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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., et al.<sup>1</sup></b> | § | <b>CHAPTER 11</b>                   |
|  | § |                                     |
| <b>Debtors.</b>  | § | <b>Joint Administration Pending</b> |
|  | § |                                     |

**MOTION OF ODESSA METHODIST HOUSING, INC. AND  
CANYONS SENIOR LIVING, L.P. FOR INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE USE OF CASH COLLATERAL,  
(II) GRANTING THE FORM OF ADEQUATE PROTECTION PROVIDED  
TO THE SECURED PARTIES AND (III) SCHEDULING A FINAL HEARING**

Odessa Methodist Housing, Inc. (“OMH”) and Canyons Senior Living, L.P. (“CSL” and together with OMH, the “HUD Debtors”), as debtors and debtors in possession, by and through their proposed undersigned counsel, file this motion (the “Motion”), pursuant to sections 361, 362, 363 and 364 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of interim (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.

“Interim Cash Collateral Order”) and final orders (the “Final Cash Collateral Order” and together with the Interim Cash Collateral Order, the “Cash Collateral Orders”) (i) authorizing the HUD Debtors to use cash collateral, (ii) granting the form of adequate protection provided herein to the United States Department of Housing and Urban Development (“HUD”) and Prudential Huntoon Paige Associates, Ltd. (“Prudential” and together with HUD, the “Secured Parties”), as applicable, and (iii) scheduling a final hearing (the “Final Hearing”). In support of this Motion, the HUD Debtors respectfully represent as follows:

### **INTRODUCTORY STATEMENT**

CSL owns and operates Canyons Retirement Community (the “Canyons”), a senior living facility located in Amarillo, Texas. OMH owns and operates Desert Haven Retirement Community, a low-income senior living facility located in Odessa, Texas (“Desert Haven” and together with Canyons, the “HUD Facilities”). In the ordinary course of their businesses, the HUD Debtors require cash on hand and cash flow from the HUD Facilities’ operations to fund their working capital, liquidity needs, and other routine payables. In addition, the HUD Debtors require cash on hand to fund their chapter 11 cases. All of the HUD Debtors’ cash and cash proceeds are encumbered by security interests in favor of the Secured Parties, as applicable, and, as such constitute “cash collateral” of the Secured Parties (as such term is defined in Bankruptcy Code section 363(a), “Cash Collateral”).

Absent the use of Cash Collateral, the HUD Debtors will be unable to continue operating the HUD Facilities, thereby jeopardizing the well-being of their residents and stifling the HUD Debtors’ ability to maximize the value of their estates. Such an abrupt cessation of the HUD Debtors’ businesses would have a devastating effect on the residents of the HUD Facilities, including leaving many without the basic living amenities that they require. Specifically, many

residents may be forced to immediately relocate, putting both their lives and health in jeopardy. The HUD Debtors will also be unable to satisfy other routine payment obligations, thereby leaving the HUD Facilities in a complete state of disarray.

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a), 361, 362, 363 and 364 and Bankruptcy Rule 4001.

### **BACKGROUND**

3. On June 10, 2014 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) commenced these cases by each filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

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

5. No trustee, examiner or committee has been appointed in any of the Debtors’ chapter 11 cases.

6. A complete description of the Debtors’ background and business is set forth in the Declaration of Paul B. Rundell in Support of First Day Motions, filed contemporaneously herewith and incorporated herein by reference.

**A. Business Operations and Prepetition Debt Structure<sup>2</sup>**

7. Debtor Sears Methodist Retirement System, Inc. (“SMRS”) provides certain management and oversight services to the HUD Facilities including, among other things, payroll, billing, strategic planning and employee benefit plan administration services. Debtor Senior Dimensions, Inc. (“SDI”) also provides certain management services to Canyons including, among other things, marketing available units and supplying security personnel.

**i) Canyons**

8. As described above, CSL owns Canyons. CSL, a Texas limited partnership, is indirectly controlled by SMRS. Sears Methodist Senior Housing, LLC is the .01% general partner of CSL and SDI is the 99.99% limited partner of CSL.

9. Canyons is located in Amarillo, Texas and consists of 109 independent living apartments. As of May 2014, Canyons had 96 residents.

10. Development of Canyons began on December 31, 2010, and was financed through (i) a loan of \$3,637,300 (the “Canyons HUD Loan”) pursuant to that certain Building Loan Agreement (the “Canyons HUD Loan Agreement”) between CSL and Prudential; (ii) a grant of \$7,899,892 (the “TDHCA Grant”) awarded by the Texas Department of Housing and Community Affairs (“TDHCA”); and (iii) a grant of \$272,500 from the City of Amarillo, Texas (the “Amarillo Grant”). Canyons was completed and placed into service in 2011.

11. Pursuant to a certain Security Agreement (Equipment, Inventory, and Accounts), dated as of October 28, 2010, by and between CSL and Prudential (the “Canyons Security Agreement”), obligations arising under the Canyons HUD Loan are secured by the goods,

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<sup>2</sup> The HUD Debtors continue to investigate the enforceability of all documents underlying their debt obligations and any related liens. Nothing herein or in the proposed order constitutes an admission of or stipulation as to the enforceability of any such documents and related liens.

inventory, equipment, accounts, general intangibles and fixtures arising from the property upon which Canyons is located (each as described in the Canyons Security Agreement, and collectively, the “Canyons Prepetition Collateral”).

12. No amounts are currently due under the TDHCA Grant or the Amarillo Grant. The TDHCA Grant may only be called in the event that CSL fails to comply with certain requirements for use of the grant, including but not limited to maintaining a minimum percentage of units as “low income units.” The HUD Debtors do not believe that the TDHCA Grant is secured by any of CSL’s Cash Collateral. As of May 2014, the outstanding balance of the Canyons HUD Loan was approximately \$3,574,502 and the monthly debt service payment was approximately \$26,896.

13. As of January 2014, on a book value basis, CSL had approximately \$12.8 million in assets and \$12.0 million in liabilities. CSL’s main assets consist of: (i) approximately \$43,000 in cash and cash equivalents; (ii) approximately \$11,000 in accounts receivable; and (iii) approximately \$12.2 million in property and equipment. CSL’s main liabilities are: (i) approximately \$3,575,493 in respect of the Canyons HUD Loan; and (ii) approximately \$193,000 in accounts payable.

## **ii) Desert Haven**

11. OMH, a Texas non-profit corporation controlled by SMRS, owns Desert Haven. Desert Haven is located in Odessa, Texas and consists of forty (40) low-income, HUD-subsidized apartments in Odessa, Texas. As of May 2014, Desert Haven had 37 residents.

12. On October 9, 1996, OMH received a capital advance note from HUD in the aggregate amount of \$1,957,700 (the “Desert Haven HUD Note”). The note bears no interest and payment is not required as long as the housing remains available for low-income persons.

The note will be forgiven at its maturity date of September 1, 2037 if Desert Haven remains available for occupancy by eligible families until that date. Otherwise, the entire amount, plus interest at 7% since October 9, 1996, will be declared due and payable to HUD. Pursuant to a certain Deed of Trust, dated as of October 9, 1996, by and between OMH, as successor grantor and Jack T. Stark, as trustee (the “Desert Haven Deed of Trust”), the Desert Haven HUD Note is secured by all property owned by OMH and all rents, profits and income attributed to its operations (each as described in the Desert Haven Deed of Trust, the “Desert Haven Prepetition Collateral” and together with the Canyons Prepetition Collateral, the “Prepetition Collateral”).

13. As of January 2014, on a book value basis, OMH had approximately \$1.2 million in assets and \$35,000 in liabilities. OMH’s main assets consist of: (i) approximately \$64,000 in cash and cash equivalents; and (ii) approximately \$1.1 million in property and equipment. OMH’s main liabilities are approximately \$5,000 in accounts payable.

**B. Cash Management Systems**

14. Prior to the Petition Date and in the ordinary course of business, OMH and CSL maintained their own separate cash management systems. OMH and CSL each maintain a centralized operating account funded from resident receipts. The cash maintained in the operating accounts is used to fund operating expenses at Desert Haven and Canyons, respectively. Each of OMH and CSL maintain an account funded from, and used to hold, resident security deposits. CSL also maintains a separate account used to fund refurbishment of Canyons, while OMH maintains additional accounts to: (i) fund capital improvements at Desert Haven and (ii) comply with HUD guidelines. Additionally, certain reserve accounts with respect to the Canyons HUD Loan are maintained by Prudential.

15. It should also be noted that funds may flow back and forth from the operating accounts of the HUD Debtors to SMRS's operating account to cover various shared services expenses (e.g., health claims). Some of these intercompany transfers are made on a monthly basis while others are as-needed. Additionally, the HUD Properties have relationships with the senior living facilities owned by other Debtors based on geographic location and shared services, which result in regular cash transfers between the two (e.g., OMH and Debtor Sears Permian Retirement Corporation, CSL; Sears Panhandle Retirement Corporation).

**C. Events Leading to Chapter 11 Filing**

16. Senior living facilities have experienced substantial declines in occupancy recently as a result of 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. These market conditions have contributed to decreased revenue and lower than anticipated occupancy rates at certain of the Debtors' senior living facilities.

17. 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 CRO and other personnel. The Debtors also hired an interim chief executive officer to replace the previous chief executive officer.

### **HUD DEBTORS' IMMEDIATE AND URGENT NEED FOR CASH COLLATERAL**

18. In the ordinary course of business, the HUD Debtors require cash on hand and cash flow from their operations to fund their working capital and liquidity needs. The HUD Debtors have an immediate and urgent need to use Cash Collateral, and absent the use of Cash Collateral, the HUD Debtors cannot continue their business operations, and their ability to maximize the value of their estates will be in jeopardy. If the HUD Debtors are forced to abruptly cease business operations, residents will suffer significant harm that will put their lives and health at risk and there would be no recovery for unsecured creditors.

### **RELIEF REQUESTED**

19. By this Motion, the HUD Debtors seek entry of the Cash Collateral Orders pursuant to Bankruptcy Code sections 105(a), 361, 362, 363 and 364 and Bankruptcy Rule 4001, (i) authorizing the use Cash Collateral, (ii) approving the form of adequate protection provided to the Secured Parties, and (iii) scheduling the Final Hearing.

20. The HUD Debtors have submitted herewith the proposed Interim Cash Collateral Order. Attached to the Interim Cash Collateral Order is a detailed operating budget (the "Budget"). Certain of the terms of the Interim Cash Collateral Order are summarized below:

| Term                          | Brief Summary  |
|-------------------------------|--|
| <b>Use of Cash Collateral</b> | <p>Pursuant to sections 105, 361, 362 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6003 and 9014, the HUD Debtors are authorized, through and including the conclusion of the Final Hearing, to use Cash Collateral on an interim basis pending a final determination by the Court.</p> <p>The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the Budget; <u>provided, however</u>, that the HUD Debtors may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-week period does not exceed ten percent (10%) in aggregate (the "<u>Variance</u>"). Any unused portion of the Variance will carry over</p> |



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|----------------------------|--|
|                            | <p>to the following rolling 4-week period.</p> <p>From and after entry of the Interim Cash Collateral Order, the HUD Debtors shall provide to the Secured Parties on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report certified by the HUD Debtors' chief financial officer and in the same form as the Budget indicating all receipts received and disbursements made by the HUD Debtors in the week ending the prior Friday compared to the Budget and detailing any variances of more than 10% in aggregate from the disbursements and receipts in the Budget.</p>   |
| <b>"Cash Collateral"</b>   | <p>The term "Cash Collateral" will be defined consistent with 11 U.S.C. § 363(a) to mean all cash (whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the applicable HUD Debtor.</p>  |
| <b>Adequate Protection</b> | <p>As adequate protection for any diminution in value of the Secured Parties' applicable Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506a(a) (a "<u>Diminution in Value</u>"), the applicable Secured Party shall be granted senior priority replacement liens upon all assets and property of the applicable HUD Debtor and its estate, of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Prepetition Collateral (the "<u>Replacement Liens</u>"), but excluding all claims and causes of action, and the products and proceeds thereof, arising under or permitted by Sections 502(d), 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code and any other avoidance claims and causes of action arising under state or federal law; <u>provided, however</u>, that the Replacement Liens shall be subject and subordinate to (a) the Carve-Out (defined below), (b) any validly perfected lien or security interest senior to the liens and security interests of the applicable Secured Party with respect to the applicable HUD Debtor's assets and properties as of the Petition Date, as applicable (the "<u>Prior Senior Liens</u>"), and (c) any liens concurrently or hereafter granted to secure any debtor in possession financing facility or otherwise granted under section 364(d) of the Bankruptcy Code (the "<u>DIP Liens</u>").</p> <p>Furthermore, the HUD Debtors shall continue to operate their businesses, and in doing so, shall preserve the value of their respective estates.</p> |
| <b>Carve-Out</b>           | <p>The Replacement Liens granted hereunder shall be junior and subordinate to the following fees and expenses (the "<u>Carve-Out</u>"): (a) all budgeted and accrued but unpaid fees and expenses (the "<u>Professional Fees and Expenses</u>") of the attorneys, accountants or other professionals retained by the applicable HUD Debtor and any statutory committee of unsecured creditors (including, without limitation, any committee of residents) appointed in these Chapter 11</p>  |

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|  | cases under section 327 or 1103(a) of the Bankruptcy Code (the “Committee”) (collectively, the “Professionals”), allocable to the HUD Debtors under and to the extent set forth in the Budget; and (b) the payment of fees pursuant to 28 U.S.C. § 1930 to the extent related to the Chapter 11 case, <u>provided</u> that all such fees and expenses shall be subject to approval by a final order of the Court pursuant to sections 326, 328, 330, 331 or 363 of the Bankruptcy Code. |
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21. The foregoing is only a brief summary. The terms of the HUD Debtors’ use of Cash Collateral are set forth in detail in the attached Interim Cash Collateral Order. **In the event of any inconsistency between the above summary and the Interim Cash Collateral Order, the terms of the Interim Cash Collateral Order shall control. Interested parties should review the Interim Cash Collateral Order for a complete and accurate understanding.**

22. The relief requested herein is in the best interest of the HUD Debtors, their estates and creditors, and residents of the HUD Facilities. Absent such relief, the HUD Debtors will experience immediate and irreparable harm and their reorganization efforts will be jeopardized.

### **BASIS FOR RELIEF**

**A. The HUD Debtors Have a Vital Need to Access Cash Collateral Immediately.**

23. The HUD Debtors have a vital need to use Cash Collateral. Because the HUD Debtors have no funds other than Cash Collateral, the HUD Debtors have no ability to operate their businesses without the use of Cash Collateral, including, among other things, servicing the residents of the HUD Facilities. The inability to perform such critical tasks would cause immediate and irreparable harm to the HUD Debtors’ estates, creditors and the residents of the HUD Facilities.

24. The alternative to allowing access to the Cash Collateral is “to force the debtors to close down their operations and thus doom any effort at reorganization . . . .” In re Dynaco

Corp., 162 B.R. 389, 396 (Bankr. D.N.H. 1993). This harsh outcome would be catastrophic and would stand in diametrical opposition to the rehabilitative purpose of chapter 11.

25. The HUD Debtors' ability to finance their operations and the availability to the HUD Debtors of sufficient working capital and liquidity through the use of Cash Collateral is vital. Without use of the Cash Collateral, the HUD Debtors will have no ability to operate their businesses. The HUD Debtors, therefore, seek immediate authority to use the Cash Collateral as set forth herein and in the Cash Collateral Orders to prevent immediate and irreparable harm to their estates and creditors and residents of the HUD Facilities.

**B. The Interests of the Secured Parties are Adequately Protected.**

26. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. See In re Martin, 761 F.2d 472 (8th Cir. 1985). 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. See In re Swedeland Dev. Grp., Inc., 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citations omitted); United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.), 793 F.2d 1380, 1389 (5th Cir. 1986) (adequate protection is intended to protect secured creditors from a decrease in value of their collateral).

27. 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); MBank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1396 (10th Cir. 1987)

(stating that the concept of adequate protection is a flexible one and that courts should determine whether it exists on a case-by-case basis).

28. Here, the HUD Debtors are requesting authority to use Cash Collateral to protect the enterprise value of their businesses (including the value of the Prepetition Collateral), to maximize the value of their estates and to ensure that the well-being of residents of the HUD Facilities are protected. The proposed adequate protection is typical and appropriate under the circumstances.

**i. Replacement Liens**

29. As adequate protection for any Diminution in Value, the HUD Debtors request that the Court grant the Secured Parties the Replacement Liens in and upon all assets and property of the HUD Debtors and their estates, as applicable, of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Prepetition Collateral, but excluding all claims and causes of action, and the products and proceeds thereof, arising under or permitted by sections 502(d), 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code and any other avoidance claims and causes of action arising under state or federal law; provided, however, that the Replacement Liens shall be subject and subordinate to (a) the Carve-Out, (b) the Prior Senior Liens, and (c) if any are granted, the DIP Liens. Further, the Replacement Liens would be in addition to all security interests, liens, and rights of setoff existing in favor of the Secured Parties on the Petition Date, and would be valid, perfected, enforceable and effective as of the Petition Date without any further action of the HUD Debtors or the Secured Parties and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank

accounts. If granted, the Replacement Liens will adequately protect the Secured Parties from any potential depreciation and deterioration in the value of the Prepetition Collateral.

**ii. Continued Operation**

30. The Secured Parties are also adequately protected as a result of the continuation of the business operations of the HUD Facilities. Without the use of the Cash Collateral, the HUD Debtors will be unable to continue managing the HUD Facilities and will be forced to cease operations, thereby jeopardizing their ability to maximize the value of their estates. Such an abrupt cessation of the HUD Debtors' businesses would also have devastating effects on the residents of the HUD Facilities, including leaving many without food and the support services that they require. In addition, absent the use of Cash Collateral, the HUD Debtors will also be unable to satisfy other routine payable obligations, thereby leaving the HUD Facilities in a complete state of disarray.

31. The continuation of the HUD Facilities' operations likely presents the best opportunity for the Secured Parties to receive the greatest recovery on account of their claims. Accordingly, the HUD Debtors submit that use of the Cash Collateral will allow the HUD Debtors to continue the operation of the HUD Facilities and thereby protect the Secured Parties' interests. Courts have recognized that the preservation of the going concern value of a secured lender's collateral constitutes adequate protection of such creditor's interest in the collateral. See, e.g., Save Power Ltd. v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.), 193 B.R. 713, 716-17 (Bankr. D. Del. 1996) (holding that if there is no actual diminution of value of collateral and the debtor can operate profitably post-petition, then the secured creditor is adequately protected); In re 499 W. Warren St. Assocs., Ltd. P'ship, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (finding a secured creditor's interest in collateral adequately protected when

cash collateral was applied to normal operating and maintenance expenditures on the collateral property); Stein v. U.S. Farmers Home Admin. (In re Stein), 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditor's secured position would be enhanced by the continued operation of the debtor's business); accord 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).

**C. The Carve-Out Should Be Approved.**

32. With the inclusion of the Carve-Out, the Cash Collateral Orders do not directly or indirectly deprive the HUD Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). In Ames, the court found such "carve-outs" for professional fees to be not only reasonable, but necessary to ensure that official committees and debtors' estates can retain assistance from counsel. Id. at 41. The Replacement Liens are expressly subject and subordinated to the Carve-Out, as described above.

**D. Interim Approval Should Be Granted.**

33. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use

cash collateral or obtain credit, 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 post-petition credit to the extent necessary to avoid immediate harm to a debtor's estate pending a final hearing and an Interim Cash Collateral Order can also be entered on consent of the parties affected thereby.

34. Pursuant to Bankruptcy Rule 4001(b), the HUD Debtors request that the Court conduct an expedited hearing on this Motion and (a) authorize the HUD Debtors to use Cash Collateral in accordance with the Budget on an interim basis, pending entry of the Final Cash Collateral Order, in order to (i) maintain the HUD Debtors' ongoing operations, and (ii) avoid immediate harm and prejudice to the HUD Debtors estates and all parties in interest and (b) schedule the Final Hearing.

35. As set forth above, the HUD Debtors have an immediate and urgent need to use Cash Collateral. Absent the use of Cash Collateral, the HUD Debtors will not be able to meet their working capital and liquidity needs, and their estates and creditors, and residents of the HUD Facilities, will suffer immediate and irreparable harm. Accordingly, the HUD Debtors submit that the interim relief requested is critical to presenting and maintaining the HUD Debtors' going concern value, protecting the interests of their creditors and residents and facilitating their reorganization efforts.

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

36. The HUD Debtors believe an efficient and expeditious approval and implementation of the relief sought herein is in the best interests of their creditors and other parties in interest, including residents of the HUD Facilities. Accordingly, the HUD Debtors

seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of orders authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**F. Form and Manner of Notice of Final Hearing.**

37. No later than two (2) business days following entry of the Interim Cash Collateral Order, the HUD Debtors shall file with the Court and cause to be served a Notice of Final Hearing and a copy of the Interim Cash Collateral Order upon the following parties: (i) counsel to the Secured Parties; (ii) TDHCA; (iii) the Office of the Attorney General of the State of Texas; (iv) the office of the United States Trustee for the Northern District of Texas; (v) the holders of the twenty (20) largest unsecured claims against each of the Debtors; (vi) all known parties that may be asserting a lien against either of the HUD Debtors' assets; and (vii) all parties requesting notice pursuant to Bankruptcy Rule 2002.

**NOTICE**

38. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) TDHCA; (iii) the Office of the Attorney General of the State of Texas; (iv) each of the Debtor's twenty (20) largest unsecured creditors on a consolidated basis; (v) counsel to the Secured Parties; (vi) all known parties that may be asserting a lien against any of the HUD Debtors' assets; and (vii) all parties requesting notice pursuant to Bankruptcy Rule 2002. The HUD Debtors submit that, in light of the nature of the relief requested, no other or further notice is necessary or required.



**CONCLUSION**

**WHEREFORE**, the HUD Debtors respectfully request that the Court grant the Motion and enter the attached form of Interim Cash Collateral Order: (i) authorizing the HUD Debtors to use Cash Collateral; (ii) granting adequate protection to the Secured Parties; (iii) approving the form and manner of notice of the Final Hearing and scheduling a Final Hearing; and (iv) granting such other and further relief as may be 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 Interim Cash Collateral 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., et al.<sup>1</sup></b> | § | <b>CHAPTER 11</b>                   |
|  | § |                                     |
| <b>Debtors.</b>  | § | <b>Joint Administration Pending</b> |
|  | § |                                     |

**INTERIM ORDER: (I) AUTHORIZING ODESSA  
METHODIST HOUSING, INC. AND CANYONS SENIOR  
LIVING, L.P. TO USE CASH COLLATERAL, (II) GRANTING  
THE FORM OF ADEQUATE PROTECTION PROVIDED TO THE  
SECURED PARTIES AND (III) SCHEDULING A FINAL HEARING**

Upon the motion (the “Motion”)<sup>2</sup> of Odessa Methodist Housing, Inc. (“OMH”) and Canyons Senior Living, L.P. (“CSL”), debtors and debtors-in-possession in the above-captioned cases (together, the “HUD Debtors”), for an interim order (this “Order”) (1) authorizing the HUD Debtors to use the cash collateral of the United States Department of Housing and Urban Development (“HUD”), Prudential Huntoon Paige Associates, Ltd. (“Prudential” and together with HUD, the “Canyons Secured Parties”) and the Texas Department of Housing and Community Affairs (“TDHCA” and together with HUD and Prudential, the “Secured Parties”), as applicable, (2) granting the form of adequate protection provided herein to the Secured Parties upon the terms set forth herein, and (3) scheduling a final hearing on the Motion and approving the form and manner of notice thereof; and it appearing that this Court has jurisdiction 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), 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 not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the HUD Debtors, their estates, their creditors and other parties in interest; and it appearing that notice of the Motion has been given in accordance with Bankruptcy Rule 4001(b)(2); and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND THAT:<sup>3</sup>

A. On the Petition Date, the HUD Debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code.

B. Since the Petition Date, the HUD Debtors have continued in the management and operation of their businesses and property as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or committee has been appointed in the HUD Debtors' Chapter 11 cases.

C. The HUD Debtors believe that the Secured Parties will assert that the HUD Debtors are obligated under the following undertakings, as applicable:

(1) a certain Building Loan Agreement, dated as of October 28, 2010, by and between CSL and Prudential;

(2) a certain Security Agreement (Equipment, Inventory, and Accounts), dated as of October 28, 2010, by and between CSL and Prudential;

(3) a certain Firm Commitment for Capital Financing, dated as of September 9, 1996, by HUD;

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

(4) a certain Deed of Trust, dated as of October 9, 1996, by and between OMH, as successor grantor, and Jack Stark, as Trustee;

D. The security interests and liens and other protections granted to the Secured Parties pursuant to this Order (1) are fair and reasonable and satisfy the requirements of the Bankruptcy Code and (2) will not be affected by any subsequent reversal, modification, vacatur or amendment of this Order or any other order, as provided in Section 364(e) of the Bankruptcy Code.

E. The liens and security interests granted to the Secured Parties hereunder shall not prime or impair any validly perfected lien or security interest senior to the liens and security interests of the Secured Parties with respect to the applicable HUD Debtor's assets and properties as of the Petition Date (the "Prior Senior Liens") or any liens concurrently or hereafter granted to secure any debtor in possession financing facility or otherwise granted under section 364(d) of the Bankruptcy Code (the "DIP Liens"). The granting of the replacement liens and other agreements of the HUD Debtors hereunder constitute adequate protection to the Secured Parties for the HUD Debtors' use of Cash Collateral for purposes of this Order.

F. Good cause has been shown for entry of this Order. Without use of Cash Collateral, the HUD Debtors will not be able to fund their day-to-day operations, including providing ongoing services to their residents. Unless the Court authorizes the use of Cash Collateral, the HUD Debtors will be unable to pay for the goods and services necessary to preserve and maximize the value of their assets while they attempt to obtain confirmation of a Chapter 11 plan. Accordingly, this Order is required to avoid

immediate and irreparable harm to the HUD Debtors' estates. Entry of this Order is in the best interests of the HUD Debtors, their creditors, their residents, and their estates.

THE COURT HEREBY ORDERS, AS FOLLOWS:

1. The Motion is granted on an interim basis in accordance with the terms and conditions of this Order.
2. Use of Cash Collateral. Subject to the terms and conditions set forth in this Order, the HUD Debtors are, through and including the conclusion of the final hearing on the HUD Debtors' use of Cash Collateral, authorized pursuant to Bankruptcy Code Sections 105, 361, 362 and 363, and Bankruptcy Rules 2002, 4001, 6003 and 9014 to use Cash Collateral on an interim basis pending a final determination by the Court. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the budget attached hereto as Exhibit A (the "Budget"); provided, however, that the HUD Debtors may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-week period does not exceed ten percent (10%) in aggregate (the "Variance"). Any unused portion of the Variance will carry over to the following rolling 4-week period.
3. Reporting. From and after the entry of this Order, the HUD Debtors shall provide to the Secured Parties on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report certified by the HUD Debtors' chief financial officer and in the same form as the Budget indicating all receipts received and disbursements made by the Debtor in the week ending the prior Friday compared to the Budget and detailing any variances of more than 10% in aggregate from the disbursements and receipts in the Budget.

4. Adequate Protection; Replacement Liens. The Secured Parties are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, as applicable, including, but not limited to, the Cash Collateral, for any diminution in value of their interests in the Prepetition Collateral, including, without limitation, any such diminution resulting from the HUD Debtors' use of Cash Collateral and any other Prepetition Collateral and the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code. As security for and solely to the extent of any diminution in the value of the Secured Parties' Prepetition Collateral, as applicable, from and after the Petition Date, calculated in accordance with Bankruptcy Code Section 506(a) (a "Diminution in Value"), the Secured Parties are hereby granted senior priority replacement liens upon all assets and property of the applicable HUD Debtor and its estate of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Prepetition Collateral (the "Replacement Liens"), but excluding all claims and causes of action, and the products and proceeds thereof, arising under or permitted by Sections 502(d), 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code and any other avoidance claims and causes of action arising under state or federal law; provided, however, that the Replacement Liens shall be subject and subordinate to (a) the Carve-Out (defined below), (b) the Prior Senior Liens and (c) if any are granted, the DIP Liens. The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of the Secured Parties, as applicable, on the Petition Date, and are and shall be valid, perfected, enforceable and effective as of the Petition Date without any further action of the HUD Debtors or Secured Parties and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. Notwithstanding the foregoing, the

Secured Parties are hereby authorized, but not required, to file or record any financing statements, security agreements, deeds of trust, or other documents in any jurisdiction or take any other action in order to validate and perfect the Replacement Liens granted hereunder.

5. Carve-Out. The Replacement Liens granted hereunder shall be junior and subordinate to the following fees and expenses (the “Carve-Out”): (a) all budgeted and accrued but unpaid fees and expenses (the “Professional Fees and Expenses”) of the attorneys, accountants or other professionals retained by the HUD Debtors and any statutory committee of unsecured creditors (including, without limitation, any committee of residents) appointed in these Chapter 11 cases under section 327 or 1103(a) of the Bankruptcy Code (the “Committee”) (collectively, the “Professionals”), allocable to the HUD Debtors under and to the extent set forth in the Budget; and (b) the payment of fees pursuant to 28 U.S.C. § 1930 to the extent related to the applicable HUD Debtor’s Chapter 11 case, provided that all such fees and expenses shall be subject to approval by a final order of the Court pursuant to sections 326, 328, 330, 331 or 363 of the Bankruptcy Code.

6. No Third Party Rights. Except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holders or any direct, indirect or incidental beneficiary.

7. Effect of Order. This Order shall be effective upon its entry and not subject to any stay (notwithstanding anything to the contrary contained in the Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3)). The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered (a) confirming any plan of reorganization; (b) dismissing these Chapter 11 cases; (c) converting these Chapter 11 cases to any other Chapter under the Bankruptcy Code; (d) withdrawing of the references of these



Chapter 11 cases from the Court; and (e) providing for abstention from handling or retaining of jurisdiction of these Chapter 11 cases in the Court.

8. Amendments and Waivers. The applicable HUD Debtor and Secured Party may amend, modify, supplement or waive any provision of this Order in writing if such amendment, modification, supplement or waiver is not material, without any need to apply to, or receive further approval from, the Court. The HUD Debtors shall provide notice of any such nonmaterial amendment, modification, supplement or waiver to counsel for any Committee and the Office of the United States Trustee. Any material amendment, modification, supplement or waiver shall be in writing, signed by the applicable HUD Debtor and Secured Party, and approved by the Court on appropriate notice by such HUD Debtor.

9. Order Governs. In the event of any inconsistency between the provisions of this Order and the Motion, the provisions of this Order shall govern.

10. Final Hearing. A final hearing on the Motion will be scheduled for [•] 2014, at [•] a.m./p.m. CST (the "Final Hearing"). The HUD Debtors will provide notice of the Final Hearing by first class mail to (a) counsel for the Secured Parties, (b) TDHCA, (c) counsel for any official committee of creditors appointed in these cases, (d) the Office of the United States Trustee, (e) all parties who have filed requests for notice under Bankruptcy Rule 2002, (f) the holders of the twenty (20) largest unsecured claims against each Debtor, and (g) such other parties as this Court may order. Any party wishing to object to the relief granted herein being granted on a permanent basis shall file such objection with the Court, together with proof of service thereof, and served upon: (a) counsel for the HUD Debtors; (b) counsel for the Secured Parties; (c) counsel for any Committee; and (d) the Office of the United States Trustee, so as to be received no later than [•], 2014 at 4:00 p.m. CST (the "Objection Deadline"). If no objections are filed

and served on or before the Objection Deadline, at the Final Hearing, the Court may enter a final order permitting the use of Cash Collateral by the HUD Debtors.

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

**Exhibit A**

**Budget**

CRO Budget  
SMRS - Canyons

| Week   |                  |                  |                 |                  | 4 Weeks               |
|--|------------------|------------------|-----------------|------------------|-----------------------|
|  | 1                | 2                | 3               | 4                | Total                 |
|  | Week Ending      | Week Ending      | Week Ending     | Week Ending      | 6/15/2014<br>7/6/2014 |
|  | 6/15/2014        | 6/22/2014        | 6/29/2014       | 7/6/2014         |                       |
| <b>SMRS - Canyons</b>                              |                  |                  |                 |                  |                       |
| Beginning Book Cash Balance                        | \$ 17,367        | \$ 27,186        | \$ 19,381       | \$ 6,610         | \$ 17,367             |
| <b>Receipts</b>                                    |                  |                  |                 |                  |                       |
| Deposits   | 26,035           | 2,945            | 2,945           | 26,035           | 57,960                |
| Medicare   | -                | -                | -               | -                | -                     |
| Medicaid   | -                | -                | -               | -                | -                     |
| Direct / Shared Service Receipts                   | -                | -                | -               | -                | -                     |
| Entrance Fees                                      | -                | -                | -               | -                | -                     |
| <b>Total Receipts</b>                              | <b>26,035</b>    | <b>2,945</b>     | <b>2,945</b>    | <b>26,035</b>    | <b>57,960</b>         |
| <b>Disbursements</b>                               |                  |                  |                 |                  |                       |
| Payroll & Benefits                                 | 4,966            | -                | 4,966           | -                | 9,931                 |
| Trade Payables                                     | 11,250           | 10,750           | 10,750          | 10,750           | 43,500                |
| Health Insurance                                   | -                | -                | -               | -                | -                     |
| Entrance Fee Refunds                               | -                | -                | -               | -                | -                     |
| Debt Service                                       | -                | -                | -               | -                | -                     |
| Direct Allocated Expenses                          | -                | -                | -               | -                | -                     |
| Shared Services Expenses                           | -                | -                | -               | 8,716            | 8,716                 |
| 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                              | -                | -                | -               | -                | -                     |
| Total Disbursements                                | 16,216           | 10,750           | 15,716          | 19,466           | 62,147                |
| <b>Net Cash Flow</b>                               | <b>9,819</b>     | <b>(7,805)</b>   | <b>(12,771)</b> | <b>6,569</b>     | <b>(4,187)</b>        |
| <b>Ending Book Cash Balance</b>                    | <b>\$ 27,186</b> | <b>\$ 19,381</b> | <b>\$ 6,610</b> | <b>\$ 13,180</b> | <b>\$ 13,180</b>      |
| Beginning DIP Balance                              | \$ -             | \$ -             | \$ -            | \$ -             | \$ -                  |
| DIP Funding  | -                | -                | -               | -                | -                     |
| <b>Ending DIP Balance</b>                          | <b>\$ -</b>      | <b>\$ -</b>      | <b>\$ -</b>     | <b>\$ -</b>      | <b>\$ -</b>           |
| <b>Adjusted Ending Cash Balance</b>                | <b>\$ 27,186</b> | <b>\$ 19,381</b> | <b>\$ 6,610</b> | <b>\$ 13,180</b> | <b>\$ 13,180</b>      |
| <b>Accrued Professional Fees (before payments)</b> | -                | -                | 8,907           | 11,491           | 11,491                |

CRO Budget  
SMRS - Desert Haven

| Week   |                  |                  |                  |                  | 4 Weeks          |
|--|------------------|------------------|------------------|------------------|------------------|
|  | 1                | 2                | 3                | 4                | Total            |
|  | Week Ending      | Week Ending      | Week Ending      | Week Ending      | 6/15/2014        |
|  | 6/15/2014        | 6/22/2014        | 6/29/2014        | 7/6/2014         | 7/6/2014         |
| <b>SMRS - Desert Haven</b>                         |                  |                  |                  |                  |                  |
| Beginning Book Cash Balance                        | \$ 50,923        | \$ 56,923        | \$ 55,523        | \$ 54,123        | \$ 50,923        |
| <b>Receipts</b>                                    |                  |                  |                  |                  |                  |
| Deposits   | 8,000            | 600              | 600              | 8,000            | 17,200           |
| Medicare   | -                | -                | -                | -                | -                |
| Medicaid   | -                | -                | -                | -                | -                |
| Direct / Shared Service Receipts                   | -                | -                | -                | -                | -                |
| Entrance Fees                                      | -                | -                | -                | -                | -                |
| <b>Total Receipts</b>                              | <b>8,000</b>     | <b>600</b>       | <b>600</b>       | <b>8,000</b>     | <b>17,200</b>    |
| <b>Disbursements</b>                               |                  |                  |                  |                  |                  |
| Payroll & Benefits                                 | -                | -                | -                | -                | -                |
| Trade Payables                                     | 2,000            | 2,000            | 2,000            | 7,062            | 13,062           |
| Health Insurance                                   | -                | -                | -                | -                | -                |
| Entrance Fee Refunds                               | -                | -                | -                | -                | -                |
| Debt Service                                       | -                | -                | -                | -                | -                |
| Direct Allocated Expenses                          | -                | -                | -                | 1,438            | 1,438            |
| Shared Services Expenses                           | -                | -                | -                | 1,223            | 1,223            |
| 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                              | -                | -                | -                | -                | -                |
| Total Disbursements                                | 2,000            | 2,000            | 2,000            | 9,723            | 15,723           |
| <b>Net Cash Flow</b>                               | <b>6,000</b>     | <b>(1,400)</b>   | <b>(1,400)</b>   | <b>(1,723)</b>   | <b>1,477</b>     |
| <b>Ending Book Cash Balance</b>                    | <b>\$ 56,923</b> | <b>\$ 55,523</b> | <b>\$ 54,123</b> | <b>\$ 52,401</b> | <b>\$ 52,401</b> |
| Beginning DIP Balance                              | \$ -             | \$ -             | \$ -             | \$ -             | \$ -             |
| DIP Funding  | -                | -                | -                | -                | -                |
| <b>Ending DIP Balance</b>                          | <b>\$ -</b>      | <b>\$ -</b>      | <b>\$ -</b>      | <b>\$ -</b>      | <b>\$ -</b>      |
| <b>Adjusted Ending Cash Balance</b>                | <b>\$ 56,923</b> | <b>\$ 55,523</b> | <b>\$ 54,123</b> | <b>\$ 52,401</b> | <b>\$ 52,401</b> |
| <b>Accrued Professional Fees (before payments)</b> | -                | -                | 2,719            | 3,508            | <b>3,508</b>     |