusive of transferees under Section 549) and 553 of the Bankruptcy Code, and any other avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, the “<u>Avoidance Actions</u>”) until entry of the Final Order; and (b) the term “<u>Obligated Group/SDI Collateral</u>” shall not include any and all cash or other property received by the Obligated Group Debtors or SDI in the form of gifts, charitable donations, bequests or grants that are by their terms, restricted in the manner in which they may be utilized by the Obligated Group Debtors or SDI to the extent, and only to the extent, that such restrictions would prohibit the granting of any such gifts, donations, bequests or grants as collateral or prohibit the payment of any such gifts, donations, bequests or grants to the Trustee in connection with the Interim Order and such prohibitions are not rendered ineffective by the Bankruptcy Code or other applicable law (the collateral excluded from (a) and (b) for the periods set forth in (a) and (b) is referred to collectively as the “<u>Excluded Property</u>”). All liens and security interests granted to the Trustee pursuant to this provision shall be defined as the “<u>DIP Liens</u>.” The DIP Liens granted pursuant to the Interim Order shall be in addition to the superpriority administrative expense claim set forth in the Interim Order, and, pursuant to sections 364(c) and 364(d), shall be valid, binding, continuing, enforceable, fully-perfected, senior and priming first priority senior security interest on all Obligated Group/SDI Collateral that (a) will be and remain senior to the Trustee’s liens relating to the Bonds; and (b) will otherwise constitute a first priority lien in all other Obligated Group/SDI Collateral, subject only to (i) prior valid and perfected liens (“<u>Prior Senior Liens</u>”), if any, existing as of the Petition Date with priority over the Trustee’s liens; and (ii) the Carve-Out (as defined below).</p>
<u>Adequate Protection</u>	<p>Pursuant to the Interim Order, the Trustee will receive, for itself and the Bondholders, the following adequate protection for the use of its Cash Collateral:</p> <p>As adequate protection for any diminution in the value of Cash Collateral and other Pre-Petition Bond Collateral resulting from the use by the Obligated Group Debtors of Cash Collateral after the Petition Date (“<u>Diminution</u>”), the Trustee shall continue to have a valid, perfected and enforceable continuing replacement lien and security interest (the “<u>Rollover Lien</u>”) in all assets of the Obligated Group Debtors existing on or after the Petition Date of the same type as the Pre-Petition Bond Collateral, together with the proceeds, rents, products and profits thereof, whether acquired or arising before or after the Petition Date, to the same extent, validity, perfection, enforceability and priority of the liens and security interests of the Trustee as of the Petition Date (the “<u>Post-Petition Bond Collateral</u>”). The Post-Petition Bond Collateral shall not include entrance fees received by the Debtors after the Petition Date subject to the terms of the order to be entered with respect to the Debtors’ motion seeking to escrow entrance deposition received post-petition (the “<u>Initial Entrance Deposit Escrow Motion</u>”). The Rollover Lien shall be subject to only (i) the DIP Liens; (ii) Prior Senior Liens; and (iii) the Carve-Out.</p> <p>As additional adequate protection for any Diminution, the Trustee shall have a valid,</p>

	<p>perfected and enforceable continuing supplemental lien and security interest (the “<u>Supplemental Lien</u>”) in all of the assets of the Obligated Group Debtors of any kind or nature whatsoever within the meaning of Section 541 of the Bankruptcy Code, whether acquired or arising prepetition or postpetition, together with all proceeds, rents, products, and profits thereof, exclusive of causes of action under Chapter 5 of the Bankruptcy Code (other than Section 549 and 550 as made applicable by Section 549) (the “<u>Supplemental Collateral</u>” and, collectively with the “<u>Post-Petition Bond Collateral</u>”, the “<u>Collateral</u>”). The Supplemental Lien shall be subject to only (i) the DIP Liens; (ii) the Prior Senior Liens, if any, existing as of the Petition Date with priority over the Trustee’s liens; and (iii) the Carve-Out.</p> <p>As additional adequate protection for any Diminution, the Trustee shall have a super-priority administrative expense claim pursuant to Section 507(b) of the Bankruptcy Code, with recourse to and payable from any and all assets of the estates of the Obligated Group Debtors (the “<u>Secured Party Superpriority Claims</u>”). The Secured Party Superpriority Claims shall be subject to only (i) DIP Liens; (ii) Prior Senior Liens; and (iii) the Carve-Out, and shall otherwise have priority over any and all administrative expenses, diminution claims and all other claims against the Obligated Group Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all other administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Obligated Group Debtors, any successor trustee or any creditor in these Bankruptcy Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Obligated Group Debtors, and all proceeds thereof.</p>
<u>Repayment</u>	<p>The Obligated Group Debtors and SDI are obligated to immediately repay the DIP Obligations upon the Termination Date (as defined below) which for the purposes under the Interim Order shall be no later than July 12, 2014. The proceeds of the DIP Loans shall be used for the Permissible Uses, and subject to the terms and conditions set forth in the Interim Order.</p>
<u>Priority</u>	<p>In the event and to the extent that the Obligated Group/SDI Collateral does not satisfy in full the DIP Obligations, then, subject to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims against the Obligated Group Debtors and SDI with priority over any and all unpaid administrative expenses, diminution claims and all other claims against the Obligated Group Debtors or SDI, now existing or hereafter arising, of any kind whatsoever (the “<u>Superpriority Claims</u>”), including, without limitation, all other unpaid administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Obligated Group Debtors or SDI or other Debtors, any successor trustee or any creditor, in the Bankruptcy Case or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual</p>

	lien, levy or attachment. The Superpriority Claims granted to the Trustee shall be payable from and have recourse to all pre- and post-petition property of the Obligated Group Debtors and/or SDI and all proceeds thereof.
<u>Fees</u>	The Trustee will be entitled to a commitment fee equal to \$10,000, which shall be due payable upon the first advance under the Interim Order.
<u>Milestones</u>	<p>The Interim Order contains the following milestones:</p> <ul style="list-style-type: none"> <li>• On or before June 17, 2014, Lamun Lusk Sanchez shall retain Continuum Development Specialists (“CDS”) to assess the feasibility of operations at such facility (the “<u>Big Spring Report</u>”);</li> <li>• On or before July 7, 2014, the Big Spring Report shall be delivered by CDS to the Trustee; and</li> <li>• On or before July 1, 2014, the Trustee and the Obligated Group shall provide the Trustee with a proposed final form of Budget for the period of July 13, 2014 through December 7, 2014 for each of (x) the Obligated Group, (y) SDI, and (z) the Obligated Group and SDI.</li> </ul>
<u>Termination of Use of Cash Collateral or DIP Loans Without Prior Notice</u>	<p>The authority of the Obligated Group Debtors to draw upon the DIP Loans and to use the proceeds of Cash Collateral hereunder shall terminate without any further action by this Court and a Termination Event shall occur without prior notice upon the occurrence of any of the following (also a “<u>Termination Event</u>”):</p> <ul style="list-style-type: none"> <li>• Any of the bankruptcy cases of the Obligated Group Debtors or SDI are dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;</li> <li>• The earlier of (y) the date of the entry of an order of this Court appointing a Chapter 11 trustee or an examiner with enlarged powers (beyond those set forth in Sections 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code) for any of the Obligated Group Debtors or SDI; or (z) the date the Debtors file a motion, application or other pleading consenting to or acquiescing in any such appointment;</li> <li>• This Court suspends the bankruptcy cases of any of the Obligated Group Debtors or SDI under Section 305 of the Bankruptcy Code;</li> <li>• The Interim Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the Trustee;</li> <li>• An order is entered in the Bankruptcy Cases over the objection of the Trustee approving financing pursuant to Section 364 that would grant an additional security interest or a lien on any Collateral or granting a superpriority administrative claim that is equal or superior to the superpriority administrative claim granted to the Trustee under the Interim Order;</li> <li>• An adversary proceeding or contested matter is commenced by the</li> </ul>

	<p>Obligated Group Debtors or SDI challenging the amount, validity, enforceability, priority or extent of the Trustee's liens, security interests or claims; and</p> <ul style="list-style-type: none"> <li>• July 12, 2014.</li> </ul>
<p><u>Termination of Use of Cash Collateral With Notice</u></p>	<p>A Termination Event shall be deemed to have occurred three (3) business days after receipt of written notice sent by the Trustee to the Obligated Group Debtors and SDI, their counsel, the Committee, if any, and the Committee's counsel, and the U.S. Trustee of the occurrence of any of the following:</p> <ul style="list-style-type: none"> <li>• The payment or incurrence by any member of the Obligated Group of any expense of a type not set forth in the Budget;</li> <li>• The use of Cash Collateral or the proceeds of DIP Loans for the payment for or on behalf of any Debtor that is not a member of the Obligated Group Debtors;</li> <li>• The payment of any expenses that would cause the aggregate expenditures to exceed one hundred ten percent (110%) of the total budgeted expenses for that same period (a "<u>Measuring Period</u>"). This "<u>Variance</u>" shall be measured, on a rolling four week basis; provided however, that, for purposes of calculating such variances, (i) the first Measuring Period shall be the one week after the Petition Date and the first week of the Budget, (ii) the second Measuring Period shall be the two weeks after the Petition Date and the first two weeks of the Budget, (iii) the third Measuring Period shall be the three weeks after the Petition Date and the first three weeks of the Budget, and (iv) the fourth Measuring Period shall be the first four weeks after the Petition Date and the first four weeks of the Budget. Any budgeted expenditures not paid in a particular budget period may be paid during a subsequent period and, for the purpose of calculating rolling four week variances set forth above, the Budget will be revised to move such expenditures to the later period. Expenditures may be paid in an earlier period in the reasonable discretion of the Obligated Group Debtors, in which event, the Budget shall be deemed amended to move the expenditure into the week of the actual expenditure for the purpose of calculating rolling four week variances set forth above. The Obligated Group Debtors will provide a written explanation in reasonable detail explaining the amount of and the reason for the prepayment or delay in payment.</li> <li>• The failure of the Obligated Group Debtors to pay, within ten (10) days of the applicable due date, all undisputed administrative expenses in full in accordance with their terms as provided for in the Budget;</li> <li>• The failure of the Obligated Group Debtors to timely pay all fees due under 28 U.S.C. §1930; and</li> <li>• The failure of the Obligated Group Debtors or SDI to comply with, keep, observe or perform any of its agreements or undertakings under the Interim Order, including meeting the Milestones by each date set forth in the</li> </ul>

	<p>Interim Order.</p> <p>Unless prior to the expiration of the three (3) business day period described in paragraph 24 of the Interim Order, the Obligated Group Debtors or SDI, as applicable, have cured the Termination Event(s) specified in the Trustee's notice, or obtained an order of this Court, on notice to and with the opportunity to be heard by the Trustee, that no such Termination Event has occurred, the authority of the Obligated Group and SDI to draw upon the DIP Loans or to use Cash Collateral under the Interim Order shall terminate without further action of any kind and upon expiration of such three (3) business day period, all amounts owed under the terms of the Interim Order shall be accelerated and immediately due and payable, the Trustee shall be permitted to exercise any and all remedies under the Interim Order without further notice or court order, and the Trustee shall be automatically relieved of any further stay under Section 362 of the Bankruptcy Code, or other restriction on enforcement of its prepetition and postpetition liens and security interests in the Collateral to collect the amounts due under the DIP Obligations (the "<u>Termination Date</u>").</p>
<u>Releases</u>	<p>The Obligated Group Debtors and SDI waive any and all claims and causes of action against the Trustee and the holders of the Bonds and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, directly related to (i) DIP Loans, (ii) all of Obligated Group Debtors' and SDI's obligations and indebtedness arising under, in respect of or in connection with the Interim Order, including without limitation, any and all amounts due, whether now existing or hereafter arising, under the DIP Loans or any related financing document, owed or owing to the Trustee by the Obligated Group Debtors or SDI, in each instance, whether absolute or contingent, direct or indirect, secured or unsecured, due or not due, primary or secondary, joint or several, arising by operation of law or otherwise, and all interest and other charges thereon, including post-petition interest (collectively, the "<u>DIP Obligations</u>"), (iii) any financing document and, (iv) the Interim Order or the negotiation of the terms thereof.</p> <p>Subject to the Interim Order, the Obligated Group Debtors and SDI waive, release and discharge the Trustee, all holders of the Bonds and their respective affiliates, agents, attorneys, professionals, officers, directors and employees (collectively, the "<u>Released Parties</u>"), from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Bonds and the Bond Documents, any aspect of the prepetition relationship between the Trustee and/or all holders of the Bonds and the Obligated Group Debtors, and any other acts or omissions by the Trustee and/or all holders of the Bonds in connection with either the Bond Documents or the Trustee's and/or holders of the Bonds' prepetition relationship with the Debtors. Further, the Obligated Group Debtors and SDI waive any and all rights to object to or contest the amount of the Bond Claim or the Trustee's security interest in the Pre-Petition Bond Collateral and agree that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens.</p>
<u>Financial Information</u>	<p>As further security for the DIP Obligations and the Bond Claim (and as additional protection for the use of the Trustee's Cash Collateral), the Obligated Group Debtors and SDI shall provide to the Trustee on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report (the "<u>Weekly Budget</u>").</p>

	<p><u>Report</u>”) certified by the chief financial officers of the Obligated Group Debtors and SDI and in the same form as the Budget indicating all receipts received and disbursements made by the Obligated Group Debtors and SDI in the week ending the prior Friday compared to the Budget and detailing any variances of more than 5% and at least \$10,000 from the expenditures and receipts in the Budget.</p>
<p><u>No Charge on Collateral: Carve Out</u></p>	<p>In partial consideration of the Obligated Group Debtors’ and SDI’s acknowledgement of the debt due and owing and the Obligated Group Debtors’ and SDI’s waiver of any claims under Section 506(c) of the Bankruptcy Code, the Trustee consents to the payment of certain amounts which shall be superior in all instances to the liens and claims of the Trustee and all other parties (the “<u>Carve Out</u>”). For purposes hereof, the “<u>Carve Out</u>” means (a) \$50,000 for estate professionals, plus (b) the statutory fees of the United States Trustee pursuant to 28 U.S.C. § 1930 and the fees of the Clerk of this Court. The entry of a Final Order shall be a conclusive and binding determination on all parties that except for the Carve Out, no costs or expenses of administration shall be imposed against the Trustee or the Pre-Petition Bond Collateral or the Collateral under Sections 105 or 506(c) of the Bankruptcy Code, or otherwise.</p>
<p><u>Stipulations in Favor of the Trustee</u></p>	<p>Subject to the right of other parties in interest with standing, the Obligated Group Debtors stipulate that as of the Petition Date, that pursuant to the Bond Documents, the Trustee has (i) a first priority lien and security interest in all of the Gross Revenues (as defined in the Master Indenture) of the Obligated Group; (ii) a first-lien mortgage on the Obligated Group Debtors’ facilities known as Wesley Court, the Craig, and the Parks (collectively, the “<u>Deeds of Trust</u>”), including all Improvements and Personal Property (each as defined in the Deeds of Trust) as well as, without limitation, all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications, or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the respective grantors; and (iii) subordinate deeds of trust on certain undeveloped land located in Waco, Texas and Abilene, Texas (together, the “<u>Subordinate Deeds of Trust</u>”; and together with the Deeds of Trust, the “<u>Mortgages</u>”) all Improvements and Personal Property (each as defined in the Deeds of Trust) as well as, including without limitation all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications, or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the respective grantors. Each of the Subordinate Deeds of Trust is subordinate to liens granted to Texas Methodist Foundation.</p>

## **BASIS FOR RELIEF**

### **I. The Requested Relief Should Be Granted Pursuant To Sections 364(c) and 364(d)(1) Of The Bankruptcy Code.**

37. As set forth above, the Obligated Group Debtors' and SDI's ability to maximize the value of their estates hinges upon their being able to access postpetition financing. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit outside the ordinary course of business, and (c) obtaining credit with specialized priority or on a secured basis. See 11 U.S.C. § 364. Pursuant to section 364(c) of the Bankruptcy Code, if a debtor cannot obtain postpetition credit on an unsecured basis, a court may authorize such debtor to obtain credit or incur debt that is entitled to super-priority administrative expense status, secured by a senior lien on unencumbered property or secured by a junior lien on encumbered property.

38. Under section 364 of the Bankruptcy Code, courts also may authorize postpetition credit secured by a senior or equal lien on encumbered property if the debtor cannot obtain credit elsewhere and the interests of existing lienholders are adequately protected. See id. Specifically, section 364(d)(1) of the Bankruptcy Code provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (A) the [debtor] is unable to obtain credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

Id. § 364(d)(1).



***A. The Obligated Group Debtors and SDI Have Exercised Their Business Judgment in Entering Into the DIP Loans.***

39. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties-in-interest."); see also In re Farmland Indus., Inc., 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, *inter alia*, an exercise of "sound and reasonable business judgment."); Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the interim loan, receivables facility and asset based facility were approved because they "reflect[ed] sound and prudent business judgment . . . [were] reasonable under the circumstances and in the best interest of [the debtor] and its creditors.").

40. Bankruptcy courts routinely accept a debtor's business judgment on many business decisions, including the decision to borrow money. See, e.g., In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985) (noting that "[b]usiness judgments should be left to the board room and not to this Court"). Further, one court has noted that "[m]ore exacting scrutiny [of a debtor's business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985).

41. Bankruptcy courts generally will defer to a debtor in possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. See In re Curlew Valley Assocs., 14 B.R. 506, 511–13 (Bankr. D. Utah 1981); see also In re Trans World Airlines, Inc., 163 B.R. at 974 (approving interim loan, receivables facility and asset based facility based upon prudent business judgment of the debtor). Bankruptcy courts generally will not second-guess a debtor in possession's business decisions involving "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." Curlew Valley, 14 B.R. at 513–14.

42. The Obligated Group Debtors and SDI have exercised sound business judgment in determining the appropriateness of the DIP Loans and have satisfied the legal prerequisites to incur debt on the terms and conditions set forth in the Interim Order. The Interim Order contains terms and conditions that are the best available under the circumstances and provides the Obligated Group Debtors and SDI with sufficient liquidity during the period of the Budget. In addition, the Interim Order preserves the rights of any statutory committee of unsecured creditors, to investigate and challenge the validity, amount, perfection, priority, extent or enforceability of the Bond Claim or the pre-petition security interests of the Trustee.

43. Moreover, approval of the Interim Order will provide the Obligated Group Debtors and SDI with immediate and ongoing access to funds to pay their current and ongoing operating expenses, including postpetition wages and salaries and vendor costs. Unless these expenditures are made, the Obligated Group Debtors and SDI will be forced to cease operations, which would result in irreparable harm to their respective businesses and deplete going concern value. Equally important, without borrowings under the Interim Order, the health and well-being of the residents at the Facilities would be jeopardized. Because Cash Collateral is insufficient to

fund such expenditures, the credit provided under the Interim Order essential to a successful reorganization.

44. Accordingly, pursuant to sections 364(c) and (d) of the Bankruptcy Code, the Obligated Group Debtors and SDI respectfully submit that they should be granted authority to obtain financing from the Trustee on the terms set forth in the Interim Order.

***B. The DIP Loans Represent the Best Financing Available.***

45. A debtor seeking financing under section 364(c) of the Bankruptcy Code must make a reasonable effort to seek other sources of unsecured credit, but is granted deference in acting in accordance with its business judgment and, indeed, is not required to seek credit from every possible source. See, e.g., Ames Dep't Stores, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (“[T]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.”).

46. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); see also In re Garland Corp., 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); In re Ames Dep't Stores, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

47. The Obligated Group Debtors and SDI and their advisors have solicited proposals from and negotiated with several institutions in an effort to secure debtor in possession financing on the best terms available. The Obligated Group Debtors and SDI have determined that the terms and conditions of the Interim Order are the best available under the circumstances and address the Obligated Group Debtors' and SDI's working capital needs. Postpetition financing is not otherwise available without granting, pursuant to sections 364(c)(1) of the Bankruptcy Code, claims having priority over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, and securing such indebtedness and obligations with the security interests in and the liens upon the DIP Collateral pursuant to section 364(c) and (d) of the Bankruptcy Code. The Obligated Group Debtors and SDI are unable to obtain the necessary postpetition financing that they need on terms more favorable than those provided by the Interim Order. Accordingly, the Obligated Group Debtors' and SDI's efforts to obtain postpetition financing satisfy the statutory requirements of section 364(c) of the Bankruptcy Code.

***C. The DIP Loans are Necessary to Maintain the Obligated Group Debtors' Ongoing Business Operations.***

48. The DIP Loans will provide essential working capital, allowing the Obligated Group Debtors and SDI to maintain the value of their assets and their ongoing business operations while working to successfully reorganize. In addition, the DIP Loans will provide the Obligated Group Debtors' and SDI's various constituencies, including residents, employees, vendors, service providers, and regulatory agencies with confidence in the Obligated Group Debtors' and SDI's ability to maintain operations during these chapter 11 cases.

49. If the relief sought in this Motion is denied or delayed, the Obligated Group Debtors and SDI likely will experience business disruptions, an inability to provide proper

resident care, and difficulty maximizing value for the estates may be irreparably damaged. Accordingly, the DIP Loans are necessary to maximize value for the Obligated Group Debtors' and SDI's estates and inure to the benefit of creditors and all parties in interest, including residents of the Facilities.

***D. The Terms of the Interim Order are Fair, Reasonable, and Adequate Under the Circumstances.***

50. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. See In re Farmland Indus., Inc., 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.), 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). Here, the terms and conditions of the Interim Order were negotiated in good faith and at arm's length among the parties and provide the Obligated Group Debtors and SDI with essential working capital and maintain their respective business operations. Indeed, when viewed in its totality, the Interim Order reflects the Obligated Group Debtors' and SDI's exercise of prudent business judgment consistent with their fiduciary duties and is supported by fair consideration.

***E. Section 364(e) Protections Should Apply to the Interim Order.***

51. The terms and conditions of the Interim Order are fair and reasonable, and were negotiated extensively by well-represented, independent parties in good faith and at arm's length. Accordingly, the Court should find that the Trustee is a "good faith" lender within the meaning of Bankruptcy Code section 364(e), and are entitled to all of the protections afforded by that section.

**II. THE OBLIGATED GROUP DEBTORS' REQUEST FOR USE OF CASH COLLATERAL AND THE PROPOSED ADEQUATE PROTECTION IS APPROPRIATE.**

52. The Obligated Group Debtors' use of property of the estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

53. Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Obligated Group Debtors to use Cash Collateral as long as the applicable secured creditors consent or are adequately protected. See In re McCormick, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (explaining that the use of cash collateral of a secured creditor requires the debtor to have the consent of the secured creditor or to establish to the Court that the secured creditor's interest in the cash collateral is adequately protected).

54. The Obligated Group Debtors have an urgent need for the use of the Cash Collateral and seek to use all Cash Collateral existing on or after the Petition Date through July 12, 2014. The Obligated Group Debtors require the use of the Cash Collateral to, among other things, maintain their ongoing business operations and to pay the costs and expenses associated with the administration of these chapter 11 cases. Absent the use of Cash Collateral, the Obligated Group Debtors' ability to ensure proper resident care and uninterrupted services at the Obligated Group Facilities would be impaired and the value of the Obligated Group Debtors' businesses as a going concern would be irreparably harmed. In addition, the Trustee, which is the only party holding a security interest in the Cash Collateral, has consented to the use of Cash

Collateral as requested herein, subject to their receipt of the adequate protection provided for in the Interim Order.

55. Section 361 of the Bankruptcy Code delineates permissible forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. See MBank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1396 (10th Cir. 1987). The focus of the requirement is to protect a secured creditor from the diminution in value of its interest in the particular collateral during the period of use. Id. (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”). Whether or not a creditor is adequately protected is determined on a case-by-case basis. See In re Self, 239 B.R. 877, 881 (Bankr. E.D. Tex. 1999) (determination of adequate protection is not an “exact science” but, rather, it requires a court to balance all relevant factors).

56. Courts have also held that adequate protection may be demonstrated by showing that the secured creditor’s interest in the collateral is preserved by the debtor’s use of the cash collateral in a manner that maintains or enhances the collateral’s value. See In re Salem Plaza Assocs., 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a secured creditor was adequately protected when cash collateral was used to pay necessary operating expenses); In re Constable Plaza Assocs., L.P., 125 B.R. 98, 105–06 (Bankr. S.D.N.Y. 1991) (authorizing debtor to use cash collateral to operate and maintain office building, thereby protecting secured lender’s collateral and existing equity cushion); accord Principal Mut. Lif. Ins. Co. v. Atrium Dev. Co. (In re Atrium Dev. Co.), 159 B.R. 464, 471 (Bankr. E.D. Va. 1993) (“Adequate protection is typically established by the fact that cash is being used to maintain and enhance the value of the underlying income producing real property in which the creditor also usually holds a security

interest.”); McCombs Props. VI, Ltd. v. First Tex. Sav. Ass’n (In re McCombs Props. VI, Ltd.), 88 B.R. 261, 267 (Bankr. C.D. Cal. 1988) (holding that committing to use cash collateral for operating expenses substantially eliminated the risk of diminution in the secured creditor’s interest in the collateral).

57. Here, the proposed adequate protection is typical and appropriate under the circumstances. Specifically, as adequate protection for the Trustee with respect to, and solely to the extent of, any diminution of value in the Pre-Petition Bond Collateral, the Trustee shall receive the Rollover Lien in the Post-Petition Bond Collateral.

58. Additionally, the Trustee shall have a valid, perfected and enforceable continuing supplemental lien and security interest (the “Supplemental Lien”) in all of the assets of the Obligated Group Debtors of any kind or nature whatsoever within the meaning of Section 541 of the Bankruptcy Code, whether acquired or arising prepetition or postpetition, together with all proceeds, rents, products, and profits thereof, exclusive of causes of action under Chapter 5 of the Bankruptcy Code (other than Section 549 and 550 as made applicable by Section 549) (the “Supplemental Collateral” and, collectively with the “Post-Petition Bond Collateral”, the “Collateral”).

59. Finally, as additional adequate protection, the Trustee shall have a super-priority administrative expense claim pursuant to Section 507(b) of the Bankruptcy Code, with recourse to and payable from any and all assets of the estates of the Obligated Group (the “Secured Party Superpriority Claims”).

60. The Trustee has consented to these forms of adequate protection. In addition, the Obligated Group Debtors will use Cash Collateral to operate their business, which will maintain



and enhance the value of the Prepetition Bond Collateral. Accordingly, the Obligated Group Debtors request that this Court authorize the use of Cash Collateral as set forth herein.

### **III. MODIFICATION OF THE AUTOMATIC STAY ON A LIMITED BASIS IS WARRANTED.**

61. The relief requested herein contemplates a modification of the automatic stay pursuant to Bankruptcy Code section 362 to the extent necessary to permit the Trustee to exercise, upon the occurrence and during the continuation of any Termination Event, all rights and remedies provided for in the Interim Order, and the Final Order, after three (3) business days' notice thereof, and to take various actions without further order of or application to the Court. Additionally, the relief requested herein contemplates a modification of the automatic stay insofar as necessary to permit the Trustee to: (i) receive payments to be made by the Obligated Group or SDI to the Trustee and the payment of amounts due to the holders of the Bonds, (ii) apply, allocate or pay from any of the funds or accounts maintained by the Trustee (including without limitation the Trustee-Held Funds) in accordance with the terms of the Bond Documents, and (iii) take any action specifically authorized or contemplated by the Interim Order.

62. Stay modification provisions of this sort are ordinary and usual features of debtor in possession financing facilities and, in the Obligated Group Debtors' business judgment, are reasonable under the present circumstances. Accordingly, modification of the automatic stay to the extent contemplated by the proposed DIP/Cash Collateral Orders is appropriate.

### **IV. INTERIM APPROVAL AND SCHEDULING OF FINAL HEARING**

63. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to obtain credit and use cash collateral pursuant to Bankruptcy Code section 364, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon

request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

64. Pursuant to Bankruptcy Rules 4001(b) and (c), the Obligated Group Debtors and SDI request that the Court conduct an expedited preliminary hearing on this Motion and (a) authorize the Obligated Group Debtors and SDI to borrow up to \$600,000 under the terms of the Interim Order and authorize to Obligated Group Debtors to use Cash Collateral on an interim basis, during the Interim Period, in order to (i) maintain and finance the ongoing operations of the Obligated Group Debtors and SDI and (ii) avoid immediate and irreparable harm and prejudice to the Obligated Group Debtors' and SDI estates and all parties in interest, and (b) schedule the Final Hearing.

65. The Obligated Group Debtors and SDI need cash to maintain proper liquidity levels and to continue to operate. Without postpetition financing the Obligated Group Debtors and SDI will not have sufficient funds with which to operate their businesses on an ongoing basis during these chapter 11 cases. Additionally, absent authorization from the Court to use Cash Collateral, as requested, on an interim basis pending the Final Hearing, the Obligated Group Debtors will be immediately and irreparably harmed. Accordingly, the interim relief requested is critical to preserving and maintaining the going concern value of the Obligated Group Debtors and SDI facilitating their reorganization efforts.

#### **V. Waiver of Bankruptcy Rules 6004(a) and (h)**

66. The Obligated Group Debtors and SDI believe an efficient and expeditious approval and implementation of the Interim Order is in the best interests of their creditors, residents and other parties in interest. Accordingly, the Obligated Group Debtors and SDI seek a

waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 10-day stay of orders authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

### **NOTICE**

67. 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 Debtors' twenty (20) largest unsecured creditors; (d) counsel to the Trustee (e) counsel to UMB Bank, N.A., as trustee; and (f) all known parties that may be asserting a lien against any of the Obligated Group Debtors' or SDI's assets. The Obligated Group Debtors and SDI submit that, in light of the nature of the relief requested, no other or further notice is necessary or required.

### **CONCLUSION**

**WHEREFORE**, the Obligated Group Debtors and SDI respectfully request that the Court (i) enter an order substantially in the form of the proposed Interim Order attached hereto as Exhibit I, (ii) after the Final Hearing, enter the Final Order substantially in the form that shall be filed with the Court, and (iii) grant such other and further relief as this Court deems 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 I**  
**Interim 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., <i>et al.</i><sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Joint Administration Pending</b>
	§	

**INTERIM ORDER (I) AUTHORIZING CERTAIN DEBTORS TO (A) USE CASH  
COLLATERAL AND (B) INCUR POSTPETITION SECURED INDEBTEDNESS,  
(II) GRANTING LIENS AND PROVIDING SUPER-PRIORITY ADMINISTRATIVE  
EXPENSE STATUS; (III) GRANTING ADEQUATE PROTECTION TO WELLS  
FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, (IV) MODIFYING  
THE AUTOMATIC STAY AND (V) SCHEDULING A FINAL HEARING**

This Interim Order (I) Authorizing Certain Debtors To (A) Use Cash Collateral And (B) Incur Postpetition Secured Indebtedness, (II) Granting Liens And Providing Super-Priority Administrative Expense Status; (III) Granting Adequate Protection To Wells Fargo Bank, National Association, As Trustee, (IV) Modifying The Automatic Stay And (V) Scheduling A Final Hearing is (this “Order”) is entered upon the Motion Of Debtors Sears Methodist

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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.

Retirement System, Inc., Sears Permian Retirement Corporation, Sears Methodist Centers, Inc., Sears Panhandle Retirement Corporation, Sears Methodist Foundation, Sears Brazos Retirement Corporation And Senior Dimensions, Inc. For Interim And Final Orders Under 11 U.S.C. §§ 105, 361, 362, 363, And 364 And Bankruptcy Rules 2002, 4001, And 9014 (I) Authorizing Certain Debtors To (A) Use Cash Collateral And (B) Incur Postpetition Secured Indebtedness, (II) Granting Liens And Providing Super-Priority Administrative Expense Status; (III) Granting Adequate Protection To Wells Fargo Bank, National Association, As Trustee, (IV) Modifying The Automatic Stay And (V) Scheduling A Final Hearing (the “DIP/Cash Collateral Motion”), and upon terms agreed between Sears Methodist Retirement System, Inc. (“SMRS”), Sears Permian Retirement Corporation (“Permian”), Sears Methodist Centers, Inc. (“SMC”), Sears Panhandle Retirement Corporation (“Panhandle”), Sears Methodist Foundation (“SMF”), Sears Brazos Retirement Corporation (“Brazos” and together with SMRS, Permian, SMC, Panhandle and SMF, the “Obligated Group Debtors”), and Senior Dimensions, Inc. (“SDI”) and Wells Fargo Bank, National Association, not individually but as master trustee and bond trustee for the bonds described more fully below (the “Trustee”).

Upon the terms of the DIP/Cash Collateral Motion, the stipulations, acknowledgements and arguments of the Obligated Group Debtors, SDI and the Trustee, the statements of the parties and their respective counsel at the hearing on the DIP/Cash Collateral Motion, and the record of these proceedings, the Court makes the following findings of fact and rulings of law:

**The Debtors' Chapter 11 Cases; Procedural Background; Jurisdiction; Notice**

A. On June 10, 2014 (the "Petition Date"), each of the above captioned-debtors and debtors in possession (collectively, the "Debtors") filed voluntary petitions for relief with this Court (the "Bankruptcy Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the Debtors have operated their respective businesses and managed their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No request has been made for the appointment of a trustee or examiner in these Bankruptcy Cases and no committee has been appointed in these Bankruptcy Cases under section 1102 of the Bankruptcy Code as of the date hereof (a "Committee").

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, and this matter constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. The Obligated Group Debtors and SDI have properly served notice of the DIP/Cash Collateral Motion and the interim hearing thereon pursuant to sections 102, 361, 362 and 363 of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 2002 and 4001, and the local rules for this Court, as applicable, which notice was sent to among others: (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 the Trustee and (e) all known parties that may be asserting a lien against any of the Obligated Group Debtors' or SDI's assets. This notice is appropriate in the particular circumstances and is sufficient for all purposes under the Bankruptcy Code and the applicable Bankruptcy Rules, including the local rules for this Court, in respect to the relief requested.



**The Secured Bond Obligations and the Obligated Group**

D. The Obligated Group Debtors own the following facilities (collectively, the “Obligated Group Facilities”): (i) Parks Methodist Retirement Community (“Parks”), a senior living facility located in Odessa, Texas and owned by Permian; (ii) Wesley Court Methodist Retirement Community (“Wesley Court”), a senior living facility located in Abilene, Texas and owned by SMC; and (iii) Craig Retirement Community (“Craig”), a senior living facility located in Amarillo, Texas and owned by Panhandle.

E. The Obligated Group Facilities offer seniors myriad residency options during their retirement years, providing affordable living accommodations and related healthcare and support services to a target market of middle-income seniors aged sixty-two (62) years and older. Each of the Obligated Group Facilities provides unmatched services and top of the line amenities. Specifically, the Obligated Group Facilities include dining experiences in well-appointed dining rooms, scenic Texas views, spacious floor plans, salons and spas, day excursions and top-notch housekeeping services. The Obligated Group Facilities also provide residents with multiple social outlets for all stages of their retirement living including, among other things, movie nights, live music, exercise classes and bible study.

F. Pursuant to separate contracts between SDI and the Veterans Land Board of Texas (the “VLB”), SDI operates three veterans homes (the “VLB Homes” and together with the Obligated Group Facilities, the “Facilities”). The VLB Homes are owned by the State of Texas and are designed for veterans. The three VLB Homes are: (i) Alfredo Gonzalez Texas State Veterans Home (“Alfredo Gonzalez”), located in McAllen, Texas; (ii) Ambrosio Guillen Texas State Veterans Home (“Ambrosio Guillen”), located in El Paso, Texas; and (iii) Lamun Lusk Sanchez Texas State Veterans Home (“Lamun Lusk Sanchez”), located in Big Spring, Texas.

G. The “Obligated Group” was created under that certain Amended and Restated Master Trust Indenture, dated August 1, 1998 and effective as of May 1, 2013 (the “Master Trust Indenture”) between the members of the Obligated Group and the Trustee, as master trustee.

H. Under the Master Trust Indenture, there are as outstanding Obligations (as defined in the Master Trust Indenture) certain promissory notes pursuant to which Sears Methodist Retirement System, Inc., as the obligated group representative, is obligated to make payments to the Trustee, as assignee of the Red River Issuer and the Abilene Issuer (each as defined below). These promissory notes were executed in connection with the issuance of the bonds described as follows (collectively, the “Bonds”):

- Those certain Red River Health Facilities Development Corporation Retirement Facility Revenue Bonds (Sears Methodist Retirement System Obligated Group Project) Series 2013B Bonds, Series 2013C Bonds, and \$765,000 in principal amount of Series 2013D Bonds (collectively, the “New Money Bonds”), each issued by the Red River Health Facilities Development Corporation (the “Red River Issuer”) pursuant to an Indenture of Trust, dated as of May 1, 2013 (the “2013 Bond Indenture”) between the Red River Issuer and the Trustee, as bond trustee;
- Those certain Red River Health Facilities Development Corporation Retirement Facility Revenue Bonds (Sears Methodist Retirement System Obligated Group Project) Series 2013A Bonds and \$3,725,000 in principal amount of Series 2013D Bonds (together, the “Exchanged Bonds”), issued by the Red River Issuer pursuant to the 2013 Bond Indenture;

- Those certain Abilene Health Facilities Development Corporation Retirement Facility Revenue Bonds (Sears Methodist Retirement System Obligated Group Project), Series 1998A Bonds (the “Series 1998 Bonds”), issued by the Abilene Health Facilities Development Corporation (the “Abilene Issuer”) pursuant to an Indenture of Trust dated as of August 1, 1998 (the “1998 Bond Indenture”) between the Abilene Issuer and Chase Bank of Texas, N.A., as predecessor to the Trustee, as bond trustee;
- Those certain Abilene Health Facilities Development Corporation Retirement Facility Revenue Bonds (Sears Methodist Retirement System Obligated Group Project), Series 1999 Bonds (the “Series 1999 Bonds”), issued by the Abilene Issuer pursuant to the 1998 Bond Indenture, as supplemented by Supplemental Bond Indenture No. 1 dated as of January 1, 1999 between the Abilene Issuer and Chase Bank of Texas, N.A., as predecessor to the Trustee, as bond trustee; and
- Those certain Abilene Health Facilities Development Corporation Retirement Facility Revenue Bonds (Sears Methodist Retirement System Obligated Group Project), Series 2003A Bonds (the “Series 2003 Bonds”), issued by the Abilene Issuer pursuant to the 1998 Bond Indenture, as supplemented by Supplemental Bond Indenture No. 2 dated as of April 1, 2003 between the Abilene Issuer and JPMorgan Chase Bank, as predecessor to the Trustee, as bond trustee.

Certain of the Series 1998 Bonds, the Series 1999 Bonds and the Series 2003 Bonds were exchanged for the Exchanged Bonds. The Master Trust Indenture, the 1998 Bond Indenture, the supplemental bond indentures, the 2013 Bond Indenture, the promissory notes and loan agreements related to the Bonds, the Mortgages (as defined below), and the other documents

related to the Bonds are referred to herein as the “Bond Documents.” The SDI Entities are not part of the Obligated Group.

I. Subject to the reservations for a Committee set forth herein (solely with respect to the prepetition liens and claims of the Trustee), the Obligated Group Debtors stipulate that as of the Petition Date, that pursuant to the Bond Documents, the Trustee has (i) a first priority lien and security interest in all of the Gross Revenues<sup>2</sup> of the members of the Obligated Group; (ii) a first-lien mortgage on the Debtors’ facilities known as Wesley Court, the Craig, and the Parks (collectively, the “Deeds of Trust”), including all Improvements and Personal Property (each as defined in the Deeds of Trust) as well as, without limitation, all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications, or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to

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<sup>2</sup> “Gross Revenues” shall have the meaning given to such term in the Master Trust Indenture which is as follows:

“Gross Revenues” shall mean all revenues, income, receipts, cash and negotiable instruments received in any period or on behalf of any Obligated Group Member including, but without limiting the generality of the foregoing, (a) revenues derived from operations, and (b) proceeds derived from (i) insurance and condemnation awards except to the extent the use thereof is otherwise required by this Indenture, (ii) accounts receivable, (iii) securities and other investments, (iv) inventory and other tangible and intangible property, (v) medical expense reimbursement or insurance programs or agreements, and (vi) contract rights and other rights and assets now or hereafter owned, held or possessed by or on behalf of any Obligated Group Member, excluding however, (a) the proceeds of borrowing, and interest earned thereon if and to the extent such interest is required to be excluded by the terms of the borrowing, (b) revenues, income, receipts, and money received by any Obligated Group Member as agent for and on behalf of someone other than any Obligated Group Member and (c) gifts, grants, bequests, donations and contributions and the income or interest earned thereon which have been restricted by the donor in such manner that they may not be pledged as a portion of Gross Revenues.

time be owned by the respective grantors; and (iii) subordinate deeds of trust on certain undeveloped land located in Waco, Texas and Abilene, Texas (together, the “Subordinate Deeds of Trust”; and together with the Deeds of Trust, the “Mortgages”) all Improvements and Personal Property (each as defined in the Deeds of Trust) as well as, including without limitation all buildings, structures, fixtures, additions, enlargements, extensions, improvements, modifications, or repairs now or hereafter located thereon or therein and with the tenements, hereditaments, servitudes, appurtenances, rights, privileges and immunities thereunto belonging or appertaining which may from time to time be owned by the respective grantors. Each of the Subordinate Deeds of Trust is subordinate to liens granted to Texas Methodist Foundation. The collateral described in this paragraph I is referred to herein as the “Pre-Petition Bond Collateral.”

J. In addition, under the terms of the Bond Documents, certain accounts were established and are held by the Trustee, including, but not limited to, (i) the Debt Service Reserve Fund (as defined in the Master Trust Indenture); the Operating Reserve Fund (as defined in the Master Trust Indenture); and the Project Account (as defined in the 2013 Bond Indenture). These funds, and any other accounts established by the Bond Documents and held by the Trustee are referred to herein as the “Trustee-Held Funds.” The Debt Service Reserve Fund and the Operating Reserve Fund are held under the Master Trust Indenture and, as of the Petition Date, the balance of such funds was \$4,814,389.40 and \$611,194.63, respectively. The Project Account is held under the 2013 Bond Indenture and as of the Petition Date, the balance of such account was \$2,686,877.80. The total amount of all Trustee-Held Funds as of the Petition Date was \$8,138,055.13. The Obligated Group Debtors have acknowledged and agreed, and the Court finds, that the Trustee-Held Funds are held in trust for the holders of the Bonds. The Obligated Group Debtors acknowledge that the Trustee holds a validly perfected possessory security

interest in the Trustee-Held Funds, and is entitled to access the Trustee-Held Funds in accordance with the terms of the Bond Documents. To the extent that the automatic stay otherwise applies to such Trustee-Held Funds pursuant to section 362(a) of the Bankruptcy Code, as adequate protection for the use of the Trustee's Cash Collateral (as defined below), the Obligated Group Debtors stipulate to relief from such stay for the purpose of allowing the Trustee to administer and apply the Trustee-Held Funds in accordance with the Bond Documents. The Trustee-Held Funds shall be administered and applied as set forth the Bond Documents and for the express purposes set forth therein, and shall not be used or made available to Obligated Group Debtors or the other Debtors as Cash Collateral or otherwise pursuant to this Order, the Final Order (as defined below) or any other order entered in these cases.

### **The Bond Claim**

K. The Obligated Group Debtors acknowledge that as of the Petition Date, the amounts due and owing under the Bonds and Bond Documents are not less than:

- (i) unpaid principal in the amount of \$95,475,000;
- (ii) accrued but unpaid interests on the Bonds in the amount of \$383,814.10, which interest continues to accrue at a per diem rate of \$15,352.45 (the aggregate of (i) and (ii) are referred to herein as the "Bond Claim"); and
- (iii) unliquidated, accrued and unpaid fees and expenses of the Trustee and its professionals incurred through the Petition Date (the "Prepetition Expense Claim") as well as any replenishment obligations owed by the Obligated Group. Such amounts when liquidated shall be added to the Bond Claim.

The Trustee reserves any and all rights to amend the Bond Claim. Nothing herein shall be deemed to be a waiver of such rights. In the event the Trustee amends the Bond Claim to increase the amount of such claim, the Obligated Group Debtors may challenge any amounts in excess of (i) and (ii) above.

**The Need for Debtor in Possession Financing**

L. The Debtors have determined that the Obligated Group and SDI will not be able to adequately finance their business operations by using only cash collateral and that they require immediate access to additional financing. To fund this shortfall, the Debtors solicited offers from several entities before the Petition Date to provide financing to the Obligated Group Debtors and SDI during these cases. In exchange for providing post-petition financing, each of these entities would have required a first-priority priming lien on all of the assets of the Obligated Group securing all amounts advanced by such lender. In addition, SDI could not obtain post-petition financing on a stand-alone basis. The Trustee would not consent to such priming liens and would have argued that the Obligated Group Debtors and SDI could not have provided adequate protection for the proposed financing.

M. As an alternative to having a lender provide financing for the benefit of all of the Debtors, the Debtors have determined that their working capital needs can be met with an interim proposed loan of \$600,000 to the Obligated Group Debtors and SDI in the amounts and categories of the budget attached hereto as **Exhibit A** (the “Budget”), solely for the use by the Obligated Group Debtors and SDI pursuant to such Budget (“Permissible Uses”).

N. The Trustee on behalf of the holders of the Bonds has agreed to provide the requested financing from the Trustee-Held Funds as advances under the Bond Documents and to enter into a debtor in possession credit facility with the Obligated Group Debtors and SDI up to an interim maximum amount of \$600,000 (the “DIP Loans”) on a senior secured, superpriority basis on the terms and conditions of this Order solely for Permissible Uses under the Budget through the period ending July 12, 2014 (the “Interim Period”). At the expiration of the Interim Period, the Trustee, in its sole and absolute discretion and subject to entry of the Final Order,

may continue to advance funds up to a maximum amount as established and agreed to between the parties. The Obligated Group Debtors and SDI expressly acknowledge and agree, and this Order provides, that there is no obligation by the Trustee to continue funding upon expiration of such Interim Period, and at such time, the Trustee may determine, in its sole and absolute discretion, to cease funding altogether, fund only the Obligated Group Debtors (or a portion thereof without SDI), or fund the Obligated Group Debtors and all or a portion of SDI. Nothing contained herein, or otherwise, shall prejudice the rights of the Trustee to (i) make such determination as to whether to fund or not fund and any or all of the Obligated Group Debtors or SDI; or (ii) object to an alternative source of funding on the basis of lack of adequate protection or otherwise. Similarly, the Obligated Group Debtors reserve all right to seek replacement or alternative financing. Further, upon expiration of such funding, the Trustee, and the estates of the Obligated Group Debtors, shall have no obligations or liability to SDI relating to any claims or amounts owed by SDI to third parties.

O. In negotiating the terms and conditions of this Order, the Trustee exercised its rights and powers and used the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; and the Trustee acted consistent with its duties and responsibilities under, and entry of this Order does not violate, the terms of any agreement relating to the Bonds.

P. The Obligated Group Debtors and SDI assert that the access by the Obligated Group Debtors and SDI to sufficient working capital and liquidity through the DIP Loans is vital to the preservation and maintenance of the going concern value of the Obligated Group Debtors and SDI. The Obligated Group Debtors and SDI assert that they are unable to obtain financing on more favorable terms from sources other than the Trustee under this Order and are unable to



obtain adequate unsecured credit allowable under sections 364(c)(1) or 503(b)(1) of the Bankruptcy Code as an administrative expense. The Obligated Group Debtors and SDI assert that they are also unable to obtain secured credit from sources other than the Trustee that would be allowable under sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code for the purposes set forth in this Order and Superpriority Claims as defined and set forth herein.

Q. The terms of this Order have been negotiated in good faith and at arm's length between the Obligated Group Debtors, SDI, and the Trustee, and all of Obligated Group Debtors' and SDI's obligations and indebtedness arising under, in respect of or in connection with this Order, including without limitation, any and all amounts due, whether now existing or hereafter arising, under the DIP Loans or any related financing document, owed or owing to the Trustee by the Obligated Group Debtors or SDI, in each instance, whether absolute or contingent, direct or indirect, secured or unsecured, due or not due, primary or secondary, joint or several, arising by operation of law or otherwise, and all interest and other charges thereon, including post-petition interest (collectively, the "DIP Obligations"; and together with the Bond Claim, the "Obligations"), shall be deemed to have been extended by the Trustee in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Obligations, the DIP Liens (as defined below) and the Superpriority Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise, or modification of the terms of the financing authorized by this Order.

R. The terms of this Order are fair and commercially reasonable, reflect the Obligated Group Debtors' and SDI's prudent exercise of business judgment consistent with their respective

fiduciary duties and constitute reasonably equivalent value and fair consideration. Good cause has been shown for the entry of this Order.

**Use of Cash Collateral and Need for Adequate Protection**

S. The Obligated Group Debtors have also requested the use of the Trustee's Cash Collateral in connection with the Bankruptcy Cases to preserve the value of their businesses. Pursuant to the Bankruptcy Code, the Obligated Group Debtors are required to provide adequate protection to the Trustee for the use of such Cash Collateral. The Trustee has informed the Obligated Group Debtors and this Court that the Trustee does not consent to the use of Cash Collateral except upon the terms and conditions of this Order.

T. Without the use of Cash Collateral on an interim basis, the Obligated Group Debtors would suffer immediate and irreparable harm pending the Final Hearing on the DIP/Cash Collateral Motion and would likely be required to cease operations immediately or, at a minimum, the Obligated Group Debtors' inability to use Cash Collateral would disrupt the Obligated Group Debtors as a going concern and would otherwise not be in the best interests of the Obligated Group Debtors, or the other Debtors, their estates or their creditors, including the holders of the Bonds and residents of the Debtors' facilities. In lieu of giving the Trustee relief from stay or attempting to obtain this Court's approval for use of Cash Collateral on a non-consensual basis, the Obligated Group Debtors wish to provide adequate protection of the liens and security interests of the Trustee in Cash Collateral and other Pre-Petition Bond Collateral on the terms set forth in this Order, reflecting the agreement of the Obligated Group Debtors and the Trustee.

U. The Trustee is willing to consent to the use of its Cash Collateral by Obligated Group Debtors on the terms set forth in this Order, including that Cash Collateral is used solely in the amounts and categories set forth in the Budget and solely in connection with Permissible Uses.

V. The terms of the proposed use of Cash Collateral, and this Order are fair and commercially reasonable, reflect the Obligated Group Debtors' prudent exercise of business judgment consistent with their respective fiduciary duties and constitute reasonably equivalent value and fair consideration. Good cause has been shown for the entry of this Order.

W. To the extent any portion of the foregoing constitute rulings of law, they shall constitute this Court's rulings with respect to the matters so-stated.

**NOW, THEREFORE, THE COURT HEREBY ORDERS AS FOLLOWS:**

1. Disposition. The DIP/Cash Collateral Motion is granted on an interim basis, on the terms set forth in this Order. The date of this Order shall be known as the "Effective Date." The requirements of Bankruptcy Rule 4001(b)(2) are satisfied with respect to the use of Cash Collateral on an interim basis pending the Final Hearing on the DIP/Cash Collateral Motion. Any objections to the relief sought in the DIP/Cash Collateral Motion that have not been previously resolved or withdrawn, and all reservations of rights contained therein, are overruled on the merits, without prejudice, however, to any such objection or reservation of rights being reasserted in connection with the hearing on entry of the Final Order.

**DIP LOANS**

2. DIP Loan. The Obligated Group Debtors and SDI are hereby, based on entry of this Order, authorized (i) to incur the DIP Loan incorporated in this Order, and (ii) do all other things and execute and deliver all other documents, instruments and agreements contemplated by this Order. Without limiting the foregoing, to the extent the Trustee deems necessary, the

Obligated Group Debtors and SDI shall execute all documents reasonably required by the Trustee to evidence the terms and conditions of the proposed borrowing under this Order.

3. Repayment Obligation; Purpose. The Obligated Group Debtors and SDI are obligated to immediately repay the DIP Obligations upon the Termination Date (as defined below) which for the purposes hereunder shall be no later than July 12, 2014. The proceeds of the DIP Loans shall be used for the Permissible Uses, and subject to the terms and conditions set forth herein.

4. Requests for DIP Loan. So long as the Termination Date has not occurred and no Termination Event (as defined below) has occurred and is continuing, the Trustee shall make advances under the DIP Loan to pay the items set forth in the Budget in the amounts, line items, and for the particular Obligated Group Debtors and SDI as set forth in the Budget; provided, however that the aggregate advances under the Budget shall not exceed \$600,000.00.

5. Disbursements of DIP Loans. Subject to the conditions contained herein, the Trustee agrees to make available disbursements to the Obligated Group Debtors and SDI on a weekly basis (to the extent required as set forth in the Budget), commencing on the next Monday following entry of this Order, for the payment of expenses set forth in the Budget in such week, in the amounts set forth in such Budget in an amount equal to 100% of the projected operating deficit for such week shown on the Budget and solely for those items and for those particular Debtors, as set forth in the Budget. The Obligated Group Debtors and SDI shall use all funds made available to it pursuant to this Paragraph 5 exclusively to fund those costs and items for such particular Debtors as set forth in the Budget. To the extent the Budget and/or Weekly Budget Reports (as defined below) do not identify a projected operating deficit for any given week, the Trustee shall not make a DIP Loan for such week.

6. Amendment or Extension of Budget. The Obligated Group Debtors or SDI may, at any time, propose to the Trustee in writing (including by email) an amended Budget, for the period covered by the Budget. Any such proposed amendment or modification of the terms and conditions, or any amendment, modification, roll-forward or replacement of the Budget itself, shall be subject to the prior written consent of the Trustee. At such time as the amended budget becomes the Budget, the Obligated Group Debtors and SDI shall file a copy thereof with this Court and serve it upon all parties entitled to notice in accordance with Bankruptcy Rule 4001(b).

7. Interest. Subject to this Paragraph 7, the DIP Loan shall accrue interest under this Order at a rate of 6.25% per annum. From and after the occurrence of a Termination Event and until such time as any and all DIP Obligations are satisfied in full in cash, the DIP Loan shall accrue interest at a rate of 8.25% per annum. In addition, as and for consideration for providing the DIP Loans, the Obligated Group Debtors and SDI shall pay the Trustee a commitment fee of \$10,000.00, which shall be due and payable upon the first advance hereunder.

8. Liens. As security for the DIP Obligations, effective and perfected upon the date of entry of this Order, and without the necessity of the execution or recordation of filings by the Obligated Group Debtors or SDI, of security agreements, pledge agreements, fixture filings, mortgages, hypothecs, deeds of trust, control agreements, financing statements or other similar documents, or the possession or control by the Trustee, the following security interests in and liens are hereby granted to the Trustee on and over all property and other assets of the members of the Obligated Group Debtor, SDI and their respective estates of every kind or type whatsoever, tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, and whether or not encumbered prior to the Petition Date, wherever located:

all property of the members of the Obligated Group Debtors and SDI within the meaning of section 541 of the Bankruptcy Code; and all proceeds, rents and products of the foregoing (collectively, all of the foregoing property and assets of the Obligated Group Debtors, SDI and/or their estates, “Obligated Group/SDI Property”), which Obligated Group/SDI Property includes but is not limited to: (i) all accounts generated post-petition and proceeds thereof, including all escrowed entrance fees (to the extent of the interests of the Obligated Group Debtors and/or SDI) (ii) all pre-petition accounts and proceeds thereof, including all escrowed entrance fees (to the extent of the interests of the Obligated Group and/or SDI Entities) (iii) all intangibles, (iv) all real property, the improvements, fixtures thereon and all real property leases, (v) all other assets of members of the Obligated Group Debtors and SDI including but not limited to inventory and equipment, (vi) any and all cash of the members of the Obligated Group Debtors and SDI, (vii) all other property of the members of the Obligated Group Debtors, SDI and their estates, and (viii) the proceeds of all the foregoing (clauses (i) through (vii) collectively, the “Obligated Group/SDI Collateral”), provided, that (a) the term “Obligated Group/SDI Collateral” shall not include claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 (exclusive of transferees under Section 549) and 553 of the Bankruptcy Code, and any other avoidance actions under Chapter 5 of the Bankruptcy Code (collectively, the “Avoidance Actions”) until entry of the Final Order; and (b) the term “Obligated Group/SDI Collateral” shall not include any and all cash or other property received by the Obligated Group Debtors or SDI in the form of gifts, charitable donations, bequests or grants that are by their terms, restricted in the manner in which they may be utilized by the Obligated Group Debtors or SDI to the extent, and only to the extent, that such restrictions would prohibit the granting of any such gifts, donations, bequests or grants as collateral or prohibit the payment of any such gifts, donations, bequests or grants to the

Trustee in connection with this Order and such prohibitions are not rendered ineffective by the Bankruptcy Code or other applicable law (the collateral excluded from (a) and (b) for the periods set forth in (a) and (b) is referred to collectively as the “Excluded Property”). All liens and security interests granted to the Trustee pursuant to this paragraph 8 shall be defined as the “DIP Liens.” The DIP Liens granted pursuant to this paragraph 8 shall be in addition to the superpriority administrative expense claim set forth in paragraph 8 hereof, and, pursuant to sections 364(c) and 364(d), shall be valid, binding, continuing, enforceable, fully-perfected, senior and priming first priority senior security interest on all Obligated Group/SDI Collateral that (a) will be and remain senior to the Trustee’s liens relating to the Bonds; and (b) will otherwise constitute a first priority lien in all other Obligated Group/SDI Collateral, subject only to (i) prior valid and perfected liens (“Prior Senior Liens”), if any, existing as of the Petition Date with priority over the Trustee’s liens; and (ii) the Carve Out (as defined below).

9. Superpriority Claims. In the event and to the extent that the Obligated Group/SDI Collateral does not satisfy in full the DIP Obligations, then, subject to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims against the Obligated Group Debtors and SDI with priority over any and all unpaid administrative expenses, diminution claims and all other claims against the Obligated Group Debtors or SDI, now existing or hereafter arising, of any kind whatsoever (the “Superpriority Claims”), including, without limitation, all other unpaid administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Obligated Group Debtors or SDI or other Debtors, any

successor trustee or any creditor, in the Bankruptcy Case or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The Superpriority Claims granted to the Trustee by this paragraph 9 shall be payable from and have recourse to all pre- and post-petition property of the Obligated Group Debtors and/or SDI and all proceeds thereof.

10. No Liens or Encumbrances. Prior to payment in full of the DIP Loans and all DIP Obligations, neither the Obligated Group Debtors nor SDI shall sell, pledge, hypothecate or otherwise encumber any Obligated Group/SDI Collateral (and any such sale, pledge, hypothecation or other transfer shall be void *ab initio*). All parties reserve their respective rights to encumber such property after all DIP Obligations have been paid in full.

11. DIP Covenants. The Obligated Group Debtors and SDI shall observe all covenants in this Order at all times prior to and after the Termination Date.

12. Effectiveness of DIP Loans. From and after the Effective Date, this Order constitutes a valid and binding obligation of the Obligated Group Debtors and SDI, enforceable against the Obligated Group Debtors and SDI in accordance with the terms of this Order for all purposes during the these Bankruptcy Cases, any subsequently converted cases of any of the Obligated Group Debtors or SDI under chapter 7 of the Bankruptcy Code or after the dismissal of the Bankruptcy Cases. No obligation, payment, transfer or grant of security under this Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.



13. Payment to the Trustee. All payments or proceeds remitted to the Trustee pursuant to the provisions of this Order or otherwise shall, be received by the Trustee, free and clear of all claims, charges, assessments or other liabilities including, without limitation, any such claim or charge arising out of or based on section 506(c) or 552(b), whether directly or indirectly, all of which are waived by the Obligated Group Debtors and SDI.

**AUTHORIZATION TO USE CASH COLLATERAL**

14. Authorization to Use Cash Collateral. The Obligated Group Debtors are authorized to use, as cash collateral (as defined in Section 363 of the Bankruptcy Code), any Gross Revenues and other cash received by the Obligated Group Debtors based upon the ordinary course operations of their businesses (the “Cash Collateral”) until the earlier of (i) the occurrence of a Termination Event (as defined below) or (ii) July 12, 2014, but only on the terms of this Order. Subject to the preceding sentence, such use of Cash Collateral shall be limited solely to the categories of expenses listed in the Budget, and solely by Obligated Group Debtors specified in such Budget. Further, such use of Cash Collateral shall be limited solely to pay expenses in the amounts and at the times listed in the Budget; *provided however*, the members of the Obligated Group Debtors shall be permitted to exceed the amounts set forth in the Budget to pay categories of expenses listed on the Budget to the extent such a variance does not constitute a Termination Event described in Paragraphs 24 of this Order.

15. Exclusion from Cash Collateral. No other party, other than the Obligated Group Debtors may use the Cash Collateral of the Trustee. In addition, the Debtors are not authorized to use and shall not use any Gross Revenues or proceeds thereof not derived in the ordinary course of the operations of the Obligated Group Debtors. Nothing in this Order, any subsequent order concerning the extension of the use of Cash Collateral, or other order of this Court, shall

entitle the Debtors to use any Trustee-Held Funds and no lien or other interest may be granted in the Trustee-Held Funds to any third party.

16. Rollover Lien. As adequate protection for any diminution in the value of Cash Collateral and other Pre-Petition Bond Collateral resulting from the use by the Obligated Group Debtors of Cash Collateral after the Petition Date (“Diminution”), the Trustee shall continue to have a valid, perfected and enforceable continuing replacement lien and security interest (the “Rollover Lien”) in all assets of the Obligated Group Debtors existing on or after the Petition Date of the same type as the Pre-Petition Bond Collateral, together with the proceeds, rents, products and profits thereof, whether acquired or arising before or after the Petition Date, to the same extent, validity, perfection, enforceability and priority of the liens and security interests of the Trustee as of the Petition Date (the “Post-Petition Bond Collateral”). The Post-Petition Bond Collateral shall include entrance fees received by the Debtors after the Petition Date subject to the terms of the Initial Entrance Deposit Escrow Motion. The Rollover Lien shall be subject to only (i) the DIP Liens; (ii) Prior Senior Liens, if any, existing as of the Petition Date with priority over the Trustee’s liens; and (iii) the Carve Out.

17. Supplemental Lien. As additional adequate protection for any Diminution, the Trustee shall have a valid, perfected and enforceable continuing supplemental lien and security interest (the “Supplemental Lien”) in all of the assets of the Obligated Group Debtors of any kind or nature whatsoever within the meaning of Section 541 of the Bankruptcy Code, whether acquired or arising prepetition or postpetition, together with all proceeds, rents, products, and profits thereof, exclusive of causes of action under Chapter 5 of the Bankruptcy Code (other than Section 549 and 550 as made applicable by Section 549) (the “Supplemental Collateral” and, collectively with the “Post-Petition Bond Collateral”, the “Collateral”). The Supplemental Lien

shall be subject to only (i) the DIP Liens; (ii) the Prior Senior Liens, if any, existing as of the Petition Date with priority over the Trustee's liens; and (iii) the Carve Out.

18. Superpriority Claims. As additional adequate protection for any Diminution, the Trustee shall have a super-priority administrative expense claim pursuant to Section 507(b) of the Bankruptcy Code, with recourse to and payable from any and all assets of the estates of the Obligated Group Debtors (the "Secured Party Superpriority Claims"). The Secured Party Superpriority Claims shall be subject to only (i) DIP Liens; (ii) Prior Senior Liens; and (iii) the Carve Out, and shall otherwise have priority over any and all administrative expenses, diminution claims and all other claims against the Obligated Group Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all other administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of the Obligated Group Debtors, any successor trustee or any creditor in these Bankruptcy Cases or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Obligated Group Debtors, and all proceeds thereof.

**PROVISIONS COMMON TO DIP LOANS  
AND USE OF CASH COLLATERAL**

19. Limitation on Use of the DIP Loan and Cash Collateral. The Obligated Group Debtors and SDI hereby waive any and all claims and causes of action against the Trustee and the holders of the Bonds and their respective agents, affiliates, subsidiaries, directors, officers,

representatives, attorneys or advisors, directly related to DIP Loans, DIP Obligations, any financing document and this Order or the negotiation of the terms thereof. Except as expressly provided in this paragraph 19, no proceeds of Cash Collateral or any DIP Loan shall be used for the purpose of: (i) objecting to, or contesting in any manner, or raising any defense to, the validity, amount, extent, perfection, priority, or enforceability of the Bonds, the Pre-Petition Bond Collateral, the Bond Claim, the DIP Loans or any liens or security interests with respect thereto, or any other rights or interests of the Trustee therein; (ii) asserting any claims or defenses or causes of action against the Trustee or any holder of the Bonds or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, including with respect to payments made pursuant to this Order or the Bond Documents; (iii) seeking to modify any of the rights granted to the Trustee hereunder; (iv) paying any amounts not included in the Budget; (v) paying any amounts on account of claims arising before the Petition Date, except to the extent provided for in the Budget and approved by the Court; or (vi) paying any amounts for or on behalf of any entity that is not an Obligated Group Debtor or SDI. Notwithstanding the foregoing, not more than \$10,000 of the Cash Collateral may be made available to reimburse a Committee, upon appropriate application therefor, for the Committee's fees and expenses solely for the purposes of investigating the validity, priority, perfection and enforceability of the Trustee's liens in the Pre-Petition Bond Collateral.

20. No Further Action Required. The approval of this Order by the Court shall be sufficient and conclusive evidence of the validity, extent, enforceability and perfection of the DIP Liens, Rollover Lien, and Supplemental Lien granted to the Trustee, whether or not the Trustee elects to file or record financing statements, any other documents which may otherwise

be required under federal or state law in any jurisdiction, or to take such other steps as may otherwise be required to obtain, evidence or perfect such liens under applicable law; provided, however, that upon the request of the Trustee, the Obligated Group Debtors or SDI shall execute such other documents as may be reasonably requested to evidence and perfect such liens, and the Trustee may, in its sole discretion, but shall not be required to, file a certified copy of this Order in any filing or recording office in any jurisdiction in which the Obligated Group Debtors or SDI have real or personal property, and the Obligated Group Debtors and SDI are authorized and directed to execute, or cause to be executed, all such financing statements or other documents upon the Trustee's reasonable request, and such filing or recording shall be accepted and shall constitute further evidence of perfection of the Trustee's liens and security interests. No obligation, payment, transfer or grant of security under this Order shall be stayed (other than by court order in an appeal from this Order), restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any otherwise applicable state law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

21. Financial Information. As further security for the DIP Obligations and the Bond Claim (and as additional protection for the use of the Trustee's Cash Collateral), the Obligated Group Debtors and SDI shall allow the Trustee and its professionals and designees reasonable access, during normal business hours, to the premises of the Obligated Group Debtors and SDI in order to conduct appraisals, analyses and/or audits of the Pre-Petition Bond Collateral and the Collateral, and shall otherwise reasonably cooperate in providing any other financial information requested by the Trustee for this purpose. From and after the entry of this Order, the Obligated Group Debtors and SDI shall provide to the Trustee on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report (the "Weekly Budget Report")

certified by the chief financial officers of the Obligated Group Debtors and SDI and in the same form as the Budget indicating all receipts received and disbursements made by the Obligated Group Debtors and SDI in the week ending the prior Friday compared to the Budget and detailing any variances of more than 5% and at least \$10,000 from the expenditures and receipts in the Budget. The Obligated Group Debtors and SDI, and their professionals and consultants shall be available weekly (subject to reasonable scheduling conflicts) for a telephonic conference call with the Trustee and/or its professionals to discuss the status of the these Bankruptcy Cases, the results of operations and other matters pertaining to the facilities of the Obligated Group Debtors and SDI, including any sale or restructuring efforts. The Trustee shall have independent access to the financial advisors, Investment Banker (as defined below), and Consultants (as defined below) of the Obligated Group Debtors and SDI to discuss matters relating to the Obligated Group Debtors and SDI. The Obligated Group Debtors and SDI shall provide to the Trustee such other reports and information as the Trustee may reasonably request from time to time, including but not limited to consolidated and consolidating balance sheets, income statements, and cash flow statements for all Debtors for fiscal year ending 2013 and the first and second quarters of 2014.

22. Compliance With Bond Documents. As further adequate protection against Diminution, and as further consideration for the DIP Loans, the Obligated Group Debtors shall comply with those terms and provisions of the Bond Documents set forth on **Exhibit B** attached hereto and incorporated herein. The requirements of this Order shall be in addition to, and not in substitution for, the terms and provisions of the Bond Documents set forth on Exhibit B, *provided, however*, in the event of any inconsistency between the Bond Documents and this Order, the terms of this Order shall control.

23. Bankruptcy Proceeding Milestones. As further adequate protection against Diminution, and as further consideration for the DIP Loans and the use of the Trustee's Cash Collateral, the Obligated Group Debtors and SDI (as applicable) shall comply with the following Bankruptcy Transaction milestones (the "Milestones"):

- (i) On or before June 17, 2014, Lamun-Lusk Sanchez shall retain Continuum Development Specialists ("CDS") to assess the feasibility of operations at such facility (the "Big Spring Report");
- (ii) On or before July 7, 2014, the Big Spring Report shall be delivered by CDS to the Trustee; and
- (iii) On or before July 1, 2014, the Obligated Group shall provide the Trustee with a proposed final form of Budget for the period of July 13, 2014 through December 7, 2014 for each of (x) the Obligated Group, (y) SDI, and (z) the Obligated Group and SDI

24. Termination of Use of Cash Collateral With Notice. A Termination Event shall be deemed to have occurred three (3) business days after receipt of written notice sent by the Trustee to the Obligated Group Debtors and SDI, their counsel, the Committee, if any, and the Committee's counsel, and the U.S. Trustee of the occurrence of any of the following:

- (i) the payment or incurrence by any member of the Obligated Group of any expense of a type not set forth in the Budget;
- (ii) the use of Cash Collateral or the proceeds of DIP Loans for the payment for or on behalf of any Debtor that is not a member of the Obligated Group Debtors;
- (iii) the payment of any expenses that would cause the aggregate expenditures to exceed one hundred one hundred ten percent (110%) of the total budgeted expenses for that same period (a "Measuring Period"). This "Variance" shall be measured, on a rolling four week basis; provided however, that, for purposes of calculating such variances, (i) the first Measuring Period shall be the one week after the Petition Date and the first week of the Budget, (ii) the second Measuring Period shall be the two weeks after the Petition Date and the first two weeks of the Budget, (iii) the third Measuring Period shall be the three weeks after the Petition Date and the first three weeks of the Budget, and (iv) the fourth Measuring Period shall be the first four weeks after the Petition Date and the first four weeks of the Budget. Any budgeted expenditures not paid in a particular budget period may be paid during a subsequent period and, for the purpose of calculating rolling four week variances set forth above, the Budget will be revised to move such expenditures to the later period. Expenditures may be paid in an earlier period in the reasonable discretion of the

Obligated Group Debtors, in which event, the Budget shall be deemed amended to move the expenditure into the week of the actual expenditure for the purpose of calculating rolling four week variances set forth above. The Obligated Group Debtors will provide a written explanation in reasonable detail explaining the amount of and the reason for the prepayment or delay in payment.

- (iv) the failure of the Obligated Group Debtors to pay, within ten (10) days of the applicable due date, all undisputed administrative expenses in full in accordance with their terms as provided for in the Budget;
- (v) the failure of the Obligated Group Debtors to timely pay all fees due under 28 U.S.C. §1930; and
- (vi) the failure of the Obligated Group Debtors or SDI to comply with, keep, observe or perform any of its agreements or undertakings under this Order, including meeting the Milestones by each date set forth in Paragraph 23.

Unless prior to the expiration of the three (3) business day period described in this paragraph 24 the Obligated Group Debtors or SDI, as applicable, have cured the Termination Event(s) specified in the Trustee's notice, or obtained an order of this Court, on notice to and with the opportunity to be heard by the Trustee, that no such Termination Event has occurred, the authority of the Obligated Group and SDI to draw upon the DIP Loans or to use Cash Collateral hereunder shall terminate without further action of any kind and upon expiration of such three (3) business day period, all amounts owed under the terms of this Order shall be accelerated and immediately due and payable, the Trustee shall be permitted to exercise any and all remedies hereunder or under this Order without further notice or court order, and the Trustee shall be automatically relieved of any further stay under Section 362 of the Bankruptcy Code, or other restriction on enforcement of its prepetition and postpetition liens and security interests in the Collateral to collect the amounts due with respect to the DIP Obligations (the "Termination Date").

25. Termination of Use of Cash Collateral or DIP Loans Without Prior Notice. The authority of the Obligated Group Debtors to draw upon the DIP Loans and to use the proceeds of Cash Collateral hereunder shall terminate without any further action by this Court and a



Termination Event shall occur without prior notice upon the occurrence of any of the following (also a "Termination Event"):

- (i) Any of the bankruptcy cases of the members of the Obligated Group Debtors or SDI are dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;
- (ii) the earlier of (y) the date of the entry of an order of this Court appointing a Chapter 11 trustee or an examiner with enlarged powers (beyond those set forth in Sections 1104(c) and 1106(a)(3) and (4) of the Bankruptcy Code) for any members of the Obligated Group Debtors or SDI; or (z) the date the Debtors file a motion, application or other pleading consenting to or acquiescing in any such appointment;
- (iii) this Court suspends the bankruptcy cases of any members of the Obligated Group Debtors or SDI under Section 305 of the Bankruptcy Code;
- (iv) this Order becomes stayed, reversed, vacated, amended or otherwise modified in any respect without the prior written consent of the Trustee;
- (v) an order is entered in the Bankruptcy Cases over the objection of the Trustee approving financing pursuant to Section 364 that would grant an additional security interest or a lien on any Collateral or granting a superpriority administrative claim that is equal or superior to the superpriority administrative claim granted to the Trustee under this Order;
- (vi) an adversary proceeding or contested matter is commenced by the Obligated Group Debtors or SDI challenging the amount, validity, enforceability, priority or extent of the Trustee's liens, security interests or claims; and
- (vii) July 12, 2014.

Upon the occurrence of a Termination Event described in this paragraph 25, the Obligated Group's authority to draw upon the DIP Loans or to use Cash Collateral hereunder shall automatically terminate and the Trustee shall be automatically relieved of any further stay under Section 362 of the Bankruptcy Code, or other restriction on enforcement of its prepetition and postpetition liens and security interests in the Collateral to collect the amounts due with respect to the DIP Obligations (also a "Termination Date").

26. Release. Subject to paragraph 32, the Obligated Group Debtors and SDI hereby waive, release and discharge the Trustee, all holders of the Bonds and their respective affiliates,

agents, attorneys, professionals, officers, directors and employees (collectively, the “Released Parties”), from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Bonds and the Bond Documents, any aspect of the prepetition relationship between the Trustee and/or all holders of the Bonds and the Obligated Group Debtors, and any other acts or omissions by the Trustee and/or all holders of the Bonds in connection with either the Bond Documents or the Trustee’s and/or holders of the Bonds’ prepetition relationship with the Debtors. Further, the Obligated Group Debtors and SDI waive any and all rights to object to or contest the amount of the Bond Claim or the Trustee’s security interest in the Pre-Petition Bond Collateral and agree that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens.

27. Failure of Adequate Protection. Nothing herein shall constitute a waiver, release or modification of the rights of the Trustee to assert a claim under Bankruptcy Code Sections 364(c) and 507(b).

28. Deemed Request for Stay Relief. This Order shall be deemed to constitute a request by the Trustee for relief from the automatic stay with respect to the Pre-Petition Bond Collateral, for adequate protection for the use of Cash Collateral as of the Petition Date, and shall suffice for all purposes of Section 507(b) of the Bankruptcy Code.

29. No Charge on Collateral; Carve Out. In partial consideration of the Obligated Group Debtors’ and SDI’s acknowledgement of the debt due and owing and the Obligated Group Debtors’ and SDI’s waiver of any claims under Section 506(c) of the Bankruptcy Code, the Trustee consents to the payment of certain amounts which shall be superior in all instances to the liens and claims of the Trustee and all other parties (the “Carve Out”). For purposes hereof, the “Carve Out” means (a) \$50,000 for estate professionals, plus (b) the statutory fees of the United

States Trustee pursuant to 28 U.S.C. § 1930 and the fees of the Clerk of this Court. The entry of a Final Order shall be a conclusive and binding determination on all parties that except for the Carve Out, no costs or expenses of administration shall be imposed against the Trustee or the Pre-Petition Bond Collateral or the Collateral under Sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

30. Modification of Stay. The automatic stay imposed by virtue of Section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit the Trustee to: (i) receive payments to be made by the Obligated Group Debtors or SDI to the Trustee and the payment of amounts due to the holders of the Bonds, (ii) apply, allocate or pay from any of the funds or accounts maintained by the Trustee (including without limitation the Trustee-Held Funds) in accordance with the terms of the Bond Documents, and (iii) take any action specifically authorized or contemplated by this Order. Any of the aforementioned actions may be taken without further order of this Court.

31. Preservation of Rights. If any or all of the provisions of this Order are, at any time, modified, vacated or stayed, such stay, modification or vacation shall not affect the validity, extent, priority and enforceability of any lien, priority, or other benefit conferred under this Order prior to such stay, modification or vacation.

32. Binding Effect. This Order shall be binding on all creditors and parties in interest in these cases, including, but not limited to, the Obligated Group Debtors and SDI and any successors thereto, any Chapter 11 or Chapter 7 trustee that is appointed or elected in these Bankruptcy Cases, and any Committee; provided, however, that this Order is without prejudice to the rights of a Committee (if any) to, on behalf of the Obligated Group Debtors' and SDI's estates, challenge the validity, amount, perfection, priority, extent or enforceability of the Bond

Claim or the pre-petition security interests of the Trustee, so long as any such challenge is made on or before sixty (60) days from the Petition Date, after which time all such challenges shall be deemed finally and conclusively barred; provided further that if one or more claims are timely made under this paragraph 31 and properly filed, then except for such claims, all potential claims and causes of actions are hereby deemed forever waived and relinquished. Notwithstanding the foregoing, no claim or cause of action of any kind or nature may be asserted against the Trustee in its capacity as lender of the DIP Loans, or the liens and claims hereunder granted to the Trustee under and/or related to the DIP Loans.

33. In the event that any order entered in any other bankruptcy case filed by an affiliate of the Obligated Group Debtors or SDI contains different or additional provisions that provide protection or benefit to the secured party that are more advantageous to the particular secured creditor of such affiliate Debtor than the provisions of this Order, as determined by the Trustee, the Obligated Group Debtors and SDI stipulate that such provisions shall be deemed to be incorporated herein without further order of Court.

34. Reservation of Rights. Except as provided in this Order, neither the Obligated Group Debtors, SDI nor the Trustee waive any of their rights under the Bankruptcy Code, any applicable law, or the Bond Documents, including, without limitation, the right of the Obligated Group Debtors, SDI or the Trustee at any time to seek any relief (or to oppose any such relief) under the Bankruptcy Code, or the right of the Obligated Group Debtors, SDI or the Trustee to exercise any of their rights and remedies under the Bankruptcy Code at any time.

35. Further Relief. Nothing herein shall (i) preclude the Trustee from seeking any other relief that it may deem appropriate, including relief from the automatic stay, or (ii) prevent

the Trustee from asserting at some later time that its liens and security interests in the Pre-Petition Bond Collateral are not being adequately protected.

36. No Control. The Trustee shall not be deemed to be in control of the operations of the Obligated Group Debtors or SDI or to be acting as a “responsible person,” “managing agent” or “owner or operator” (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute) with respect to the operation or management of the Obligated Group Debtors or SDI, notwithstanding its consent to this Order and extending financial accommodations of any type, kind or nature under this Order.

37. No Third Party Beneficiaries. No rights are created hereunder for the benefit of any third party, any creditor, or any direct, indirect or incidental beneficiary.

38. Effectiveness. The rights and obligations of the parties under this Order shall be effective and enforceable as of the Petition Date. This Order shall be deemed effective immediately and, for the avoidance of doubt, Bankruptcy Rule 6004(h) shall not apply hereto. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect (i) the validity, extent, priority or enforceability of any obligations incurred prior to the actual receipt of written notice by the Trustee of the effective date of such reversal, modification, vacatur or stay or (ii) the validity, extent or enforceability of the liens and claims granted hereunder.

39. Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Order shall be in writing and shall be deemed to have been duly given if (a) delivered personally, (b) sent by email with a next-day or overnight

mail or delivery or (c) sent by facsimile, with a confirming phone message or call to the addressee:

(a) If to the Obligated Group Debtors/SDI to:

Sears Methodist Retirement System, Inc.  
c/o Paul Rundell  
2100 Ross Avenue, 21 Floor  
Dallas, Texas 75201

with a copy sent contemporaneously by email to:

DLA Piper LLP (US)  
Attn: Thomas R. Califano, Esq.  
1251 Avenue of the Americas  
New York, NY 10020-1104  
Telephone: 212.335.4500  
thomas.califano@dlapiper.com

DLA Piper LLP (US)  
Attn: Vincent P. Slusher  
1717 Main Street, Suite 4600  
Dallas, Texas 75201  
Telephone: 214.743.4500  
vincent.slusher@dlapiper.com

(b) If to the Trustee to:

Keith S. Law  
Senior Vice President  
Corporate Trust Services, Special Accounts  
Wells Fargo Bank, N.A.

One Wells Fargo Center  
MAC D1053-150  
301 South College Street, 15<sup>th</sup> Floor  
Charlotte, North Carolina 28202  
Telephone: 704.715.5771  
Keith.law1@wellsfargo.com

with a copy sent contemporaneously by email to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
Attn: Daniel S. Bleck, Esq.  
One Financial Center  
Boston, MA 02111  
Telephone: 617-542-6000  
Fax: 617-542-2241  
dsbleck@mintz.com

40. Notice of Final Hearing. The Debtors shall, within two (2) business days after entry of this Order, mail a notice of the entry of this Order, together with a copy of the DIP/Cash Collateral Motion and notice of the Final Hearing, to: (i) counsel to the Trustee; (ii) each of the Debtor's twenty (20) largest unsecured creditors as set forth in the list filed by the Debtors in the Bankruptcy Case pursuant to Bankruptcy Rule 1007(d); (iii) the Office of the Attorney General of the State of Texas; (iv) all known holders of liens on, or equipment leasing interest in, the Obligated Group Debtors' and SDI's assets; (v) all applicable government agencies to the extent required by the Bankruptcy Rules or local rules of this Court; (vi) all parties that have filed an appearance in these Bankruptcy Cases; and (vii) the U.S. Trustee (the "Notice Parties").

41. Final Hearing; Objections. A final hearing to consider the DIP/Cash Collateral Motion will be held on \_\_\_\_\_, 2014 at \_\_\_\_\_ .m. before the [Hon. \_\_\_\_\_], Bankruptcy Judge, Courtroom at [\_\_\_\_\_]. Any party desiring to object to the relief sought in the Cash Collateral Motion on a final basis shall file a written objection with the Court on or before \_\_\_\_\_, 2014 at \_\_\_\_\_ . and shall contemporaneously serve that objection on the Notice Parties so as to be received by such parties on or before such date.

**###END OF ORDER###**

**EXHIBIT A**

**BUDGET**



## CRO Budget

## SMRS - Obligated Group Plus SDI Total

Week	1	2	3	4	4 Weeks
	Week Ending	Week Ending	Week Ending	Week Ending	Total
	6/15/2014	6/22/2014	6/29/2014	7/6/2014	6/15/2014 7/6/2014
<b>SMRS - Obligated Group Plus SDI Total</b>					
Beginning Book Cash Balance	\$ 80,193	\$ 170,171	\$ (541,735)	\$ 268,789	\$ 80,193
<b>Receipts</b>					
Deposits	828,060	459,483	1,660,847	843,060	3,791,449
Medicare	157,243	-	-	177,638	334,880
Medicaid	-	-	-	64,589	64,589
Direct / Shared Service Receipts	-	-	-	606,118	606,118
Entrance Fees	-	-	-	-	-
<b>Total Receipts</b>	<b>985,302</b>	<b>459,483</b>	<b>1,660,847</b>	<b>1,691,405</b>	<b>4,797,037</b>
<b>Disbursements</b>					
Payroll & Benefits	363,238	684,303	363,238	684,303	2,095,082
Trade Payables	427,086	427,086	427,086	531,110	1,812,368
Health Insurance	105,000	60,000	60,000	60,000	285,000
Entrance Fee Refunds	-	-	-	-	-
Debt Service	-	-	-	-	-
Direct Allocated Expenses	-	-	-	-	-
Shared Services Expenses	-	-	-	322,421	322,421
Utility Deposits	-	-	-	-	-
Debtors Counsel - DLA	-	-	-	-	-
Debtors Advisor - A&M	-	-	-	-	-
Debtors Banker - Cain	-	-	-	-	-
Creditors Professionals	-	-	-	-	-
Claims Agent - GCG	-	-	-	-	-
Ombudsman	-	-	-	-	-
US Trustee	-	-	-	-	-
System Conversion / Special Projects	-	-	-	-	-
DIP Interest and Fees	-	-	-	3,000	3,000
Total Disbursements	895,324	1,171,389	850,324	1,600,834	4,517,871
<b>Net Cash Flow</b>	<b>89,978</b>	<b>(711,906)</b>	<b>810,523</b>	<b>90,571</b>	<b>279,166</b>
<b>Ending Book Cash Balance</b>	<b>\$ 170,171</b>	<b>\$ (541,735)</b>	<b>\$ 268,789</b>	<b>\$ 359,359</b>	<b>\$ 359,359</b>
Beginning DIP Balance	\$ -	\$ 500,000	\$ 600,000	\$ 600,000	\$ -
DIP Funding	500,000	100,000	-	-	600,000
<b>Ending DIP Balance</b>	<b>\$ 500,000</b>	<b>\$ 600,000</b>	<b>\$ 600,000</b>	<b>\$ 600,000</b>	<b>\$ 600,000</b>
<b>Adjusted Ending Cash Balance</b>	<b>\$ 670,171</b>	<b>\$ 58,265</b>	<b>\$ 868,789</b>	<b>\$ 959,359</b>	<b>\$ 959,359</b>
<b>Accrued Professional Fees (before payments)</b>	-	-	680,072	877,352	877,352

**EXHIBIT B**

**BOND COVENANTS**