



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 June 12, 2014

United States Bankruptcy Judge

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

In re:

SEARS METHODIST RETIREMENT
SYSTEM, INC., *et al.*¹

Debtors.

§
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§
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§
§

CASE NO. 14-32821-11

CHAPTER 11

Joint Administration Pending

INTERIM ORDER: (I) AUTHORIZING SEARS PLAINS RETIREMENT CORPORATION TO USE CASH COLLATERAL, (II) GRANTING THE FORM OF ADEQUATE PROTECTION PROVIDED TO THE LENDER AND (III) SCHEDULING A FINAL HEARING

Upon the motion (the "Motion")² of Sears Plains Retirement Corporation, debtor and debtor-in-possession in the above-captioned cases ("Plains" or the "Debtor"), for an interim order (this "Order") (1) authorizing the Debtor to use the cash collateral of Prosperity Bank, N.A.

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.

(“Lender”), (2) granting the form of adequate protection provided herein to Lender upon the terms set forth herein, and (3) scheduling a final hearing on the Motion and approving the form and manner of notice thereof; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and it appearing that notice of the Motion has been given in accordance with Bankruptcy Rule 4001(b)(2); and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND THAT:³

- A. On the Petition Date, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code.
- B. Since the Petition Date, the Debtor has continued in the management and operation of its business and property as debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or committee has been appointed in the Debtor’s Chapter 11 case.
- C. The Debtor believes that Lender will assert that the Debtor is obligated under the following undertakings:
 - (1) approximately \$8.2 million of bank loan debt (the “Plains Loan”), issued pursuant to that certain loan agreement (the “Plains Loan Agreement”), dated as of

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.

December 1, 2011, between Red River Health Facilities Development Corporation ("Red River"), Debtor and Lender, as successor lender to American State Bank ("ASB"); and

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

D. Debtor expects Lender to further assert that:

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

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

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

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

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

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

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

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

Order (1) are fair and reasonable and satisfy the requirements of the Bankruptcy Code

and (2) will not be affected by any subsequent reversal, modification, vacatur or amendment of this Order or any other order, as provided in Section 364(e) of the Bankruptcy Code.

F. The liens and security interests granted to Lender hereunder shall not prime or impair any validly perfected lien or security interest senior to the liens and security interests of Lender with respect to the Debtor's assets and property as of the Petition Date (the "Prior Senior Liens") or any liens concurrently or hereafter granted to secure any debtor in possession financing facility or otherwise granted under section 364(d) of the Bankruptcy Code (the "DIP Liens"). The granting of the replacement liens and other agreements of the Debtor hereunder constitute adequate protection to Lender for the Debtor's use of Cash Collateral for purposes of this Order.

G. Good cause has been shown for entry of this Order. Without use of Cash Collateral, the Debtor would not be able to fund its day-to-day operations, including providing ongoing services to its residents. Unless the Court authorizes the use of Cash Collateral, the Debtor will be unable to pay for the goods and services necessary to preserve and maximize the value of its assets while it attempts to obtain confirmation of a Chapter 11 plan. Accordingly, this Order is required to avoid immediate and irreparable harm to the Debtor's estate. Entry of this Order is in the best interests of the Debtor, its creditors, its residents, and its estate.

THE COURT HEREBY ORDERS, AS FOLLOWS:

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

2. Use of Cash Collateral. Subject to the terms and conditions set forth in this Order, the Debtor is, through and including the conclusion of the final hearing on the Debtor's use of Cash Collateral, authorized pursuant to Bankruptcy Code Sections 105, 361, 362 and 363, and Bankruptcy Rules 2002, 4001, 6003 and 9014 to use Cash Collateral, which Cash Collateral includes without limitation the Reserve Funds, on an interim basis pending a final determination by the Court. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the budget attached hereto as Exhibit A (the "Budget"); provided, however, that the Debtor may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-week period does not exceed ten percent (10%) in aggregate (the "Variance"). Any unused portion of the Variance will carry over to the following rolling 4-week period.
3. Reporting. From and after the entry of this Order, the Debtor shall provide to Lender on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report certified by the Debtor's chief financial officer and in the same form as the Budget indicating all receipts received and disbursements made by the Debtor in the week ending the prior Friday compared to the Budget and detailing any variances of more than 10% in aggregate from the disbursements and receipts in the Budget.
4. Adequate Protection; Replacement Liens. Lender is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, as applicable, including, but not limited to, the Cash Collateral, for any diminution in value of its interest in the Prepetition Collateral, including, without limitation, any such diminution resulting from the Debtor's use of Cash Collateral and

any other Prepetition Collateral and the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code. As security for and solely to the extent of any diminution in the value of Lender's Prepetition Collateral, as applicable, from and after the Petition Date, calculated in accordance with Bankruptcy Code Section 506(a) (a "Diminution in Value"), Lender is hereby granted senior priority replacement liens upon all assets and property of the Debtor and its estate of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Prepetition Collateral (the "Replacement Liens"), but excluding all claims and causes of action, and the products and proceeds thereof, arising under or permitted by Sections 502(d), 506(c), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code and any other avoidance claims and causes of action arising under state or federal law; provided, however, that the Replacement Liens shall be subject and subordinate to (a) the Carve-Out (defined below), (b) the Prior Senior Liens and (c) if any are granted, the DIP Liens. The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of Lender, as applicable, on the Petition Date, and are and shall be valid, perfected, enforceable and effective as of the Petition Date without any further action of the Debtor or Lender and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. Notwithstanding the foregoing, Lender is hereby authorized, but not required, to file or record any financing statements, security agreements, deeds of trust, or other documents in any jurisdiction or take any other action in order to validate and perfect the Replacement Liens granted hereunder.

5. Carve-Out. The Replacement Liens granted hereunder shall be junior and subordinate to the following fees and expenses (the "Carve-Out"): (a) all budgeted and accrued but unpaid fees and expenses (the "Professional Fees and Expenses") of the attorneys, accountants or other professionals retained by the Debtor and any statutory committee of unsecured creditors (including, without limitation, any committee of residents) appointed in these Chapter 11 cases under section 327 or 1103(a) of the Bankruptcy Code (the "Committee") (collectively, the "Professionals"), allocable to the Debtor under and to the extent set forth in the Budget; and (b) the payment of fees pursuant to 28 U.S.C. § 1930 to the extent related to the Debtor's Chapter 11 case, provided that all such fees and expenses shall be subject to approval by a final order of the Court pursuant to sections 326, 328, 330, 331 or 363 of the Bankruptcy Code.
6. No Third Party Rights. Except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holders or any direct, indirect or incidental beneficiary.
7. Effect of Order. This Order shall be effective upon its entry and not subject to any stay (notwithstanding anything to the contrary contained in the Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3)). The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered (a) confirming any plan of reorganization; (b) dismissing these Chapter 11 cases; (c) converting these Chapter 11 cases to any other Chapter under the Bankruptcy Code; (d) withdrawing of the references of these Chapter 11 cases from the Court; and (e) providing for abstention from handling or retaining of jurisdiction of these Chapter 11 cases in the Court.

8. Amendments and Waivers. The Debtor and Lender may amend, modify, supplement or waive any provision of this Order in writing if such amendment, modification, supplement or waiver is not material, without any need to apply to, or receive further approval from, the Court. The Debtor shall provide notice of any such nonmaterial amendment, modification, supplement or waiver to counsel for any Committee and the Office of the United States Trustee. Any material amendment, modification, supplement or waiver shall be in writing, signed by the Debtor and Lender, and approved by the Court on appropriate notice by the Debtor.
9. Order Governs. In the event of any inconsistency between the provisions of this Order and the Motion, the provisions of this Order shall govern.
10. Final Hearing. A final hearing on the Motion will be scheduled for July 14, 2014, at 2:30 p.m. CST (the "Final Hearing"). The Debtor will provide notice of the Final Hearing by first class mail to (a) counsel for Lender, (b) counsel for any official committee of creditors appointed in these cases, (c) the Office of the United States Trustee, (d) all parties who have filed requests for notice under Bankruptcy Rule 2002, (e) the holders of the twenty (20) largest unsecured claims against each of the Debtors, and (f) such other parties as this Court may order. Any party wishing to object to the relief granted herein being granted on a permanent basis shall file such objection with the Court, together with proof of service thereof, and served upon: (a) counsel for the Debtor; (b) counsel for Lender; (c) counsel for any Committee; and (d) the Office of the United States Trustee, so as to be received no later than July 10, 2014 at 5:00 p.m. CST (the "Objection Deadline"). If no objections are filed and served on or before the Objection Deadline, at

the Final Hearing, the Court may enter a final order permitting the use of Cash Collateral by the Debtor.

###END OF ORDER###

Order submitted by:

DLA PIPER LLP (US)

By: /s/ Vincent P. Slusher

Vincent P. Slusher, State Bar No. 00785480

vincent.slusher@dlapiper.com

Andrew Zollinger, State Bar No. 24063944

andrew.zollinger@dlapiper.com

DLA Piper LLP (US)

1717 Main Street, Suite 4600

Dallas, Texas 75201-4629

Telephone: (214) 743-4500

Facsimile: (214) 743-4545

Thomas R. Califano (*pro hac vice pending*)

thomas.califano@dlapiper.com

Gabriella L. Zborovsky (*pro hac vice pending*)

gabriella.zborovsky@dlapiper.com

Jacob S. Frumkin (*pro hac vice pending*)

jacob.frumkin@dlapiper.com

DLA Piper LLP (US)

1251 Avenue of the Americas

New York, New York 10020-1104

Tel: (212) 335-4500

Fax: (212) 335-4501

Proposed Attorneys for the Debtors
and Debtors in Possession

Exhibit A

Budget

Chapter 11 Budget
SMRS - Garrison

CRO Budget
SMRS - Garrison (Plains) in Lubbock

| Week | Week | | | | 4 Weeks Total 6/15/2014 7/6/2014 |
|---|-------------------------------|-------------------------------|-------------------------------|------------------------------|---|
| | 1 Week Ending 6/15/2014 | 2 Week Ending 6/22/2014 | 3 Week Ending 6/29/2014 | 4 Week Ending 7/6/2014 | |
| SMRS - Garrison (Plains) in Lubbock | | | | | |
| Beginning Book Cash Balance | \$ 243,144 | \$ 234,986 | \$ 112,475 | \$ 312,853 | \$ 243,144 |
| Receipts | | | | | |
| Deposits | 92,643 | 61,321 | 61,321 | 92,643 | 307,928 |
| Medicare | - | - | 185,465 | 33,721 | 219,186 |
| Medicaid | - | - | 54,383 | - | 54,383 |
| Direct / Shared Service Receipts | - | - | - | - | - |
| Entrance Fees | - | - | - | - | - |
| Total Receipts | 92,643 | 61,321 | 301,169 | 126,364 | 581,497 |
| Disbursements | | | | | |
| Payroll & Benefits | 35,348 | 118,399 | 35,348 | 118,399 | 307,485 |
| Trade Payables | 65,443 | 34,842 | 65,443 | 65,443 | 231,171 |
| Health Insurance | - | - | - | - | - |
| Entrance Fee Refunds | - | - | - | - | - |
| Debt Service | - | - | - | - | - |
| Professional Fees | - | - | - | - | - |
| Adjustments to Cash Balances | - | - | - | - | - |
| Sweep Account | - | - | - | - | - |
| Direct Allocated Expenses | - | - | - | - | - |
| Shared Services Expenses | - | - | - | 96,816 | 96,816 |
| Utility Deposits | - | 30,801 | - | - | 30,801 |
| Debtors Counsel - DLA | - | - | - | - | - |
| Debtors Advisor - A&M | - | - | - | - | - |
| Debtors Banker - Cain | - | - | - | - | - |
| Creditors Professionals | - | - | - | - | - |
| Claims Agent - CCG | - | - | - | - | - |
| Ombudsman | - | - | - | - | - |
| US Trustee | - | - | - | - | - |
| System Conversion / Special Projects | - | - | - | - | - |
| DIP Interest and Fees | - | - | - | - | - |
| Total Disbursements | 100,791 | 183,842 | 100,791 | 280,659 | 666,083 |
| Net Cash Flow | (8,148) | (122,521) | 200,378 | (154,295) | (94,586) |
| Ending Book Cash Balance | \$ 234,986 | \$ 112,475 | \$ 312,853 | \$ 158,558 | \$ 158,558 |
| Beginning DIP Balance | \$ - | \$ - | \$ - | \$ - | \$ - |
| DIP Funding | \$ - | \$ - | \$ - | \$ - | \$ - |
| Ending DIP Balance | \$ - | \$ - | \$ - | \$ - | \$ - |
| Adjusted Ending Cash Balance | \$ 234,986 | \$ 112,475 | \$ 312,853 | \$ 158,558 | \$ 158,558 |
| Accrued Professional Fees (before payments) | - | - | 98,943 | 127,645 | 127,645 |