



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS


ENTERED

TAWANA C. MARSHALL, CLERK

THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 31, 2014


United States Bankruptcy Judge

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

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

**FINAL ORDER: (1) AUTHORIZING SEARS
CAPROCK RETIREMENT CORPORATION TO
USE CASH COLLATERAL; AND (2) GRANTING
ADEQUATE PROTECTION TO SANTANDER BANK, N.A.
[RELATED DOCUMENT NO. 19]**

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.

Upon the motion (the “Motion”)² of Sears Caprock Retirement Corporation, a debtor and debtor-in-possession in the above-captioned cases (the “Debtor”), for a final order (this “Order”) (1) authorizing the Debtor to use the cash collateral of Santander Bank, N.A., (“Santander” or “Lender”)³, and (2) granting Santander adequate protection upon the terms set forth in interim and final orders; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this case and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and it appearing that notice of the Motion has been given in accordance with Bankruptcy Rule 4001(b)(2); and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND THAT:⁴

A. On June 10, 2014 (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. On June 19, 2014, the Office of the United States Trustee appointed an

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

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

⁴ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Official Committee of Unsecured Creditors (the “Committee”) in connection with the Chapter 11 case [Dkt. No. 96].

C. On July 20, 2014, the Debtor filed its Motion for Interim and Final Orders (I) Authorizing the Debtor to Obtain Post-Petition Financing on a Senior Secured Superpriority Basis Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 (II) Setting a Final Hearing and (III) Granting Related Relief (the “DIP Motion”) [Dkt. No. 241], pursuant to which the Debtor is seeking interim and final orders (the “DIP Orders”) approving, among other things, the granting of certain first-priority liens (the “Priming Liens”) to Santander (in such a capacity, the “DIP Lender”), and secured financing provided by the DIP Lender on an interim basis in a principal amount not to exceed \$700,000 (the “Interim DIP Financing”) and on a final basis in a principal amount of 1,500,000⁵ (the “Final DIP Financing” and together with the Interim DIP Financing, the “DIP Financing”).

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

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

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

(3) that certain Loan Agreement dated March 1, 2008 (the “Loan Agreement”), by and between the Issuer and the Debtor, pursuant to which the Issuer loaned the proceeds of the Bonds to the Debtor, and the Debtor covenanted to make payments at such times

⁵ The terms of the Facility continue to be negotiated among the DIP Lender and Caprock, including without limitation, raising the principal aggregate amount to \$2,100,000.

and in such amounts sufficient to pay the principal of, and premium, if any, and interest on the Bonds and any fees, costs and expenses related thereto when due;

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

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

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

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

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

Any and all monetary and nonmonetary obligations under the Bond Financing Documents are referred to herein as the “Prepetition Obligations.” The foregoing acknowledgments and stipulations shall be binding on the Debtor but not on any other party-in-interest in this Case, except as provided in Paragraph 11 hereof.

E. The Debtor further stipulates and agrees as follows:

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

(2) As of the Petition Date, the Prepetition Obligations constitute legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms of the Bond Financing Documents (other than with respect to a stay of enforcement arising from section 362 of the Bankruptcy Code); no offsets, defenses or counterclaims to any of the Prepetition Obligations exists; no portion of the Prepetition Obligations is subject to recharacterization,

disallowance, reduction or subordination pursuant to the Bankruptcy Code or non-bankruptcy law; the Prepetition Obligations constitute allowable secured claims; and the Debtor has irrevocably waived, discharged and released any rights it may have to challenge or object to the Prepetition Obligations, and/or to challenge or object to the security for the Prepetition Obligations;

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

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

(5) Santander's security interests and liens have attached to all funds and property of the Debtor consisting of the Prepetition Collateral and the products and proceeds thereof, and Santander's security interests and liens will, notwithstanding the commencement of the chapter 11 case, as of the Petition Date and thereafter, attach to the products and other proceeds of the Prepetition Collateral. Without limiting the foregoing, Santander's security interests and liens attach to all cash (whether as original collateral or cash proceeds of the Prepetition Collateral), negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents now or hereafter in the possession, custody or control of the Debtor (as defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral"). For the avoidance of doubt, (i) the term "Cash Collateral" does not include Santander-Held Funds; and (ii) nothing herein negates the terms of the order Authorizing the Debtors to Escrow Certain Entrance Deposits and Refund Certain Entrance Deposits, dated June 12, 2014 [Dkt. No. 56].

(6) As of the Petition Date, the principal and interest portion of the Prepetition Obligations is not less than \$6,922,982.01. Additional amounts are due under the Bond Financing Documents.

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

The foregoing acknowledgments and stipulations shall be binding on the Debtor but not on any other party-in-interest in this Case, except as provided in Paragraph 11 hereof.

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

G. The agreements and arrangements described in the Motion and authorized in this Order have been negotiated at arm's-length with all parties represented by counsel, are fair and reasonable under the circumstances, and are enforceable in accordance with their terms. The Debtor and Santander are acting in good faith with respect to the use of Cash Collateral as provided in this Order. The superpriority claims, security interests and liens and other protections granted to Santander pursuant to this Order (1) are fair and reasonable and satisfy the requirements of the Bankruptcy Code and (2) will not be affected by any subsequent reversal, modification, vacatur or amendment of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

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

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

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

THE COURT HEREBY ORDERS, AS FOLLOWS:

1. Motion Granted. The Motion is granted on a final basis in accordance with the terms and conditions of this Final Order. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are overruled on the merits.

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) December 31, 2014 (the "Termination Date") or (b) termination of this Order following issuance of a Termination Notice as set forth in Paragraph 13 below, authorized pursuant to sections 105, 361, 362 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6003 and 9014 to use Cash Collateral on a

final basis. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the budget attached hereto as Exhibit A (the “Budget”); provided, however, that the Debtor may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-week period does not exceed ten percent (10%) in aggregate (the “Variance”); and provided, further that any amendment or modification of the terms and conditions, or any amendment, modification, roll-forward or replacement of the Budget itself, shall be subject to the prior written consent of Santander, which may be granted or withheld in Santander’s sole and absolute discretion.⁶ Any such amendment or modification of the Budget shall not require approval of the Court to be effective. The Debtor shall provide the Committee with notice of any budget modification that may be agreed to by Santander. Any unused portion of the Variance will carry over to the following rolling 4-week period, provided, however that expenditures shall not exceed the amount stated in the last column of the Budget, subject to the Variance (without considering any carryover of the Variance).

3. Exclusion From Cash Collateral. No Cash Collateral may be used by or used to fund expenses, fees or costs relating to any other debtor other than the Debtor, except as specifically set forth in the Budget and referenced as “Shared Services Expenses.”⁷ In addition, the Debtor is not authorized to use and shall not use any Cash Collateral not derived in the ordinary course of the operations of the Debtor.

⁶ For the avoidance of doubt, cash may be used to pay any amounts relating to refunds due to current or former residents of the Debtor’s facility, but solely to extent set forth in the Budget and in accordance with the residents’ contracts.

⁷ The “Accrued Professional Fees” line item in the Budget is based on a good faith estimate by the Debtors. The Professionals shall provide the Lender with invoices detailing the actual fees and expenses incurred by each Professional allocable to the Debtor, payment of which shall be subject to Court approval, but the amount of which is payable from Santander’s Cash Collateral shall not exceed the amount set forth in the Budget.

4. Reporting. As additional protection for the Debtor's use of Santander's Cash Collateral, the Debtor shall allow Santander and its professionals and designees reasonable access, during normal business hours, to the premises of the Debtor in order to conduct appraisals, analyses and/or audits of the Prepetition Collateral, and shall otherwise reasonably cooperate in providing any other financial information requested by Santander for this purpose. From and after the entry of this Order, the Debtor shall provide to Santander, with a copy to the Committee, on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report (the "Weekly Budget Report") certified by the Debtor's chief financial officer or chief restructuring officer and in the same form as the Budget indicating all receipts received and disbursements made by the Debtor in the week ending the prior Friday compared to the Budget and detailing any variances of more than 5% and at least \$10,000 from the disbursements and receipts in the Budget. The Debtor, its professionals and consultants shall be available weekly (subject to reasonable scheduling conflicts) for a telephonic conference call with Santander and/or its professionals to discuss the status of the this Bankruptcy Case, the results of operations and other matters pertaining to the Debtor's facility, including any sale or restructuring efforts. Santander shall have independent access to the Debtor's financial advisors, investment banker and consultants to discuss matters relating to the Debtor, including any contemplated sale or restructuring of the Debtor. The Debtor shall provide to Santander such other reports and information as Santander may reasonably request from time to time, including balance sheets, income statements and cash flow statements for the fiscal year ending 2013 and the first and second quarters of 2014.

5. Bankruptcy Proceeding Milestones. As further adequate protection, and as further consideration for the use of Santander's Cash Collateral, the Debtor shall comply with the following milestones (the "Milestones"):

(i) on or before November 30, 2014, Santander shall have received from the Debtor a proposed plan of action for the sale of the Prepetition Collateral or the refinancing of the Prepetition Obligations that is reasonably acceptable to Santander (the "Exit Proposal"); and

(ii) the Debtor shall comply with any dates or deadlines contained in the Exit Proposal.

6. Adequate Protection; Replacement Liens. Santander is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of its interests in the Prepetition Collateral, including, without limitation, any such diminution resulting from the Debtor's use of Cash Collateral and any other Prepetition Collateral and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As security for and solely to the extent of any diminution in the value of Santander's Prepetition Collateral from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code (a "Diminution in Value"), Santander is hereby granted senior priority replacement liens upon all assets and property of the Debtor and its estate of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Prepetition Collateral (the "Replacement Liens"), but excluding all claims and causes of action, and the products and proceeds thereof, arising under or permitted by Sections 502(d), 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code and any other avoidance claims and

causes of action arising under state or federal law; provided, however, that the Replacement Liens shall be subject and subordinate to (a) the Carve-Out (defined below) (b) the Priming Liens and (c) the Prior Senior Liens. The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of Santander on the Petition Date, and are and shall be valid, perfected, enforceable and effective as of the Petition Date without any further action of the Debtor or Santander and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. Notwithstanding the foregoing, Santander is hereby authorized, but not required, to file or record any financing statements, security agreements, deeds of trust, or other documents in any jurisdiction or take any other action in order to validate and perfect the Replacement Liens granted hereunder.

7. Adequate Protection; 507(b) Priority Claim. Santander is hereby granted an administrative claim with a priority equivalent to a claim under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code, on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, sections 105, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113 and 1114 of the Bankruptcy Code (the “Super-Priority Administrative Claim”), except for expenditures constituting the Carve-Out and the super-priority claim granted to the DIP Lender under the DIP Orders.

8. Bankruptcy Code Section 506(c) Waiver. Except as set forth in Paragraph 11 below, the entry of this Order by the Court shall be a conclusive and binding determination on all parties (x) as to the scope, extent, perfection, validity and enforceability, in all respects, of Santander’s security interests and liens in the Prepetition Collateral, including, without

limitation, the Cash Collateral, and (y) that such liens and security interests shall not be subject to any claim under section 552(b) of the Bankruptcy Code. Santander's security interests in the Prepetition Collateral, including, without limitation, the Cash Collateral, are and shall not be subject to any claim under section 506(c) of the Bankruptcy Code, which claims are hereby deemed to be waived.

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

10. Carve-Out. The Replacement Liens and Super-Priority Administrative Claim granted hereunder shall be junior and subordinate to the following fees and expenses (the "Carve-Out"): (a) all budgeted and accrued but unpaid fees and expenses incurred until the earlier of (1) the Termination Date or (2) the delivery of a Termination Notice (the "Professional Fees and Expenses") of the attorneys, accountants or other professionals retained by the Debtor and the Committee (collectively, the "Professionals"), allocable solely to the Debtor and not to exceed the amount of "Accrued Professional Fees" set forth in the Budget; (b) Professional Fees and Expenses allocable solely to the Debtor and to the extent set forth in the Budget in the maximum amount of \$50,000.00 incurred after delivery of a Termination Notice; (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 and (d) all reasonable and necessary costs incurred by any state regulatory authority in connection with the maintenance, retention and disposition of patient medical records as required by applicable state or federal law or the provisions of 11 U.S.C. § 351. Notwithstanding anything to the contrary set forth herein, no Cash Collateral nor any portion of the Carve-Out may be used to (i) fund expenses, fees or costs relating to any debtor other than the Debtor, except as specifically set forth in the Budget and referenced as “Shared Services Expenses” for the Debtor or (ii) prosecute actions, claims, demands or causes of action against Santander, or to object to or contest in any manner, or to raise any defense in any pleading to the validity, perfection, priority or enforceability of Santander’s liens and security interests against the Prepetition Collateral or the Replacement Liens; provided, however, that the a maximum of \$15,000 of Cash Collateral may be used by the Committee and its professionals to perform due diligence with respect to the validity, perfection, priority, or enforceability of Santander’s liens and security interests against the Prepetition Collateral or the Replacement Liens. The entry of this Order shall be a conclusive and binding determination on all parties that except for the Carve Out, no costs or expenses of administration shall be imposed against Santander or the Prepetition Collateral, including, without limitation, the Cash Collateral, under sections 105 or 506(c) of the Bankruptcy Code, or otherwise. Notwithstanding anything herein to the contrary, the Committee’s or Debtors’ professionals may seek a re-allocation of the Carve Out, in a manner different from the Budget, if such allocation of the Carve Out proves to have been improvident in light of developments not capable of being anticipated at the time of entry of this Order.

11. Parties in Interest Bound.

(a) The admissions and stipulations contained in Paragraphs D and E of this Order shall be binding on the Debtor under all circumstances and shall be binding upon all other parties in interest, including, without limitation, any Committee and any chapter 7 or chapter 11 trustee that may be appointed or elected on behalf of the Debtor's estate, except to the extent that (i) a party in interest has filed an adversary proceeding or contested matter challenging the validity, enforceability or priority of the Prepetition Debt or the liens on the Prepetition Collateral in respect thereof, or otherwise asserting any claims or causes of action against Santander on behalf of the Debtor's estate, no later than September 17, 2014 and (ii) the Court rules in favor of the plaintiff in any such timely filed adversary proceeding or contested matter. If any such adversary proceeding or contested matter is timely commenced as of such date, the admissions contained in this Order shall nonetheless remain binding and preclusive (as provided in this Paragraph) except to the extent that such acknowledgments and agreements are expressly challenged in such adversary proceeding or contested matter.

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

shall be deemed released from any and all rights, claims, causes of action and liabilities arising from or in connection with the Prepetition Obligations, the Prepetition Collateral, the Bond Financing Documents and/or the extension of credit or other financial accommodations thereunder or with respect thereto.

(c) Nothing herein shall affect the rights of the Texas Health and Human Services Commission from exercising its rights of recoupment, provided, however, that the Debtor shall retain its rights to exhaust all available administrative remedies to contest the dollar amount of any such recoupment(s).

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

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

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

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

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

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

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

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

(h) the breach by the Debtor of its obligations under this Order, including, without limitation, meeting the Milestones as set forth in Paragraph 5;

(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/or supported by Santander;

(j) the filing by the Debtor of any bid procedures 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/or supported by Santander; or

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

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

14. Release. Subject to Paragraph 11, the Debtor hereby waives, releases and discharges Santander and its respective affiliates, agents, attorneys, professionals, officers, directors and employees (collectively, the "Released Parties"), from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Bonds, the Bond Financing Documents, any aspect of the prepetition relationship between Santander and the Debtor, and any other acts or omissions by Santander in connection with either the Bond Documents or Santander's prepetition relationship with the Debtor. Further, subject to Paragraph 11, the Debtor waives any and all rights to object to or contest the amount of the Prepetition Obligations or Santander's security interest in the Prepetition Collateral and agrees

that all such claims and security interests have been duly perfected and are in all respects valid and enforceable first priority security interests and liens.

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

16. Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code shall be, and it hereby is, vacated and modified to the extent necessary to permit (i) Santander to receive and apply payments made pursuant to this Order in accordance with the terms and provisions of this Order and the Budget, and (ii) to permit Santander to send the Termination Notice (as defined herein) and to exercise any rights and remedies or other action authorized or contemplated by this Order. Any of the aforementioned actions may be taken without further order of Court.

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

18. Preservation of Rights. If any or all of the provisions of this Order are, at any time, modified, vacated or stayed, such stay, modification or vacation shall not affect the validity, extent, priority and enforceability of any lien, priority, or other benefit conferred under this Order prior to such stay, modification or vacation

19. Santander-Held Funds. The Debtor stipulates and agrees that the Santander-Held Funds are not property of its estate, are not collateral to secure the repayment of the Debtor's obligations with respect to any debtor-in-possession financing and may not be encumbered by any

liens granted to a debtor-in-possession financing lender. Santander may, without further Court authority (including, without limitation, the need to file a motion to lift the automatic stay), access Santander-Held Funds in accordance with the terms of the Bond Financing Documents; provided, however, that Santander agrees not to access the Santander-Held Funds prior to September 17, 2014.

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

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

22. 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.

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

24. 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 the reference 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.

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

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

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

AGREED TO BY:

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

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

DLA Piper LLP (US)

Duane Morris LLP

/s/ Vincent P. Slusher

/s/ John Robert Weiss

DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629

Duane Morris LLP
190 South LaSalle Street, Suite 3700
Chicago, IL 60603

###END OF ORDER###

EXHIBIT A

Budget

Chapter 11 Budget
SMRS - Mesa

CRO Budget
SMRS - Mesa (Caprock) in Abilene

Week	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending
	7/20/2014	7/27/2014	8/3/2014	8/10/2014	8/17/2014	8/24/2014	8/31/2014	9/7/2014	9/14/2014	9/21/2014	9/28/2014	10/5/2014	10/12/2014	10/19/2014	10/26/2014	11/2/2014	11/9/2014
SMRS - Mesa (Caprock) in Abilene																	
Beginning Book Cash Balance	\$ 164,554	\$ 18,426	\$ (42,541)	\$ (77,781)	\$ (240,077)	\$ (271,206)	\$ (531,523)	\$ (530,301)	\$ (621,084)	\$ (565,485)	\$ (871,801)	\$ (870,580)	\$ (963,675)	\$ (843,033)	\$ (925,850)	\$ (1,130,878)	\$ (1,226,286)
Receipts																	
Deposits	52,239	52,239	104,478	47,239	52,239	52,239	52,239	104,478	97,239	52,239	52,239	104,478	97,239	52,239	52,239	104,478	97,239
Medicare	-	-	74,421	74,421	-	-	-	74,421	74,421	-	-	74,421	74,421	-	-	74,421	74,421
Medicaid	-	32,350	-	32,350	-	-	32,350	-	32,350	-	32,350	-	32,350	-	32,350	-	32,350
Shared Services Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Entrance Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	52,239	84,589	178,899	154,010	52,239	52,239	84,589	178,899	204,010	52,239	84,589	178,899	204,010	52,239	84,589	178,899	204,010
Disbursements																	
Payroll & Benefits	27,076	78,764	27,076	78,764	27,076	78,764	27,076	78,764	27,076	78,764	27,076	78,764	27,076	78,764	27,076	78,764	27,076
Trade Payables	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292
Entrance Fee Refunds	115,000	-	-	-	-	-	-	-	-	65,000	-	-	-	-	-	-	-
Debt Service & Lender Professionals	-	-	38,212	50,000	-	50,000	-	38,212	-	25,000	-	38,212	-	-	-	38,212	-
Shared Services Expenses	-	-	90,247	-	-	-	-	90,247	-	-	-	90,247	-	-	-	90,247	-
Utility Deposits	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debtors Counsel - DLA	-	-	-	65,250	-	58,500	-	-	-	54,750	-	-	-	-	-	51,000	-
Debtors Advisor - A&M	-	-	-	46,500	-	39,750	-	-	-	39,750	-	-	-	-	-	36,000	-
Debtors Banker - RBC	-	-	-	3,750	-	3,750	-	-	-	3,750	-	-	-	-	-	3,750	-
Creditors Professionals	-	-	-	7,500	-	15,000	-	-	-	15,000	-	-	-	-	-	15,000	-
Claims Agent - GCG	-	-	-	8,250	-	6,750	-	-	-	6,750	-	-	-	-	-	6,750	-
Ombudsman	-	-	-	-	-	3,750	-	-	-	3,750	-	-	-	-	-	3,750	-
US Trustee	-	-	-	-	-	-	-	-	-	9,750	-	-	-	-	-	-	-
System Conversion / Special Projects	-	-	-	-	-	-	-	-	65,043	-	-	-	-	-	-	-	-
DIP Interest and Fees	-	10,500	2,313	-	-	-	-	6,167	-	-	-	8,479	-	-	-	10,792	-
Total Disbursements	198,368	145,556	214,140	316,306	83,368	312,556	83,368	269,682	148,411	358,556	83,368	271,994	83,368	135,056	289,618	274,307	83,368
Net Cash Flow	(146,129)	(60,967)	(35,240)	(162,296)	(31,129)	(260,317)	1,221	(90,783)	55,599	(306,317)	1,221	(93,095)	120,642	(82,817)	(205,029)	(95,408)	120,642
Ending Book Cash Balance																	
	\$ 18,426	\$ (42,541)	\$ (77,781)	\$ (240,077)	\$ (271,206)	\$ (531,523)	\$ (530,301)	\$ (621,084)	\$ (565,485)	\$ (871,801)	\$ (870,580)	\$ (963,675)	\$ (843,033)	\$ (925,850)	\$ (1,130,878)	\$ (1,226,286)	\$ (1,105,643)
Beginning DIP Balance	\$ -	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 800,000	\$ 800,000	\$ 800,000	\$ 800,000	\$ 1,100,000	\$ 1,100,000	\$ 1,100,000	\$ 1,100,000	\$ 1,100,000	\$ 1,400,000	\$ 1,400,000
DIP Funding	300,000	-	-	-	-	500,000	-	-	-	300,000	-	-	-	-	-	300,000	-
Ending DIP Balance	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 800,000	\$ 800,000	\$ 800,000	\$ 800,000	\$ 1,100,000	\$ 1,100,000	\$ 1,100,000	\$ 1,100,000	\$ 1,100,000	\$ 1,400,000	\$ 1,400,000	\$ 1,400,000
Adjusted Ending Cash Balance	\$ 318,426	\$ 257,459	\$ 222,219	\$ 59,923	\$ 28,794	\$ 268,477	\$ 269,699	\$ 178,916	\$ 234,515	\$ 228,199	\$ 229,420	\$ 136,325	\$ 256,967	\$ 174,150	\$ 269,122	\$ 173,714	\$ 294,357
Cumulative Fees Incurred Case to Date	173,708	258,750	258,750	258,750	258,750	258,750	382,500	382,500	382,500	382,500	498,750	498,750	498,750	498,750	607,500	607,500	607,500

Chapter 11 Budget
SMRS - Mesa

CRO Budget
SMRS - Mesa (Caprock) in Abilene

Week

23	24	25	26	27	28	29	30	25 Weeks
Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending	Total
11/6/2014	11/23/2014	11/30/2014	12/7/2014	12/14/2014	12/21/2014	12/28/2014	1/4/2015	7/20/2014 1/4/2015

SMRS - Mesa (Caprock) in Abilene

Beginning Book Cash Balance	\$ (1,105,643)	\$ (1,188,460)	\$ (1,418,339)	\$ (1,468,805)	\$ (1,514,837)	\$ (1,478,233)	\$ (1,677,862)	\$ (1,728,329)	\$ 164,554
Receipts									
Deposits	52,239	52,239	52,239	104,478	97,239	52,239	52,239	104,478	1,794,410
Medicare	-	-	-	74,421	74,421	-	-	74,421	818,630
Medicaid	-	-	32,350	-	-	-	32,350	-	323,501
Shared Services Receipts	-	-	-	-	-	-	-	-	-
Entrance Fees	-	-	-	-	-	-	-	-	-
Total Receipts	52,239	52,239	84,589	178,899	171,660	52,239	84,589	178,899	2,936,542
Disbursements									
Payroll & Benefits	78,764	27,076	78,764	27,076	78,764	27,076	78,764	27,076	1,297,149
Trade Payables	56,292	56,292	56,292	56,292	56,292	56,292	56,292	56,292	1,407,300
Entrance Fee Refunds	-	65,000	-	-	-	-	-	-	310,000
Debt Service & Lender Professionals	-	25,000	-	38,212	-	50,000	-	68,212	484,272
Shared Services Expenses	-	-	-	90,247	-	-	-	118,759	569,995
Utility Deposits	-	-	-	-	-	-	-	-	-
Debtors Counsel - DLA	-	43,500	-	-	-	-	-	-	382,500
Debtors Advisor - A&M	-	36,000	-	-	-	-	-	-	270,000
Debtors Banker - RBC	-	3,750	-	-	-	-	-	-	243,750
Creditors Professionals	-	15,000	-	-	-	15,000	-	15,000	97,500
Claims Agent - GCG	-	6,750	-	-	-	6,750	-	6,750	48,750
Ombudsman	-	3,750	-	-	-	3,750	-	3,750	22,500
US Trustee	-	-	-	-	-	9,750	-	9,750	29,250
System Conversion / Special Projects	-	-	-	-	-	-	-	-	65,043
DIP Interest and Fees	-	-	-	13,104	-	-	-	16,188	67,542
Total Disbursements	135,056	282,118	135,056	224,931	135,056	251,868	135,056	645,026	5,296,551
Net Cash Flow	(82,817)	(229,879)	(50,467)	(46,032)	36,604	(199,629)	(50,467)	(466,127)	(2,359,010)
Ending Book Cash Balance	\$ (1,188,460)	\$ (1,418,339)	\$ (1,468,805)	\$ (1,514,837)	\$ (1,478,233)	\$ (1,677,862)	\$ (1,728,329)	\$ (2,194,455)	\$ (2,194,455)
Beginning DIP Balance	\$ 1,400,000	\$ 1,400,000	\$ 1,700,000	\$ 1,700,000	\$ 1,700,000	\$ 1,700,000	\$ 2,100,000	\$ 2,100,000	\$ -
DIP Funding	-	300,000	-	-	-	-	-	250,000	2,350,000
Ending DIP Balance	\$ 1,400,000	\$ 1,700,000	\$ 1,700,000	\$ 1,700,000	\$ 1,700,000	\$ 2,100,000	\$ 2,100,000	\$ 2,350,000	\$ 2,350,000
Adjusted Ending Cash Balance	\$ 211,540	\$ 281,661	\$ 231,195	\$ 185,163	\$ 221,767	\$ 422,138	\$ 371,671	\$ 155,545	\$ 155,545
Cumulative Fees Incurred Case to Date	607,500	607,500	716,250	716,250	716,250	716,250	1,065,000	1,065,000	1,065,000