

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 PLAINS RETIREMENT CORPORATION
FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE
PROTECTION TO PROSPERITY AND (III) SCHEDULING A FINAL HEARING**

Sears Plains Retirement Corporation (“Plains”), 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 Order” and together with the Interim Cash Collateral Order, the “Cash Collateral Orders”)

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.

(i) authorizing Plains to use cash collateral, (ii) granting adequate protection provided to Prosperity Bank, N.A. (“Prosperity”), and (iii) scheduling a final hearing (the “Final Hearing”).

In support of this Motion, Plains respectfully represents as follows:

INTRODUCTORY STATEMENT

Plains owns and operates Mildred and Shirley L. Garrison Geriatric Education and Care Center (“Garrison”), a geriatric learning center and nursing facility located in Lubbock, Texas on the campus of Texas Tech University (“TTU”). In the ordinary course of its business, Plains requires cash on hand and cash flow from Garrison’s operations to fund its working capital, liquidity needs, and other routine payables. In addition, Plains requires cash on hand to fund its chapter 11 case. All of Plains’s cash and cash proceeds are encumbered by security interests in favor of Prosperity and, as such, constitute “cash collateral” of Prosperity (as such term is defined in Bankruptcy Code section 363(a), “Cash Collateral”).

Absent the use of Cash Collateral, Plains will be unable to continue operating Garrison, thereby jeopardizing the health and well-being of its residents and stifling Plains’s ability to maximize the value of its estate. Such an abrupt cessation of Plains’s business would have a devastating effect on the residents of Garrison, 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, Plains will have difficulty funding its payroll and will lose many employees. Plains will also be unable to satisfy other routine payment obligations, thereby leaving Garrison 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 Rundell in Support of First Day Motions, filed contemporaneously herewith and incorporated herein by reference.

A. Plains’s Business Operations

7. Debtor Sears Methodist Retirement System, Inc. (“SMRS”) wholly owns Plains, which in turn wholly owns Garrison. SMRS provides certain management and oversight services to Plains 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. Garrison is located in Lubbock, Texas on the campus of TTU on land leased to Plains for a period of 50 years with two 10-year extensions, after which Garrison becomes the property of TTU. It consists of 104 nursing beds and one executive home. Garrison is also used as a training ground for Texas Tech University Health Sciences Center students. Residents at Garrison pay monthly fees. As of May 2014, Garrison had 86 residents and a 92.7% (YTD) occupancy rate.

9. As of January 2014, on a book value basis, Plains had approximately \$12.8 million in assets and \$10.2 million in liabilities. Plains's main assets consist of: (i) approximately \$1.1 million in cash and cash equivalents; (ii) approximately \$620,000 in accounts receivable; and (iii) approximately \$9.2 million in property and equipment. Plains's main liabilities are: (i) approximately \$8.2 million of bank loan debt (the "Plains Loan"), issued pursuant to that certain loan agreement (the "Plains Loan Agreement"), dated as of December 1, 2011, between Red River Health Facilities Development Corporation ("Red River"), Plains and Prosperity, as successor lender to American State Bank ("ASB"); and (ii) approximately \$480,000 in accounts payable.

10. The Plains Loan Agreement establishes, among other things, a debt service reserve account (the "Plains Debt Service Reserve Account"). Funds held in the Plains Debt Service Reserve Account (the "Reserve Funds") are to be applied to the final payment on the Plains Loan. The initial deposit in the Plains Debt Service Reserve Account was \$250,000. As of the date hereof, the balance of the Plains Debt Service Reserve Account remains at \$250,000.

B. Plains's Prepetition Debt Structure²

11. On December 1, 2011, Plains entered into the Plains Loan Agreement pursuant to which it borrowed \$9,000,000 from ASB (which was later succeeded as lender by Prosperity). The Plains Loan matures on October 1, 2016 and, as of May 2014, the loan balance was approximately \$8,234,000. The Plains Loan is evidenced by a certain A note, accruing interest at 3.50% ("Note A"), a B note, accruing interest at 3.50% ("Note B") and a C note, accruing interest at 4.25% ("Note C"). The monthly debt service payment under the Plains Loan is \$57,392. In connection with the Plains Loan, Plains entered into a certain Leasehold Deed of Trust, Security Agreement, and Assignment of Rents (the "Deed of Trust"), and a certain Commercial Security Agreement (the "Security Agreement"), pursuant to which Plains granted a lien to Lender on all its real property and other assets to secure repayment of the Plains Loan. The Plains Loan Agreement, Note A, Note B, Note C, Deed of Trust, and Security Agreement are collectively referred to herein as the "Loan Documents".

C. Plains's Cash Management System

12. Plains receives revenue from several sources, including monthly fees. In the ordinary course of business, Plains maintains a cash management system consisting of three different bank accounts. First, funds are collected into a centralized operating account, which receives cash from resident receipts. The cash maintained in Plains's operating account is used to fund operating expenses at Garrison. Second, Plains maintains a resident trust account funded from Social Security payments for Medicaid residents as well as personal deposits. The resident

² Plains continues to investigate the enforceability of the Loan Documents and any related liens. Nothing herein constitutes an admission of or stipulation as to the enforceability of the Loan Documents and any related liens.

trust account is used to fund miscellaneous/personal expenses for residents at Garrison. Finally, the Reserve Funds are maintained by Prosperity.

13. It should also be noted that funds may flow back and forth from Plains'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

14. 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.

15. 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 financial advisory services. The Debtors also hired an interim chief executive officer to replace the previous chief executive officer.

PLAINS'S IMMEDIATE AND URGENT NEED FOR CASH COLLATERAL

16. In the ordinary course of business, Plains requires cash on hand and cash flow

from its operations to fund its working capital and liquidity needs. Plains has an immediate and urgent need to use Cash Collateral, and absent the use of Cash Collateral, Plains cannot continue its business operations, and its ability to maximize the value of its estate is in jeopardy. If Plains 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

17. By this Motion, Plains 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 Plains to use Cash Collateral, (ii) approving the form of adequate protection to Prosperity, and (iii) scheduling the Final Hearing.

18. Plains 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:³

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, Plains is authorized, through 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 Plains 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 to the following rolling 4-week period.</p>

³ Capitalized terms not otherwise defined in the summary shall have the meanings ascribed to them in the Interim Cash Collateral Order.

	From and after entry of the Interim Cash Collateral Order, Plains shall provide to Lender on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report certified by the Plains's chief financial officer and in the same form as the Budget indicating all receipts received and disbursements made by Plains in the week ending the prior Friday compared to the Budget and detailing any variances of more than ten percent 10% in aggregate 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 Plains, including without limitation the Reserve Funds.
Adequate Protection	<p>As adequate protection for any diminution in value of Prosperity's Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506a(a) (a "<u>Diminution in Value</u>"), Prosperity shall be granted senior priority replacement liens upon all assets and property of Plains 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 Prosperity with respect to Plains's assets and properties as of the Petition Date (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, Plains shall continue to operate its business, and in doing so, shall preserve the value of Plains's estate.</p>
Carve-Out	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 Plains 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 to Plains under and to the extent set forth in the Budget and incurred prior to the delivery of a Termination Notice; 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.
--	---

19. The foregoing is only a brief summary. The terms of Plains'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.**

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

BASIS FOR RELIEF

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

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

22. 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.

23. Plains's ability to finance its operations and the availability to Plains of sufficient working capital and liquidity through the use of Cash Collateral is vital. Without use of the Cash Collateral, Plains will have no ability to operate its business. Plains, 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 Garrison.

B. The Interests of Prosperity are Adequately Protected.

24. 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).

25. 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).

26. Here, Plains is requesting authority to use Cash Collateral to protect the enterprise value of Plains’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 Garrison are protected. The proposed adequate protection is typical and appropriate under the circumstances.

i. Replacement Liens

27. As adequate protection for any Diminution in Value, Plains requests that the Court grant Prosperity the Replacement Liens in and upon all assets and property of Plains 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 Prosperity on the Petition Date, and would be valid, perfected, enforceable and effective as of the Petition Date without any further action of Plains or Prosperity 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 Prosperity from any potential depreciation and deterioration in the value of the Prepetition Collateral.

ii. Continued Operation

28. Prosperity is also adequately protected as a result of the continuation of Plains's business operations. Without the use of the Cash Collateral, Plains will be unable to continue managing Garrison and will be forced to cease operations, thereby jeopardizing its ability to maximize the value of its estate. Such an abrupt cessation of the Plains's business would also have devastating effects on the residents of Garrison, including leaving many without food, medical supplies, and the health and support services that they require. In addition, absent the

use of Cash Collateral, Plains will have difficulty funding its payroll and will lose many employees. Plains will also be unable to satisfy other routine payable obligations, thereby leaving Garrison in a complete state of disarray.

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

C. The Carve-Out Should Be Approved.

30. With the inclusion of the Carve-Out, the Cash Collateral Orders do not directly or indirectly deprive Plains'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 are expressly subject and subordinated to the Carve-Out, as described above.

D. Interim Approval Should Be Granted.

31. 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.

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

33. As set forth above, Plains has an immediate and urgent need to use Cash Collateral. Absent the use of Cash Collateral, Plains will not be able to meet its working capital and liquidity needs, and its estate and creditors, and residents of Garrison, will suffer immediate and irreparable harm. Accordingly, Plains submits that the interim relief requested is critical to presenting and maintaining Plains's going concern value, protecting the interests of its creditors and residents and facilitating its reorganization efforts.

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

34. Plains 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 Garrison. Accordingly, Plains 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).

F. Form and Manner of Notice of Final Hearing.

35. No later than two (2) business days following entry of the Interim Cash Collateral Order, Plains 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 Prosperity; (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 Plains's assets; and (vi) all parties requesting notice pursuant to Bankruptcy Rule 2002.

NOTICE

36. 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 Prosperity; (v) all known parties that may be asserting a lien against any of Plains's assets; and (vi) all parties requesting notice pursuant to Bankruptcy Rule 2002. Plains submits that, in light of the nature of the relief requested, no other or further notice is necessary or required.

CONCLUSION

WHEREFORE, Plains respectfully requests that the Court grant the Motion and enter the attached form of Interim Cash Collateral Order: (i) authorizing Plains to use Cash Collateral, including without limitation the Reserve Funds; (ii) granting adequate protection to Prosperity; (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: (I) AUTHORIZING SEARS PLAINS RETIREMENT
CORPORATION TO USE CASH COLLATERAL, (II) GRANTING
THE FORM OF ADEQUATE PROTECTION PROVIDED TO THE
LENDER AND (III) SCHEDULING A FINAL HEARING**

Upon the motion (the “Motion”)² of Sears Plains Retirement Corporation, debtor and debtor-in-possession in the above-captioned cases (“Plains” or the “Debtor”), for an interim order (this “Order”) (1) authorizing the Debtor to use the cash collateral of Prosperity Bank, N.A. (“Lender”), (2) granting the form of adequate protection provided herein to Lender upon the terms set forth herein, and (3) scheduling a final hearing on the Motion and approving the form

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.

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 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 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:³

- 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 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 believes that Lender will assert that the Debtor is obligated under the following undertakings:
 - (1) approximately \$8.2 million of bank loan debt (the "Plains Loan"), issued pursuant to that certain loan agreement (the "Plains Loan Agreement"), dated as of December 1, 2011, between Red River Health Facilities Development Corporation ("Red River"), Debtor and Lender, as successor lender to American State Bank ("ASB"); and

³ 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.

- (2) a certain A note, accruing interest at 3.50% ("Note A"), a B note, accruing interest at 3.50% ("Note B") and a C note, accruing interest at 4.25% ("Note C"). The monthly debt service payment under the Plains Loan is \$57,392 (collectively, the "Prepetition Obligations"); and
- (3) a certain Security Agreement, dated December 1, 2011 ("Security Agreement"), and a certain Deed of Trust, Security Agreement, and Assignment of Rents dated December 1, 2011 (the "Deed of Trust"), each securing repayment of the Prepetition Obligations.

D. Debtor expects Lender to further assert that:

(1) As of the Petition Date, the Debtor is obligated under the Loan Agreement, Note A, Note B, Note C, the Deed of Trust, and the Security Agreement (collectively the "Loan Documents");

(2) the Loan Documents are each valid and enforceable and not subject to any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity or enforceability of the Loan Documents;

(3) the financial undertaking under the Loan Documents (the "Prepetition Obligations") are valid, binding and enforceable and no portion thereof is subject to subordination or recharacterization for any reason;

(4) the obligations under the Loan Documents are secured claims; and

(5) Prosperity's liens and security interests are valid enforceable and perfected and are not subject to recharacterization, disallowance, reduction or subordination for any reason;

(6) Prosperity holds a validly perfected possessory security interest in the Reserve Funds and is entitled to access such funds in accordance with the terms of the Loan Documents; and

(7) Prosperity may administer and apply the Reserve Funds in accordance with the Loan Documents.

- E. The security interests and liens and other protections granted to Lender 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.

F. The liens and security interests granted to Lender hereunder shall not prime or impair any validly perfected lien or security interest senior to the liens and security interests of Lender with respect to the Debtor's assets and property 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 Debtor hereunder constitute adequate protection to Lender for the Debtor's use of Cash Collateral for purposes of this Order.

G. Good cause has been shown for entry of this Order. Without use of Cash Collateral, the Debtor would not be able to fund its day-to-day operations, including providing 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 its assets while it attempts to obtain confirmation of a Chapter 11 plan. 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, its residents, and its 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 conclusion of the final hearing on the Debtor's 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, which Cash Collateral includes without limitation the Reserve Funds, 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”). 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 Debtor shall provide to Lender on Wednesday of each week (commencing with the second week after the Petition Date), a weekly 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 10% in aggregate from the disbursements and receipts in the Budget.
4. Adequate Protection; Replacement Liens. Lender is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, as applicable, including, but not limited to, the Cash Collateral, for any diminution in value of its interest 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 Lender's Prepetition Collateral, as applicable, from and after the Petition Date, calculated in accordance with Bankruptcy Code Section 506(a) (a "Diminution in Value"), Lender 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), (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 Lender, 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 Debtor or Lender 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, Lender 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. 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 Debtor 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 Debtor 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 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 Debtor and Lender 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 Lender, and approved by the Court on appropriate notice by the 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 Debtor will provide notice of the Final Hearing by first class mail to (a) counsel for Lender, (b) counsel for any official committee of creditors appointed in these cases, (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 Lender; (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.

###END OF ORDER###

Exhibit A

Budget

CRO Budget

SMRS - Garrison (Plains) in Lubbock

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 - Garrison (Plains) in Lubbock					
Beginning Book Cash Balance	\$ 243,144	\$ 234,996	\$ 112,475	\$ 312,853	\$ 243,144
Receipts					
Deposits	92,643	61,321	61,321	92,643	307,928
Medicare	-	-	185,465	33,721	219,186
Medicaid	-	-	54,383	-	54,383
Direct / Shared Service Receipts	-	-	-	-	-
Entrance Fees	-	-	-	-	-
Total Receipts	92,643	61,321	301,169	126,364	581,497
Disbursements					
Payroll & Benefits	35,348	118,399	35,348	118,399	307,495
Trade Payables	65,443	65,443	65,443	65,443	261,772
Health Insurance	-	-	-	-	-
Entrance Fee Refunds	-	-	-	-	-
Debt Service	-	-	-	-	-
Direct Allocated Expenses	-	-	-	-	-
Shared Services Expenses	-	-	-	96,816	96,816
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	100,791	183,842	100,791	280,659	666,083
Net Cash Flow	(8,148)	(122,521)	200,378	(154,295)	(84,586)
Ending Book Cash Balance	\$ 234,996	\$ 112,475	\$ 312,853	\$ 158,558	\$ 158,558
Beginning DIP Balance	\$ -	\$ -	\$ -	\$ -	\$ -
DIP Funding	-	-	-	-	-
Ending DIP Balance	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Ending Cash Balance	\$ 234,996	\$ 112,475	\$ 312,853	\$ 158,558	\$ 158,558
Accrued Professional Fees (before payments)	-	-	98,943	127,645	127,645