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PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

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

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

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE DEBTORS TO (A) MAINTAIN EXISTING  
INSURANCE POLICIES AND PAY ALL OBLIGATIONS ARISING THEREUNDER,  
(B) MAINTAIN FINANCING OF INSURANCE PREMIUMS AND PAY ALL  
OBLIGATIONS IN CONNECTION THEREWITH, AND (C) RENEW,  
REVISE, EXTEND, SUPPLEMENT, CHANGE, OR ENTER INTO NEW  
INSURANCE POLICIES AND (II) GRANTING CERTAIN RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of an order pursuant to sections 105(a), 363, 364, 1107, and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”)

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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.

(i) authorizing the Debtors to (a) maintain existing insurance policies and pay all obligations arising thereunder, (b) maintain financing of their insurance premiums and pay all obligations in connection therewith, and (c) renew, revise, extend, supplement, change, or enter into new insurance policies as needed in their business judgment; and (ii) granting certain related relief.

In support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over the Debtors, their estates, and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

3. The statutory bases for the relief requested herein are sections 105(a), 363, 364, 1107 and 1108 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004(h).

### **BACKGROUND**

#### **A. General Background**

4. On June 10, 2014 (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

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

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

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

**B. The Debtors' Insurance Policies**

8. The Debtors maintain several insurance policies (the "Insurance Policies") that are administered by several third-party insurance carriers (collectively, the "Insurance Carriers") and collectively provide coverage for, among other things, (a) general liability, (b) automobile liability, (c) special coverage, (d) property, (e) excess liability, (f) director and officer liability, and (g) workers' compensation fees. A schedule of the Insurance Policies is attached hereto as "Exhibit C" and incorporated herein by reference.<sup>2</sup> Continuation of the Insurance Policies is essential to the preservation of the value of the Debtors' businesses, properties, and assets. Moreover, in many cases, the coverage provided by the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtors' business activities.

9. The premiums for the Insurance Policies covering property liability, and wind/hail property damage (the "Financed Insurance Policies") are financed through a certain Premium Financing Agreement (the "Premium Finance Agreement") with BankDirect Capital Finance. A copy of the Premium Finance Agreement is attached hereto as "Exhibit D."

10. The Premium Finance Agreement benefits the Debtors by spreading out the cost of the Insurance Policies over the applicable coverage period. Under the Premium Finance Agreement, the Debtors financed the Financed Insurance Policies, and all amounts due thereunder as of the Petition Date have been paid in full. Under the Premium Finance Agreement, the Debtors financed the Financed Insurance Policies, and the balance as of the date of the Petition Date is \$501,417.81. Pursuant to the terms of the Premium Finance Agreement,

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<sup>2</sup> Concurrently with this Motion, the Debtors have filed a motion for an order authorizing payment of prepetition (i) wages, salaries and other compensation of employees, (ii) employee medical and similar benefits, (iii) reimbursable employee expenses, and (iv) other miscellaneous employee expenses and benefits (the "Wage Motion"). Several insurance policies discussed in this Motion are provided for the benefit of employees of the Debtors, and are therefore addressed concurrently in the Wage Motion.

the Debtors are obligated to pay \$50,924.16 in monthly installments due on the first day of each month. The next monthly insurance premium installment is due on July 1, 2014.

11. In addition to those Insurance Carriers of policies not covered under the Premium Finance Agreement, the Debtors make various weekly payments totaling approximately \$73,400, monthly payments totaling approximately \$132,100, annual payments totaling approximately \$56,000, and a triennial payment of \$4,400 (collectively, the “Premium Payments”). The Premium Payments are due as set forth on Exhibit D and pertain to coverage for the periods specified thereon.

### **RELIEF REQUESTED**

12. By this Motion, the Debtors request entry of interim and final orders, substantially in the forms attached hereto as “Exhibit A” and “Exhibit B” (the “Interim Order” and the “Final Order,” respectively), (i) authorizing the Debtors to (a) maintain the existing Insurance Policies and pay all obligations arising thereunder, including any Premium Payments, (b) maintain financing of their insurance premiums and pay all obligations in connection therewith, including monthly installment payments in connection with the Premium Finance Agreement, and (c) renew, revise, extend, supplement, change, or enter into new insurance policies as needed in their business judgment; (ii) authorizing and directing banks and other financial institutions to receive, process, honor, and pay all checks issued and electronic payment requests made related to the foregoing; (iii) scheduling a final hearing (the “Final Hearing”) to consider entry of the Final Order; and (iv) granting such other and further relief as may be appropriate. The Debtors propose that the costs of any insurance payments authorized herein be allocated among the Debtors according to their relative revenue (the “Allocation Formula”).

**BASIS FOR RELIEF**

**A. Maintaining the Insurance Policies and Paying Obligations Related Thereto Is Required by the Bankruptcy Code and the U.S. Trustee.**

13. The Insurance Policies are essential to preserve the value of the Debtors' businesses, properties, and assets. Not only are some of the Insurance Policies required by the various regulations, laws, and contracts that govern the Debtors' commercial activities, but section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public," is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Moreover, the *Guidelines for Chapter 11 Cases for the Northern and Eastern Districts of Texas* (the "UST Guidelines") also require a debtor to maintain insurance coverage throughout its chapter 11 case.

14. Payment of obligations owing in connection with the Insurance Policies and Premium Finance Agreement and the renewal, revision, extension, supplementation, or change of existing Insurance Policies and entering into new insurance policies as needed in the Debtors' business judgment are necessary to protect and safeguard the Debtors' ongoing operations and ensure compliance with the UST Guidelines.

**B. Payment of the Insurance Obligations Are Permitted as Ordinary Course Expenses.**

15. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

16. Section 363(c) of the Bankruptcy Code provides, in pertinent part:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the trustee 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). The insurance obligations that the Debtors seek to pay by this Motion are clearly within the definition of payments made in the ordinary course of business contemplated by section 363(c).

**C. Payment of the Insurance Obligations Is Warranted Under the Doctrine of Necessity.**

17. To the extent that the Court determines that the payment of the Insurance Premiums is not within the scope of the ordinary course of business of the Debtors, such payments are clearly permitted under the doctrine of necessity. Courts generally acknowledge that, under appropriate circumstances, they may authorize special treatment for, or authorize a Debtor to pay for, certain prepetition obligations. See, e.g., In re Just for Feet, Inc., 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that a debtor may pay prepetition claims that are essential to the continued operation of the debtor’s business); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code.

18. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries charged with “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Inherent in the fiduciary duties of a debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value,” which, in certain instances, can be fulfilled “only . . . by the

preplan satisfaction of a prepetition claim.” Id. Indeed, the court in CoServ specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate . . . .” Id.

19. Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. See, e.g., Institutional Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.), 780 F.2d 1223, 1225 (5th Cir. 1986) (“There must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); Ionosphere Clubs, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); James A. Phillips, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).<sup>3</sup>

20. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” Ionosphere Clubs, Inc., 98 B.R. at 176; see also Just For Feet, 242 B.R. at 826 (finding that payment of

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<sup>3</sup> Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit preplan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor’s business reorganization plan. See In re CEI Roofing, Inc., 315 B.R. 50 (HDL) (Bankr. N.D. Tex. May 6, 2004) (holding that the Court has the authority pursuant to § 105 in conjunction with §§ 507(a)(3) and (4) to authorize the payment of priority wage claims and employee benefits prior to the confirmation of a plan); In re UNR Indus., 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); Ionosphere Clubs, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); In re Quality Interiors, Inc., 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool-makers as “necessary to avert a serious threat to the Chapter 11 process”); Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation . . .”).

21. Failure to pay amounts related to the Insurance Policies as they come due may harm the Debtors’ estates in several ways. Specifically, there is the potential for an insurance company to terminate coverage. Such termination would likely place additional strain on the Debtors’ relationships with key employees who benefit from the Debtors’ insurance coverage, and would also eviscerate the Debtors’ ability to prevent loss in value caused by casualty, natural disaster, or another unforeseen event. The continuation of the Debtors’ Insurance Policies is especially important in the healthcare sector. In the event of termination of insurance coverage, the Debtors would need to obtain replacement insurance, likely at a higher price. The cancellation of key Insurance Policies would threaten to halt the Debtors’ operations altogether. In light of the importance of maintaining insurance coverage with respect to their business activities, the Debtors submit it is in the best interest of their estates to maintain the Insurance



Policies and to pay related amounts as described herein under the Bankruptcy Code. In addition, the Debtors should be authorized to renew, revise, extend, supplement, or change existing Insurance Policies, or enter into new insurance policies as needed in the Debtors' business judgment, to ensure that appropriate insurance coverage is maintained during these chapter 11 cases and that the Debtors are fulfilling their fiduciary duties.

22. Courts in this jurisdiction and others have approved relief similar to the relief requested in this Motion. See, e.g., In re Reddy Ice Holdings, Inc.; No. 12-32349 (SGJ) (Bankr. N.D. Tex. Apr. 17, 2013) (authorizing debtors, pursuant to 11 U.S.C. §§ 105, 363, 503(b)(9), 1107 and 1108, and Federal Rule of Bankruptcy Procedure 6003, to make payments to certain critical suppliers in the ordinary course); In re Hi-Way Equipment Company, LLC, No. 13-41498 (RFN) (Bankr. N.D. Tex. Apr. 4, 2013) (authorizing debtors to continue prepetition insurance coverage and maintain financing of insurance premiums); In re Conexant Sys., Inc., No. 13-10367 (MFW) (Bankr. D. Del. Apr. 11, 2013) (same); In re Vertis Holdings, Inc., No. 12-12821 (CSS) (Bankr. D. Del. Nov. 1, 2012) (authorizing debtors to maintain, extend, and renew existing insurance programs and pay all insurance obligations including premiums, deductibles, retrospective adjustments, expenses, taxes, fees, etc.); In re Bicent Holdings LLC, No. 12-11304 (KG) (Bankr. D. Del. Apr. 24, 2012) (same); In re Friendly Ice Cream Corp., No. 11-13167 (KG) (Bankr. D. Del. Oct. 5, 2011) (same); In re Appleseed's Intermediate Holdings, LLC, No. 11-10160 (KG) (Bankr. D. Del. Feb. 18, 2011) (same); In re The Majestic Star Casino, No. 09-14136 (KG) (Bankr. D. Del. Nov. 23, 2009) (same).

**D. Cause Exists to Authorize and Direct the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.**

23. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment, and to honor

all electronic payment requests made by the Debtors related to the obligations described herein, whether such checks were presented or electronic requests are submitted prior to, on, or after the Petition Date.<sup>4</sup> The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein by virtue of funds to be made available under the Debtors' proposed postpetition-financing facility and the budget contemplated thereby. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment made with respect to the Insurance Policies. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests with respect to the Insurance Policies.

**E. The Requirements of Bankruptcy Rule 6003 are Satisfied.**

24. As described above, the Debtors seek authority pursuant to the Interim Order to pay \$50,924.16 on account of amounts related to the Premium Financing Agreement that will become due and owing on July 1, 2014, and to pay the Insurance Premiums that will become due and owing as such amounts become due in the ordinary course as specified on Exhibit C. Under Bankruptcy Rule 6003, the Court may authorize the Debtors to satisfy the amounts related to the Premium Financing Agreement and the Insurance Premiums within the 21-day period after the Petition Date because such relief is necessary to avoid immediate and irreparable harm to the

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<sup>4</sup>Concurrently with this Motion, the Debtors have filed a motion for an order authorizing the Debtors to (i) continue to use their existing cash management system, (ii) maintain their existing bank accounts, (iii) continue to use their existing business forms, and (iv) maintain their existing investment practices.

Debtors' estates. See Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. In re CoServ, 273 B.R. at 498 (discussing the elements of "immediate and irreparable harm"). Specifically, the Fifth Circuit has interpreted the language "immediate and irreparable harm" in the context of preliminary injunctions. In that context, courts in this Circuit have explained that irreparable harm requires proof that "(1) the harm to Plaintiffs is imminent (2) the injury would be irreparable and (3) that Plaintiffs have no other adequate legal remedy." See, e.g., GoNannies, Inc. v. GoAuPair.Com, Inc., 464 F. Supp. 2d 603, 608 (N.D. Tex. 2006) (citing Chacon v. Granata, 515 F.2d 922, 925 (5th Cir. 1975)).

25. The Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm, as defined by courts in this Circuit. As discussed above, if the Debtors do not obtain the relief requested in the Interim Order, they would suffer immediate and irreparable harm because (a) the Debtors would not be able to continue their operations if an insurance company terminated coverage due to nonpayment of premiums; (b) the Debtors would be at severe risk of jeopardizing their assets if they did not have adequate coverage; (c) the Debtors' assets would be harmed by the subsequent need to obtain replacement insurance at a likely higher price; and (d) it would be difficult for the Debtors to obtain financing agreements on favorable terms for future insurance policies. Accordingly, the Debtors respectfully submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and seek authority to pay the amounts related to the Insurance Policies pursuant to the Interim Order.

#### **WAIVER OF BANKRUPTCY RULES REGARDING NOTICE AND STAY**

26. To implement the foregoing successfully, the debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief

requested herein pursuant to Bankruptcy Rules 6004(h), 7062, 9014, or otherwise. The Debtors therefore seek a waiver of any stay of any order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As explained above, the immediate payment of all amounts identified in this Motion is essential to prevent potentially irreparable damage to the Debtors’ operations and value. Accordingly, the Debtors submit that cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), if it even applies.

### **RESERVATION OF RIGHTS**

27. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, agreement, contract, or lease under section 365 of the Bankruptcy Code. Additionally, nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors. The Debtors expressly reserve their rights to contest any claim or billing dispute. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

28. To the extent that any of the Insurance Policies or the Premium Financing Agreement may be deemed executory contracts within the meaning of 11 U.S.C. § 365, the Debtors do not at this time seek authority to assume the contracts. The Debtors simply request authorization to continue to pay the obligations related to the Insurance Policies and the Premium Financing Agreement as necessary to keep the respective Insurance Policies in force.

**NOTICE**

29. 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) the Insurance Carriers; and (g) 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.

**WHEREFORE**, for the reasons set forth herein, the Debtors respectfully request that the Court enter the Interim and Final Orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, (i) authorizing the Debtors to (a) maintain the existing Insurance Policies and pay all obligations arising thereunder, including any Insurance Premium payments, (b) maintain financing of their insurance premiums and pay all obligations in connection therewith, including monthly installment payments in connection with the Premium Finance Agreement, and (c) renew, revise, extend, supplement, change, or enter into new insurance policies as needed in their business judgment; (ii) authorizing and directing banks and other financial institutions to receive, process, honor, and pay all checks issued and electronic payment requests made related to the foregoing; (iii) scheduling a Final Hearing; and (iv) granting such other and further relief as may be appropriate.

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 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<br/>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 THE DEBTORS TO (A) MAINTAIN EXISTING  
INSURANCE POLICIES AND PAY ALL OBLIGATIONS ARISING THEREUNDER,  
(B) MAINTAIN FINANCING OF INSURANCE PREMIUMS AND PAY ALL  
OBLIGATIONS IN CONNECTION THEREWITH, AND (C) RENEW,  
REVISE, EXTEND, SUPPLEMENT, CHANGE, OR ENTER INTO NEW  
INSURANCE POLICIES AND (II) GRANTING CERTAIN RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an order (this “Order”) pursuant to sections 105(a), 363, 364, 1107, and 1108 of the Bankruptcy Code, and Rules 6003, 6004(a) and 6004(h) of the Bankruptcy Rules (i) authorizing the Debtors to (a) maintain the

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

existing Insurance Policies and pay all obligations arising thereunder, including any Premium Payments, (b) maintain financing of their insurance premiums and pay all obligations in connection therewith, including monthly installment payments in connection with the Premium Finance Agreement, and (c) renew, revise, extend, supplement, change, or enter into new insurance policies as needed in their business judgment; (ii) authorizing and directing banks and other financial institutions to receive, process, honor, and pay all checks issued and electronic payment requests made related to the foregoing; and (iii) scheduling a Final Hearing to consider entry of the Final Order, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and upon consideration of the Affidavit of Paul B. Rundell in Support of First Day Motions, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis to the extent provided herein.

2. The Debtors are authorized to maintain their existing Insurance Policies and pay unpaid prepetition premiums associated with the Insurance Policies, and maintain financing of their insurance premiums, including payment of any prepetition amounts due in the 21-day period following the Petition Date under the Premium Finance Agreement in an approximate amount of \$50,924.16 and the Premium Payments as they become due in the ordinary course of business.

3. All payments approved herein shall be made pursuant to the Allocation Formula and only in accordance with and to the extent set forth in the budgets attached to any cash collateral or debtor in possession financing orders entered by this Court.

4. The Debtors' secured lenders (on a pro rata basis in accordance with the Allocation Formula) shall have a lien any right the Debtors may have to a return of amounts paid pursuant to this Order.

5. Without further order of this Court, the Debtors are authorized to renew, revise, extend, supplement, or change existing Insurance Policies, or enter into new insurance policies and premium financing agreements as needed in their business judgment.

6. All banks and financial institutions from which checks are drawn or from which electronic payment requests are made for payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

7. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Order, any authorization contained in this Order, or any claim for which

payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

8. Notwithstanding anything to the contrary contained herein, any payment to be made or authorization contained hereunder shall be subject to the requirements imposed on the Debtors under any approved order regarding the use of cash collateral approved by this Court in these chapter 11 cases.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

10. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

11. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

12. The Final Hearing on the Motion shall be held on \_\_\_\_\_, 2014 at \_\_\_\_:\_\_\_\_ a.m./p.m. Central Time. Any objections or responses to entry of the proposed Final Order shall be filed and served on counsel to the Debtors, (a) the Office of the United States Trustee for the Northern District of Texas; (b) counsel to Wells Fargo Bank, N.A. as trustee; (e) counsel to UMB Bank, N.A., as trustee; and (c) counsel to any official committee appointed in these chapter 11 cases, on or before \_\_\_\_\_, **2014**. In the event no objections to entry of the Final Order are timely received, the Court may enter the Final Order without need for the Final Hearing.

13. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

###End of Order###

**EXHIBIT B**

**(Proposed Final 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<br/>SYSTEM, INC., <i>et al.</i><sup>1</sup></b> | § | <b>CHAPTER 11</b>                   |
|   | § |                                     |
| <b>Debtors.</b>   | § | <b>Joint Administration Pending</b> |

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) MAINTAIN EXISTING  
INSURANCE POLICIES AND PAY ALL OBLIGATIONS ARISING THEREUNDER,  
(B) MAINTAIN FINANCING OF INSURANCE PREMIUMS AND PAY ALL  
OBLIGATIONS IN CONNECTION THEREWITH, AND (C) RENEW,  
REVISE, EXTEND, SUPPLEMENT, CHANGE, OR ENTER INTO NEW  
INSURANCE POLICIES AND (II) GRANTING CERTAIN RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an order (this “Order”) pursuant to sections 105(a), 363, 364, 1107, and 1108 of the Bankruptcy Code, Rules 6003, 6004(a) and 6004(h) of the Bankruptcy Rules, (i) authorizing the Debtors to (a) maintain the existing Insurance Policies and pay all obligations arising thereunder, including Premium

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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> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Payments, (b) maintain financing of their insurance premiums and pay all obligations in connection therewith, including monthly installment payments in connection with the Premium Finance Agreement, and (c) renew, revise, extend, supplement, change, or enter into new insurance policies as needed in their business judgment; and (ii) authorizing and directing banks and other financial institutions Rules 6003, 6004(a) and 6004(h) of the Bankruptcy Rules; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and the Court having entered the Interim Order Authorizing the Debtors to (A) Continue Prepetition Insurance Coverage and (B) Maintain Financing of Insurance Premiums [Docket No.\_\_\_\_] (the “Interim Order”); and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and upon consideration of the Affidavit of Paul B. Rundell in Support of First Day Motions, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.



2. The Debtors are authorized to maintain their existing Insurance Policies and pay unpaid prepetition premiums associated with the Insurance Policies and maintain financing of their insurance premiums, including payment of any prepetition amounts due in the 21-day period following the Petition Date under the Premium Finance Agreement in an approximate amount of \$50,924.16 and the Premium Payments as they become due in the ordinary course of business.

3. All payments approved herein shall be made pursuant to the Allocation Formula and only in accordance with and to the extent set forth in the budgets attached to any cash collateral or debtor in possession financing orders entered by this Court.

4. The Debtors' secured lenders (on a pro rata basis in accordance with the Allocation Formula) shall have a lien any right the Debtors may have to a return of amounts paid pursuant to this Order.

5. All banks and financial institutions on which checks were drawn or from which electronic payment requests are made for payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Order.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order, nor any payment made pursuant to this Order, shall constitute, or is intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

7. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Order, any authorization contained in this Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

10. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

11. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

###End of Order###

**EXHIBIT C****(Insurance Policies)**

| <b>COVERAGE TYPE</b>          | <b>NAMED INSURED</b> | <b>CARRIER</b>          | <b>POLICY NUMBER</b>       | <b>PREMIUM PAID</b>  |
|-------------------------------|----------------------|-------------------------|----------------------------|--|
| Group Medical                 | SMRS                 | Blue Cross Blue Shield  | 091427                     | <ul style="list-style-type: none"> <li>• \$68,500 Weekly</li> <li>• Next payment due: 6/12/14</li> <li>• Covering: W/E 5/30/14</li> </ul>          |
| Group Dental                  | SMRS                 | Blue Cross Blue Shield  | 091049                     | <ul style="list-style-type: none"> <li>• \$3,500 Weekly</li> <li>• Next payment due: 6/12/14</li> <li>• Covering: W/E 5/30/14</li> </ul>           |
| Various Ancillary Policies    | SMRS                 | Unum                    | 0123238-001<br>0133843-001 | <ul style="list-style-type: none"> <li>• \$4,500 Monthly</li> <li>• Next payment due:6/15/14</li> <li>• Covering: May</li> </ul>                   |
| Various Ancillary Policies    | SMRS                 | Provident               | 7263130/E0014522           | <ul style="list-style-type: none"> <li>• \$17,200 Monthly</li> <li>• Next payment due:6/15/14</li> <li>• Covering: May</li> </ul>                  |
| Nonsubscriber/Employee Injury | SMRS                 | North American Capacity | EEG0000328-01              | <ul style="list-style-type: none"> <li>• \$4,500 Monthly</li> <li>• Next payment due:7/1/14</li> <li>• Covering: July</li> </ul>                   |
| D&O Liability                 | SMRS                 | RSUI                    | NHP649488                  | <ul style="list-style-type: none"> <li>• \$55,000 Yearly</li> <li>• Next payment due:6/20/14</li> <li>• Covering: Year</li> </ul>                  |
| Auto                          | SMRS                 | Philadelphia            | PHPK1178771                | <ul style="list-style-type: none"> <li>• \$6,268 Monthly</li> <li>• Next payment due: 7/1/14</li> <li>• Covering: July</li> </ul>                  |
| Commercial Crime              | SMRS                 | Hartford                | 46BDDet9523                | <ul style="list-style-type: none"> <li>• \$4,400 Every three years</li> <li>• Next payment due:11/1/16</li> <li>• Covering: Three years</li> </ul> |
| Property/Crime                | SMRS                 | Travelers               | KTQ-CMB-6E04617-A-14       | <ul style="list-style-type: none"> <li>• Premium Financing Agreement</li> </ul>  |
| Wind/Hail                     | SMRS                 | Landmark American       | LHD387753                  | <ul style="list-style-type: none"> <li>• Premium Financing Agreement</li> </ul>  |

|                      |      |           |               |  |
|----------------------|------|-----------|---------------|--|
| TN Workers Comp      | SMRS | Travelers | UB-6A181199   | <ul style="list-style-type: none"><li>• \$500 Yearly</li><li>• Next payment due:10/27/14</li><li>• Covering: Year</li></ul>  |
| Long-term Disability | SMRS | Standard  | 00621240/0001 | <ul style="list-style-type: none"><li>• \$1,400 Monthly</li><li>• Next payment due:6/15/14</li><li>• Covering: May</li></ul> |

**EXHIBIT D**

**(Premium Financing Agreement)**

[see attached]

# BankDirect

## CAPITAL FINANCE

150 North Field Drive, Suite 190  
Lake Forest, Illinois 60045  
Phone 877-226-5456 Fax: 877-226-5297

Quote Number: 1029397.1

### COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT

THIS COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT (this "Agreement") is between Insured named below as borrower and BankDirect Capital Finance, a division of Texas Capital Bank, N.A. ("BankDirect") as lender, concerning the financing of the premium(s) for one or more commercial insurance policies listed in the Schedule of Policies below (the "Loan"). The terms of this Agreement are stated below and on all subsequent pages of this document.

**Insured / Borrower ("Insured")** Name & Business Address (as stated in Policy):

Sears Methodist Retirement Systems Inc  
1 Village Dr.  
Abilene, TX 79606

Telephone Number: 325-691-5519

Taxpayer ID #: XXXXX6330

**Insured's Agent or Broker ("Agent")** Name & Business Address

Arthur J. Gallagher Risk Management Services, Inc. - Bloomington  
3600 American Blvd. W  
Suite 500  
Bloomington, MN 55431

Telephone Number: 952-358-7500

Agency Code: 9651

#### SCHEDULE OF POLICIES (each, a "Policy")

| Policy Prefix and Number | Effective Date of Policy MM/DD/YY | Name & City of Insurance Company and Name & City of General or Policy Issuing Agent or Company Office                 | Type of Coverage | Policy Subject to Audit (✓) | Policy Term in Months Covered | Min. Earned Prem % | Days to Cancel | Short Rate (✓) | Premium Amounts   |
|--------------------------|-----------------------------------|---|------------------|-----------------------------|-------------------------------|--------------------|----------------|----------------|---|
| LHD387753                | 6/1/2014                          | Landmark American Insurance Co<br>Arthur J. Gallagher - RMS<br>The Gallagher Center Two Pierce Place Itasca, IL 60143 | TEXAS WIND       |                             | 12                            | 25%                | 10             |                | Premium: \$347,193.00<br>Policy Fee: \$0.00<br>Broker Fee: \$0.00<br>Tax/Stamp: \$17,046.98<br>Inspection: \$0.00 |

Additional Policies are listed on the attached Schedule of Policies

#### TOTAL PREMIUMS

\$642,578.80

| TOTAL PREMIUMS | DOWN PAYMENT | UNPAID PREMIUM BALANCE | FLORIDA DOC STAMP TAX<br>Applicable in Florida only | AMOUNT FINANCED<br>Amount of Loan provided to or on behalf of Insured | FINANCE CHARGE<br>The dollar amount of interest the Loan will cost over the term of the Loan | TOTAL OF PAYMENTS<br>Amount of interest and principal which will have been paid on the Loan after making all scheduled Loan payments | ANNUAL PERCENTAGE INTEREST RATE<br>The cost of interest on the Loan as a yearly percentage rate |
|----------------|--------------|------------------------|---|---|--|--|---|
| \$642,578.80   | \$141,160.99 | \$501,417.81           | \$0.00  | \$501,417.81  | \$7,823.79   | \$509,241.60   | 3.39%   |

**Payment Schedule:**  
The Loan payment schedule will be:

| Number of Loan Payments | Amount of Each Loan Payment* | When Loan Payments are Due ("Due Dates") |                                |
|-------------------------|------------------------------|--|--------------------------------|
| 10                      | \$50,924.16                  | First Due Date                           | Subsequent Monthly Due Dates** |
|                         |                              | 7/1/2014                                 | 1st                            |

\*Non-payment of the Loan may result in cancellation of any Policy. \*\*Subsequent payments are due on the same day of each succeeding period until paid in full.

**Prepayment:** Insured may prepay the outstanding principal balance of the Loan in full at any time. If Insured prepays the Loan in full, Insured will receive a refund of the unearned finance charge, calculated according to the Rule of 78's or the actuarial method as provided by applicable law. Minimum refund is \$1.

**Security Interest:** Insured assigns and grants a security interest to BankDirect as security for payment of all amounts payable under this Agreement, in all of Insured's right, title and interest in and to each Policy and all amounts which are or may become payable to Insured under or with reference to the Policies including, among other things, any gross unearned premiums, dividend payments, and all payments on account of loss which results in reduction of any unearned premium in accordance with the term(s) of said Policies.

**Delinquency Charge:** Insured agrees to pay a delinquency charge to BankDirect on any payment required to be made by Insured hereunder which is not received by BankDirect within five (5) days of its due date, unless a longer period is specified under applicable law, in which case the delinquency charge will be imposed on any payment not received by BankDirect within this longer period. The delinquency charge will be the lesser of: (1) 5% of the overdue amount; or (2) the maximum delinquency charge allowed by applicable law.

**Cancellation Charge:** If a default results in cancellation of a Policy, Insured agrees to pay a cancellation charge of \$25 or the maximum amount permitted by applicable law.

**IMPORTANT INFORMATION ABOUT YOUR LOAN:** To help the Federal government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies the Insured. We will require such information as we deem reasonably necessary to allow us to properly identify you, such as your name, address and Taxpayer ID # (TIN).

NOTICE TO  
INSURED:

1. DO NOT SIGN THIS AGREEMENT UNTIL YOU READ ALL PAGES OF THE AGREEMENT AND FILL IN ANY BLANK SPACES. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT. 3. YOU UNDERSTAND AND HAVE RECEIVED A COPY OF THIS AGREEMENT, KEEP IT TO PROTECT YOUR LEGAL RIGHTS. 4. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. 5. SEE ADDITIONAL PAGES FOR IMPORTANT INFORMATION.

#### REPRESENTATIONS AND WARRANTIES:

The undersigned Agent and Insured have read the Representations and Warranties on page two of this document, make all such representations and warranties and understand that BankDirect will rely on all such representations and warranties in determining whether or not to accept this Agreement, and agree to be bound by the terms of this Agreement. Insured further acknowledges that upon satisfactory completion of the Agreement, the undersigned Agent may receive a fee from BankDirect for the origination and administration of this Agreement as allowed by applicable law.

All Insureds must sign as named in Policies. If corporation, authorized officers must sign; if partnership, partner must sign as such; signatory acting in representative capacity represents that has authorized this transaction and has authorized signatory to receive all notices hereunder. By signing below Insured agrees to make all payments required by this Agreement and to be bound by all provisions of this Agreement, including those on page two. Insured is not required to enter into an insurance premium financing arrangement as a condition to the purchase of any insurance policy.

(Signature of Agent)

(Signature of Insured)

(Title)

(Date)

(Printed Name &amp; Title)

(Date)

BANKDIRECT 1 040114

Name of Insured: Sears Methodist Retirement Systems Inc

Insured (jointly and severally if more than one) agrees as follows:

**1. Promise to Pay.** In consideration of the payment by BankDirect of the Amount Financed, Insured agrees to pay the Down Payment to the insurance company(ies) listed in the Schedule of Policies, and Insured agrees to pay to the order of BankDirect all of the principal amount of the Loan, all interest thereon and all other amounts payable by Insured hereunder in accordance with the Payment Schedule and the other terms of this Agreement.

**2. Representations and Warranties.** Insured represents and warrants that: (a) the Policies are in full force and effect; (b) the proceeds of the Loan are to be used to purchase insurance for business or commercial purposes; (c) all information provided herein or in connection with this Agreement is true, correct, complete and not misleading; (d) Insured has no indebtedness to the insurers issuing the Policies; (e) Insured is not insolvent nor presently the subject of any insolvency proceeding; and (f) the person signing this Agreement on behalf of Insured is authorized to do so.

**3. Power of Attorney.** Insured hereby irrevocably appoints BankDirect as Attorney-in-Fact with full power of substitution and full authority upon the occurrence of an Event of Default (defined below) to (i) effect cancellation of the Policies, (ii) receive any unearned premium or other amounts with respect to the Policies assigned as security herein, (iii) sign any check or draft issued therefore in Insured's name and to direct the insurance companies to make said check or draft payable to BankDirect and (iv) sign any other instrument or document in the name of and on behalf of Insured to effectuate the purposes of this Agreement. Insured agrees that this appointment and authority cannot be revoked and is coupled with an interest and will terminate only after Insured's obligations under this Agreement are paid in full. Insured agrees that proof of mailing any notice hereunder constitutes proof of receipt of such notice.

**4. Payments Received after Notice of Cancellation.** Insured agrees that any payments made and accepted after a Notice of Cancellation has been sent to any insurance company do not constitute reinstatement or obligate BankDirect to request reinstatement of such insurance Policy(ies), and Insured acknowledges that BankDirect has no authority or duty to reinstate coverage, and that such payments may be applied to Insured's obligations hereunder or under any other agreement with BankDirect, and any such payments will not affect BankDirect's rights or remedies under this Agreement.

**5. Assignments.** Insured agrees not to assign any rights, interests or obligations under any Policy or this Agreement without the prior written consent of BankDirect, except that BankDirect's consent is not required for the rights or interests of mortgagees and loss payees. BankDirect may assign its rights and interests under this Agreement without Insured's consent, and all rights and interests conferred upon BankDirect under this Agreement shall inure to BankDirect's successors and assigns.

**6. Insufficient Funds (NSF) Fees.** If an Insured's check or electronic funding is dishonored for any reason, Insured agrees to pay BankDirect a fee equal to \$25 or the maximum amount permitted by applicable law.

**7. Default.** An Event of Default occurs when: (a) Insured does not pay any installment according to the terms of this Agreement or any other agreement; (b) Insured fails to comply with any of the terms of the Agreement; (c) any of the Policies are cancelled for any reason; (d) Insured or its insurance companies are insolvent or involved in a bankruptcy or similar proceeding as a debtor; (e) premiums increase under any of the Policies and Insured fails to pay such increased premiums within thirty (30) days of the notification; or (f) Insured is in default under any other agreement with BankDirect.

**8. Rights Upon Default.** If an Event of Default occurs, BankDirect may at its option pursue any and all rights and remedies available, including but not limited to, the following: demand and receive immediate payment of the Loan and any other unpaid amounts due under this Agreement regardless of whether BankDirect has received any refund of unearned premium. BankDirect may take all necessary actions to enforce payment of any unpaid amounts due hereunder. To the extent not prohibited or limited by applicable law, BankDirect is entitled to collection costs and expenses paid or incurred by BankDirect as a result of or in connection with enforcing its rights and remedies under this Agreement and applicable law and to reasonable attorneys' fees if this Agreement is referred to an attorney who is not a salaried employee of BankDirect for collection or enforcement. BankDirect may cancel any or all of the Policies and collect any unearned premiums or other amounts payable under said Policies. Unearned premiums shall be payable to BankDirect only.

**9. Right of Offset.** BankDirect may offset and deduct from any amounts BankDirect owes to Insured with respect to any Policies financed hereunder, any amounts which Insured owes to BankDirect under this Agreement or any other agreement to the extent permitted by applicable law.

**In connection with the Policies scheduled herein, Agent represents and warrants to BankDirect and its successors and assigns that:**

**1. Payment.** Agent shall remit all funds received from BankDirect and Insured promptly to the insurance company(ies) issuing the financed policy(ies). Agent shall segregate and hold all payments received by it from Insured or any insurance company listed in the Schedule of Policies with respect to the Loan or this Agreement in trust for BankDirect, shall have no right or interest in any such payments and shall immediately deliver all such payments to BankDirect for application to Insured's obligations hereunder.

**2. Signatures Genuine.** Insured's signature on both pages of this Agreement is genuine and authorized.

**3. Authorization By Insured.** If this Agreement has been signed by Agent on behalf of Insured, Agent has been fully authorized to sign this Agreement on behalf of Insured and Insured has authorized this transaction. Agent has given Insured a complete copy of this Agreement.

**4. Authority of Agent.** For each Policy, Agent signing this Agreement is either the authorized policy-issuing agent of the issuing insurance company(ies) or the broker placing the coverage directly with the issuing insurance company(ies), except as indicated on the Schedule of Policies. The person signing this Agreement on behalf of Agent is authorized to do so. Agent is neither authorized to receive any payments from Insured under this Agreement nor to make any representations to Insured for or on behalf of BankDirect.

**5. Not Agent of BankDirect.** Agent is not an agent of BankDirect and is not authorized to bind BankDirect and has not made any representation to the contrary.

**6. Recognition of Assignment.** Agent recognizes the security interest granted in this Agreement, whereby Insured assigns to BankDirect all unearned premiums, dividends and certain loss payments. Upon cancellation of any of the Policies, Agent agrees to pay BankDirect all unearned commissions and unearned premiums upon receipt. If such funds are not remitted to BankDirect within ten (10) days of receipt by Agent, Agent agrees to pay BankDirect interest on such funds at the maximum rate permitted under applicable law. Agent shall not deduct any amounts which Insured owes to Agent from any amounts owing to BankDirect hereunder.

Total Premiums: \$642,578.80

**10. Finance Charge.** The Finance Charge includes interest on the outstanding principal amount of the Loan. The Finance Charge is computed using a 365-day year. Interest on the Loan shall accrue from the Effective Date of this Agreement or the earliest policy effective date indicated in the Schedule of Policies, whichever is earlier, and continue to accrue until the Loan is paid in full. If BankDirect terminates this Agreement after an Event of Default, Insured will pay interest on the outstanding principal balance of the Loan at the maximum rate permitted under applicable law from the date of such termination until Insured pays the Loan and all other amounts due under this Agreement in full.

**11. Additional Premiums.** Insured agrees to promptly pay to each applicable insurance company any additional premiums due on any Policy.

**12. Agent.** Agent is not the agent of BankDirect and Agent cannot bind BankDirect in any way. BankDirect is not Agent of any insurer and is not liable for any acts or omissions of any insurer. Agent is the agent of Insured, and Insured acknowledges that it has chosen to do business with Agent and the insurance companies issuing the Policies, and that the insolvency, fraud, defalcation or other action or failure to act by any of them shall not relieve or diminish Insured's obligations to BankDirect hereunder.

**13. Corrections.** Except if prohibited by applicable law, BankDirect may correct any errors or omissions in this Agreement and if not known or corrected at the time of signature by or for Insured.

**14. Force or Effect.** This Agreement shall have no force or effect until accepted in writing by BankDirect.

**15. Limitation of Liability: Claims Against BankDirect.** Neither BANKDIRECT nor its assignee shall be liable for any loss or damage to the Insured by reason of failure of any insurance company to issue or maintain in force any of the Policies or by reason of the exercise by BANKDIRECT or its assignee of the rights conferred herein, including but not limited to BANKDIRECT's exercise of the right of cancellation, except in the event of willful or intentional misconduct by BANKDIRECT.

**16. Governing Law.** This Agreement is governed by and construed and interpreted in accordance with the laws of the state where BankDirect accepts this Agreement. BankDirect shall, at its option, prosecute any action to enforce its rights and remedies hereunder in the Circuit Court of Cook County, Illinois, and Insured (i) irrevocably waives any objection to such venue and (ii) will honor any order issued by or judgment enforced in such court.

**17. Miscellaneous.** All rights and remedies in this Agreement are cumulative and not exclusive. If any provision of this Agreement is determined to be invalid or unenforceable under applicable law, the remaining provisions of this Agreement shall continue to be in full force and effect. This Agreement constitutes the entire agreement between BankDirect and Insured with respect to its subject matter and may not be modified except as agreed upon in writing. BankDirect's acceptance of late or partial payments shall not be deemed a waiver by BankDirect of any provisions of this Agreement, and BankDirect is entitled to require Insured to strictly comply with the terms hereof. If any amount contracted for or received by BankDirect hereunder is determined to violate any applicable law, BankDirect may return such prohibited amount to Insured without any further liability therefor or in respect thereof to the fullest extent permitted by law. Any electronic signature or electronic record may be used in the formation of this Agreement, and the signatures of Insured and Agent and the record of this Agreement may be in electronic form (as those terms are used in the Uniform Electronic Transactions Act). A photocopy, a facsimile or other paper or electronic record of this Agreement shall have the same legal effect as a manually signed copy.

**18. CALIFORNIA RESIDENTS: FOR INFORMATION CONTACT THE DEPARTMENT OF CORPORATIONS, STATE OF CALIFORNIA.**

Insured agrees that, in accordance with Section 18608 of the California Financial Code, BankDirect's liability to Insured upon the exercise of BankDirect's authority to cancel the Policies shall be limited to the amount of the principal balance of this loan, except in the event of BankDirect's willful failure to mail the notice of cancellation required under California law.

**New York Residents:** No charges imposed for obtaining and servicing the financed policies, pursuant to Section 2119 (formerly 129) of the New York Insurance Laws, are financed hereunder unless specified in the Schedule of Policies.

**7. Down Payment.** The down payment and any other payments due from Insured which Agent has agreed to collect, have been collected from Insured.

**8. Policies:** (a) are all cancelable by standard short-rate or pro-rata tables; (b) are not audit or reporting form policies or policies subject to retrospective rating, unless so indicated on the Schedule of Policies in this Agreement, and if so indicated, the deposit premiums are not less than the anticipated premiums to be earned for the full term of the Policies; (c) upon cancellation by Insured or BankDirect, do not require advance notice of cancellation to any party, other than any notice required to be given by BankDirect; (d) are in full force and effect and the premiums indicated are correct for the term of the Policies; (e) have not been financed on an installment payment plan provided by the insurance company(ies); (f) are all cancelable policies; (g) are written for a term of at least one year; (h) are not for personal, family or household purposes; and (i) have no exceptions other than those indicated and comply with BankDirect's eligibility requirements. All information in this Agreement pertaining to the Policies is complete and correct.

**9. Insured:** (a) has not paid for the Policies other than as described in this Agreement; (b) has received a copy of this Agreement; and (c) is not the subject of any proceeding in bankruptcy, receivership or insolvency, or if Insured is the subject of such a proceeding, it is noted on the Agreement in the space in which Insured's name and address is placed. All information in this Agreement pertaining to Insured is complete and correct.

**10. Miscellaneous.** Agent agrees to indemnify and pay BankDirect for and hold BankDirect harmless from and against any losses, costs, damages, fees and expenses (including reasonable attorneys' fees, court costs and collection costs) paid or incurred by BankDirect or its assignee as a result of or in connection with any untrue or misleading representation or warranty made by Agent hereunder, any breach by Agent of this Agreement, any error committed by Agent in completing or failing to complete any portion of this Agreement, or any violation by Agent of any applicable law. Agent shall promptly notify BankDirect of any unpaid increased premiums for the Policies. This Agreement is a valid and enforceable agreement between BankDirect and Agent and there are no defenses to it.

[illegible]