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AND DEBTORS IN POSSESSION

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

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

**MOTION OF DEBTORS FOR ORDER  
AUTHORIZING THE DEBTORS TO ESCROW CERTAIN  
ENTRANCE DEPOSITS AND REFUND CERTAIN ENTRANCE DEPOSITS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by their proposed attorneys, hereby move this Court, pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order authorizing the Debtors to (i) during the pendency of these chapter 11 cases, deposit all entrance fees (“EDs”) paid by residents that are received by the Debtors postpetition into a newly established escrow account (the “Escrow Account”) and (ii) under certain circumstances, refund EDs received postpetition to

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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) (“SMRS”), Canyons Senior Living, L.P. (8545) (“CSL”), Odessa Methodist Housing, Inc. (9569) (“OMH”), Sears Brazos Retirement Corporation (8053) (“Brazos”), Sears Caprock Retirement Corporation (9581) (“Caprock”), Sears Methodist Centers, Inc. (4917) (“SMC”), Sears Methodist Foundation (2545) (“SMF”), Sears Panhandle Retirement Corporation (3233) (“Panhandle”), Sears Permian Retirement Corporation (7608) (“Permian”), Sears Plains Retirement Corporation (8233) (“Plains”), Sears Tyler Methodist Retirement Corporation (0571) (“Tyler”) and Senior Dimensions, Inc. (4016) (“SDI”). 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.

residents who move into the senior living facilities during the pendency of these chapter 11 cases and thereafter move out of such facilities. In support of the Motion, the Debtors respectfully represent as follows:

### **Jurisdiction**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are Bankruptcy Code sections 105 and 363.

### **Background**

4. On June 10, 2014 (the “Petition Date”), the Debtors commenced these cases by each filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
5. The Debtors remain in possession of their assets and continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.
6. No trustee, examiner or committee of creditors has been appointed in these cases.
7. The factual background regarding each of the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings, is set forth in detail in the Declaration of Paul B. Rundell in Support of First Day Motions (the “Rundell Declaration”), filed substantially contemporaneously herewith and incorporated herein by reference.

### **Entrance Fees**

8. The following Debtor-owned senior living communities require prospective

residents to pay EDs prior to occupying an independent living unit: (a) Parks Methodist Retirement Community (“Parks”), a senior living facility located in Odessa, Texas and owned by Permian; (b) Wesley Court Methodist Retirement Community (“Wesley Court”), a senior living facility located in Abilene, Texas and owned by SMC; (c) Craig Retirement Community (“Craig”), a senior living facility located in Amarillo, Texas and owned by Panhandle; (d) Meadow Lake Retirement Community (“Meadow Lake”), a senior living facility located in Tyler, Texas and owned by Tyler; (e) Mesa Springs Retirement Village (“Mesa Springs”), a senior living facility located in Abilene, Texas and owned by Caprock and (f) The Mildred and Shirley L. Garrison Geriatric Education and Care Center (“Garrison”),<sup>2</sup> a geriatric learning center and nursing facility located on the campus of Texas Tech University in Lubbock, Texas and owned by Plains (each a “Facility” and collectively, the “Facilities”).

9. Generally, prior to a resident’s occupancy of an independent living unit at any one of the Facilities, the Debtor-owner enters into a personal and non-assignable residency agreement (each a “Residency Agreement”) with that prospective resident. Under the terms of each Residency Agreement, a resident agrees to pay to the Debtor-owner an ED and a related monthly service fee. In return, the resident is permitted to occupy a unit in the applicable Facility for his or her lifetime, subject to certain conditions.

10. EDs are split into two separate installments. The first installment is generally an amount equal to ten percent (10%) of the ED and is due when the prospective resident signs a Residency Agreement. The second installment is generally due upon the earlier of (i) when the unit is available for occupancy or (ii) sixty days after execution of the Residency Agreement. Upon termination of a Residency Agreement, either by the resident, the Debtor-owner, or by

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<sup>2</sup> Only one unit at Garrison requires an ED. The Debtors do not anticipate soliciting a replacement ED for the Garrison property.

reason of death, the Debtor-owner is required to refund 90% of the ED to the resident or their estate within 30 days of the resale of the unit and receipt of a new ED from a prospective resident.<sup>3</sup> The 10% non-refundable portion of then ED is contributed to SMF and used for future benevolent care.

### **Relief Requested**

11. The Debtors seek entry of an order: (i) authorizing the Debtors to deposit all EDs collected postpetition into the Escrow Account, (ii) authorizing the Debtors to amend new Residency Agreements with an addendum providing that prospective residents shall be entitled to refunds of their respective EDs, to the extent deposited in the Escrow Account during the pendency of these cases if such resident elects to leave the relevant Facility, or passes away, prior to consummation of a plan of reorganization with respect to the relevant Debtor-owner, (iii) authorizing a designated escrow agent (the “Escrow Agent”) to return EDs in the Escrow Account to the respective residents who had made such payments to the extent (A) a resident is entitled to such a refund under his or her Residency Agreement or (B) such resident’s respective Facility closes (each a “Refund Event”), and (iv) requiring the Escrow Agent to pay over such EDs held in the Escrow Account, pursuant to further order of the Court, upon the earlier of (A) a disposition of all or substantially all of the assets of the relevant Debtor-owner (through sale, transfer of equity interests or otherwise) (other than a Refund Event) or (B) consummation of a plan of reorganization (each, a “Trigger Event”).

### **Basis for Relief**

12. The Debtors submit that the relief requested herein is necessary because EDs required under the Residency Agreements are the lifeblood of the Debtors’ operations. EDs account for a significant portion of the Debtors’ annual operating budget and the collection of

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<sup>3</sup> The Garrison ED refund is different, however, in that it is not subject to resale.

such amounts is critical to the Debtors' ability to reorganize, including their ability to continue as a going-concern. Providing the relief requested in this Motion maintains the status quo pending a resolution of these cases.

13. Upon confirmation of a plan or a disposition of all or substantially all of the assets of the relevant Debtor-owner, the EDs will be disbursed by the Escrow Agent pursuant to further order of the Court. Moreover, upon a Refund Event, the EDs will be returned from the Escrow Account to the respective resident who had made such payments. Any restriction preventing the Debtors from guaranteeing potential residents that their EDs will be escrowed would have a devastating effect on the Debtors' operations. Accordingly, the Debtors seek authorization to escrow all EDs received postpetition in order to protect the residents' interest with respect thereto.

14. The relief requested herein is necessary to provide assurance to new residents that the Debtors' bankruptcy cases will not affect such residents' rights to a refund. Any negative publicity suggesting that a community is in bankruptcy will necessarily deter prospective residents from entering into new Residency Agreements, which are the precursors to the Debtors' receipt of future EDs.

15. The Debtors anticipate a decrease in the amount of EDs received from new residents during their bankruptcy cases. The Debtors are hopeful, however, that the relief sought in this Motion will provide new residents with comfort that during the time periods covered by this Motion, such new residents can elect to leave the relevant Facility and receive a refund of their ED, to the extent provided for in their Residency Agreement. The Debtors believe that these modifications are critical to obtaining new EDs during these cases.

16. A resident's ability to elect to leave a Facility is necessary to provide prospective

residents with the peace of mind that, during the pendency of the Debtors' chapter 11 cases, the residents are not held captive by their obligations under the Residency Agreements. The current requirement that a new resident pay an ED prior to the refund of an exiting resident's ED will necessarily deter prospective residents from entering into Residency Agreements while the Debtors' cases are pending. Allowing prospective residents to have a "free look" at whether or not the Facilities are operating effectively while these cases are pending should drastically increase the willingness of potential residents to pay an ED. Because EDs are critical to the Debtors' operations, the provision regarding return of the EDs should be amended to encourage prospective residents to reside at the Facilities.

17. Of significant importance to a prospective resident's peace of mind is the knowledge that should his or her Facility close, his or her ED would be promptly refunded. Should a Refund Event happen, it is imperative that the residents have access to their EDs, to the extent provided for in their Residency Agreement. The EDs are relatively large sums of money paid by each individual resident and would likely be necessary for the resident to secure alternative housing upon a Refund Event. If prospective residents were not certain that their EDs would be returned upon a Refund Event, such resident would be discouraged from choosing to reside at the Facilities.

18. The placement of the EDs in the Escrow Account during the pendency of these cases is necessary to protect prospective residents' interests in an ED. However, upon a Trigger Event, such protection will no longer be necessary because the Debtors will no longer be chapter 11 debtors. Upon the occurrence of a Trigger Event, the escrowed EDs shall be disbursed by the Escrow Agent pursuant to further order of the Court.

19. Relief similar to the relief requested herein has been granted in other senior living

community bankruptcy cases in this District and outside of this District. See e.g., In re Devonshire PGA Holdings, LLC, Case No. 13-12460 (Bankr. D. Del. Sept. 23, 2013); In re Virginia United Methodist Homes of Williamsburg, Inc., Case No. 13-3109 (Bankr. E.D. Va. Mar. 6, 2013) In re CWT Liquidation Co., Case No. 11- 46151 (Bankr. N.D. Ill. Jan. 11, 2012); In re Fairview Ministries, Inc., Case No. 11-04386 (Bankr. N.D. Ill. Feb. 9, 2011); In re Hingham Campus et al., Case No. 11-33912 (Bankr. N.D. Tex. June 21, 2011); In re Lincolnshire Campus, LLC, et al., Case No. 10-34176 (Bankr. N.D. Tex. June 15, 2010); In re Erickson Retirement Cmtys., LLC, Case No. 09-37010 (Bankr. N.D. Tex. Oct. 19, 2009); In re The Nat'l Benevolent Assoc. of the Christian Church (Disciples of Christ), et al., Case No. 04-50948 (Bankr. N.D. Tex. Feb. 18, 2004).

20. This Motion provides a practical approach to protect the interests of prospective residents in the EDs during the pendency of these cases and provides for the proper transfer of the EDs upon a Trigger Event. The relief requested herein is reasonable under the circumstances and will maximize the value of the Debtors' estates by encouraging prospective residents to choose to live at one of the Debtors' Facilities and thereby pay an ED.

### **Notice**

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

**Conclusion**

WHEREFORE, the Debtors respectfully request entry of an order of this Court substantially in the form annexed hereto as Exhibit A and granting such further relief as is just and proper.

Dated: June 10, 2014  
Dallas, Texas

**DLA PIPER LLP (US)**

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Proposed Attorneys for the Debtors  
and Debtors in Possession



**Exhibit A**

**Proposed Order**

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

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

**ORDER AUTHORIZING DEBTORS TO ESCROW CERTAIN  
ENTRANCE DEPOSITS AND REFUND CERTAIN ENTRANCE DEPOSITS**

Upon the Debtors' Motion to Escrow Entrance Deposits and Refund Certain Entrance Deposits (the "Motion");<sup>2</sup> and all as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §157(b);

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

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

and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the necessary parties; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Debtors in these cases shall designate an independent escrow agent (the “Escrow Agent”), no later than five (5) days after the entry of this Order, to receive and hold in trust the EDs received from prospective residents of the Facilities into an escrow account (the “Escrow Account”), pursuant to this Order; provided that the Escrow Agent shall be any bank that is authorized to do business in Texas, if required by applicable state law, and that is a member of the Federal Deposit Insurance Corporation; and it is further

ORDERED that the Debtors are authorized to deposit into the Escrow Account all EDs transferred to the Debtors after the Petition Date until the occurrence of a Refund Event or Trigger Event (as such terms are defined herein); and it is further

ORDERED that the Escrow Agent is authorized, without further order of this Court, to return EDs in the Escrow Account to the respective residents who had made such payments to

the extent (A) a resident is entitled to such a refund under his or her Residency Agreement or (B) their respective Facility closes (each a “Refund Event”); and it is further

ORDERED that upon the earlier of (A) a disposition of all or substantially all of the assets of the relevant Debtor-owner (through sale or transfer or otherwise) (other than a Refund Event) or (B) consummation of a plan of reorganization (each, a “Trigger Event”), the escrowed EDs shall be disbursed by the Escrow Agent pursuant to further order of the Court; and it is further

ORDERED that prospective residents shall be entitled to refunds of their respective EDs by the Escrow Agent, to the extent deposited in the Escrow Account during the pendency of these cases if they elect to leave a Facility or pass away prior to consummation of a plan of reorganization with respect to the relevant Debtor-owner and comply with all the requirements set forth in their Residency Agreement, including the addendum providing for such refund, without the necessity of a new resident occupying the departing resident’s unit; and it is further

ORDERED, subject to the rights of residents as set forth herein, and to the extent the Debtors have an interest in the EDs held in the Escrow Account, such interest of the Debtors constitutes cash collateral in which the Debtors’ secured lenders have an interest in each case set forth more fully in the relevant cash collateral and debtor-in-possession financing orders; and it is further

ORDERED that the Debtors shall provide each of Wells Fargo Bank, National Association, as master trustee and bond trustee, and the other lenders, with a copy of any proposed escrow agreement contemplated by this order; and it is further

ORDERED that the Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that this Court will retain jurisdiction to address all disputes related to the interpretation or enforcement of this Order.

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