



THIS ORDER IS SIGNED AND ENTERED.

Dated: January 29, 2016

**Hon. Robert D. Martin
United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

In re:	§	Chapter 11
	§	
CAPITOL LAKES, INC., ¹	§	Case No. 16-10158
	§	
Debtor.	§	Hon. Robert D. Martin

**INTERIM ORDER: (1) AUTHORIZING DEBTOR TO USE CASH
COLLATERAL; (2) GRANTING ADEQUATE PROTECTION;
AND (3) SCHEDULING A FINAL HEARING**

Upon the motion (the “Motion”)² of Capitol Lakes, Inc., f/k/a Meriter Retirement Services, Inc., the above-captioned debtor and debtor-in-possession (the “Debtor”), for an interim order (this “Order”) (1) authorizing the Debtor to use the cash collateral of U.S. Bank, National Association, as Trustee; Santander Bank, N.A.; and KBC Bank N.V. New York Branch (collectively, the “Lenders”), (2) granting the Lenders adequate protection upon the terms set forth in interim and final orders, and (3) scheduling a final hearing on the Motion and approving

¹ The debtor in this chapter 11 case, along with the last four (4) digits of its taxpayer identification number, is: Capitol Lakes, Inc. (2320). The mailing address of the debtor, solely for purposes of notices and communications, is: 333 W. Main Street, Madison, WI 53703.

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

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. Without stipulating to its obligations thereunder, the Debtor agrees that it is or was a party to the following undertakings (together with all other documents, instruments, and agreements executed pursuant thereto or in connection therewith, collectively, the "Bond Financing Documents"):

(1) those certain Wisconsin Health and Educational Facilities Authority (the "Issuer") Variable Rate Demand Revenue Bonds (Meriter Retirement Services, Inc.), Series

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.

2002A, in the aggregate principal amount of \$8,000,000 (the “2002A Bonds”); Variable Rate Demand Revenue Bonds (Meriter Retirement Services, Inc.), Series 2008A, in the aggregate principal amount of \$15,210,000 (the “2008A Bonds”); Variable Rate Demand Revenue Bonds (Meriter Retirement Services, Inc.), Series 2008B, in the aggregate principal amount of \$29,380,000 (the “2008B Bonds”); and Taxable Variable Rate Demand Revenue Bonds (Meriter Retirement Services, Inc.), Series 2008C, in the aggregate principal amount of \$6,985,000 (the “2008C Bonds” and together with the 2002A Bonds, the 2008A Bonds, and the 2008B Bonds, the “Bonds”), issued pursuant to the Master Indenture and the Bond Indentures defined below;

(2) that certain Eighth Supplemental Master Trust Indenture dated as of March 1, 2008 (the “Eighth Supplemental Master Indenture”), by and between the Debtor and the Trustee;

(3) that certain Amended and Restated Master Trust Indenture dated as of March 1, 2008 (as amended and supplemented, and together with the Eighth Supplemental Master Indenture, the “Master Indenture”), as amended and supplemented from time to time, by and between the Debtor and the Trustee;

(4) that certain Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement dated as of March 1, 2008 (the “Mortgage”), by and between the Debtor and the Trustee;

(5) that certain Assignment of Project Documents dated as of March 1, 2008 (the “Assignment of Project Documents”), by and between the Debtor and the Trustee;

(6) that certain Investment Security Agreement dated as of March 1, 2008 (the “Investment Security Agreement”), among the Debtor, Pacific Retirement Services, Inc. (“PRS”), and the Trustee;

(7) that certain Loan and Trust Agreement dated as of April 1, 2002 (the “2002A Loan Agreement”), by and between the Issuer, the Debtor, and the Trustee;

(8) that certain Loan Agreement dated as of March 1, 2008 (the “2008A Loan Agreement”), by and between the Issuer and the Debtor;

(9) that certain Bond Trust Indenture dated as of March 1, 2008 (the “2008A Bond Indenture”), by and between the Issuer and the Trustee;

(10) that certain Loan Agreement dated as of March 1, 2008 (the “2008B Loan Agreement”), by and between the Issuer and the Debtor;

(11) that certain Bond Trust Indenture dated as of March 1, 2008 (the “2008B Bond Indenture”), by and between the Issuer and the Trustee;

(12) that certain Loan Agreement dated as of March 1, 2008 (the “2008C Loan Agreement”), by and between the Issuer and the Debtor;

(13) that certain Bond Trust Indenture dated as of March 1, 2008 (the “2008C Bond Indenture”), by and between the Issuer and the Trustee;

(14) that certain Reimbursement, Credit and Security Agreement dated as of March 1, 2008 (as amended and supplemented from time to time, the “KBC Reimbursement Agreement”), by and between the Debtor and KBC Bank N.V., New York Branch (“KBC”);

(15) that certain Promissory Note, Series 2008-D dated April 1, 2008 (the “KBC Note D”), from the Debtor to KBC;

(16) that certain Reimbursement, Credit and Security Agreement dated as of March 1, 2008 (as amended and supplemented from time to time, the “Santander Reimbursement Agreement”), by and between the Debtor and Sovereign Bank (n/k/a Santander Bank, N.A.) (“Santander”);

(17) that certain Promissory Note, Series 2008-E dated April 1, 2008 (the “Santander Note”), from the Debtor to Santander;

(18) that certain Promissory Note, Series 2008-F dated April 1, 2008 (together with the KBC Note D, the “KBC Notes”), from the Debtor to KBC; and

(19) that certain ISDA Master Agreement and the Schedule and Confirmations thereto, each dated as of April 1, 2008, between KBC and the Debtor (the “Swap Agreement”).

D. The Debtor has requested that Lenders consent to the Debtor’s use of Cash Collateral and Lenders are willing to consent to the Debtor’s use of Cash Collateral on the terms and conditions provided herein. Lenders are relying on the terms, conditions and protections provided herein in so consenting.

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

THE COURT HEREBY ORDERS, AS FOLLOWS:

1. The Motion is granted on an interim basis in accordance with the terms and conditions of this Order.

2. Use of Cash Collateral. Subject to the terms and conditions set forth in this Order, the Debtor is, through and including the earlier of (a) February 10, 2016 or (b) termination of this Order following issuance of a Termination Notice as set forth in Paragraph 8 below, authorized pursuant to sections 105, 361, 362 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6003 and 9014 to use Cash Collateral on an interim basis. 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 from the Budget during the period set forth above in the aggregate does not exceed ten percent (10%) (the "Variance"); and provided further that any amendment or modification of the terms and conditions of the Debtor's use of the Cash Collateral, or any amendment, modification, roll-forward or replacement of the Budget itself, shall be subject to the prior written consent of Lenders, which may be granted or withheld in Lenders' sole discretion.

3. Reporting. From and after the entry of this Order, the Debtor shall provide to Lenders on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report (the "Weekly Budget Report") certified by the Debtor's chief financial officer and in the same form as the Budget indicating all receipts received and disbursements made by the Debtor in the week ending the prior Friday compared to the Budget and detailing any variances of more than 10% and at least \$10,000 from the disbursements and receipts in the

Budget. The Debtor shall provide to Lenders such other reports and information as Lenders may reasonably request from time to time.

4. Adequate Protection; Replacement Liens. To the extent of any valid and perfected liens of Lenders in the Prepetition Collateral as of the Petition Date, Lenders are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in such Prepetition Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of their interests in the Prepetition Collateral, including, without limitation, any such diminution resulting from the 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 Prepetition Collateral (to the extent the Lenders have valid and perfected liens in such Prepetition Collateral) from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code (a "Diminution in Value"), Lenders are hereby granted 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"), excluding (except as to insiders) (a) all Entrance Fees paid to the Debtor after the Petition Date and deposited into escrow for the benefit of the applicable resident (provided, however, that in the event the Debtor becomes entitled to payment of any such Entrance Fee out of escrow, the Replacement Liens shall immediately attach thereto, without further order of this Court or any action by the Lenders, to the same extent and validity of the Lenders' prepetition liens in such Entrance Fees; (b) all funds now and hereafter held in the Trust Accounts; and (c) 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 have the same priority as any existing lien of the Trustee in such Prepetition Collateral as of the Petition Date and shall be subject and subordinate to (a) the Carve-Out (defined below) and (b) the Prior Senior Liens (as defined below). The Replacement Liens are and shall be valid, perfected, enforceable and effective as of the Petition Date without any further action of the Debtor or 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, 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. 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 in existence as of the Petition Date, if any (the "Prior Senior Liens")

5. Adequate Protection; 507(b) Priority Claim. 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 as set forth in Paragraph 4 above, 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. 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 accrued but unpaid fees and expenses incurred until the earlier of (1) February 10, 2016 or (2) the delivery of a Termination Notice (the “Professional Fees and Expenses”) of the attorneys, accountants or other professionals retained by the Debtor and any statutory committee of unsecured creditors (including, without limitation, any committee of residents) appointed in this chapter 11 case under section 327 or 1103(a) of the Bankruptcy Code (the “Committee”) (collectively, the “Professionals”), allocable solely to the Debtor; (b) Professional Fees and Expenses allocable solely to the Debtor in the maximum amount of \$50,000.00 incurred after delivery of a Termination Notice; and (c) the payment of fees pursuant to 28 U.S.C. § 1930, 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.

7. 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 Lenders:

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

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

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

(d) without the prior written consent of Lenders, 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 Trustee) on or with respect to all or any portion of the Prepetition Collateral with a value in excess of \$50,000;

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

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

8. Termination Notice. Immediately upon the occurrence or existence of an Event of Default, 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. The Debtor's right to use Cash Collateral shall terminate immediately upon delivery of a Termination Notice with respect to an Event of Default under Paragraphs 7(a)-(d) and (f). The Debtor's right to use Cash Collateral shall terminate five (5) business days delivery of a Termination Notice with respect to an Event of Default under Paragraphs 7(e) or (g), unless within such period, the Debtor shall have obtained an order of the Court permitting continued use of Cash Collateral on the terms set forth in such order.

9. 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 (a) Lenders to receive and apply payments made pursuant to this Interim Order in accordance with the terms and provisions of this Interim Order and the Budget, and (b) to permit Lenders to send the Termination Notice (as defined herein) and to exercise any rights and remedies or other action authorized or contemplated by this Order.

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

11. 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 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. Nothing in this Order will limit any Committee or Trustee appointed by the United States Trustee from challenging the Lenders' Prepetition Claims and the Lenders' Prepetition Liens in the Prepetition Collateral, and specifically, from challenging the allowance, validity, perfection of the same.

12. Amendments and Waivers. The Debtor and Lenders 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 Lenders, and approved by the Court on appropriate notice by the Debtor.

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

14. Trustee-Held Funds. Pursuant to the Bond Indentures, the following accounts were established and may be held by Trustee (collectively, together with other accounts and funds held by Trustee under the Bond Indentures, the “Trustee-Held Funds”): (a) Bond Funds, (b) Clearing Funds, (c) Debt Service Reserve Funds, (d) Expense Funds, (e) Project Funds, and (f) Rebate Funds (each as defined in the Bond Indentures). The parties reserve all rights with respect to whether the Trustee-Held Funds constitute property of the estate or Cash Collateral, and in any event, the Debtor is not authorized to use the Trustee-Held Funds pursuant to the terms of this Order.

15. 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.

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

17. Second Interim Hearing. A second interim hearing on the Motion will be held on February 10, 2016, at 1:30 p.m. CST (the “Second Interim Hearing”). The Debtor will provide notice of the Second Interim Hearing by first class mail to (a) counsel for Lenders, (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 the Debtor, (f) such other parties as this Court may order. Any party wishing to object to the relief granted herein being granted on a further interim 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 Lenders; (c) counsel for any Committee; and (d) the Office of the United States Trustee, so as to be received no later than February 8, 2016 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 second interim order permitting the use of Cash Collateral by the Debtor.

AGREED TO BY:

Capitol Lakes, Inc., as debtor and debtor-in-possession

U.S. Bank, National Association, as trustee

DLA Piper LLP (US)

Waller Lansden Dortch & Davis, LLP

/s/ Thomas Califano

/s/ David Lemke

DLA Piper LLP (US)
1251 Avenue of the Americas
New York, NY 10020

Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219

Santander Bank, N.A.

KBC Bank N.V., New York Branch

Duane Morris LLP

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/s/ John Weiss

/s/ Vincent Marriott

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

Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

EXHIBIT A

Budget

Capitol Lakes, Inc.
13 Week Cash Flow
Interim Period

	0	1	2	3	4	5	
	2 Days Ended 01/22/16	Week Ended 01/29/16	Week Ended 02/05/16	Week Ended 02/12/16	Week Ended 02/19/16	Week Ended 02/26/16	
1	Beginning Cash Balance ¹	\$ 5,074,762	\$ 5,069,762	\$ 5,116,797	\$ 5,440,690	\$ 5,380,908	\$ 5,214,850
2	Operating Cash Receipts						
3	Health Center (Medicare)	-	-	347,500	-	-	-
4	Resident Billing-Health Center	-	182,800	22,850	182,800	114,250	137,100
5	Resident Billing-IL / AL / MC	-	189,600	23,700	189,600	118,500	142,200
6	Resident ACH-IL / AL / MC	-	107,800	13,475	107,800	67,375	80,850
7	Middleton Glen Reimb	-	33,000	-	-	-	33,000
8	Misc. receipts	-	13,500	10,500	10,500	10,500	55,500
9	Total Operating Cash Receipts	\$ -	\$ 526,700	\$ 418,025	\$ 490,700	\$ 310,625	\$ 403,650
10	Operating Cash Outflows						
11	Salaries, Benefits & Taxes	500	316,324	19,133	380,844	19,133	316,324
12	ADP Health / Dental / Vision ins.	-	112,725	-	-	-	-
13	Utilities	-	-	4,400	-	-	22,355
14	Medical Professionals	-	-	-	2,072	-	2,839
15	Bed Tax	-	-	-	14,450	-	-
16	Cap Ex	-	-	-	23,466	-	66,130
17	Consonus-Therapy Provider	-	-	-	-	-	53,226
18	Mallatt-Pharma Supply	-	-	-	-	-	20,723
19	Facility Insurance	-	-	-	-	-	-
20	Property Taxes	-	-	-	45,000	-	45,000
21	PRS Mgmt. Fees	-	-	-	-	-	38,751
22	Other AP	4,500	50,616	75,000	80,250	100,000	160,500
23	Entrance Fee Refund Reserves	-	-	-	-	282,150	282,150
24	Total Operating Cash Outflows	\$ 5,000	\$ 479,665	\$ 94,133	\$ 550,481	\$ 401,283	\$ 680,847
25	Net Cash Flow from Operations	\$ (5,000)	\$ 47,035	\$ 323,892	\$ (59,781)	\$ (90,658)	\$ (277,197)
26	Chapter 11 Items						
27	Utilities Deposit	-	-	-	-	75,400	75,400
28	Pro. Fees	-	-	-	-	-	-
29	Pro. Fees Holdback	-	-	-	-	-	-
30	503(b)(9)	-	-	-	-	-	-
31	Total Ch. 11 Costs	\$ -	\$ -	\$ -	\$ -	\$ 75,400	\$ 75,400
32	Ending Cash Balance	\$ 5,069,762	\$ 5,116,797	\$ 5,440,690	\$ 5,380,908	\$ 5,214,850	\$ 4,937,653
33	Entrance Fee Escrow Account						
34	Beginning Balance	-	-	-	-	-	-
35	Forecasted Units Sold	-	-	-	-	-	-
36	Entrance Fee Receipts	-	-	-	-	-	-
37	Entrance Fee Escrow Ending Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
38	Ending Cash & Escrow Balance	\$ 5,069,762	\$ 5,116,797	\$ 5,440,690	\$ 5,380,908	\$ 5,214,850	\$ 4,937,653
	Cumulative Fees Incurred but not Paid	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 755,000

Notes:
1 Beginning Balance does not include \$3.4mm in Debt Service Reserve Funds