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PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS IN POSSESSION

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

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

**MOTION OF SEARS TYLER METHODIST RETIREMENT CORPORATION
FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING
THE USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE
PROTECTION TO THE TRUSTEE AND (III) SCHEDULING A FINAL HEARING**

Sears Tyler Methodist Retirement Corporation (“Tyler”), 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

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.

Orders”) (i) authorizing Tyler to use cash collateral, (ii) granting adequate protection to UMB Bank, N.A., as successor bond trustee and master trustee (the “Trustee”), and (iii) scheduling a final hearing (the “Final Hearing”). In support of this Motion, Tyler respectfully represents as follows:

INTRODUCTORY STATEMENT

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

Absent the use of Cash Collateral, Tyler will be unable to continue operating Meadow Lake, thereby jeopardizing the health and well-being of its residents and stifling Tyler’s ability to maximize the value of its estate. Such an abrupt cessation of Tyler’s business would have a devastating effect on the residents of Meadow Lake, 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, Tyler will have difficulty funding its payroll and will lose many employees. Tyler will also be unable to satisfy other routine payment obligations, thereby leaving Meadow Lake 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. Tyler’s Business Operations

7. Debtor Sears Methodist Retirement System, Inc. (“SMRS”) wholly owns Tyler, which in turn wholly owns Meadow Lake. SMRS provides certain management and oversight services to Tyler 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. Meadow Lake is located in Tyler, Texas and offers 35 executive homes, 20 assisted living apartments, 80 independent living apartments, 35 memory enhancement beds, and 30 nursing beds. Residents at Meadow Lake pay monthly fees, and those living in executive homes and independent living apartments pay a refundable entrance deposit (“ED”) prior to moving in. As of May 2014, Meadow Lake had 161 residents.

9. As of January 2014, on a book value basis, Tyler had approximately \$56.3 million in assets and \$67.8 million in liabilities. Tyler’s main assets consist of: (i) approximately \$2.2 million in cash and cash equivalents; (ii) approximately \$787,000 in accounts receivable; and (iii) approximately \$49.5 million in property and equipment. Tyler’s main liabilities are: (i) approximately \$43,050,000 in respect of the Bonds (as defined below) issued by HFDC of Central Texas, Inc. (“Issuer”); (ii) approximately \$1.5 million in accrued interest payable; (iii) approximately \$350,000 in accounts payable; and (iv) approximately \$380,000 in contingent EDs.

B. Tyler’s Prepetition Debt Structure

10. The construction of Meadow Lake was initially financed with proceeds of \$8,545,000 Series 2009A Term Retirement Facility Revenue Bonds and an additional \$27,555,000 Series 2009A Term Retirement Facility Revenue Bonds (collectively, the “Series 2009A Bonds”) and \$7,850,000 Series 2009B Term Retirement Facility Revenue Bonds (the “Series 2009B Bonds” and together with the Series 2009A Bonds, the “Series 2009 Bonds”), issued pursuant to that certain Indenture of Trust, dated as of November 1, 2009 (the “Original Bond Indenture”) between Issuer and the Trustee. Issuer loaned the proceeds of the Series 2009

Bonds to Tyler pursuant to that certain Loan Agreement, dated as of November 1, 2009 (the “Original Loan Agreement”), between Issuer and Tyler, which provided for the repayment of such loans by Tyler pursuant to certain notes required to be issued by Tyler (the “Series 2009 Notes”). The Series 2009A Bonds accrue interest at 7.75% per annum and mature on either November 15, 2029 or November 15, 2044. The Series 2009B Bonds accrue interest at 6.375% per annum and mature on November 15, 2019.

11. The second phase of Meadow Lake’s construction was financed with the proceeds of \$3,895,000 Series 2011A Retirement Facility Revenue Bonds (the “Series 2011A Bonds”) and \$1,500,000 Series 2011B Retirement Facility Revenue Bonds (the “Series 2011B Bonds” and together with the Series 2011A Bonds, the “Series 2011 Bonds”), issued pursuant to that certain Supplemental Bond Indenture No. 1, dated as of February 1, 2011, between the Issuer and the Trustee (the “Supplemental Bond Indenture No. 1,” and collectively with the Original Bond Indenture, the “Bond Indenture”). The Series 2011 Bonds and the Series 2009 Bonds are collectively referred to herein as the “Bonds.” Issuer loaned the proceeds of the Series 2011 Bonds to Tyler pursuant to Amendment No. 1 to the Original Loan Agreement, dated as of February 1, 2011 (“Amendment No. 1,” and collectively with the Original Loan Agreement, the “Loan Agreement”), between Issuer and Tyler and provided for the repayment of such loans by Tyler pursuant to the Series 2011 Note (the “Series 2011 Note” and together with the Series 2009 Notes, the “Notes”), issued by Tyler as required by Amendment No. 1. The Series 2011A Bonds accrue interest at 8.50% per annum and the Series 2011B Bonds accrue interest at 7.25% per annum. Each of the Series 2011 Bonds mature on November 15, 2044. On November 15, 2019, the interest rate on any outstanding Series 2011B Bonds will increase to 10.0% per annum.

12. To secure the payment of the Bonds and the Notes, Tyler and the Trustee entered into that certain Master Trust Indenture, Deed of Trust and Security Agreement, dated as of November 1, 2009 (the “Original Master Indenture”), as supplemented by Supplemental Indenture Number 1, dated as of November 11, 2009 (“Supplemental Indenture No. 1”), Supplemental Indenture Number 2, dated as of February 1, 2011 (“Supplemental Indenture No. 2”), and Supplemental Indenture Number 3, dated as of May 1, 2012 (“Supplemental Indenture No. 3”) and collectively with the Original Master Indenture, Supplemental Indenture No. 1 and Supplemental Indenture No. 2, the “Master Indenture”) pursuant to which Tyler granted the Trustee a lien and security interest in its “Gross Revenues” and the “Premises” (each as defined in the Master Indenture, and collectively the “Prepetition Collateral”).

13. The proceeds of the Series 2011 Bonds were intended to: (i) pay a portion of the costs of completing the acquisition, construction, furnishing and equipping of Meadow Lake; (ii) fund an increase in the debt service reserve fund securing the Bonds; (iii) fund interest on the Series 2011 Bonds for approximately three months; and (iv) pay the costs of issuance of the Series 2011 Bonds.

14. Pursuant to the Master Indenture, certain accounts were established and are held by the Trustee (collectively, the “Trustee-Held Funds”), including, without limitation, (a) a certain “Entrance Fee Fund,” (b) a certain “Working Capital Fund,” (c) a certain “Operating Support Fund,” and (d) a certain “Revenue Fund” (each as defined in the Master Indenture). The Trustee-Held Funds are held in trust for the benefit of the holders of the Bonds as set forth the documents governing the Bonds and for the express purposes set forth therein. The Trustee-Held Funds are expressly excluded from the Cash Collateral proposed to be used by Tyler.

15. In connection with the issuance of the Series 2009 Bonds, Tyler entered into an

Operating Support Agreement with SDI, dated as of November 1, 2009 (the “Operating Support Agreement”), pursuant to which, among other things, Senior Dimensions, Inc. (i) agreed to deposit all of its net cash flow from certain contracts into an operating support fund, and (ii) granted to Tyler a continuing security interest in and to all right, title and interest of SDI in its right to receive payments of money under such contracts. Based on historical operations and future projections there is no Net Cash Flow (as defined in the Operating Support Agreement) distributable to Tyler.

16. A number of events of default under the Bonds and the Master Indenture have occurred and are continuing, including: (i) Tyler has not remitted any of the required interest payments since May 1, 2012; (ii) Tyler did not begin replenishment payments to a certain debt service reserve fund as required under the Tyler Bond documents; (iii) Tyler has not deposited its gross revenues in a certain revenue fund since July 1, 2012; (iv) Tyler failed to maintain cumulative cash from operations at amounts set forth in the loan documents; and (v) Tyler failed to maintain an occupancy covenant (collectively, the “Tyler Events of Default”).

17. As a result of the Tyler Events of Default, Tyler and certain holders of the Bonds engaged in negotiations regarding the terms of a permanent restructuring. In the course of these negotiations, on November 15, 2013, Tyler and the beneficial owners of at least 66-2/3% in aggregate principal amount of the Bonds entered into a Forbearance Agreement (the “Tyler Forbearance Agreement”), pursuant to which the bondholders agreed to, among other things, forbear from exercising any remedies available with respect to the payment defaults until March 31, 2014. In connection therewith, Tyler deposited \$150,000 with the Trustee to be used for fees and expenses related to the Tyler Forbearance Agreement. On March 31, 2014, the Trustee

agreed to forbear from initiating any formal legal action to accelerate the Bonds or to foreclose upon the underlying collateral until April 15, 2014.

18. On April 15, 2014, the Trustee and Tyler entered into a separate Forbearance Agreement (the “2014 Forbearance Agreement”), pursuant to which the Trustee agreed to, among other things, forbear from exercising any rights or remedies against Tyler available to the Trustee under the Loan Agreement, the Master Indenture or any other document governing the Bonds until the earlier of (i) July 14, 2014 or (ii) the occurrence of any Forbearance Termination Event (as defined therein). The Trustee may, in its sole discretion, extend the forbearance period for an additional ninety (90) days beyond July 14, 2014, to the extent that the Trustee is satisfied with the progress made towards implementing a restructuring or sale transaction and in the absence of contrary direction from the holders of the Bonds.

19. Pursuant to the 2014 Forbearance Agreement, Tyler agreed to, among other things, (i) establish a fee escrow account with the Trustee, consisting of an initial deposit of \$100,000 and subsequent deposits of \$100,000 on May 15, 2014, and June 16, 2014, respectively, and (ii) deliver a restructuring plan to the Trustee on or before May 30, 2014. If the Trustee and Tyler are unable to agree on the terms of the restructuring plan, or if the Trustee determines that the restructuring plan is not feasible or desirable, then the Trustee is required to inform Tyler of such determination on or before June 16, 2014.

C. Tyler’s Cash Management System

20. Tyler receives revenue from several sources, including monthly fees and EDs. In the ordinary course of business, Tyler maintains a cash management system consisting of four different bank accounts. First, funds are collected into a centralized operating account, which receives cash from resident receipts. The cash maintained in Tyler’s operating account is used to

fund operating expenses at Meadow Lake. Second, Tyler 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 Meadow Lake. Third, Tyler maintains a segregated money market account funded from resident deposits that is used to fund resident apartment/home purchases and home construction. Finally, the Trustee-Held Funds are maintained by the Trustee.

21. It should also be noted that funds may flow back and forth from Tyler'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

22. 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 EDs. These market conditions have contributed to decreased revenue and lower than anticipated occupancy rates at certain of the Debtors' senior living facilities.

23. 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.

24. As discussed above, a number of events of default under the Bonds and the Master Indenture have occurred and, pursuant to the 2014 Forbearance Agreement, the Trustee has agreed to forbear on exercising any rights or remedies until the earlier of (i) July 14, 2014 or (ii) the occurrence of any Forbearance Termination Event (as defined therein).

TYLER'S IMMEDIATE AND URGENT NEED FOR CASH COLLATERAL

25. In the ordinary course of business, Tyler requires cash on hand and cash flow from its operations to fund its working capital and liquidity needs. Tyler has an immediate and urgent need to use Cash Collateral, and absent the use of Cash Collateral, Tyler cannot continue its business operations, and its ability to maximize the value of its estate is in jeopardy. If Tyler 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

26. By this Motion, Tyler 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 Tyler to use Cash Collateral, (ii) granting adequate protection to the Trustee, and (iii) scheduling the Final Hearing.

27. Tyler 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, Tyler 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 Tyler 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 the Trustee. Any unused portion of the Variance will carry over to the following rolling 4-week period.</p> <p>Tyler shall provide to the Trustee an updated rolling 13-week cash flow report in a form acceptable to the Trustee comparing actual results to the Budget and reporting on the Variance of actual cash inflows and outflows from those set forth in the Budget.</p>
“Cash Collateral”	<p>The term “Cash Collateral” will be defined consistent with 11 U.S.C. § 363(a) to mean all cash (whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of Tyler. The definition of “Cash Collateral” shall expressly exclude the Trustee-Held Funds.</p>
Adequate Protection	<p>As adequate protection for any diminution in value of the Trustee’s Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506a(a) (a “<u>Diminution in Value</u>”), the Trustee shall be granted senior priority replacement liens upon all assets and property of Tyler 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 the Trustee with respect to Tyler’s assets and properties as of the Petition Date (the “<u>Prior Senior Liens</u>”). The Replacement Liens</p>

	<p>so granted are in addition to all security interests, liens, and rights of setoff existing in favor of the Trustee on the Petition Date, and are and shall be valid, perfected, enforceable and effective as of the Petition Date without any further action of Tyler or the Trustee 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, the Trustee 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, Tyler shall pay the reasonable fees and expenses of Trustee’s outside legal and financial advisors in accordance with the Budget, with any balance due to the Trustee’s professionals and the Trustee’s internal fees and expenses to be paid by the Trustee through deductions from (a) any expense retainers funded by Tyler prior to the Petition Date and/or (b) the Trustee-Held Funds.</p> <p>Furthermore, Tyler shall continue to operate its business, and in doing so, shall preserve the value of Tyler’s estate.</p>
<p>Stipulations</p>	<p>Tyler stipulates and agrees that: (a) it is obligated under the Master Indenture, the Bond Indenture, the Bonds and the Loan Agreement (collectively, the “<u>Bond Financing Documents</u>”); (b) the Bond Financing 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 Bond Financing Documents; (c) the financial undertaking under the Bond Financing Documents (the “<u>Prepetition Obligations</u>”) are valid, binding and enforceable and no portion thereof is subject to subordination or recharacterization for any reason; (d) the obligations under the Bond Financing Documents are secured claims; (e) the Trustee’s liens and security interests are valid enforceable and perfected and are not subject to recharacterization, disallowance, reduction or subordination for any reason; (f) the Trustee holds a validly perfected possessory security interest in the Trustee-Held Funds and is entitled to access such funds in accordance with the terms of the Bond Financing Documents; and (g) the Trustee may administer and apply the Trustee-Held Funds in accordance with the Bond Financing Documents.</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 (the “<u>Professional Fees and Expenses</u>”) of the attorneys, accountants or other professionals retained by Tyler 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 the Debtor under and to the extent set forth in the Budget and incurred prior to the delivery of a Termination Notice; (b) Professional Fees and Expenses 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 prosecute actions, claims, demands or causes of action against the Trustee, 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 the Trustee’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 the Trustee’s liens and security interests against the Prepetition Collateral or the Replacement Liens.</p>
Term	Tyler’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.
Events of Default	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 Tyler under section 1104 or section 1106(b) of the Bankruptcy Code; (d) without the prior written consent of the Trustee, 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) Tyler uses Cash Collateral for any purpose or in a manner other than as permitted in 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 the Trustee) 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 Tyler of any pleading

	<p>objecting to or seeking to challenge the Trustee's claims with respect to the Prepetition Obligations or the Trustee's lien upon Cash Collateral or the Prepetition Collateral or otherwise asserting rights, claims or causes of action against the Trustee with respect to the Prepetition Obligations; (h) the breach by Tyler of its obligations under the Interim Cash Collateral Order; (i) the filing by Tyler of any debtor-in-possession financing pleadings or any final documents pertaining to a debtor-in-possession financing not acceptable to and not supported by the Trustee; (j) the filing by Tyler 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 the Trustee; or (k) Tyler 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, the Trustee shall be authorized to issue a notice (a "<u>Termination Notice</u>") thereof to Tyler, 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, Tyler's authority to use Cash Collateral shall terminate.</p>
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28. The foregoing is only a brief summary. The terms of Tyler'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.**

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

BASIS FOR RELIEF

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

30. Tyler has a vital need to use Cash Collateral. Because Tyler has no funds other than Cash Collateral, Tyler has no ability to operate its business without the use of Cash

Collateral, including, among other things, servicing the residents of Meadow Lake, paying vendors, or funding payroll. The inability to perform these critical tasks would cause immediate and irreparable harm to Tyler's estate, creditors and the residents of Meadow Lake.

31. 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.

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

B. The Interests of the Trustee are Adequately Protected.

33. The Trustee 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).

34. 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).

35. Here, Tyler is requesting authority to use Cash Collateral to protect the enterprise value of Tyler’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 Meadow Lake are protected. The proposed adequate protection is typical and appropriate under the circumstances.

i. Replacement Liens

36. As adequate protection for any Diminution in Value, Tyler requests that the Court grant the Trustee the Replacement Liens in and upon all assets and property of Tyler 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 the Trustee on the Petition Date, and would be valid, perfected, enforceable and effective as of the Petition Date without any further action of Tyler or the Trustee and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. If granted, the Replacement Liens will adequately protect the Trustee from any potential depreciation and deterioration in the value of the Prepetition Collateral.

ii. Super-Priority Administrative Claim

37. As additional adequate protection, Tyler requests that the Court grant the Trustee 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. Fees and Expenses

38. In addition to the Replacement Liens and Super-Priority Administrative Claim, Tyler proposes to pay the reasonable fees and expenses of Trustee's outside legal and financial advisors in accordance with the Budget, with any balance due to the Trustee's professionals and the Trustee's internal fees and expenses to be paid by the Trustee through deductions from (x) any expense retainers funded by Tyler prior to the Petition Date and/or (y) the Trustee-Held Funds.

iv. Continued Operation

39. The Trustee is also adequately protected as a result of the continuation of Tyler's business operations. Without the use of the Cash Collateral, Tyler will be unable to continue managing Meadow Lake and will be forced to cease operations, thereby jeopardizing its ability to maximize the value of its estate. Such an abrupt cessation of the Tyler's business would also have devastating effects on the residents of Meadow Lake, including leaving many without food, medical supplies, and the health and support services that they require. In addition, absent the use of Cash Collateral, Tyler will have difficulty funding its payroll and will lose many employees. Tyler will also be unable to satisfy other routine payable obligations, thereby leaving Meadow Lake in a complete state of disarray.

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

41. The Trustee has consented to these forms of adequate protection. Accordingly, Tyler should be authorized to use Cash Collateral as set forth in the Interim Cash Collateral Order.

C. The Carve-Out Should Be Approved.

42. With the inclusion of the Carve-Out, the Cash Collateral Orders do not directly or indirectly deprive Tyler'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.

43. The relief requested herein contemplates a modification of the automatic stay pursuant to Bankruptcy Code section 362 to the extent necessary to permit the Trustee 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.

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

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

E. Interim Approval Should Be Granted.

46. 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.

47. Pursuant to Bankruptcy Rule 4001(b), Tyler requests that the Court conduct an

expedited hearing on this Motion and (a) authorize Tyler 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 Tyler's ongoing operations, and (ii) avoid immediate harm and prejudice to Tyler's estate and all parties in interest and (b) schedule the Final Hearing.

48. As set forth above, the Trustee has consented to entry of the Interim Cash Collateral Order. Additionally, Tyler has an immediate and urgent need to use Cash Collateral. Absent the use of Cash Collateral, Tyler will not be able to meet its working capital and liquidity needs, and its estate and creditors, and residents of Meadow Lake, will suffer immediate and irreparable harm. Accordingly, Tyler submits that the interim relief requested is critical to presenting and maintaining Tyler'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).

49. Tyler 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 Meadow Lake. Accordingly, Tyler 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.

50. No later than two (2) business days following entry of the Interim Cash Collateral Order, Tyler shall file with the Court and cause to be served a Notice of Final Hearing and a copy of the Interim Cash Collateral Order upon the following parties: (i) counsel to the Trustee; (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 Tyler's assets; and (vi) all parties requesting notice pursuant to Bankruptcy Rule 2002.

NOTICE

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

CONCLUSION

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

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Proposed Attorneys for the Debtors
and Debtors in Possession

Exhibit A

Proposed Interim Cash Collateral Order

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

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 TYLER METHODIST
RETIREMENT CORPORATION TO USE CASH COLLATERAL ON AN
INTERIM BASIS; (2) GRANTING ADEQUATE PROTECTION TO
TRUSTEE; AND (3) SCHEDULING A FINAL HEARING**

Upon the motion (the “*Motion*”)² of Sears Tyler Methodist 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 the Trustee, (2) granting

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.

the Trustee 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: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 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*");

(1) a certain Master Trust Indenture, Deed of Trust and Security Agreement dated November 1, 2009 (as supplemented and amended, the "*Master Indenture*"), by and between the Debtor and UMB Bank, N.A., not individually, but as successor master trustee (the "*Master Trustee*");

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 Indenture of Trust dated November 1, 2009 (as supplemented and amended, the “*Bond Indenture*”), by and between HFDC of Central Texas, Inc. (the “*Issuer*”) and UMB Bank, N.A., not individually, but as successor bond trustee (the “*Bond Trustee*” and, together with the Master Trustee, the “*Trustee*”);

(3) those certain HFDC of Central Texas, Inc. Retirement Facility Revenue Bonds (Sears Tyler Methodist Retirement Corporation Project), Series 2009A (the “*2009A Bonds*”), issued pursuant to the Bond Indenture in the initial aggregate principal amount of \$36,100,000;

(4) those certain HFDC of Central Texas, Inc. Retirement Facility Revenue Bonds (Sears Tyler Methodist Retirement Corporation Project), Series 2009B (the “*2009B Bonds*”), issued pursuant to the Bond Indenture in the initial aggregate principal amount of \$7,850,000;

(5) those certain HFDC of Central Texas, Inc. Retirement Facility Revenue Bonds (Sears Tyler Methodist Retirement Corporation Project), Series 2011A (the “*2011A Bonds*”), issued pursuant to the Bond Indenture in the initial aggregate principal amount of \$3,895,000;

(6) those certain HFDC of Central Texas, Inc. Retirement Facility Revenue Bonds (Sears Tyler Methodist Retirement Corporation Project), Series 2011B (the “*2011B Bonds*” and, together with the 2009A Bonds, the 2009B Bonds, and the 2011A Bonds, the “*Bonds*”), issued pursuant to the Bond Indenture in the initial aggregate principal amount of \$1,500,000; and

(7) a certain Loan Agreement dated November 1, 2009 (as supplemented and amended, the “*Loan Agreement*”), by and between the Issuer and the Debtor, pursuant to which the Debtor covenanted to make payments at such times and in such amounts so as to provide for the payment of the principal of, premium, if any, and interest on the Bonds and any fees, costs and expenses related thereto (collectively, 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 8 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) The Trustee's liens and security interests with respect to the Debtor's "Gross Revenues" and the "Premises" (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 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, the Trustee 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 Master Indenture, certain accounts were established and are held by the Trustee (collectively, the "*Trustee-Held Funds*"), including, without limitation, (a) a certain "Entrance Fee Fund," (b) a certain "Working Capital Fund," (c) a certain "Operating Support Fund," and (d) a certain "Revenue Fund" (each as defined in the Master Indenture). The Trustee-Held Funds are held in trust for the benefit of the holders of the Bonds as set forth the Bond Financing Documents and for the express purposes set forth therein. The Debtor acknowledges that the Trustee holds a validly perfected possessory security interest in the Trustee-Held Funds, and is entitled to access the Trustee-Held Funds in accordance with the terms of the Bond Financing Documents. To the extent that the automatic stay otherwise applies to such Trustee-Held Funds pursuant to Bankruptcy Code Section 362(a), as adequate protection for the use of the Trustee's Cash Collateral, the Debtor stipulates to relief from such stay for the limited purpose of allowing the Trustee to administer and apply the Trustee-Held Funds in accordance with the Bond Financing Documents. The Trustee-Held Funds shall be administered and applied as set forth the Bond Financing Documents and for the express purposes set forth therein, 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; and

(5) The Trustee'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 the Trustee'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, the Trustee'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 Trustee-Held Funds.

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 8 hereof.

E. The Debtor has requested that the Trustee consent to the Debtor's use of Cash Collateral and the Trustee is willing to consent to the Debtor's use of Cash Collateral on the terms and conditions provided herein. The Trustee 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 the Trustee 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 the Trustee 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 the Trustee'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, the Trustee 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 the Trustee hereunder shall not prime or impair any validly perfected lien or security interest senior to the liens and security interests of the Trustee with respect to the Debtor's assets and properties as of the Petition Date (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 the Trustee 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 while it attempts to obtain confirmation of its 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 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 10 below, authorized pursuant to Bankruptcy Code Sections 105, 361, 362 and 363, and Bankruptcy Rules 2002, 4001, 6003 and 9014 to use Cash Collateral on an interim basis pending a final determination by the Court. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the budget attached hereto as Exhibit A (the "*Budget*"); provided, however, that the 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 the Trustee. Any unused portion of the Variance will carry over to the following rolling 4-week period.

3. Reporting. Each week during the Chapter 11 case, the Debtor will submit to the Trustee an updated rolling 13-week cash flow report in a form acceptable to the Trustee comparing actual results to the Budget and reporting on the Variance of actual cash inflows and outflows from those set forth in the Budget. The Debtor will make its books and records, and its financial staff and advisors, reasonably available to the Trustee and its advisors at any time between the hours of 9:00 a.m. and 5:00 p.m. on any weekday, with not less than forty-eight (48) hours advance notice, to enable the Trustee to monitor the Debtor’s compliance with the Budget and this Order and the Debtor’s operations (whether historic, current or prospective).

4. Adequate Protection; Replacement Liens. The Trustee 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 the Trustee’s Prepetition Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code Section 506(a) (a “*Diminution in Value*”), the Trustee 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 the Trustee 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 the Trustee and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. Notwithstanding the foregoing, the Trustee 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. The Trustee 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. Adequate Protection; Fees and Expenses. The Debtor is hereby authorized and directed to pay the reasonable fees and expenses of Trustee's outside legal and financial advisors in accordance with the Budget, with any balance due to the Trustee's professionals and the Trustee's internal fees and expenses to be paid by the Trustee through deductions from (a) any expense retainers funded by the Debtor prior to the Petition Date and/or (b) the Trustee-Held Funds in accordance with the Bond Financing Documents. Notwithstanding the foregoing, the Trustee 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.

7. 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 (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 to the Debtor under and to the extent set forth in the Budget and incurred prior to the delivery of a Termination Notice; (b) Professional Fees and Expenses 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 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 prosecute actions, claims, demands or causes of

action against the Trustee, 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 the Trustee's liens and security interests against the Prepetition Collateral or the Replacement Liens; provided, however, 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 the Trustee's liens and security interests against the Prepetition Collateral or the Replacement Liens.

8. 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 the Trustee 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) the Trustee 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.

9. 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 the Trustee:

(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 Debtors under section 1104 or section 1106(b) of the Bankruptcy Code;

(d) without the prior written consent of the Trustee, 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 the Trustee) 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 the Trustee’s claims with respect to the Prepetition Obligations or the Trustee’s lien upon Cash Collateral or the Prepetition Collateral or otherwise asserting rights, claims or causes of action against the Trustee 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 acceptable to and not supported by the Trustee;

(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 the Trustee; 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.

10. Termination Notice. Immediately upon the occurrence or existence of an Event of Default, the Trustee 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.

11. Trustee-Held Funds. The Trustee-Held Funds are held in trust for the benefit of the holders of the Bonds, as set forth the Bond Financing Documents. The Trustee may, without further Court authority (including, without limitation, the need to file a motion to lift the automatic stay), access the Trustee-Held Funds in accordance with the terms of the Bond Financing Documents.

12. No Duty to Monitor Compliance. The Trustee 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.

13. No Waiver. The failure of the Trustee 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 the Trustee's rights hereunder, thereunder or otherwise.

14. 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.

15. Section 552(b). In light of its agreement to subordinate its liens and superpriority claims to the Carve-Out, the Trustee 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 the Trustee with respect to products and proceeds of any of the Prepetition Collateral.

16. 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.

17. Amendments and Waivers. The Debtor and the Trustee 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 the Trustee, and approved by the Court on appropriate notice by the Debtor.

18. Trustee 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 the Trustee 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.

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

20. 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 the Trustee, (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 the Trustee; (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 Tyler Methodist Retirement Corporation, as debtor
and debtor-in-possession through its counsel

DLA Piper LLP (US)

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

UMB Bank, N.A., as trustee
through its counsel

McDermott Will & Emery LLP

/s/ Nathan F. Coco
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, Illinois 60606-5096

###END OF ORDER###

EXHIBIT A

Budget

CRO Budget
SMRS - Meadow Lake in Tyler

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 - Meadow Lake in Tyler					
Beginning Book Cash Balance	\$ 604,237	\$ 598,590	\$ 566,340	\$ 368,915	\$ 604,237
Receipts					
Deposits	155,556	62,778	62,778	216,668	497,780
Medicare	-	-	-	95,120	95,120
Medicaid	-	-	-	-	-
Direct / Shared Service Receipts	-	-	-	-	-
Entrance Fees	-	-	-	-	-
Total Receipts	155,556	62,778	62,778	311,788	592,900
Disbursements					
Payroll & Benefits	98,488	32,313	98,488	32,313	261,603
Trade Payables	62,715	62,715	62,715	62,715	250,860
Health Insurance	-	-	-	-	-
Entrance Fee Refunds	-	-	99,000	-	99,000
Adequate Protection	-	-	-	100,000	100,000
Direct Allocated Expenses	-	-	-	20,000	20,000
Shared Services Expenses	-	-	-	73,190	73,190
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	161,203	95,028	260,203	288,218	804,653
Net Cash Flow	(5,647)	(32,250)	(197,425)	23,569	(211,753)
Ending Book Cash Balance	\$ 598,590	\$ 566,340	\$ 368,915	\$ 392,484	\$ 392,484
Beginning DIP Balance	\$ -	\$ -	\$ -	\$ -	\$ -
DIP Funding	-	-	-	-	-
Ending DIP Balance	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Ending Cash Balance	\$ 598,590	\$ 566,340	\$ 368,915	\$ 392,484	\$ 392,484
Accrued Professional Fees (before payments)	-	-	95,237	122,864	122,864