

Vincent P. Slusher, State Bar No. 00785480
vincent.slusher@dlapiper.com
Andrew Zollinger, State Bar No. 24063944
andrew.zollinger@dlapiper.com
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545

Thomas R. Califano (*pro hac vice pending*)
thomas.califano@dlapiper.com
Gabriella L. Zborovsky (*pro hac vice pending*)
gabriella.zborovsky@dlapiper.com
Jacob S. Frumkin (*pro hac vice pending*)
jacob.frumkin@dlapiper.com
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Tel: (212) 335-4500
Fax: (212) 335-4501

PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

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

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

**MOTION OF SEARS CAPROCK RETIREMENT CORPORATION
FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE USE OF CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION TO
SANTANDER BANK, N.A. AND (III) SCHEDULING A FINAL HEARING**

Sears Caprock Retirement corporation (“Caprock”), as debtor and debtor in possession, by and through its proposed undersigned counsel, files 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 “Interim Cash Collateral Order”) and final orders (the “Final Cash Collateral

¹ 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.

Order” and together with the Interim Cash Collateral Order, the “Cash Collateral Orders”) (i) authorizing Caprock to use the cash collateral of Santander Bank, N.A., (“Santander” or “Lender”), (2) granting Santander adequate protection upon the terms set forth in the Cash Collateral Orders, and (3) scheduling a final hearing on the Motion (the “Final Hearing”). In support of this Motion, Caprock respectfully represents as follows:

INTRODUCTORY STATEMENT

Caprock owns and operates Mesa Springs Retirement Village (“Mesa Springs”), a senior living facility located in Abilene, Texas. In the ordinary course of its business, Caprock requires cash on hand and cash flow from Mesa Springs’s operations to fund its working capital, liquidity needs, and other routine payables. In addition, Caprock requires cash on hand to fund its chapter 11 case and to successfully reorganize. All of Caprock’s cash and cash proceeds are encumbered by security interests in favor of Santander and, as such, constitute “cash collateral” of Santander (as such term is defined in Bankruptcy Code section 363(a), “Cash Collateral”).

Absent the use of Cash Collateral, Caprock will be unable to continue operating Mesa Springs, thereby jeopardizing the health and well-being of its residents and stifling Caprock’s ability to maximize the value of its estate. Such an abrupt cessation of Caprock’s business would have a devastating effect on the residents of Mesa Springs, including leaving many without food, medical supplies, and the health and support services that they require. Moreover, many residents may be forced to immediately relocate, putting both their lives and health in jeopardy. In addition, absent the use of Cash Collateral, Caprock will have difficulty funding its payroll and will lose many employees. Caprock will also be unable to satisfy other routine payment obligations, thereby leaving Mesa Springs 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. Caprock’s Business Operations

7. Debtor Sears Methodist Retirement System, Inc. (“SMRS”) wholly owns Caprock, which in turn wholly owns Mesa Springs. SMRS provides certain management and oversight services to Caprock including, among other things, payroll, billing, strategic planning and employee benefit plan administration services. Additionally, the executive office of SMRS

is responsible for overseeing residency contract templates, vendor contracting, licensing and regulatory filings, policies, corporate governance and compliance.

8. Mesa Springs is located in Abilene, Texas and offers 16 independent living executive homes, 34 independent living garden homes, and 10 independent living apartment homes. Residents at Mesa Springs pay monthly fees, and those living in executive homes and independent living apartments pay a refundable entrance deposit (“ED”) prior to moving in. In addition, Caprock owns and operates The Mission at Mesa Springs, a healthcare center consisting of 75 semi-private and private skilled nursing beds. As of May 2014 Mesa Springs had 116 residents.

9. As of January 2014, on a book value basis, Caprock had approximately \$10.3 million in assets and \$12.6 million in liabilities. Caprock’s main assets consist of: (i) approximately \$265,000 in cash and cash equivalents; (ii) approximately \$799,000 in accounts receivable; and (iii) approximately \$8.2 million in property and equipment. Caprock’s main liabilities are: (i) approximately \$7.1 million of bank loan debt (the “Caprock Loan”) issued pursuant to that certain Amended and Restated Reimbursement and Credit Agreement (the “Caprock Loan Agreement”), dated as of May 20, 2013, between Caprock and Santander, as successor administrative agent and lender to Sovereign Bank, N.A.; and (ii) approximately \$523,000 in accounts payable.

B. Caprock’s Prepetition Debt Structure

10. On April 10, 2008, Caprock acquired the assets of Mesa Springs. In consideration for the assets of Mesa Springs, Caprock paid the seller \$5,600,000. On that same date, Caprock issued \$3,275,000 Series 2008A Variable Rate Demand Retirement Facility Bonds and \$4,620,000 Series 2008B Variable Rate Demand Retirement Facility Revenue Bonds

(collectively, the “Caprock Bonds”). In connection with the issuance of the Caprock Bonds, HFDC of Central Texas, Inc. and The Bank of New York Mellon Trust Company National Association, as trustee for the Bonds, entered into that certain Bond Trust Indenture, dated March 1, 2008, (the “Bond Indenture”). The proceeds of the Caprock Bonds were used to finance the acquisition, remodeling and equipping of Mesa Springs. The Caprock Bonds were also used to fund additional startup costs and miscellaneous capital expenditures for Mesa Springs.

11. Pursuant to the Bond Indenture, the following accounts were established and may be currently held by Santander (collectively, together with other accounts and funds held by Santander under the Bond Indenture, the “Santander-Held Funds”): (a) a Debt Service Reserve Fund, (b) a Project Fund, and (c) a Rebate Fund (each as defined in the Bond Indenture). The Santander-Held Funds are held in trust for the benefit of the holder of the Bonds as set forth the Bond Financing Documents and for the express purposes set forth therein. The Santander-Held Funds are not property of Caprock’s estate and shall not be used or made available to Caprock as Cash Collateral or otherwise.

12. Caprock eventually defaulted under the credit and reimbursement agreement governing the Caprock Bonds. As discussed above, on May 20, 2013, Caprock entered into the Caprock Loan Agreement. In connection therewith, the Caprock Bonds were redeemed. The Caprock Loan consists of an A Note and a B Note (the “Caprock Notes”), both of which accrue interest at LIBOR + 250 and matured on April 10, 2014.

13. The obligations incurred under the Caprock Loan Agreement are secured by (i) Mortgaged Property; (ii) Gross Revenues; and (iii) certain other collateral (the “Prepetition Collateral”), as described in the Bond Financing Documents (as defined below).

C. Caprock's Cash Management System

14. Caprock receives revenue from several sources, including monthly fees and entrance deposits. In the ordinary course of business, Caprock maintains a cash management system consisting of two different bank accounts. First, funds are collected into a centralized operating account, which receives cash from resident receipts. The cash maintained in Caprock's operating account is used to fund operating expenses at Mesa Springs. Second, Caprock maintains a resident trust account funded from Social Security payments for Medicaid residents as well as personal deposits. The resident trust account is used to fund miscellaneous/personal expenses for residents at Mesa Springs. Funds may flow back and forth from Caprock's operating account 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.

D. Events Leading to Chapter 11 Filing

15. 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 due to, among other things, the upfront payment of entrance deposits. These market conditions have contributed to decreased revenue and lower than anticipated occupancy rates at certain of the Debtors' senior living facilities.

16. To address these issues, the Debtors sought to implement a number of restructuring initiatives over the last year, including making appropriate adjustments in staffing and increasing negotiations with creditors. Additionally, in the past four months, the Debtors

retained Cain Brothers & Company, LLC to provide restructuring and other investment advisory services, DLA Piper LLP (US) to provide legal advice in connection with a potential restructuring, and Alvarez & Marsal Healthcare Industry Group, LLC to provide a chief restructuring officer and other financial advisory services. The Debtors also hired an interim chief executive officer to replace the previous chief executive officer.

17. As discussed above, the Caprock Notes matured on April 10, 2014, and on that date Caprock did not make a final payment of the outstanding balance. Additionally, Caprock is alleged to have violated certain covenants of the Caprock Loan Agreement by making certain prohibited transfers of assets to an affiliate. Santander provided notice to Caprock of the missed payment and the alleged covenant default and the parties have been in discussions regarding these issues.

18. Additionally, Santander threatened to exercise certain of its rights under the “lock-box” provisions of the Caprock Loan Agreement, by, among other things, threatening to take control of Caprock’s account at First Financial Bank. Thereafter, Caprock and Santander agreed to operating controls whereby Caprock operates under a budget and is restricted from making any funds available to any affiliates within the System. The Debtor’s Chief Restructuring Officer is required to certify Caprock’s compliance therewith.

CAPROCK’S IMMEDIATE AND URGENT NEED FOR CASH COLLATERAL

19. In the ordinary course of business, Caprock requires cash on hand and cash flow from its operations to fund its working capital and liquidity needs. Caprock has an immediate and urgent need to use Cash Collateral, and absent the use of Cash Collateral, Caprock cannot continue its business operations, and its ability to maximize the value of its estate is in jeopardy. If Caprock is forced to abruptly cease business operations, residents will suffer significant harm

that will put their lives and health at risk, employees would lose their jobs, and there would be no recovery for unsecured creditors.

RELIEF REQUESTED

20. By this Motion, Caprock seeks entry of the Cash Collateral Orders pursuant to Bankruptcy Code sections 105(a), 361, 362, 363 and 364 and Bankruptcy Rule 4001, (i) authorizing Caprock to use the cash collateral of Santander, (2) granting Santander adequate protection upon the terms set forth in the Cash Collateral Orders, and (3) scheduling the Final Hearing.

21. Caprock has 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
Use of Cash Collateral	<p>Pursuant to sections 105, 361, 362 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6003 and 9014, Caprock is authorized, through and including the earlier of (a) the conclusion of the Final Hearing or (b) termination of the Interim Cash Collateral Order following issuance of a Termination Notice (as defined below), 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 Caprock 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>”); and <u>provided further</u> that any amendment or modification of the terms and conditions, or any amendment, modification, roll-forward or replacement of the Budget itself, shall be subject to the prior written consent of Santander, which may be granted or withheld in Santander’s sole and absolute discretion.</p> <p>From and after entry of the Interim Cash Collateral Order, Caprock shall provide to Santander on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report (the “<u>Weekly Budget Report</u>”) certified by Caprock’s chief financial officer</p>

	and in the same form as the Budget indicating all receipts received and disbursements made by Caprock in the week ending the prior Friday compared to the Budget and detailing any variances of more than 5% and at least \$10,000 from the disbursements and receipts in the Budget.
“Cash Collateral”	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 Caprock.
Adequate Protection	<p>As adequate protection for any diminution in value of Santander’s Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506(a) (a “<u>Diminution in Value</u>”), Santander shall be granted senior priority replacement liens upon all assets and property of Caprock 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), and (b) any validly perfected lien or security interest senior to the liens and security interests of Santander with respect to Caprock’s assets and properties as of the Petition Date (the “<u>Prior Senior Liens</u>”). The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of Santander on the Petition Date, and are and shall be valid, perfected, enforceable and effective as of the Petition Date without any further action of Caprock or Santander 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.</p> <p>As additional adequate protection, Santander shall be granted an administrative claim with a priority equivalent to a claim under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, sections 105, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113 and 1114 of the Bankruptcy Code (the “<u>Super-Priority Administrative Claim</u>”), except for expenditures constituting the Carve-Out.</p> <p>As additional adequate protection, the Prepetition Collateral shall not be subject to any claim under section 506(c) of the Bankruptcy Code, which claims shall be deemed to be waived at upon entry of the Final Cash Collateral Order.</p> <p>As additional adequate protection, Caprock shall pay the reasonable</p>

	<p>fees and expenses of Santander's outside legal and financial advisors in accordance with the Budget, with any balance due to Santander's professionals and Santander's internal fees and expenses to be paid by Santander through deductions from any expense retainers funded by Caprock prior to the Petition Date.</p> <p>Furthermore, Caprock shall continue to operate its business, and in doing so, shall preserve the value of Caprock's estate.</p>
Stipulations	<p>Caprock stipulates and agrees that: (a) it is obligated under the Bonds; the Bond Indenture; that certain Loan Agreement dated March 1, 2008, by and between the Issuer and Caprock; that certain Reimbursement and Term Loan Note dated as of April 10, 2008 by Caprock in favor of Santander; the Caprock Loan Agreement; that certain Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of March 1, 2008 (the "<u>Deed of Trust</u>") from Caprock, as Grantor, to Steward Title Guaranty Company, as Trustee, for the benefit of Santander; that certain Account Control Agreement dated as of March 1, 2008 by and among Caprock, Santander, as Administrative Agent, and First Financial Bank, N.A., as Depository Bank; and that certain Custody Pledge and Security Agreement dated as of March 1, 2008, by and among Caprock, Santander, as Issuing Bank, Administrative Agent and Lender, and the Bank of New York Trust Company, National Association, as Custodian (collectively, the "<u>Bond Financing Documents</u>") (b) the Bond Financing Documents are each valid and enforceable against Caprock and Caprock does not possess and agrees not to assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity or enforceability of the Bond Financing Documents; (c) as of the Petition Date, the financial undertaking under the Bond Financing Documents (the "<u>Prepetition Obligations</u>") constitute legal, valid and binding obligations of Caprock, enforceable in accordance with the terms of the Bond Financing Documents (other than with respect to a stay of enforcement arising from section 362 of the Bankruptcy Code) and no offsets, defenses or counterclaims to any of the Prepetition Obligations exists nor is any portion of the Prepetition Obligations subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law; (d) the Prepetition Obligations constitute allowable secured claims and Caprock has irrevocably waived, discharged and released any rights it may have to challenge or object to the Prepetition Obligations, and/or to challenge or object to the security for the Prepetition Obligations; (e) Santander's liens and security interests with respect to the Prepetition Collateral are valid, enforceable and perfected, and are not subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law and all of such financing statements, relevant instruments and the Deed of Trust were validly authorized by Caprock or validly executed by authorized representatives of Caprock; (f) Santander has first priority security interests in and liens on all of the Prepetition Collateral, including the Cash Collateral and all proceeds of the Prepetition Collateral, to secure</p>

	<p>payment of the Prepetition Obligations; (g) the Santander-Held Funds are not property of Caprock's estate, are not collateral to secure any liens granted to any debtor-in-possession financing lender, are held in trust for the benefit of the holder of the Bonds, and shall not be used or made available to Caprock as Cash Collateral or otherwise pursuant to the Cash Collateral Orders or any other order entered in this case; (h) Santander is entitled to access any Santander-Held Funds in accordance with the terms of the Bond Financing Documents; (i) Santander's security interests and liens have attached to all funds and property of Caprock consisting of the Prepetition Collateral and the products and proceeds thereof, and Santander's security interests and liens will, notwithstanding the commencement of the chapter 11 case; and (j) as of the Petition Date, the principal and interest portion of the Prepetition Obligations is not less than \$6,922,981.90.</p> <p>The Stipulations will be subject to a 60-day review and challenge period by parties-in-interest and any official committee of unsecured creditors.</p>
Carve-Out	<p>The Replacement Liens and Super-Priority Administrative Claim 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 incurred until the earlier of (1) the entry of the Final Order or (2) the delivery of a Termination Notice (the "<u>Professional Fees and Expenses</u>") of the attorneys, accountants or other professionals retained by the Debtor and any statutory committee of unsecured creditors (including, without limitation, any committee of residents) appointed in the chapter 11 case under section 327 or 1103(a) of the Bankruptcy Code (the "<u>Committee</u>") (collectively, the "<u>Professionals</u>"), allocable solely to the Debtor; (b) Professional Fees and Expenses allocable solely to Caprock in the amount of \$50,000.00 incurred after delivery of a Termination Notice; and (c) 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.</p> <p>Notwithstanding anything to the contrary set forth herein, no Cash Collateral nor any portion of the Carve-Out may be used to (i) fund expenses, fees or costs relating to any debtor other than the Debtor, except as specifically set forth in the Budget and referenced as "Direct Allocated Expenses" and "Shared Services Expenses" for the Debtor, or (ii) prosecute actions, claims, demands or causes of action against Santander, or to object to or contest in any manner, or to raise any defense in any pleading to the validity, perfection, priority or enforceability of Santander's liens and security interests against the Prepetition Collateral or the Replacement Liens; <u>provided, however</u>, that Cash Collateral may be used by the Committee and its professionals to perform due diligence with respect to the validity, perfection, priority or enforceability of Santander's liens and security interests against the Prepetition Collateral or the Replacement Liens.</p>

Term	Caprock's use of Cash Collateral will terminate upon the termination of the cash collateral arrangement by agreement of the parties or as an exercise of remedies following the occurrence of an Event of Default (as defined below).
Events of Default	<p>Each of the following shall constitute an "<u>Event of Default</u>": (a) entry of an order converting this chapter 11 case to a case under chapter 7 of the Bankruptcy Code; (b) entry of an order dismissing this chapter 11 case; (c) entry of an order appointing or directing the election of a trustee or examiner for Caprock under section 1104 or section 1106(b) of the Bankruptcy Code; (d) without the prior written consent of Santander, the entry of any order (or other judicial action which has the effect of) amending, reversing, supplementing, staying the effectiveness of, vacating, or otherwise modifying the Interim Cash Collateral Order; (e) Caprock uses Cash Collateral for any purpose or in a manner other than as permitted in the Interim Cash Collateral Order and in the Budget or otherwise fails to comply with any term of the Interim Cash Collateral Order; (f) entry of an order by the Bankruptcy Court authorizing relief from stay by any person (other than Santander) on or with respect to all or any portion of the Prepetition Collateral with a value in excess of \$50,000; (g) the filing by Caprock of any pleading objecting to or seeking to challenge Santander's claims with respect to the Prepetition Obligations or Santander's lien upon Cash Collateral or the Prepetition Collateral or otherwise asserting rights, claims or causes of action against Santander with respect to the Prepetition Obligations; (h) the breach by Caprock of its obligations under the Interim Cash Collateral Order; (i) the filing by Caprock of any debtor-in-possession financing pleadings or any final documents pertaining to a debtor-in-possession financing not reasonably acceptable to and/or supported by Santander; (j) the filing by Caprock of any bid procedure and/or sale documents relating to the sale of the Prepetition Collateral, post-petition collateral subject to the Replacement Lien, and/or Cash Collateral not acceptable to and not supported by Santander; or (k) Caprock voluntarily or involuntarily dissolves or is dissolved, liquidates or is liquidated or ceases the operation of any material portion of its business.</p> <p>Immediately upon the occurrence or existence of an Event of Default, Santander shall be authorized to issue a notice (a "<u>Termination Notice</u>") thereof to Caprock, its counsel, counsel to any Committee and the U.S. Trustee. Unless, within five (5) business days after the issuance of such notice, the Court determines that the applicable Event of Default has not occurred or does not exist, Caprock's authority to use Cash Collateral shall terminate immediately without further order of the Court.</p>

22. The foregoing is only a brief summary. The terms of Caprock's 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.

23. The relief requested herein is in the best interest of Caprock, its estate and creditors, and residents of Mesa Springs. Absent such relief, Caprock will experience immediate and irreparable harm and its reorganization efforts will be jeopardized.

BASIS FOR RELIEF

A. Caprock Has a Vital Need to Access Cash Collateral Immediately

24. Caprock has a vital need to use Cash Collateral. Because Caprock has no funds other than Cash Collateral, Caprock has no ability to operate its business without the use of Cash Collateral, including, among other things, servicing the residents of Mesa Springs, paying vendors, or funding payroll. The inability to perform these critical tasks would cause immediate and irreparable harm to Caprock's estate, creditors and the residents of Mesa Springs.

25. 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.

26. Caprock's ability to finance its operations and the availability to Caprock of sufficient working capital and liquidity through the use of Cash Collateral is vital. Without use of the Cash Collateral, Caprock will have no ability to operate its business. Caprock, therefore, seeks immediate authority to use the Cash Collateral as set forth herein and in the Cash Collateral Orders to prevent immediate and irreparable harm to its estate and creditors and residents of Mesa Springs.

B. The Interests of Santander are Adequately Protected

27. Santander has consented to the use of Cash Collateral as requested herein, subject to its receipt of the adequate protection provided for in the Interim Cash Collateral Order. 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).

28. 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).

29. Here, Caprock is requesting authority to use Cash Collateral to protect the enterprise value of Caprock’s business (including the value of the Prepetition Collateral), to maximize the value of its estate and to ensure that the health and well-being of residents at Mesa

Springs are protected. The proposed adequate protection is typical and appropriate under the circumstances.

i. Replacement Liens

30. As adequate protection for any Diminution in Value, Caprock requests that the Court grant Santander the Replacement Liens in and upon all assets and property of Caprock and its estate 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, and (b) the Prior Senior Liens. Further, the Replacement Liens would be in addition to all security interests, liens, and rights of setoff existing in favor of Santander on the Petition Date, and would be valid, perfected, enforceable and effective as of the Petition Date without any further action of Caprock or Santander 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 Santander from any potential depreciation and deterioration in the value of the Prepetition Collateral.

ii. Super-Priority Administrative Claim

31. As additional adequate protection, Caprock requests that the Court grant Santander the Super-Priority Administrative Claim, with priority equivalent to a claim under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, on a dollar-for-dollar basis solely to the extent of any Diminution in Value, which super-priority administrative claim shall, among

other things, have priority over all other costs and expense of the kind specified in, or ordered pursuant to, sections 105, 328, 330, 331, 503(b), 506(c), 507(b), 546(c), 1113 and 1114 of the Bankruptcy Code, except for expenditures constituting the Carve-Out.

iii. Bankruptcy Code Section 506(c) Waiver

32. Caprock also requests that the Court grant Santander a waiver of the provisions of section 506(c) of the Bankruptcy Code. Caprock submits that because the Cash Collateral Orders were negotiated in good faith and at arm's length, the section 506(c) waiver is appropriate. Such waiver, however, is not being requested in the Interim Cash Collateral Order and will only be effective upon entry of a Final Cash Collateral Order. As the effectiveness of this waiver will be delayed until the entry of the Final Cash Collateral Order, parties in interest will have an opportunity to be heard.

iv. Fees and Expenses

33. In addition to the Replacement Liens and Super-Priority Administrative Claim, Caprock proposes to pay the reasonable fees and expenses of Santander's outside legal and financial advisors in accordance with the Budget, with any balance due to Santander's professionals and Santander's internal fees and expenses to be paid by Santander through deductions made by Santander from any expense retainers funded by Caprock prior to the Petition Date.

v. Continued Operation

34. Santander is also adequately protected as a result of the continuation of Caprock's business operations. Without the use of the Cash Collateral, Caprock will be unable to continue managing Mesa Springs and will be forced to cease operations, thereby jeopardizing its ability to maximize the value of its estate. Such an abrupt cessation of the Caprock's business would also

have devastating effects on the residents of Mesa Springs, including leaving many without food, medical supplies, and the health and support services that they require. In addition, absent the use of Cash Collateral, Caprock will have difficulty funding its payroll and will lose many employees. Caprock will also be unable to satisfy other routine payable obligations, thereby leaving Mesa Springs in a complete state of disarray.

35. The continuation of Mesa Springs's operations likely presents the best opportunity for Santander to receive the greatest recovery on account of its claims. Accordingly, Caprock submits that use of the Cash Collateral will allow Caprock to continue the operation of Mesa Springs and thereby protect Santander's 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).

36. Santander has consented to these forms of adequate protection. Accordingly, Caprock should be authorized to use Cash Collateral as set forth in the Interim Cash Collateral Order.

C. The Carve-Out Should Be Approved

37. With the inclusion of the Carve-Out, the Cash Collateral Orders do not directly or indirectly deprive Caprock's estate or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in this case. 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 and Super-Priority Administrative Claim are expressly subject and subordinated to the Carve-Out, as described above.

D. The Automatic Stay Should be Modified on a Limited Basis.

38. The relief requested herein contemplates a modification of the automatic stay pursuant to Bankruptcy Code section 362 to the extent necessary to permit Santander to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies provided for in the Interim Cash Collateral Order and the Final Cash Collateral Order, including, without limitation, the issuance of a Termination Notice.

39. Additionally, to the extent that the automatic stay applies to the Santander-Held

Funds pursuant to Bankruptcy Code Section 362(a), as adequate protection for the use of Santander's Cash Collateral, Caprock requests relief from such stay for the limited purpose of allowing the Santander to administer and apply the Santander-Held Funds in accordance with the Bond Financing Documents.

40. Stay modifications of this kind are ordinary and standard features of postpetition cash collateral orders and, in Caprock's business judgment, are reasonable and fair under the present circumstances.

E. Interim Approval Should Be Granted

41. 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.

42. Pursuant to Bankruptcy Rule 4001(b), Caprock requests that the Court conduct an expedited hearing on this Motion and (a) authorize Caprock 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 Caprock's ongoing operations, and (ii) avoid immediate harm and prejudice to Caprock's estate and all parties in interest and (b) schedule the Final Hearing.

43. As set forth above, Santander has consented to entry of the Interim Cash Collateral Order. Additionally, Caprock has an immediate and urgent need to use Cash Collateral. Absent the use of Cash Collateral, Caprock will not be able to meet its working

capital and liquidity needs, and its estate and creditors, and residents of Mesa Springs, will suffer immediate and irreparable harm. Accordingly, Caprock submits that the interim relief requested is critical to presenting and maintaining Caprock's going concern value, protecting the interests of its creditors and residents and facilitating its reorganization efforts.

F. Waiver of Bankruptcy Rules 6004(a) and (h)

44. Caprock believes an efficient and expeditious approval and implementation of the relief sought herein is in the best interests of its creditors and other parties in interest, including residents of Mesa Springs. Accordingly, Caprock seeks 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).

G. Form and Manner of Notice of Final Hearing

45. No later than two (2) business days following entry of the Interim Cash Collateral Order, Caprock 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 Santander; (ii) the Office of the Attorney General of the State of Texas; (iii) the office of the United States Trustee for the Northern District of Texas; (iv) the holders of the twenty (20) largest unsecured claims against each of the Debtors; (v) all known parties that may be asserting a lien against any of Caprock's assets; and (vi) all parties requesting notice pursuant to Bankruptcy Rule 2002.

NOTICE

46. Notice of this Motion has been provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) the Office of the Attorney General of the State of Texas; (iii) each of the Debtor's twenty (20) largest unsecured creditors; (iv) counsel to Santander; (v) all known parties that may be asserting a lien against any of Caprock's assets; and

(vi) all parties requesting notice pursuant to Bankruptcy Rule 2002. Caprock submits that, in light of the nature of the relief requested, no other or further notice is necessary or required.

CONCLUSION

WHEREFORE, Caprock respectfully requests that the Court grant the Motion and enter the attached form of Interim Cash Collateral Order: (i) authorizing Caprock to use Cash Collateral; (ii) granting adequate protection to Santander; (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)

By: /s/ Vincent P. Slusher
Vincent P. Slusher, State Bar No. 00785480
vincent.slusher@dlapiper.com
Andrew Zollinger, State Bar No. 24063944
andrew.zollinger@dlapiper.com
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545

Thomas R. Califano (*pro hac vice pending*)
thomas.califano@dlapiper.com
Gabriella L. Zborovsky (*pro hac vice pending*)
gabriella.zborovsky@dlapiper.com
Jacob S. Frumkin (*pro hac vice pending*)
jacob.frumkin@dlapiper.com
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Tel: (212) 335-4500
Fax: (212) 335-4501

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**

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

**INTERIM ORDER: (1) AUTHORIZING SEARS
CAPROCK RETIREMENT CORPORATION TO USE CASH
COLLATERAL; (2) GRANTING ADEQUATE PROTECTION TO
SANTANDER BANK, N.A.; AND (3) SCHEDULING A FINAL HEARING**

Upon the motion (the “*Motion*”)² of Sears Caprock Retirement Corporation, a debtor and debtor-in-possession in the above-captioned cases (the “*Debtor*”), for an interim order (this “*Order*”) (1) authorizing the Debtor to use the cash collateral of Santander Bank, N.A.,

¹ 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.

² All capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

(“*Santander*” or “*Lender*”)³, (2) granting Santander adequate protection upon the terms set forth in interim and final orders, 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 consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this case 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 Debtor, its estate, its 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:⁴

A. On the Petition Date, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code.

B. Since the Petition Date, the Debtor has continued in the management and operation of its business and property as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or committee has been appointed in the Debtor’s Chapter 11 case.

C. The Debtor stipulates and agrees that it is obligated under the following undertakings (collectively, the “*Bond Financing Documents*”):

³ Santander Bank, N.A., formerly known as Sovereign Bank, N.A., is the sole holder of the Variable Rate Demand Retirement Facility Revenue Bonds (Sears Caprock Retirement Corporation Project), Series 2008A and Series 2008B.

⁴ 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.

(1) those certain HFDC of Central Texas, Inc. (the “*Issuer*”) Variable Rate Demand Retirement Facility Revenue Bonds (Sears Caprock Retirement Corporation Project), Series 2008A, in the aggregate principal amount of \$3,275,000 (the “*2008A Bonds*”), and the Variable Rate Demand Retirement Facility Revenue Bonds (Sears Caprock Retirement Corporation Project), Series 2008B, in the aggregate principal amount of \$4,620,000 (the “*Series B Bonds*” and together with the Series A Bonds, the “*Bonds*”), issued pursuant to the Bond Indenture (defined below);

(2) that certain Bond Trust Indenture dated March 1, 2008 (the “*Bond Indenture*”), by and between the Issuer and The Bank of New York Mellon Trust Company National Association, not individually, but as trustee for the Bonds (the “*Trustee*”);

(3) that certain Loan Agreement dated March 1, 2008 (the “*Loan Agreement*”), by and between the Issuer and the Debtor, pursuant to which the Issuer loaned the proceeds of the Bonds to the Debtor, and the Debtor covenanted to make payments at such times and in such amounts sufficient to pay the principal of, and premium, if any, and interest on the Bonds and any fees, costs and expenses related thereto when due;

(4) that certain Reimbursement and Term Loan Note dated as of April 10, 2008 by the Debtor in favor of Santander as Issuing Bank, Administrative Agent and Lender in the original principal amount of \$8,005,315;

(5) that certain Amended Reimbursement and Credit Agreement dated as of May 20, 2013 (the “*Reimbursement Agreement*”) by and among the Debtor and Santander, which amended that certain Reimbursement Credit Agreement dated March 1, 2008, pursuant to which Santander issued two letters of credit, which were drawn upon to redeem the Bonds on April 1, 2013, resulting in Santander being the sole holder of the Bonds;

(6) that certain Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of March 1, 2008 from the Debtor, as Grantor, to Steward Title Guaranty Company, as Trustee, for the benefit of Santander, as Beneficiary, Issuing Bank, Administrative Agent and Lender (the “*Deed of Trust*”);

(7) that certain Account Control Agreement dated as of March 1, 2008 by and among the Debtor, Santander, as Administrative Agent, and First Financial Bank, N.A., as Depository Bank; and

(8) that certain Custody Pledge and Security Agreement dated as of March 1, 2008, by and among the Debtor, Santander, as Issuing Bank, Administrative Agent and Lender, and the Bank of New York Trust Company, National Association, as Custodian.

Any and all monetary and nonmonetary obligations under the Bond Financing Documents are referred to herein as the “*Prepetition Obligations*.” The foregoing acknowledgments and stipulations shall be binding on the Debtor but not on any other party-in-interest in this Case, except as provided in Paragraph 9 hereof.

D. The Debtor further stipulates and agrees as follows:

(1) As of the Petition Date, the Bond Financing Documents are each valid and enforceable against the Debtor, and the Debtor does not possess and agrees not to assert any claim (as such term is defined in section 101(5) of the Bankruptcy Code), counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity or enforceability of the Bond Financing Documents;

(2) As of the Petition Date, the Prepetition Obligations constitute legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms of the Bond Financing Documents (other than with respect to a stay of enforcement arising from section 362 of the Bankruptcy Code); no offsets, defenses or counterclaims to any of the Prepetition Obligations exists; no portion of the Prepetition Obligations is subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law; the Prepetition Obligations constitute allowable secured claims; and the Debtor has irrevocably waived, discharged and released any rights it may have to challenge or object to the Prepetition Obligations, and/or to challenge or object to the security for the Prepetition Obligations;

(3) Santander's liens and security interests with respect to the Debtor's "Gross Revenues" and the "Mortgaged Property" (each as defined in the Bond Financing Documents, and collectively, the "*Prepetition Collateral*") are valid, enforceable and perfected (by filing financing statements, recording the Deed of Trust and, where necessary, by possession of relevant instruments, certificates or other property), and are not subject to recharacterization, disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law. All of such financing statements, relevant instruments and the Deed of Trust were validly authorized by the Debtor or validly executed by authorized representatives of the Debtor. Pursuant to the Bond Financing Documents, Santander has first priority security interests in and liens on all of the Prepetition Collateral, including the Cash Collateral (defined herein) and all proceeds of the Prepetition Collateral, to secure payment of the Prepetition Obligations;

(4) Pursuant to the Bond Indenture, the following accounts were established and may be held by Santander (collectively, together with other accounts and funds held by Santander under the Bond Indenture, the "*Santander-Held Funds*"): (a) a Debt Service Reserve Fund, (b) a Project Fund, and (c) a Rebate Fund (each as defined in the Bond Indenture). The Santander-Held Funds are held in trust for the benefit of the holder of the Bonds as set forth the Bond Financing Documents and for the express purposes set forth therein. The Debtor acknowledges that any Santander-Held Funds are not property of the Debtor's estate, are not collateral to secure any debtor-in-possession financing, cannot be encumbered by any liens granted to any debtor-in-possession financing lender, are held in trust for the benefit of the holder of the Bonds, and shall not be used or made available to the Debtor as Cash Collateral or otherwise pursuant to this Interim Order, the Final Order, or any other order entered in this case. Santander is entitled to access any Santander-Held Funds in accordance with the terms of the Bond Financing Documents.

(5) Santander's security interests and liens have attached to all funds and property of the Debtor consisting of the Prepetition Collateral and the products and proceeds thereof, and Santander's security interests and liens will, notwithstanding the commencement of the chapter 11 case, as of the Petition Date and thereafter, attach to the products and other proceeds

of the Prepetition Collateral. Without limiting the foregoing, Santander's security interests and liens attach to 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 Debtor (as defined in section 363(a) of the Bankruptcy Code, the "*Cash Collateral*"). For the avoidance of doubt, the term "Cash Collateral" does not include Santander-Held Funds.

(6) As of the Petition Date, the principal and interest portion of the Prepetition Obligations is not less than \$6,922,981.90. Additional amounts are due under the Bond Financing Documents.

(7) In the event that any order entered in any other bankruptcy case filed by an affiliate of the Debtor contains different or additional provisions that provide protection or benefit to the secured party that are more advantageous to the Lender than the provisions of this Order, as determined by the lender, Debtor stipulates that such provisions shall be deemed to be incorporated herein without further order of Court.

The foregoing acknowledgments and stipulations shall be binding on the Debtor but not on any other party-in-interest in this Case, except as provided in Paragraph 9 hereof.

E. The Debtor has requested that Santander consent to the Debtor's use of Cash Collateral and Santander is willing to consent to the Debtor's use of Cash Collateral on the terms and conditions provided herein. Santander is relying on the terms, conditions and protections provided herein in so consenting.

F. The agreements and arrangements described in the Motion and authorized in this Order have been negotiated at arm's-length with all parties represented by counsel, are fair and reasonable under the circumstances, and are enforceable in accordance with their terms. The Debtor and Santander are acting in good faith with respect to the use of Cash Collateral as provided in this Order. The superpriority claims, security interests and liens and other protections granted to Santander 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.

G. In light of Santander's agreement to subordinate its liens and superpriority claims to the Carve-Out (defined herein), and its agreement to permit use of its Cash Collateral, Santander is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

H. The liens and security interests granted to Santander hereunder shall not prime or impair any validly perfected lien or security interest senior to the liens and security interests of Santander with respect to the Debtor's assets and properties in existence as of the Petition Date, if any (the "*Prior Senior Liens*"). The granting of the replacement liens, super-priority administrative claims and other agreements of the Debtor hereunder constitute adequate protection to Santander for the Debtor's use of Cash Collateral for purposes of this Order.

I. Good cause has been shown for entry of this Order. Without use of Cash Collateral, the Debtor will not be able to fund its day-to-day operations, including payroll for its employees and ongoing services to its residents. Unless the Court authorizes the use of Cash Collateral, the Debtor will be unable to pay for the goods and services necessary to preserve and maximize the value of the Debtor's assets. Accordingly, this Order is required to avoid immediate and irreparable harm to the Debtor's estate. Entry of this Order is in the best interests of the Debtor, its creditors, and the estate.

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 Debtor is, through and including the earlier of (a) the conclusion of the final hearing on the Debtor's use of Cash Collateral or (b) termination of this Order following issuance of a

Termination Notice as set forth in Paragraph 11 below, authorized pursuant to sections 105, 361, 362 and 363 of the Bankruptcy Code, 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 Debtor 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*”); and provided further that any amendment or modification of the terms and conditions, or any amendment, modification, roll-forward or replacement of the Budget itself, shall be subject to the prior written consent of Santander, which may be granted or withheld in Santander’s sole and absolute discretion.

3. Reporting. As additional protection for the Debtor’s use of Santander’s Cash Collateral, the Debtor shall allow Santander and its professionals and designees reasonable access, during normal business hours, to the premises of the Debtor in order to conduct appraisals, analyses and/or audits of the Prepetition Collateral, and shall otherwise reasonably cooperate in providing any other financial information requested by Santander for this purpose. From and after the entry of this Order, the Debtor shall provide to Santander on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report (the “Weekly Budget Report”) certified by the Debtor’s 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 5% and at least \$10,000 from the disbursements and receipts in the Budget. The Debtor, its professionals

and consultants shall be available weekly (subject to reasonable scheduling conflicts) for a telephonic conference call with Santander and/or its professionals to discuss the status of the this Bankruptcy Case, the results of operations and other matters pertaining to the Debtor's facility, including any sale or restructuring efforts. Santander shall have independent access to the Debtor's financial advisors and investment banker to discuss matters relating to the Debtor, including any contemplated sale or restructuring of the Debtor. The Debtor shall provide to Santander such other reports and information as Santander may reasonably request from time to time.

4. Adequate Protection; Replacement Liens. Santander is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of its interests in the Prepetition Collateral, including, without limitation, any such diminution resulting from the Debtor's 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 Santander's Prepetition Collateral from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code (a "*Diminution in Value*"), Santander is hereby granted senior priority replacement liens upon all assets and property of the 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) and (b) the Prior Senior Liens. The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of Santander 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 Debtor or Santander 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, Santander is 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. Adequate Protection; 507(b) Priority Claim. Santander is hereby granted an administrative claim with a priority equivalent to a claim under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, sections 105, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113 and 1114 of the Bankruptcy Code (the “*Super-Priority Administrative Claim*”), except for expenditures constituting the Carve-Out.

6. Bankruptcy Code Section 506(c) Waiver. Except as set forth in paragraph 9 below, the entry of this Order by the Court shall be a conclusive and binding determination on all parties (x) as to the scope, extent, perfection, validity and enforceability, in all respects, of Santander’s security interests and liens in the Prepetition Collateral, including, without limitation, the Cash Collateral, and (y) that such liens and security interests shall not be subject to any claim under section 552(b) of the Bankruptcy Code. The entry of an order by the Court

approving the Cash Collateral Motion on a final basis (the “Final Order”) shall be a conclusive and binding determination on all parties that Santander’s security interests in the Prepetition Collateral, including, without limitation, the Cash Collateral, are and shall not be subject to any claim under section 506(c) of the Bankruptcy Code, which claims shall be deemed to be waived at that time.

7. Adequate Protection; Fees and Expenses. The Debtor is hereby authorized and directed to pay the reasonable fees and expenses of Santander’s outside legal and financial advisors in accordance with the Budget, with any balance due to Santander’s professionals and Santander’s internal fees and expenses to be paid through deductions made by Santander from any expense retainers funded by the Debtors prior to the Petition Date. Notwithstanding the foregoing, Santander reserves its right to assert claims for the payment of additional amounts provided for in the Bond Financing Documents, and to seek additional or further adequate protection from the Court.

8. Carve-Out. The Replacement Liens and Super-Priority Administrative Claim 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 incurred until the earlier of (1) the entry of the Final Order or (2) the delivery of a Termination Notice (the “*Professional Fees and Expenses*”) of the attorneys, accountants or other professionals retained by the Debtor and any statutory committee of unsecured creditors (including, without limitation, any committee of residents) appointed in the chapter 11 case under section 327 or 1103(a) of the Bankruptcy Code (the “*Committee*”) (collectively, the “*Professionals*”), allocable solely to the Debtor; (b) Professional Fees and Expenses allocable solely to the Debtor in the maximum amount of \$50,000.00 incurred after delivery of a Termination Notice; and (c) the payment of

fees pursuant to 28 U.S.C. § 1930 to the extent related to the 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. Notwithstanding anything to the contrary set forth herein, no Cash Collateral nor any portion of the Carve-Out may be used to (i) fund expenses, fees or costs relating to any debtor other than the Debtor, except as specifically set forth in the Budget and referenced as "Direct Allocated Expenses" and "Shared Services Expenses" for the Debtor or (ii) prosecute actions, claims, demands or causes of action against Santander, or to object to or contest in any manner, or to raise any defense in any pleading to the validity, perfection, priority or enforceability of Santander's liens and security interests against the Prepetition Collateral or the Replacement Liens; provided, however, that the Cash Collateral may be used by the Committee and its professionals to perform due diligence with respect to the validity, perfection priority or enforceability of Santander's liens and security interests against the Prepetition Collateral or the Replacement Liens. The entry of a Final Order shall be a conclusive and binding determination on all parties that except for the Carve Out, no costs or expenses of administration shall be imposed against Santander or the Prepetition Collateral, including, without limitation, the Cash Collateral, under sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

9. Parties in Interest Bound.

(a) The admissions and stipulations contained in Paragraphs C and D of this Order shall be binding on the Debtor under all circumstances and shall be binding upon all other parties in interest, including, without limitation, any Committee and any chapter 7 or chapter 11 trustee that may be appointed or elected on behalf of the Debtor's estate, except to the extent that (i) a party in interest has filed an adversary proceeding or contested matter challenging the validity, enforceability or priority of the Prepetition Debt or the liens on the Prepetition Collateral in respect thereof, or otherwise asserting any claims or causes of action against Santander on behalf of the Debtor's estate, no later than the date that is sixty (60) days after the date of entry of this Order and (ii) the Court rules in favor of the plaintiff in any such timely filed adversary proceeding or contested matter. If any such adversary proceeding or contested matter

is timely commenced as of such date, the admissions contained in this Order shall nonetheless remain binding and preclusive (as provided in this paragraph) except to the extent that such acknowledgments and agreements are expressly challenged in such adversary proceeding or contested matter.

(b) If no such adversary proceeding or contested matter is commenced as of such date, then (i) the Prepetition Obligations shall constitute allowed secured claims, not subject to subordination (other than as set forth herein with respect to the Carve-Out and the Prior Senior Liens), or avoidance, for all purposes in this chapter 11 case and any subsequent chapter 7 case, (ii) the liens securing the Prepetition Obligations on the Prepetition Collateral shall be deemed legal, valid, binding, duly authorized, perfected, not subject to defense, counterclaim, recharacterization, offset of any kind, subordination, other than as set forth herein, and otherwise unavoidable, (iii) the Prepetition Obligations and the liens on the Prepetition Collateral shall not be subject to any other or further challenge by any party-in-interest seeking to exercise the rights of the Debtor's estate, including, without limitation, any successor thereto, and (iv) Santander shall be deemed released from any and all rights, claims, causes of action and liabilities arising from or in connection with the Prepetition Obligations, the Prepetition Collateral, the Bond Financing Documents and/or the extension of credit or other financial accommodations thereunder or with respect thereto.

10. Events of Default. Each of the following shall constitute an event of default ("*Event of Default*") with respect to the Debtor's authorization to use Cash Collateral hereunder, unless otherwise waived in writing by Santander:

(a) entry of an order converting this chapter 11 case to a case under chapter 7 of the Bankruptcy Code;

(b) entry of an order dismissing this chapter 11 case;

(c) entry of an order appointing or directing the election of a trustee or examiner for the Debtor under section 1104 or section 1106(b) of the Bankruptcy Code;

(d) without the prior written consent of Santander, the entry of any order (or other judicial action which has the effect of) amending, reversing, supplementing, staying the effectiveness of, vacating, or otherwise modifying this Order;

(e) the Debtor uses Cash Collateral for any purpose or in a manner other than as permitted in this Order and in the Budget or otherwise fails to comply with any term of this Order;

(f) entry of an order by the Bankruptcy Court authorizing relief from stay by any person (other than Santander) on or with respect to all or any portion of the Prepetition Collateral with a value in excess of \$50,000;

(g) the filing by the Debtor of any pleading objecting to or seeking to challenge Santander's claims with respect to the Prepetition Obligations or Santander's lien upon Cash Collateral or the Prepetition Collateral or otherwise asserting rights, claims or causes of action against Santander with respect to the Prepetition Obligations;

(h) the breach by the Debtor of its obligations under this Order;

(i) the filing by the Debtor of any debtor-in-possession financing pleadings or any final documents pertaining to a debtor-in-possession financing not reasonably acceptable to and/or supported by Santander;

(j) the filing by the Debtor of any bid procedure and/or sale documents relating to the sale of the Prepetition Collateral, post-petition collateral subject to the Replacement Lien, and/or Cash Collateral not acceptable to and not supported by Santander; or

(k) the Debtor voluntarily or involuntarily dissolves or is dissolved, liquidates or is liquidated or ceases the operation of any material portion of its business.

11. Termination Notice. Immediately upon the occurrence or existence of an Event of Default, Santander shall be authorized to issue a notice (a "*Termination Notice*") thereof to the Debtor, its counsel, counsel to any Committee and the U.S. Trustee, which Termination Notice may be delivered by electronic mail or facsimile. Unless, within five (5) business days after the issuance of such notice, the Court determines that the applicable Event of Default has not occurred or does not exist, the Debtor's authority to use Cash Collateral shall terminate immediately without further order of the Court.

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

13. Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code shall be, and it hereby is, vacated and modified to the extent necessary to permit (i) Santander to receive and apply payments made pursuant to this Interim Order in accordance with the terms and provisions of this Interim Order and the Budget, and (ii) to permit Santander to send the

Termination Notice (as defined herein) and to exercise any rights and remedies or other action authorized or contemplated by this Order.

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

15. Santander-Held Funds. The Debtor stipulates and agrees that the Santander-Held Funds are not property of its estate, are not collateral to secure the repayment of the Debtor's obligations with respect to any debtor-in-possession financing and may not be encumbered by any liens granted to a debtor-in-possession financing lender. Santander may, without further Court authority (including, without limitation, the need to file a motion to lift the automatic stay), access Santander-Held Funds in accordance with the terms of the Bond Financing Documents.

16. No Duty to Monitor Compliance. Santander may assume that the Debtor will comply with all terms and conditions of this Order and the Budget and shall not (a) be obligated to ensure or monitor the Debtor's compliance with any financial covenants, formulae or other terms and conditions of this Order or the Bond Financing Documents, (b) be obligated to pay (directly or indirectly from Cash Collateral or otherwise) any expenses incurred or authorized to be incurred pursuant to this Order or in connection with the operation of the Debtor's business, or (c) be obligated to ensure or monitor that Cash Collateral exists to pay such expenses.

17. No Waiver. The failure of Santander to seek relief or otherwise exercise its rights and remedies under this Order or the Bond Financing Documents, as applicable, shall not constitute a waiver of any of Santander's rights hereunder, thereunder or otherwise.

18. 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.

19. Section 552(b). In light of its agreement to subordinate its liens and superpriority claims to the Carve-Out, Santander shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to Santander with respect to products and proceeds of any of the Prepetition Collateral.

20. In the event that any order entered in any other bankruptcy case filed by an affiliate of the Debtor contains different or additional provisions that provide protection or benefit to the secured party that are more advantageous to the lender than the provisions of this Order, as determined by the Lender, such provisions shall be deemed to be incorporated herein without further order of Court.

21. 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 this chapter 11 case; (c) converting this chapter 11 case to any other chapter under the Bankruptcy Code; (d) withdrawing of the references of this chapter 11 case from the Court; and (e) providing for abstention from handling or retaining of jurisdiction of this chapter 11 case in the Court.

22. Amendments and Waivers. The Debtor and Santander 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 Debtor 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 Debtor and Santander, and approved by the Court on appropriate notice by the Debtor.

23. Santander Not in Control of Debtor's Operations. With respect to the Debtor's use of Cash Collateral pursuant to this Order and any subsequent interim or final order, or any actions reasonably related to this Order, the Motion or the Bond Financing Documents, neither Santander nor its agents, employees, attorneys or representatives shall have any liability to any third party (including creditors of the Debtor) and shall not be deemed to be in control of the Debtor's operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor.

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

25. Final Hearing. A final hearing on the Motion will be scheduled for [*] 2014, at [*] a.m./p.m. CST (the "*Final Hearing*"). The Debtor will provide notice of the Final Hearing by first class mail to (a) counsel for Santander, (b) counsel for the Committee, (c) the Office of the United States Trustee, (d) all parties who have filed requests for notice under Bankruptcy Rule 2002, (e) the holders of the twenty (20) largest unsecured claims against each of the Debtors, and (f) 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 Debtor; (b) counsel

for Santander; (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 Debtor.

AGREED TO BY:

Sears Caprock Retirement Corporation,
as debtor and debtor-in-possession through
its counsel

Santander Bank, N.A., as lender through
its counsel

DLA Piper LLP (US)

Duane Morris LLP

/s/ Vincent P. Slusher
DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629

/s/ John Robert Weiss
Duane Morris LLP
190 South LaSalle Street, Suite 3700
Chicago, IL 60603

###END OF ORDER###

EXHIBIT A

Budget

CRO Budget
SMRS - Mesa (Caprock) in Abilene

Week	1	2	3	4	4 Weeks
	Week Ending	Week Ending	Week Ending	Week Ending	Total
	6/15/2014	6/22/2014	6/29/2014	7/6/2014	6/15/2014 7/6/2014
SMRS - Mesa (Caprock) in Abilene					
Beginning Book Cash Balance	\$ 181,595	\$ 143,778	\$ 112,649	\$ 62,182	\$ 181,595
Receipts					
Deposits	97,239	52,239	52,239	104,478	306,195
Medicare	-	-	-	74,421	74,421
Medicaid	-	-	32,350	-	32,350
Direct / Shared Service Receipts	-	-	-	-	-
Entrance Fees	-	-	-	-	-
Total Receipts	97,239	52,239	84,589	178,899	412,966
Disbursements					
Payroll & Benefits	78,764	27,076	78,764	27,076	211,679
Trade Payables	56,292	56,292	56,292	56,292	225,168
Health Insurance	-	-	-	-	-
Entrance Fee Refunds	-	-	-	-	-
Debt Service (Interest)	-	-	-	56,212	56,212
Direct Allocated Expenses	-	-	-	54,000	54,000
Shared Services Expenses	-	-	-	28,315	28,315
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	135,056	83,368	135,056	221,894	575,374
Net Cash Flow	(37,817)	(31,129)	(50,467)	(42,995)	(162,408)
Ending Book Cash Balance	\$ 143,778	\$ 112,649	\$ 62,182	\$ 19,187	\$ 19,187
Beginning DIP Balance	\$ -	\$ -	\$ -	\$ -	\$ -
DIP Funding	-	-	-	100,000	100,000
Ending DIP Balance	\$ -	\$ -	\$ -	\$ 100,000	\$ 100,000
Adjusted Ending Cash Balance	\$ 143,778	\$ 112,649	\$ 62,182	\$ 119,187	\$ 119,187
Accrued Professional Fees (before payments)	-	-	84,123	108,526	108,526