

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 (admitted *pro hac vice*)  
thomas.califano@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

ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

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

<b>In re:</b>	§	<b>CASE NO. 14-32821-11</b>
	§	
<b>SEARS METHODIST RETIREMENT SYSTEM, INC., et al.<sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

**MOTION OF SEARS METHODIST CENTERS, INC., SEARS PERMIAN  
RETIREMENT CORPORATION, AND SEARS PANHANDLE RETIREMENT  
CORPORATION FOR ORDERS (I) APPROVING BID PROCEDURES AND  
PROVIDING CERTAIN PROTECTIONS TO STALKING HORSE; AND  
(II) AUTHORIZING THE (A) SALE OF SUBSTANTIALLY ALL OF THEIR ASSETS  
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES,  
AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND LEASES**

Sears Methodist Centers, Inc. ("SMC"), Sears Permian Retirement Corporation ("Permian"), and Sears Panhandle Retirement Corporation ("Panhandle") and together with Permian and SMC, collectively, the "Sellers", as debtors and debtors in possession in the above captioned cases, by its attorneys, hereby submit this motion (the "Motion") to this Court for

---

<sup>1</sup> 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,

entry of orders (i) approving bid procedures and providing certain protections to and Yellow Rose Health Holdings LLC, a Nevada limited liability company (the “Stalking Horse”); and (ii) authorizing the (a) sale of substantially all of the Sellers’ assets, free and clear of all liens, claims and encumbrances (“Encumbrances”), and (b) the assumption and assignment of certain executory contracts and leases. In support of this Motion, the Sellers respectfully represents as follows:

### **Preliminary Statement**<sup>2</sup>

1. The Motion seeks entry of two orders: (i) an order approving the proposed bid procedures (the “Bid Procedures”) and providing certain bid protections to the Stalking Horse in connection with its offer to purchase the assets of the Sellers for Forty Two Million Five Hundred Thousand Dollars (\$42,500,000) (the “Stalking Horse Bid”) which will become the opening bid at the auction, including (a) the payment in cash of a break-up fee in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000) (the “Break-Up Fee”), (b) the payment in cash of expense reimbursements in an amount up to One Hundred Thousand Dollars (\$100,000) (the “Expense Reimbursement”, and together with the Break-Up Fee, the “Bid Protections”); and (ii) an order authorizing the sale of substantially all of the Seller’s assets to the party making the highest and best bid (“Successful Bidder”) after implementation of the proposed Bid Procedures. As discussed in further detail below, bidders may bid on (i) any individual Facility; (i) any combination of the Facilities; or (iii) all three Facilities. If the Facilities are sold individually to parties other than the Stalking Horse, the Bid Protections for the Stalking Horse will be pro-rated.

---

Dallas, Texas 75201.

<sup>2</sup> All capitalized terms used in the Preliminary Statement section shall have the meanings provided in this Motion.

2. The Sellers, together with the other debtors in the above captioned cases (collectively the “Debtors”), believe that the selection of the Stalking Horse, and the proposed Bid Procedures, including but not limited to the Bid Protections, are reasonable and necessary to maximize the return to the Sellers’ creditors and other parties in interest. An auction and sale of substantially all of the Sellers’ assets is the most efficient way to protect the interests of their estates, creditors, and residents and the Sellers respectfully requests entry of the proposed orders.

### **Jurisdiction and Venue**

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Standing Order Concerning Guidelines for Compensation and Expense Reimbursement of Professionals, for Early Disposition of Assets in Chapter 11 Cases, and for Motions and orders Pertaining to Use of Cash Collateral Post Petition Financing, dated December 21, 2000, issued by the Bankruptcy Court for the Northern District of Texas (the “Standing Order”).

### **The Chapter 11 Cases**

6. On June 10, 2014 (the “Petition Date”), the Debtors commenced these cases by each filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the possession of their properties and have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. On June 19, 2014, the Office of the United States Trustee appointed a committee of unsecured creditors (the “Committee”) pursuant to section 1102(a)(1) of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Debtors’ chapter 11 cases.

8. Additional factual background regarding each of the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings, is set forth in detail in the *Declaration of Paul B. Rundell in Support of First Day Motions* [Docket No. 3] (“Rundell Declaration”), incorporated herein by reference. Any capitalized term not otherwise defined herein will carry the meaning given to such term in the Rundell Declaration.

### **The Sellers’ Business Operations**

9. The Sellers are part of the “Obligated Group” along with Sears Methodist Retirement System, Inc. (“SMRS”), Sears Brazos Retirement Corporation, and Sears Methodist Foundation. The Obligated Group was created under that certain Master Trust Indenture (as amended and restated, the “SMRS Master Indenture”), dated as of August 1, 1998 and effective as of May 1, 2013, between the Obligated Group and Wells Fargo Bank, N.A., as successor Master Trustee (the “SMRS Trustee”). The Obligated Group are jointly and severally liable for payment and performance under the approximately \$95.5 million of notes issued under the SMRS Master Indenture (the “Obligated Group Bond Debt”).

#### **A. SMC’s Organizational Structure**

10. SMC, a Texas non-profit corporation, is controlled by SMRS and its mailing address is 2100 Ross Avenue, 21st Floor, Dallas, Texas 75201. SMC has 97 employees. SMC owns Wesley Court Methodist Retirement Community (“Wesley Court”), an operating senior care campus located in Abilene, Texas. Wesley Court offers (i) 30 licensed and Medicare-certified skilled nursing beds (all of which are usable), (ii) 49 independent living homes, (iii) 78

independent living apartment units, and (iv) 19 licensed assisted living units. As of May 2014, Wesley Court had 171 residents and a 95.9% (YTD) occupancy rate.

11. As of January 2014, on a book value basis, SMC had approximately \$28.4 million in assets and \$13.0 million in liabilities, excluding its joint and several liability for the Obligated Group Bond Debt. SMC's main assets consist of: (i) approximately \$148,000 in accounts receivable; and (ii) approximately \$28.3 million in property and equipment. SMC's main liabilities are: (i) its joint and several liability for the Obligated Group Bond Debt; and (ii) approximately \$183,000 in accounts payable. In 2013, SMC received approximately \$317,416 in Medicare payments.

#### B. Permian's Organizational Structure

12. Permian, a Texas non-profit corporation, is controlled by SMRS and its mailing address is 2100 Ross Avenue, 21st Floor, Dallas, Texas 75201. Permian owns Parks Methodist Retirement Community ("Parks"), an operating senior care campus located in Odessa, Texas. Permian has 92 employees, including those who work at the Desert Haven Retirement Community, which is located in the same town as Parks. Parks offers (i) 44 licensed and Medicare-certified skilled nursing facility beds and 46 licensed and Medicare/Medicaid-certified skilled nursing bed (all of which are usable), (ii) 25 licensed assisted living units, (iii) 22 independent living apartment patio homes, and (iv) 33 independent cottage homes. As of May 2014, Parks had 136 residents and an 80.1% (YTD) occupancy rate.

13. In June 2013, in connection with a joint venture between Permian, Prevarian Senior Living, L.P. ("Prevarian") and certain other entities, a senior living facility called The Courtyards ("The Courtyards") opened adjacent to the Parks. The Courtyards offers 40 assisted living residences and 30 memory care homes in a single-story community. Sears Methodist

Retirement System (“System”). System donated the land and Prevarian and the other limited partners incurred all other costs of construction, marketing, working capital, opening and maintenance of The Courtyards. The partnership pays System a monthly fee to manage the day-to-day operations of The Courtyard. System has a right of first refusal to purchase The Courtyards and the underlying land upon certain conditions being met.

14. As of January 2014, on a book value basis, Permian had approximately \$7.5 million in assets and \$4.6 million in liabilities, excluding its joint and several liability for the Obligated Group Bond Debt. Permian’s main assets consist of: (i) approximately \$1.0 million in accounts receivable; and (ii) approximately \$10.4 million in property and equipment. Permian’s main liabilities are: (i) its joint and several liability for the Obligated Group Bond Debt; and (ii) approximately \$600,000 in accounts payable. In 2013, Permian received approximately \$2.7 million in Medicare payments and approximately \$1.2 million in Medicaid payments.

#### C. Panhandle’s Organizational Structure

15. Panhandle, a Texas non-profit corporation, is controlled by SMRS and its mailing address is 2100 Ross Avenue, 21st Floor, Dallas, Texas 75201. Panhandle has 191 employees. Panhandle owns Craig Retirement Community (“Craig” and together with Wesley Court and Parks, the “Facilities”), an operating senior care campus located in Amarillo, Texas. Craig offers (i) 72 licensed and Medicare-certified skilled nursing beds and 48 licensed and Medicare/Medicaid-certified skilled nursing beds (all of which are usable), (ii) 30-bed licensed Alzheimer’s unit, (iii) 40 licensed assisted living units, (iv) 108 independent living apartments, and (v) 65 independent cottage homes. As of May 2014, Craig had 272 residents and an 88.7% (YTD) occupancy rate.

16. As of January 2014, on a book value basis, Panhandle had approximately \$25.3 million in assets and \$9.3 million in liabilities, excluding its joint and several liability for the Obligated Group Bond Debt. Panhandle's main assets consist of: (i) approximately \$1.4 million in accounts receivable; and (ii) approximately \$25.5 million in property and equipment. Panhandle's main liabilities are: (i) its joint and several liability for the Obligated Group Bond Debt; and (ii) approximately \$490,000 in accounts payable. In 2013, Panhandle received approximately \$2.8 million in Medicare payments and approximately \$1.7 million in Medicaid payments.

### **The Obligated Group's Prepetition Capital Structure**

#### A. Initial Bond Financing

17. Between 1998 and 2003, the Obligated Group secured permanent financing through a series of bond offerings by the Abilene Health Facilities Development Corporation ("Abilene Health") in the aggregate principal amount of approximately \$73.1 million, consisting of \$30,435,000 Series 1998A Abilene Health Facilities Development Corporation Bonds (the "Series 1998A Bonds"), \$7,840,000 Series 1999 Abilene Health Facilities Development Corporation Bonds (the "Series 1999 Bonds") and \$34,820,000 Series 2003A Abilene Health Facilities Development Corporation Bonds (the "Series 2003A Bonds") and together with the Series 1998A Bonds and Series 1999 Bonds, the "Previously Issued Bonds"). The Previously Issued Bonds mature on various dates, with the next maturity date being November 15, 2018.

#### B. 2013 Restructuring

18. On May 9, 2013, a refinancing plan was completed for the Obligated Group. Following the refinancing plan, the Obligated Group emerged with \$99.1 million of overall debt consisting of \$95.6 million of bonds outstanding and \$3.5 million the loan by Texas Methodist

Foundation (the “TMF”) to SMRS (the “TMF Loan”). As part of the refinancing plan, approximately \$22.5 million of new money bonds were issued to help replace the \$17.8 million of bank loans previously outstanding.

19. Specifically, pursuant to an Offer to Tender Exchange, dated April 9, 2013 (the “Offer”), the holders of the Previously Issued Bonds were given the opportunity to tender their Previously Issued Bonds for Series 2013A Retirement Facility Revenue Bonds (the “Series 2013A Bonds”) and Series 2013D Retirement Facility Revenue Bonds (the “Series 2013D Bonds” and together with the Series 2013A Bonds, the “Exchange Bonds”) to be issued by Red River. As a result of the Offer, the principal amount of the Exchange Bonds to be issued in exchange for the Original Bonds was \$69,130,000 (94.54% of the aggregate principal amount outstanding). The holders of \$3,965,000 in aggregate outstanding principal amount of the Previously Issued Bonds chose not to tender their bonds (the “Non-Exchanged Bonds”).

20. On May 9, 2013, pursuant to an Indenture of Trust, dated as of May 1, 2013 (the “SMRS Bond Indenture”), between Red River Health Facilities Development Corporation (“Red River”) and the SMRS Trustee, Red River issued (i) \$69,130,000 in Exchange Bonds; (ii) \$19,405,000 in Series 2013B Retirement Facility Revenue Bonds (the “Series 2013B Bonds”), (iii) \$2,285,000 in Series 2013C Retirement Facility Revenue Bonds (the “Series 2013C Bonds” and together with the Series 2013B Bonds and the Series 2013D Bonds, the “New Money Bonds”), and (iv) \$765,000 in Series 2013D Retirement Facility Revenue Bonds (collectively, the “2013 Bonds”). The Series 2013D Bonds were issued in part as New Money Bonds and in part as Exchange Bonds.

21. The proceeds of the New Money Bonds were loaned to SMRS pursuant to a Loan Agreement, dated as of May 1, 2013 (the “SMRS Loan Agreement”), between Red River and

SMRS. SMRS used these loan proceeds and the TMF Loan, together with certain other monies, to, among other things, (a) finance and refinance a portion of the cost of certain System health facilities located in Abilene, Amarillo, Lubbock, Tyler, and Odessa, Texas; (b) fund a debt service reserve fund to secure the 2013 Bonds; (c) satisfy the outstanding balance of a loan between SMRS and Capital One Bank, N.A.; and (d) pay the costs of issuing the 2013 Bonds.

22. The 2013 Bonds mature on various dates, with the first maturity date being November 15, 2046. The New Money Bonds and the interest payable thereon are payable solely from and secured exclusively by the funds pledged thereto under the SMRS Bond Indenture, the payments to be made by SMRS pursuant to the SMRS Loan Agreement, and certain notes (the “New Money Bond Notes”) issued by SMRS under the SMRS Master Indenture.

23. The New Money Bond Notes and other obligations of the Obligated Group under the SMRS Master Indenture are secured under the terms of three separate Deeds of Trust (each including a Security Agreement and Assignment of Rents and Leases) dated as of May 1, 2013 (collectively, the “Deeds of Trust”), between certain members of the Obligated Group and the SMRS Trustee, and two separate Subordinate Deeds of Trust (each including a Security Agreement and Assignment of Rents and Leases) dated as of May 8, 2013 (collectively, the “Subordinate Deeds of Trust”), between certain members of the Obligated Group and the SMRS Trustee. A promissory note evidencing the obligation of SMRS to repay the loan from Red River with respect to the Series 2013A Bonds (the “Series 2013A Note”) and the notes securing the Previously Issued Bonds are secured on a parity basis with the New Money Bond Notes under the SMRS Master Indenture and the Deeds of Trust. Additionally, the New Money Bond Notes and the Series 2013A Note are secured on a parity basis under the Subordinate Deeds of Trust.

24. Under the terms of the documents governing Non-Exchanged Bonds and the 2013 Bonds (the “SMRS Bond Documents”), certain accounts were established and are held by the SMRS Trustee, including, but not limited to, (i) the Debt Service Reserve Fund (as defined in the SMRS Master Indenture); the Operating Reserve Fund (as defined in the SMRS Master Indenture); and the Project Account (as defined in the SMRS Bond Indenture). These funds, and any other accounts established by the SMRS Bond Documents and held by the SMRS Trustee are referred to herein as the “SMRS Trustee-Held Funds.”

25. As discussed above, SMRS owes approximately \$3.2 million in respect of the TMF Loan. In connection with the TMF Loan, Life Care Services (“LCS”) issued a \$1.5 million bank letter of credit (the “Letter of Credit”) for the benefit of TMF. The Letter of Credit has a five-year term, and the amount of the Letter of Credit may be reduced proportionate to the reduction in the principal amount of the TMF Loan over the term of the Letter of Credit. Additionally, SMRS and LCS are parties to that certain Credit Support Agreement, dated as of May 8, 2013, pursuant to which SMRS agreed to, among other things, reimburse LCS for any amounts drawn on the Letter of Credit by TMF for payment of principal on the TMF Loan. As of the date hereof, no amounts have been drawn on the Letter of Credit.

26. On May 8, 2013, TMF, the SMRS Trustee, SMRS and LCS entered into an intercreditor agreement (the “Intercreditor Agreement”) setting forth the relative priorities of TMF, the SMRS Trustee and LCS with respect to the collateral securing the obligations of the Obligated Group with respect to the 2013 Bonds and the TMF Loan. Pursuant to the Intercreditor Agreement, except with respect to liens on certain undeveloped land in Waco (the “Waco Property”) and Abilene (the “Abilene Property” and together with the Waco Property, the “Undeveloped Properties”), the liens and rights of the SMRS Trustee under the bond documents

are superior to the liens and rights of TMF and LCS. Pursuant to the Intercreditor Agreement, the liens and rights of the SMRS Trustee under its deeds of trust with respect to the Undeveloped Properties are subordinate to those of TMF and LCS. Moreover, LCS's rights in the Abilene Property are subordinate to TMF's lien in such property.

**The Selection of the Stalking Horse Bidders**

27. Since the Petition Date, the Debtors have made efforts to market the Facilities to potential purchasers.

28. On July 30, 2014, the Debtors filed an Application for an Order Pursuant to Sections 327 and 328 of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1 Authorizing the Employment and Retention of RBC Capital Markets, LLC ("RBC") as Investment Banker to the Debtors Nunc Pro Tunc to July 17, 2014 [Dkt. No. 280]. RBC has continued marketing the Facilities. The Sellers and their professionals are hopeful that the Bid Procedures will result in a competitive bidding and auction process.

29. The Sellers and the Stalking Horse have negotiated and agreed, subject to the Court's approval, the Asset Purchase Agreement ("APA") attached hereto as Exhibit D. The APA provides as follows (all of which is subject to the terms in the APA):

- Purchase of significantly all of the Sellers' assets (except for cash and other Excluded Assets as defined in the APA);
- Payment by the Stalking Horse of a \$2,000,000 earnest money deposit within five (5) business days after the APA is fully executed;
- Payment by the Stalking Horse of the purchase price of \$42,500,000 in cash at closing;
- Assumption of the Residency Agreements and amounts due to residents thereunder;
- Purchase of the Facilities free and clear of all Encumbrances; and
- In the event a higher and better bid is ultimately chosen by the Sellers, payment to the Stalking Horse of a break-up fee in the

amount of \$1,200,000, and the payment in cash of expense reimbursements in an amount up to \$100,000.

30. Based on the terms of the APA as negotiated by the Sellers, its professionals, and potential buyers, the Sellers have negotiated and agreed to APA with the Stalking Horse, and the APA agreed to with the Stalking Horse will serve as the opening bid for the Facilities in an auction that the Sellers proposes be held, subject to Court approval, on January 21, 2015.<sup>3</sup> As described in the Proposed Bid Procedures, bidders may bid on (i) any individual Facility; (i) any combination of the Facilities; or (iii) all three Facilities. If the Facilities are sold individually to parties other than the Stalking Horse, the Bid Protections for the Stalking Horse will be pro-rated in the following manner: (i) \$535,000 for Wesley Court; (ii) \$665,000 for Craig; and (iii) \$100,000 for Parks.

### **The Proposed Bid Procedures**

31. This section summarizes key provisions of the procedures for the auction the Sellers propose to hold in connection with the sale of the Facilities. Capitalized terms used, but not defined in this section, shall have the meanings provided in the Bid Procedures. The descriptions of the Bid Procedures herein are qualified in their entirety by reference to the Bid Procedures attached to the Bid Procedures Order as Exhibit 1.

Participation Requirements. Any person desiring to submit a competing bid for all or part of the Sellers' assets (a "Potential Bidder") will be required to deliver the following (the "Participation Requirements") to the Sellers: (1) an executed confidentiality agreement in form and substance satisfactory to the Sellers; and (2) satisfactory written evidence of available funds or a firm commitment for financing sufficient for the Potential Bidder to consummate the Sale Transaction. The financial information and credit-quality support of any Potential Bidder must demonstrate the financial capability of the Potential Bidder to timely consummate the Sale Transaction pursuant to a Qualified Bid (as defined below). This information will be shared with the Committee and its professionals, and Wells Fargo Bank, National Association ("Lender") and their professionals upon request to the Sellers.

---

<sup>3</sup> All dates proposed in this Motion are subject to the Court's calendar and will, assuming this Motion is granted, be finalized at the hearing on the Bid Procedures.

Due Diligence. The Sellers will afford any Potential Bidder who satisfies the Participation Requirements, such due diligence access or additional information as the Sellers, in their business judgment, determine to be reasonable and appropriate; provided, however, that the same access and information must also be made available to the Stalking Horse. Additional due diligence will not be provided after the Bid Deadline.

Interested investors requesting information about the qualification process, and Qualified Bidders (as defined below) requesting information in connection with their due diligence, should contact David B. Fields, RBC Capital Markets, LLC, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com) .

Bid Deadline. The deadline for any bids shall be January 19, 2015 at 4:00 p.m. (prevailing Central Time). Such bids must be received on or before that date by (1) counsel for the Sellers, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attn: Thomas R. Califano (thomas.califano@dlapiper.com) and DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent Slusher (vince.slusher@dlapiper.com); (2) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com); (3) Alvarez & Marsal Healthcare Industry Group, LLC, 55 West Monroe, Chicago, IL 60603, Attn: Paul Rundell (prundell@alvarezandmarsal.com); (4) counsel for Wells Fargo Bank, National Association, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Attn: Daniel S. Bleck, Esq. (dsbleck@mintz.com); (5) counsel for the Committee, Greenberg Traurig LLP, 2200 Ross Avenue, Suite 5200, Dallas, TX 75201, Attn: Clifton R. Jessup (jessupC@gtlaw.com) and Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601, Attn: Nancy A. Peterman (petermann@gtlaw.com); (6) Office of the Attorney General for the State of Texas, (7) the Texas Department of Aging and Disability Services, c/o the Texas Attorney General's Office, Bankruptcy & Collections Division, P.O. Box 12548-MC 008, Austin, Texas 78711, Attn: Casey Roy (Casey.Roy@texasattorneygeneral.gov); and (8) the CMS RO - Centers for Medicare & Medicaid Services Regional Office, 1301 Young Street, RM. 714, Dallas, TX 75202 (collectively, the "Notice Parties").

Designation of Stalking Horse Bidder(s). The Sellers have selected the Stalking Horse Bid, on the terms set forth in the APA, as the current highest or best bid and to serve as the opening bid for the Auction for all three Facilities. The bidding at the Auction will start at the Stalking Horse Bid and continue in increments of \$200,000 at least in cash or cash equivalents in the event of a bid on all three Facilities. For individual Facilities, the bid increments will be set at the Auction.

Bid Requirements. To be eligible to participate in the Auction, each bid and each Potential Bidder submitting such a bid must, in the Sellers' sole discretion:

- (1) offer to consummate the Sale Transaction on terms no less favorable to the Sellers than those set forth in a copy of the APA;
- (2) include a marked copy of the APA to show any proposed amendments thereto (the "Modified Agreement") and a clean and executed Modified Agreement;
- (3) include a statement that there are no conditions precedent to the bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- (4) state that such offer is binding and irrevocable until the consummation of the Sale Transaction;
- (5) for a bid on all of the Facilities, offer to pay a purchase price that is greater than \$44,000,000, and, for a bid on each of the Facilities, offer to pay a purchase price that is

greater than (i) \$18,180,000 for Wesley Court; (ii) \$3,235,000 for Parks; and (iii) \$22,585,000 for Craig;

(6) disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;

(7) include the names and contact information of members of the bidder who will be available to answer questions regarding the offer, including advisors and related parties;

(8) state that the Potential Bidder intends to assume all Residency Agreements and honor all resident obligations;

(9) include a good-faith deposit in immediately available funds in the amount of \$2,000,000 ("Earnest Money Deposit");

(10) provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Sale Transaction;

(11) provide for the purchase of all or some of the Sellers' assets; and

(12) provide information on the operational and financial capabilities of the proposed bidder sufficient to allow the Debtors and interested parties to determine such bidder's ability to assume the Residency Agreements.

Bids are not required to adopt the business structure as set forth in the APA, and may provide for a not-for-profit entity as the operator of each of the Facilities, as is currently the case with the Sellers. The Sellers will consider all bids submitted whether or not they conform to the form set forth in the APA.

To the extent any Potential Bidder proposes to include non-cash consideration in its bid (other than assumption of Lender's debt), such non-cash consideration must be freely marketable and such bid must be accompanied by the form of note or other type of instrument in connection with such non-cash consideration. Lender shall be entitled to credit bid (subject to payment of the Break-Up Fee and Expense Reimbursement in cash), pursuant to Bankruptcy Code section 363(k) or otherwise at the conclusion of the Auction. The determination of whether to accept any such credit bid shall be subject to the Sellers' determination, in consultation with the Lender and the Committee, of whether such credit bid is both higher and better.

Qualified Bidders and Bids. Potential Bidders who have satisfied the Participation Requirements will be deemed "Qualified Bidders." Bids that contain all bid requirements, as determined by the Sellers, in consultation with the Committee and Lender, will be deemed "Qualified Bids." Credit bids will be entertained. The Stalking Horse shall be entitled to credit bid the Break-up Fee. The Sellers reserve the right to waive noncompliance with any bid requirement, after consultation with the Committee and Lender.

The Sellers will advise each Potential Bidder whether they are deemed to be a Qualified Bidder and whether their bid is a Qualified Bid before the Auction. The Stalking Horse is deemed a Qualified Bidder and the Stalking Horse Bid is a Qualified Bid in all respects. Lender or its designee shall be deemed a Qualified Bidder and any credit bid of the Lender is a Qualified Bid in all respects. The Sellers will provide copies of the Qualified Bids to Lender through its legal counsel, the Committee, the Stalking Horse, and the Texas Attorney General. The Stalking Horse will be notified if any unqualified bid will be deemed a Qualified Bid by the Committee and shall be notified promptly, and no later than 24 hours prior to the Auction, of any Qualified Bids.

The Sellers reserve the right, in its sole reasonable discretion, in consultation with the

Committee and Lender, to waive noncompliance with any one or more of these requirements and deem an otherwise not Qualified Bid to be a Qualified Bid.

Auction Participation. Unless otherwise agreed to by the Sellers, only Qualified Bidders, members of the Committee, the Lender, and their respective legal or financial professionals are eligible to attend or participate at the Auction (as defined below). Subject to the other provisions of these Bid Procedures, if the Sellers do not receive any Qualified Bids other than Stalking Horse Bid or if no Qualified Bidder other than the Stalking Horse has indicated its intent to participate in the Auction, the Sellers will not hold an Auction and the Stalking Horse will be named the Successful Bidder.

Auction. If any Qualified Bid other than the Stalking Horse Bid for any of the Sellers' assets has been received and any Qualified Bidder other than the Stalking Horse has indicated its intent to participate in the Auction, the Sellers will conduct an auction (the "Auction") for the sale of substantially all of its assets. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale Transaction.

The Auction shall take place at 10:00 am (prevailing Central Time) on January 21, 2015 at the offices of DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201. At the Auction, only the Stalking Horse and other Qualified Bidders will be permitted to increase their bids or make any subsequent bids, and the Lender and the Stalking Horse will each be able to make or to increase, as applicable, its credit bid at the Auction. The Sellers may conduct the Auction in the manner it reasonably determines, in its business judgment, after consultation with the Committee and Lender, will achieve the maximum value for all parties in interest and is not inconsistent with any of the provisions of these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection herewith.

First, the Sellers will conduct an auction for the Business Enterprise. The purchase price for the initial competing bid must be at least \$44,000,000. Each successive bid must be in increments of \$200,000. At the conclusion of the bidding for the Business Enterprise, the Sellers, in consultation with the Committee and the Lender, shall select the party who has submitted the highest or otherwise best offer for the Business Enterprise.

The Sellers will then conduct an auction for each Facility in the order to be announced at the commencement of the Auction. Any bidder that has submitted a bid for a specific Facility (either as a single Facility or as part of a bid for two or more Facilities) may participate in the Auction with respect to such individual Facility or if there are competing bids for multiple Facilities, an Auction will be held for the sale of such multiple Facilities together. The purchase price for the initial competing bid must be (i) \$18,180,000 for Wesley Court; (ii) \$3,235,000 for Parks; and (iii) \$22,585,000 for Craig with each successive bid to be set at the Auction (plus any break-up fee and/or expense reimbursement to be paid to a Stalking Horse pursuant to the Bidding Procedures). At the conclusion of all bidding for each of the Facilities (or a combination thereof, as the case may be), the Sellers, in consultation with the Committee and Lender, shall select the party who has submitted the highest and best offers for each of the Facilities.

After concluding the Auction for each of the Facilities (or a combination thereof, as the case may be), the Sellers will reopen the Auction for the Business Enterprise. The Sellers will compare the aggregate purchase price received for the Business Enterprise with the individual purchase prices received for each of the Facilities. The Sellers, in consultation with the Committee and the Lender, will make a determination as to which bid or bids provide for the highest and best return for the Sellers' assets.

Closing the Auction. The Auction shall continue until there is only one offer that the Sellers determine, in consultation with the Committee and Lender, subject to Bankruptcy Court approval, is the highest or best offer from among the Qualified Bidders (including

the Stalking Horse and Lender) submitted at Auction (the “Successful Bid”). The Qualified Bidder submitting such Successful Bid shall become the “Successful Bidder,” and shall have such rights and responsibilities of a purchaser, as set forth in the APA (or Modified Agreement, as applicable).

Immediately prior to the conclusion of the Auction, after consultation with the Committee and Lender, the Sellers shall (1) review each bid made at the Auction on the basis of financial and contractual terms and such other factors as may be relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale Transaction; (2) identify the Successful Bid; and (3) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name or names of the Successful Bidder and the amount and other material terms of the Successful Bid.

The Sellers shall also select a back-up bid (the “Back-Up Bid”), which shall remain open and irrevocable until one (1) business day after the closing of the sale with the Successful Bidder. In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, the Sellers may elect to regard the Back-Up Bid as the highest or best bid for the Purchased Assets, and the Sellers will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.

Assumption of Executory Contracts and Unexpired Leases. The APA provides for the assumption and assignment of executory contracts and unexpired leases to the Stalking Horse (“Assigned Contracts”). In all circumstances, the Successful Bidder(s) shall be responsible for all cure amounts relating to the Assigned Contracts under Bankruptcy Code section 365 for the respective Facilities and shall assume all obligations under the Residency Agreements (including without limitation deposit refund amounts thereunder) in connection with the respective Facilities.

32. To induce the Stalking Horse to expend the time, energy and resources necessary to submit the Stalking Horse Bid, the Sellers seek at this time this Court’s approval of the Bid Protections provided to a Stalking Horse. The Break-Up Fee and Expense Reimbursements are only payable in the event that the Sellers consummate a sale to a higher and better offer from a party other than the Stalking Horse.

33. The Sellers propose to send a notice (the “Auction and Sale Notice” a copy of which is attached to the Bid Procedures Order as Exhibit 2) to all creditors and parties in interest, including all parties having expressed an interest in acquiring all or part of the Sellers’ assets within two (2) business days following the entry of the Bidding Procedures Order.

### **Assignment Procedures**

34. The Sellers propose to establish procedures to be employed in connection with the identification, assumption and assignment of the Assigned Contracts (the “Assignment Procedures”) in accordance with the APA or Modified Agreement, as applicable. Upon a determination of which of the Sellers’ executory contracts and unexpired leases will be included in the list of Assigned Contracts, the Sellers will file with the Court a list identifying such Assigned Contracts and the amounts necessary to cure defaults thereunder. The Sellers will also serve all counterparties to the Assigned Contracts with a notice substantially in the form attached to the Bid Procedures Order as Exhibit 3 (the “Assignment Notice”), specifically stating that the Sellers are seeking to assume and assign to the Successful Bidder(s) the Assigned Contracts. Furthermore, the Assignment Notice shall provide that the deadline for objecting to the assumption and assignment of the Assigned Contracts shall be fourteen (14) days following service of the Assignment Notice.

### **Relief Requested**

35. Due to ongoing liquidity issues at the Facilities and the requirement of regulatory approval, the Sellers and their professionals believe it necessary to accelerate the sale process with respect to the Sellers’ assets as described in the Bid Procedures. By this Motion, the Sellers respectfully request entry of two orders:

- (a) an order (the “Bid Procedures Order,” a copy of which is attached hereto as Exhibit A) approving, among other things, (x) the proposed bid procedures (the “Bid Procedures,” a copy of which is attached as Exhibit 1 to the Bid Procedures Order); (y) the form and manner of service of the “Auction and Sale Notice,” a copy of which is attached as Exhibit 2 to the Bid Procedures Order; and (z) the Assignment Notice, a copy of which is attached as Exhibit 3 to the Bid Procedures Order; and

- (b) an order (the “Sale Order,” a copy of which is attached hereto as Exhibit B) authorizing the sale of substantially all of the Sellers’ assets to the Stalking Horse pursuant to the APA attached hereto as Exhibit D, or to another higher and better bidder, pursuant to the terms of Bid Procedures free and clear of all Encumbrances not expressly assumed, and the assumption and assignment of certain contracts pursuant to such sale.

36. The Sellers and their professionals believe that the Bid Procedures and the proposed sale are fair and reasonable under the circumstances of these chapter 11 cases.

### **The Basis for the Requested Relief**

37. The Sellers believe that cause exists to grant both orders being sought by this Motion. The proposed Bid Procedures are reasonable and necessary to effectuate the sale process and provide sufficient notice and opportunity to permit other bidders to participate in the Auction process. Upon conclusion of the Auction, the Sellers believe that sufficient cause exists to enter an order approving the proposed sale to the Stalking Horse, or any bidders which submit a higher or better bid pursuant to the Bid Procedures.

#### **A. The Proposed Bid Procedures Should be Approved**

38. The Sellers believe it is in the best interests of their estates, creditors, residents and employees to commence a process for soliciting potential bidders to participate in the Auction. The Sellers seek approval of the Bid Procedures in an effort to maximize the likelihood of higher and better bids being made for the Sellers’ assets. The Sellers believe that the Bidding Procedures will permit interested parties reasonable opportunities, consistent with the financial constraints of the Sellers, to evaluate whether to propose a bid for the Sellers’ assets that is higher and better than the Stalking Horse Bid for the same assets.

39. Under Bankruptcy Rule 6004(f)(1), the Sellers may sell property outside the ordinary course of business by private sale or by public auction. In this case, the Sellers believe

that an auction will expose the assets to a broad and diverse market and ensure a sale for the highest and best offer.

40. The Sellers desire to receive the greatest value for the assets by testing the public marketplace in the hope that higher and better offers are generated for all or portions of its assets.

41. If the Bid Procedures are approved, the Sellers will solicit competing Qualified Bids for the assets. The Bid Procedures describe, among other things, the assets available for sale, the manner in which bidders and bids become “qualified,” the coordination of diligence efforts among bidders and the Sellers, the receipt, negotiation and qualification of bids received, the conduct of any auction, and the selection and approval of any ultimately “Successful Bidders” (as defined in the Bid Procedures).

1. The Proposed Bid Procedures Are Reasonable and Necessary

42. The Bid Procedures were developed consistent with the Sellers’ competing needs to expedite the sale process and promote participation and active bidding. Moreover, the Bid Procedures reflect the Sellers’ objective of conducting the Auction in a controlled, fair and open fashion.

43. The Sellers believe that the Auction and proposed Bid Procedures will promote active bidding from seriously interested parties and will identify the best or highest offer(s) for the assets. The proposed Bid Procedures will allow the Sellers to conduct the Auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Sellers believe that the Bid Procedures are: (a) sufficient to encourage bidding for the assets; (b) consistent with other procedures previously approved by the Court; and (c) appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Further, the Bid

Procedures are designed to maximize value for the Sellers' estates, while ensuring an orderly sale process.

44. Once the Sellers articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" In re S.N.A. Nut Co., 186 B.R. 98 (Bankr. N.D. Ill. 1995); In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992); In re Johns-Manville Corp., 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("[A] presumption of reasonableness attaches to a [D]ebtor's management decisions.").

45. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. See, e.g., Integrated Res., 147 B.R. at 656–57 (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

46. The paramount goal in any proposed auction of property of the estate is to maximize the proceeds received by the estate. See, e.g., In re Food Barn Stores, Inc., 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); Integrated Res., 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting In re Atlanta Packaging Prods., Inc., 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

47. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. See, e.g., Integrated Res., 147 B.R. at 659 (such procedures “encourage bidding and to maximize the value of the debtor’s assets”); In re Fin. News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991), (“[C]ourt-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates.”).

48. The Sellers have sound business justifications for seeking approval of the Bid Procedures at this juncture. The Sellers believe it is in the best interests of their estates, creditors, residents and employees to commence a bidding procedure immediately, as the Sellers have limited funding and resources to try to maximize the value of its assets. In addition, the sale of the assets provides a realistic means for the continuation of certain resident care services for the residents at each of the Facilities with minimal interruption and inconvenience. For these reasons, the Sellers have determined, based upon its business judgment, that the best option for maximizing the value of its estate for the benefit of its creditors, residents, employees and other parties in interest is through the Sale Transaction pursuant to the Bid Procedures.

49. The Sellers believe that the Bid Procedures will establish the parameters under which the Sale Transaction with the Stalking Horse may be tested at the Auction. The Bid Procedures are designed to encourage competitive bidding in an orderly manner to maximize value for the Sellers’ estate for their creditors, patients and employees. The proposed procedures contain terms typical for a process through which a sale of this nature is consummated and will

increase the likelihood that the Sellers will receive the greatest possible consideration because they will ensure a competitive and fair bidding process.

50. As additional support, Bankruptcy Code section 105(a) provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). As described above, approval of the Bid Procedures will greatly assist the Sellers in maximizing the value that it may obtain for all or portions of its assets. Consequently, the Sellers respectfully submit that granting the requested relief is “appropriate” under the circumstances.

2. The Bid Protections Are in the Best Interests of the Sellers’ Estates

51. To induce the Stalking Horse to expend the time, energy and resources necessary to submit the Stalking Horse Bid, the Sellers have agreed to provide, and seek this Court’s approval of, the Bid Protections provided to a Stalking Horse as set forth in the Bid Procedures and the APA.

52. The Sellers propose to provide the Stalking Horse with the Bid Protections as described in the Bid Procedures Order. Such protections have induced the Stalking Horse’s entry into the APA and its offering of the Stalking Horse Bid. The Sellers believe that the Bid Protections are fair and reasonable in view of (a) the intensive analysis, due diligence investigation, and negotiation undertaken by the Stalking Horse in connection with the transaction, and (b) the fact that, if the Break-Up Fee and Expense Reimbursement are triggered, the Sellers will have closed on a higher or otherwise better offer for the assets, to the benefit of the Sellers’ creditors, residents and employees.

53. Although bidding incentives in favor of a stalking horse are measured against a business judgment standard, to receive administrative expense priority pursuant to Bankruptcy

Code section 503(b), the bidding incentive must provide some post-petition benefit to the estate. See In re O'Brien Env'tl. Energy, Inc., 181 F.3d 527, 533 (3d Cir. 1999). The O'Brien court identified two instances in which such a benefit to the estate may be found. The first instance is where the incentive promoted a more competitive bidding process, "such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Id. at 537. The second instance is where bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as the floor bid on which other bidders can rely. Id.

54. The amount of the Break-Up Fee and Expense Reimbursement proposed by this Motion is reasonable and appropriate in light of the size and nature of the transaction. Moreover, the Break-Up Fee and Expense Reimbursement are consistent with the O'Brien court's test above; these Bid Protections were an inducement to a potential bidder to expend time and resources in providing a competitive floor bid to become the Stalking Horse.

55. The Sellers submit that the Bid Protections are normal, and often necessary components of sales outside the ordinary course of business under Bankruptcy Code section 363. See, e.g., In re Kupp Acquisition Corp., Case No. 96-1223 (PJW) (Bankr. D. Del. March 3, 1997); In re Kmart, Case No. 02-B-02474 (SPS) (Bankr. N.D. Ill. May 10, 2002) (authorizing a termination fee and overbid amounts for potential bidders); In re Comdisco, Inc., Case No. 01-24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, *inter alia*, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate, and a necessary inducement for, and a condition to, the proposed purchaser's entry into the purchase agreement); In re Crowthers McCall Pattern, Inc., 114 B.R. 877 (Bankr. S.D.N.Y. 1990) (approving an overbid requirement in an amount equal to the approved break-up fee).

56. In sum, the Sellers' ability to offer the Bid Protections to the Stalking Horse enables the Sellers to ensure the sale of substantially all of its assets to the Stalking Horse at a price it believes to be fair while, while at the same time providing the Sellers with the potential of even greater benefit to the Sellers' estates. Thus, the Bid Protections should be approved.

57. Moreover, payment of the Bid Protections will not diminish the assets of the estates available for distribution to creditors, because, as stated above, the Sellers will only be required to make payments in accordance with the Bid Protections if the Sellers consummate a sale with an alternative bidder that exceeds the consideration offered by the relevant Stalking Horse by an amount sufficient to pay the Break-Up Fee and Expense Reimbursement.

58. Finally, in the event the Sellers accept a higher and better offer and therefore pay the Break-Up Fee and Expense Reimbursement, the Stalking Horse will provide a statement satisfying all of the conditions to payment of the Break-Up Fee and Expense Reimbursement as set forth in this Court's Standing Order. A schedule setting forth each of the Sellers' twenty largest creditors as required by the Standing Order is attached as Exhibit C hereto.

B. The Sale Order Should Be Approved

1. The Proposed Sale is an Exercise of Sound Business Judgment and Should Be Approved

59. The Sellers submit that ample authority exists for the approval of the Sale Transaction. Bankruptcy Code section 363, which authorizes a debtor to sell assets of the estate other than in the ordinary course of business, provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1).

60. Although Bankruptcy Code section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's

assets, courts have held that approval of a proposed sale of property pursuant to section 363(b) is appropriate if the transaction represents the reasonable business judgment of the debtor. See Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983); see also In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a “sound business reason” justifying the preconfirmation sale of assets); In re Phoenix Steel Corp., 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a Chapter 11 case are “that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith”).

61. If a valid business justification exists for the sale, as it does in these cases, the Sellers’ decision to sell property out of the ordinary course of business enjoys a strong presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company.” In re Integrated Res., Inc., 147 B.R. at 656. Therefore, parties objecting to the Sellers’ proposed Sale Transaction must make a showing of “bad faith, self-interest or gross negligence.” Id. at 656; see also In re Johns-Manville Corp., 60 B.R. at 616 (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from decisions made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”).

62. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the

parties have acted in good faith. See, e.g., In re Delaware & Hudson Ry. Co., 124 B.R. at 176; In re Phoenix Steel Corp., 82 B.R. at 335–36. The proposed Sale Transaction satisfies all these factors.

63. First, the Sellers have proposed the Sale Transaction after thorough consideration of all viable alternatives and have concluded that the sale is supported by a number of sound business reasons. A sale is critical to maintaining the going concern value of the Sellers' business operations. In particular, the Sellers submit that the facts described above, which require a prompt sale of the assets to preserve value for its estate, provide a strong business justification for the Sale Transaction. The maximization of asset value for the benefit of creditors reflects a sound business purpose that warrants authorization of the proposed Sale Transaction.

64. Second, the Sellers will provide notice of the Bid Procedures as provided in the Bid Procedures Order, including notice to creditors, potential bidders and other parties in interest. The Sellers submit that such notice constitutes adequate and reasonable notice to interested parties.

65. Third, the value the Sellers will receive for the assets as a going concern as provided in the APA, or through such other purchase agreement(s) between the Sellers and any Successful Bidder, exceeds any value that the Sellers could get for the assets if the Sellers were required to liquidate its assets piecemeal, while maintaining appropriate services for residents.

66. Finally, as described in more detail below, the Sale Transaction as provided in the APA was negotiated in the utmost good faith and at arm's length.

67. For the foregoing reasons, the Sellers submit that approval of the Sale Transaction and all related transactions are appropriate and warranted under Bankruptcy Code section 363.

2. The Proposed Sale Should Be Free and Clear of all Encumbrances

68. The Sellers further submit that it is appropriate to sell the assets free and clear of all Encumbrances, pursuant to Bankruptcy Code section 363(f), with any such encumbrances attaching to the net sale proceeds of the assets, as and to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interests;
- (2) if such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

69. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Sellers' assets "free and clear" of liens and interests. Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met); In re Dundee Equity Corp., 1992 WL 53743, at \*4 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.").

70. The Court also may authorize the sale of a debtor's assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply. See In re Trans World Airlines, Inc., 2001 WL 1820325, at \*3 (Bankr. D. Del. Mar. 27, 2001) (stating that "bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f)"); see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

71. The Sellers believe that one or more of the tests of Bankruptcy Code section 363(f) are satisfied with respect to the transfer of the assets pursuant to the APA or as otherwise agreed to with a Successful Bidder. Moreover, any lienholder also will be adequately protected by having its liens, if any, attach to the sale proceeds received by the Sellers for the sale of the assets to one or more Successful Bidders in the same order of priority, with the same validity, force and effect that such creditor had prior to such sale, subject to any claims and defenses the Sellers and their estates may possess with respect thereto. Accordingly, section 363(f) authorizes the sale and transfer of the assets free and clear of any such encumbrances.<sup>4</sup>

---

<sup>4</sup> The Successful Bidders shall have no successor liability for any claims against the Sellers. Courts have consistently held that the purchaser of a debtor's assets under Bankruptcy Code section 363 takes such assets free and clear of successor liability resulting or arising from pre-existing claims. Such successor liability-type claims would frustrate the purpose of an order authorizing the sale of estate assets free and clear of all "interests." Accordingly, the purchasing parties should not be subject to further claims related to a debtors' pre-sale conduct. See, e.g., Ninth Ave. Remedial Grp. v. Allis-Chalmers Corp., 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 91 (2d Cir. 1988) (channeling of claims to proceeds of sale consistent with intent of sale free and clear under Bankruptcy Code section 363(f)); Rubinstein v. Alaska Pac. Consortium (In re New England Fish Co.), 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property pursuant to Bankruptcy Code section 363(f) was made free and clear of Title VII employment discrimination and civil rights claims of debtors' employees); In re Hoffman, 53 B.R. 874, 876 (Bankr. D. R.I. 1985) (transfer of liquor license pursuant to Bankruptcy Code section 363(f) was made free and clear of any interest permissible even though estate had unpaid tax liability); Am. Living Sys. v. Bonapfel (In re All Am. of Ashburn, Inc.), 56 B.R. 186, 189-90 (Bankr. N.D. Ga. 1986) (product liability claims precluded on successor liability doctrine where assets were sold free and clear pursuant to Bankruptcy Code section 363(f)); aff'd sub. nom., Griffen v. Bonapfel, 805 F.2d 1515 (11th Cir. 1986).

3. Assumption and Assignment of Assumed Contracts Is Authorized by Bankruptcy Code Section 365

72. Bankruptcy Code Sections 365(a) and (b) authorize a debtor in possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor. 11 U.S.C. § 365(a), (b); In re Jamesway Corp., 201 B.R. 73, 76 (Bankr. S.D.N.Y. 1996). Under Bankruptcy Code section 365(a), a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Bankruptcy Code Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

- (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee--
  - (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
  - (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
  - (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

73. The standard applied by a court in determining whether the assumption or rejection of an executory contract or unexpired lease pursuant to section 365(a) should be approved is the "business judgment" test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. See, e.g., In re Grp. of Inst. Investors, Inc. v. Chicago, Milwaukee, St. Paul and Pac. R.R. Co., 318 U.S. 523, 550 (1943) ("the question [of assumption] is one of business judgment"); Orion Pictures Corp. v. Showtime Networks, Inc.

(In re Orion Pictures Corp.), 4 F.3d 1095, 1098–99 (2d Cir. 1993) (to decide a motion to assume the court must put itself in the position of the trustee and determine whether such assumption would be a good decision or a bad one).

74. Courts generally will not second-guess a debtor’s business judgment concerning the assumption of an executory contract. See In re Paolo Gucci, 193 B.R. 411, 414 (S.D.N.Y. 1996); see also Sharon Steel Corp. v. National Gas Fuel Distrib. Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989); In re III Enter., Inc., 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994) (“Generally, a court will give great deference to a debtor’s decision to assume or reject an executory contract. A debtor need only show that its decision to assume or reject the contract is an exercise of sound business judgment—a standard which we have concluded many times is not difficult to meet.”).

75. In the present case, the Sellers’ assumption and assignment of the contracts designated in the APA or by any Successful Bidder in their asset purchase agreement (the “Assigned Contracts”) meets the business judgment standard and satisfies the requirements of section 365 of the Bankruptcy Code. As discussed above, the Sale Transaction will provide significant benefits to the Sellers’ estates. Because the Sellers cannot obtain the benefits of the Sale Transaction without the assumption of the Assigned Contracts, the assumption of these Assigned Contracts is undoubtedly a sound exercise of the Sellers’ business judgment.

76. Further, a debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a), and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. See 11 U.S.C. § 365(f)(2). Significantly, among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and

experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

77. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” EBG Midtown S. Corp. v. McLaren/Hart Env'tl. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), aff'd, 993 F.2d 300 (2d Cir. 1993).

78. Here, the Successful Bidder will be required to pay all cure amounts in connection with the Assigned Contracts. The Successful Bidder will have shown sufficient assets to continue performance thereunder and at the hearing on cure amounts, the Successful Bidder will demonstrate to the satisfaction of the Bankruptcy Court that adequate assurance of future performance is present by the promise to perform the obligations of the Assigned Contracts from and after the closing of the Sale Transaction. Accordingly, the Sellers submit that the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

79. To assist in the assumption, assignment and sale of the Assigned Contracts, the Sellers also request that the Bankruptcy Court enter an order providing that anti-assignment provisions in the Assigned Contracts shall not restrict, limit or prohibit the assumption, assignment and sale of the Assigned Contracts or the timelines set forth in the Bid Procedures, and are deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f).

80. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign unexpired leases and contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection . . . .

11 U.S.C. § 365(f)(1).

81. Section 365(f)(1), by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. See, e.g., Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.), 127 F. 3d 904, 910–11 (9th Cir. 1997) (“no principle of bankruptcy or contract law precludes us from permitting the debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365”). Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. See, e.g., In re Jamesway Corp., 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

82. Other courts have recognized that provisions that have the effect of restricting assignments also cannot be enforced. See In re Rickel Home Ctrs., Inc., 240 B.R. 826, 831 (D. Del. 1998) (“In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions.”). Similarly, in In re Mr. Grocer, Inc., the court noted that:

[the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves ipso facto anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.

77 B.R. 349, 354 (Bankr. D.N.H. 1987).

83. Thus, the Sellers request that any anti-assignment provisions and right of first refusal provisions be deemed not to restrict, limit or prohibit the assumption, assignment and sale of the Assigned Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

C. Cause Exists for Waiver of the Stay Imposed  
by Bankruptcy Rule 6004(h)

84. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property. . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of [14] days after the entry of the order, unless the court orders otherwise.” Id. 6006(d).

85. The Sellers request that any order entered pursuant to the Motion authorizing the consummation of a transaction that is deemed a sale of assets and/or an assignment of an unexpired lease be effective immediately by providing that the 14-day stay under Rules 6004 or 6006, as the case may be, is inapplicable, so that they may proceed to close on the transaction as expeditiously as possible and within the time frames contemplated by the Sellers and the successful bidder(s). Given the Sellers’ liquidity position and the danger of losing going concern value, the Sellers respectfully submit that it is in the best interests of their estates to close the sale

as soon as possible after all closing conditions have been met or waived. Accordingly, the Sellers hereby requests that the Court eliminate the 14-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

**Notice**

86. Notice of this Motion has been provided to (a) the Office of the United States Trustee for the Northern District of Texas; (b) the Sellers' twenty largest unsecured creditors on a consolidated basis; (c) counsel Well Fargo Bank, National Association; as trustee; (d) counsel for the Official Committee of Unsecured Creditors; (e) the Office of the Attorney General for the State of Texas; (f) the Texas Department of Aging and Disability Services; (g) the Center for Medicare & Medicaid Services; and (h) all other parties who have requested notice in this case. The Sellers submit that, in light of the nature of the relief requested, no other or further notice is necessary or required.

*[Remainder of page left intentionally blank.]*

**Conclusion**

WHEREFORE, the Sellers respectfully request that the Court enter orders substantially in the form annexed hereto as Exhibits A and B, (i) approving bid procedures and providing certain protections to the Stalking Horse; (ii) authorizing the (a) sale of substantially all of the Sellers' assets free and clear of all liens, claims and encumbrances to the Stalking Horse or such other higher or better bidder, and (b) the assumption and assignment of certain executory contracts and leases; and (iii) granting such other and further relief as is just and proper.

Dated: November 24, 2014  
Dallas, Texas

**DLA PIPER LLP (US)**

By: /s/ Vincent P. Slusher

Vincent P. Slusher, State Bar No. 00785480  
vincent.slusher@dlapiper.com  
Andrew Zollinger, State Bar No. 24063944  
andrew.zollinger@dlapiper.com  
DLA Piper LLP (US)  
1717 Main Street, Suite 4600  
Dallas, Texas 75201-4629  
Telephone: (214) 743-4500  
Facsimile: (214) 743-4545

Thomas R. Califano (admitted pro hac vice)  
thomas.califano@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

Attorneys for the Debtors and Debtors-in-Possession

**EXHIBIT A**

**BID PROCEDURES ORDER**

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

<b>In re:</b>	§	<b>CASE NO. 14-32821-11</b>
	§	
<b>SEARS METHODIST RETIREMENT SYSTEM, INC., <i>et al.</i><sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

**ORDER APPROVING BID PROCEDURES AND PROVIDING  
CERTAIN PROTECTIONS TO STALKING HORSE RELATED TO THE PROPOSED  
SALE OF SUBSTANTIALLY ALL ASSETS OF DEBTORS SEARS METHODIST  
CENTERS, INC., SEARS PERMIAN RETIREMENT CORPORATION, AND SEARS  
PANHANDLE RETIREMENT CORPORATION AND GRANTING RELATED RELIEF**

---

<sup>1</sup> 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”)<sup>2</sup> of Sears Methodist Centers, Inc. (“SMC”), Sears Permian Retirement Corporation (“Permian”), and Sears Panhandle Retirement Corporation (“Panhandle” and together with Permian and SMC, collectively, the “Sellers”), as debtors and debtors in possession in the above captioned cases (and, together with the other debtors and debtors in possession in the above captioned cases, the “Debtors”), pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order approving the Bid Procedures, which are attached hereto as Exhibit 1, in connection with the sale of all or substantially all of the Sellers’ assets, and providing certain protections to Yellow Rose Health Holding LLC, a Nevada limited liability company (the “Stalking Horse”), including the form and manner of service of the notice attached hereto as Exhibit 2, and granting other relief related thereto; and the Court having reviewed the Motion, and having considered the statements of counsel and evidence adduced with respect to the Motion at a hearing before the Court (the “Hearing”); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iv) notice of the Motion and the Hearing was sufficient under the circumstances, and no further or other notice is required; and (v) a reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to all interested persons; after due deliberation the Court having determined that the relief requested in the Motion (a) represents a sound exercise of the Sellers’ business judgment, (b) is necessary and essential to maximize the value of the Sellers’ estates; (c) is in the best interests of the Sellers,

---

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion or Bid Procedures.

their estates and creditors, including the holders of the 2013 Bonds and the holders of the Non-Exchanged Bonds (together, the “Bondholders”); (d) and that SMRS Trustee has acted reasonably and prudently in supporting the entry of this Order approving the Bidding Procedures; and upon the record herein; and after due deliberation thereon; and good and sufficient cause having been shown;

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

A. The Sellers have articulated good and sufficient reasons for, and the best interests of its estate will be served by, this Court granting certain of the relief requested in the Motion, including approval of (i) the Bid Procedures, (ii) the Break-Up Fee and the Expense Reimbursement, as provided for in the Motion, (iii) the sale of substantially all of the Sellers’ assets to the Successful Bidder, and (iv) the form and manner of the Auction and Sale Notice.

B. The Bid Procedures are fair, reasonable and appropriate and are designed to maximize the recovery with respect to the Sale Transaction.

C. The Break-Up Fee and Expense Reimbursement to be paid under the circumstances described herein to the Stalking Horse are (i) actual and necessary costs and expenses of preserving the Sellers’ estates, within the meaning of Bankruptcy Code section 503(b), (ii) commensurate to the real and substantial benefits conferred upon the Sellers’ estates by the entry by one or more Stalking Horse into the APA; and (iii) reasonable and appropriate in light of the size and nature of the proposed Sale Transaction and comparable transactions, the commitments that have been made and the efforts that have been or will be expended by the Stalking Horse.

---

<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

D. Moreover, the Break-Up Fee and Expense Reimbursement were essential to induce a Stalking Horse's entry into an APA. Unless it is assured that the Break-Up Fee and Expense Reimbursement will be available, a Stalking Horse would be less willing to consummate the Sale Transaction or otherwise be bound under an APA (including the obligation to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bid Procedures). Accordingly, the Break-Up Fee and Expense Reimbursement are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Sellers' estates.

E. The Sellers have demonstrated a compelling and sound business justification for authorizing the payment of the Break-Up Fee and Expense Reimbursement under the circumstances, timing and procedures set forth in the Motion.

F. The Sellers have provided support for its decision to authorize the payment of the Break-Up Fee and Expense Reimbursement sufficient to satisfy all conditions set forth in this Court's Standing Order Concerning Guidelines for Compensation and Expense Reimbursement of Professionals, for Early Disposition of Assets in Chapter 11 Cases, and for Motions and orders Pertaining to Use of Cash Collateral and Post Petition Financing, dated December 21, 2000.

G. The Auction and Sale Notice is appropriate, adequate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Transaction and the Bid Procedures. No other or further notice is required for the Sale Transaction or the Bid Procedures, as set forth herein and in the Motion.

H. The form and manner of service of the Assignment Notice described in the Motion, and attached hereto as Exhibit 3, are approved in all respects. The Sellers shall serve the Assignment Notice on all counterparties to the Assigned Contracts as set forth in the Motion.

Service of the Assignment Notice, as set forth herein, constitutes sufficient notice of the Assignment Procedures.

I. The Sellers have articulated good and sufficient reasons for, and the best interests of its estate will be served by, this Court scheduling a subsequent Sale Hearing to consider granting other relief requested in the Motion, including approval of the Sale Transaction and the transfer of the assets to the Stalking Horse free and clear of all Encumbrances pursuant to Bankruptcy Code section 363(f).

J. As demonstrated by the compelling and sound business justifications set forth by the Sellers in the Motion and at the Hearing, the entry of this Order is in the best interests of the Sellers and their estates, creditors, and interest holders and all other parties in interest herein; and therefore

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED to the extent set forth herein.
2. The Bid Procedures attached hereto as Exhibit 1 are approved in all respects and shall govern all bids and bid proceedings relating to the sale of the Sellers' assets. The Sellers are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.
3. The failure specifically to include or reference any particular provision of the Bid Procedures in this Order shall not diminish or impair the effectiveness of such procedure, it being the intent of the Court that the Bid Procedures be authorized and approved in their entirety.
4. The form and manner of service of the Auction and Sale Notice described in the Motion, and attached hereto as Exhibit 2, are approved in all respects. The Sellers shall serve the Auction and Sale Notice on all of the Sellers' creditors, parties in interest, potentially interested bidders and to such other additional creditors or parties in interest as identified by the Debtors or

the SMRS Trustee within two (2) business days following the entry of this Order. Service of the Auction and Sale Notice, as set forth herein, constitutes sufficient notice of the Auction and Sale Hearing.

5. The Bid Deadline is January 19, 2015 at 4:00 p.m. (prevailing Central Time). All Potential Bidders are required to provide copies of their bids so as to be received by hand and by electronic mail by the following parties on or before the Bid Deadline: (1) counsel for the Sellers, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attn: Thomas R. Califano (thomas.califano@dlapiper.com) and DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent Slusher (vince.slusher@dlapiper.com); (2) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com); (3) Alvarez & Marsal Healthcare Industry Group, LLC, 55 West Monroe, Chicago, IL 60603, Attn: Paul Rundell (prundell@alvarezandmarsal.com); (4) counsel for Wells Fargo Bank, National Association, as trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Attn: Daniel S. Bleck, Esq. (dsbleck@mintz.com); (5) counsel for the Committee Greenberg Traurig LLP, 2200 Ross Avenue, Suite 5200, Dallas, TX 75201, Attn: Clifton R. Jessup (jessupC@gtlaw.com) and Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601, Attn: Nancy A. Peterman (petermann@gtlaw.com); (6) Office of the Attorney General for the State of Texas; (7) the Texas Department of Aging and Disability Services, c/o the Texas Attorney General's Office, Bankruptcy & Collections Division, P.O. Box 12548-MC 008, Austin, Texas 78711, Attn: Casey Roy (Casey.Roy@texasattorneygeneral.gov); and (8) the CMS RO - Centers for Medicare & Medicaid Services Regional Office, 1301 Young

Street, RM. 714, Dallas, TX 75202 (collectively, the “Notice Parties”). The Stalking Horse Bid will serve as the opening bid for the Auction.

6. The Auction, if necessary under the Bid Procedures, will be held on January 21, 2015 at the offices of DLA Piper LLP (US), 1717 Main Street, Ste. 4600, Dallas, Texas 75201 at 10:00 a.m. (prevailing Central Time).

7. Objections to the Sale Transaction shall be in writing, shall state the basis of such objection with specificity and shall be filed with the Court, and served so as to be received on or before January 19, 2015, at 4:00 p.m. (prevailing Central Time) on the Notice Parties.

8. The Sale Hearing, at which the Sellers shall seek approval of the Successful Bid, shall be held in this Court on January [23], 2014, at [10:00 a.m.] (prevailing Central Time). The Sale Hearing may be adjourned or rescheduled without further notice other than an announcement of the adjourned date at the Sale Hearing.

9. The Stalking Horse and Wells Fargo Bank, National Association (the “Lender”) shall each constitute a Qualified Bidder (as defined in the Bid Procedures) for all purposes and in all respects with regard to the Bid Procedures. The Lender is permitted to credit bid part of all of its claims in this case pursuant to section 363(k) of the Bankruptcy Code directly or through a designee.

10. The Sellers are hereby authorized, in the exercise of its sound business judgment, to pay the Stalking Horse, as set forth in the APA and pursuant to the Bid Procedures, a Break-Up Fee of One Million Two Hundred Thousand Dollars (\$1,200,000) and Expense Reimbursement in an amount up to One Hundred Thousand Dollars (\$100,000), subject to the terms of this Order and the APA. Except as otherwise provided in the APA, the payment of the Break-Up Fee and Expense Reimbursement shall be expressly conditioned on consummation of

the Sale Transaction to a party that is not the Stalking Horse or affiliated with the Stalking Horse, and shall be paid solely from proceeds of sale at closing of the Sale Transaction.

11. The failure of any objecting person or entity to timely file its objection shall be an absolute bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, or the consummation and performance of the Sale Transaction, if any (including the transfer free and clear of all Encumbrances of the Sellers' assets pursuant to the Sale Transaction).

12. Unless an objection to the Assignment Notice has been filed within fourteen (14) days of service of the Assignment Notice, all counterparties to the Assigned Contracts who have received actual or constructive notice of the Assignment Procedures shall be deemed to have waived and released any right to assign an objection to the assumption and assignment of the Assigned Contracts and to have otherwise consented to the assumption and assignment of the Assigned Contracts to the Successful Bidder(s). If an objection to the Assignment Notice is received within fourteen (14) days of service of the Assignment Notice, the Sellers and/or the Successful Bidder(s) shall promptly schedule a hearing for the Court to consider such objection. Such objection must set forth the cure amount or other obligation that the objecting party asserts is due, the specific types and dates of the alleged defaults, pecuniary losses and conditions to the assignment and the support thereof, if any.

13. The Sellers are authorized and empowered to take such steps, expend such sums of money and do such other things as may be necessary to implement and effect the terms and requirements established and relief granted in this Order.

14. Notwithstanding anything to the contrary in any APA, the Sellers are authorized to interview, qualify, encourage and negotiate with, any Potential Bidder in addition to the Stalking Horse prior to the completion of the Auction.

15. To the extent, if any, anything contained in this Order conflicts with the Motion, this Order and the provisions of the Bid Procedures attached hereto shall govern and control.

16. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), this Order shall take effect immediately upon its entry.

17. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.

**###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 (admitted *pro hac vice*)  
thomas.califano@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

Attorneys for the Debtors  
and Debtors in Possession

## **Exhibit 1**

### **Bid Procedures**

Set forth below are the bid procedures (the “Bid Procedures”) to be employed with respect to the sale of substantially all of the assets of Sears Methodist Centers, Inc. (“SMC”), Sears Permian Retirement Corporation (“Permian”), and Sears Panhandle Retirement Corporation (“Panhandle” and together with Permian and SMC, collectively, the “Sellers”), as debtors and debtors in possession in the jointly administered chapter cases (the “Chapter 11 Cases”) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”), Case No. 14-32821-11.

The Sellers propose to sell substantially all of their assets (the “Sale Transaction”) for Forty Two Million Five Hundred Thousand Dollars (\$42,500,000) (the “Stalking Horse Bid”) pursuant to the Asset Purchase Agreement (the “APA”) between the Sellers and Yellow Rose Health Holdings LLC, a Nevada limited liability company (the “Stalking Horse”). Specifically, the Sellers are seeking to sell each and all of the following operating senior care facilities (each, a “Facility”, and collectively the “Facilities” or the “Business Enterprise”)

- (i) Wesley Court Methodist Retirement Community located in Abilene, Texas;
- (ii) Parks Methodist Retirement Community located in Odessa, Texas; and
- (iii) Craig Retirement Community located in Amarillo, Texas.

The Sale Transaction is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Participation Requirements**

Any person desiring to submit a competing bid for all or part of the Sellers’ assets (a “Potential Bidder”) will be required to deliver the following (the “Participation Requirements”) to the Sellers: (1) an executed confidentiality agreement in form and substance satisfactory to the Sellers; and (2) satisfactory written evidence of available funds or a firm commitment for financing sufficient for the Potential Bidder to consummate the Sale Transaction. The financial information and credit-quality support of any Potential Bidder must demonstrate the financial capability of the Potential Bidder to timely consummate the Sale Transaction pursuant to a Qualified Bid (as defined below). This information will be shared with the Official Committee of Unsecured Creditors and its professionals, and Wells Fargo Bank, National Association (“Lender”) and their professionals, upon request to the Sellers.

### **Due Diligence**

The Sellers will afford any Potential Bidder who satisfies the Participation Requirements, such due diligence access or additional information as the Sellers, in their business judgment, determine to be reasonable and appropriate; provided, however, that the same access and information must also be made available to the Stalking Horse. Additional due diligence will not be provided after the Bid Deadline.

Interested investors requesting information about the qualification process, and Qualified Bidders (as defined below) requesting information in connection with their due diligence, should contact David B. Fields, RBC Capital Markets, LLC, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com).

### **Bid Deadline**

The deadline for any bids shall be January 19, 2015 at 4:00 p.m. (prevailing Central Time). Such bids must be received on or before that date by (1) counsel for the Sellers, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attn: Thomas R. Califano (thomas.califano@dlapiper.com) and DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent Slusher (vince.slusher@dlapiper.com); (2) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com); (3) Alvarez & Marsal Healthcare Industry Group, LLC, 55 West Monroe, Chicago, IL 60603, Attn: Paul Rundell (prundell@alvarezandmarsal.com); (4) counsel for Wells Fargo Bank, National Association, as trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Attn: Daniel S. Bleck, Esq. (dsbleck@mintz.com); (5) counsel for the Committee, Greenberg Traurig LLP, 2200 Ross Avenue, Suite 5200, Dallas, TX 75201, Attn: Clifton R. Jessup (jessupC@gtlaw.com) and Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601, Attn: Nancy A. Peterman (petermann@gtlaw.com); (6) Office of the Attorney General for the State of Texas; (7) the Texas Department of Aging and Disability Services, c/o the Texas Attorney General's Office, Bankruptcy & Collections Division, P.O. Box 12548-MC 008, Austin, Texas 78711, Attn: Casey Roy (Casey.Roy@texasattorneygeneral.gov); and (8) the CMS RO - Centers for Medicare & Medicaid Services Regional Office, 1301 Young Street, RM. 714, Dallas, TX 75202 (collectively, the "Notice Parties").

### **Designation of Stalking Horse Bidder(s)**

The Sellers have selected the Stalking Horse Bid, on the terms set forth in the APA, as the current highest or best bid and to serve as the opening bid for the Auction. The bidding at the Auction will start at the Stalking Horse Bid and continue in increments of at least \$200,000 in

cash or cash equivalents in the event of a bid on all three Facilities. For individual Facilities, the bid increments will be set at the Auction.

### **Bid Requirements**

To be eligible to participate in the Auction, each bid and each Potential Bidder submitting such a bid must, in the Sellers' sole discretion:

- (1) offer to consummate the Sale Transaction on terms no less favorable to the Sellers than those set forth in a copy of the APA;
- (2) include a marked copy of the APA to show any proposed amendments thereto (the "Modified Agreement") and a clean and executed Modified Agreement;
- (3) include a statement that there are no conditions precedent to the bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- (4) state that such offer is binding and irrevocable until the consummation of the Sale Transaction;
- (5) for a bid on all of the Facilities, offer to pay a purchase price that is greater than \$44,000,000, and, for a bid on each of the Facilities, offer to pay a purchase price that is greater than (i) \$18,180,000 for Wesley Court; (ii) \$3,235,000 for Parks; and (iii) \$22,585,000 for Craig;
- (6) disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation;
- (7) include the names and contact information of members of the bidder who will be available to answer questions regarding the offer, including advisors and related parties;
- (8) state that the Potential Bidder intends to assume all Residency Agreements and honor all resident obligations;
- (9) include a good-faith deposit in immediately available funds in the amount of \$2,000,000 ("Earnest Money Deposit");
- (10) provide satisfactory written evidence of available funds or a firm commitment for financing sufficient to consummate the Sale Transaction;
- (11) provide for the purchase of all or some of the Sellers' assets; and

(12) provide information on the operational and financial capabilities of the proposed bidder sufficient to allow the Debtors and interested parties to determine such bidder's ability to assume the Residency Agreements.

Bids are not required to adopt the business structure as set forth in the APA, and may provide for a not-for-profit entity as the operator of each of the Facilities, as is currently the case with the Sellers. The Sellers will consider all bids submitted whether or not they conform to the form set forth in the APA.

To the extent any Potential Bidder proposes to include non-cash consideration in its bid (other than assumption of Lender's debt), such non-cash consideration must be freely marketable and such bid must be accompanied by the form of note or other type of instrument in connection with such non-cash consideration. Lender shall be entitled to credit bid (subject to payment of the Break-Up Fee and Expense Reimbursement in cash), pursuant to Bankruptcy Code section 363(k) or otherwise at the conclusion of the Auction. The determination of whether to accept any such credit bid shall be subject to the Sellers' determination, in consultation with the Lender and the Committee, of whether such credit bid is both higher and better.

### **Qualified Bidders and Bids**

Potential Bidders who have satisfied the Participation Requirements will be deemed "Qualified Bidders." Bids that contain all bid requirements, as determined by the Sellers, in consultation with the Committee and Lender, will be deemed "Qualified Bids." Credit bids will be entertained. The Stalking Horse shall be entitled to credit bid the Break-up Fee. The Sellers reserve the right to waive noncompliance with any bid requirement, after consultation with the Committee and Lender.

The Sellers will advise each Potential Bidder whether they are deemed to be a Qualified Bidder and whether their bid is a Qualified Bid before the Auction. The Stalking Horse is deemed a Qualified Bidder and the Stalking Horse Bid is a Qualified Bid in all respects. Lender or its designee shall be deemed a Qualified Bidder and any credit bid of the Lender is a Qualified Bid in all respects. The Sellers will provide copies of the Qualified Bids to Lender through its legal counsel, the Committee, the Stalking Horse, and the Texas Attorney General. The Stalking Horse will be notified if any unqualified bid will be deemed a Qualified Bid by the Committee and shall be notified promptly, and no later than 24 hours prior to the Auction, of any qualified bids.

The Sellers reserve the right, in its sole reasonable discretion, in consultation with the Committee and Lender, to waive noncompliance with any one or more of these requirements and deem an otherwise not Qualified Bid to be a Qualified Bid.

### **Auction Participation**

Unless otherwise agreed to by the Sellers, only Qualified Bidders, members of the Committee, the Lender, and their respective legal or financial professionals are eligible to attend or participate at the Auction (as defined below). Subject to the other provisions of these Bid Procedures, if the Sellers do not receive any Qualified Bids other than Stalking Horse Bid or if no Qualified Bidder other than the Stalking Horse has indicated its intent to participate in the Auction, the Sellers will not hold an Auction and the Stalking Horse will be named the Successful Bidder.

### **Auction**

If any Qualified Bid other than the Stalking Horse Bid for any of the Sellers' assets has been received and any Qualified Bidder other than the Stalking Horse has indicated its intent to participate in the Auction, the Sellers will conduct an auction (the "Auction") for the sale of substantially all of its assets. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale Transaction.

The Auction shall take place at 10:00 am (prevailing Central Time) on January 21, 2015 at the offices of DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201. At the Auction, only the Stalking Horse and other Qualified Bidders will be permitted to increase their bids or make any subsequent bids, and the Lender and the Stalking Horse will each be able to make or to increase, as applicable, its credit bid at the Auction. The Sellers may conduct the Auction in the manner it reasonably determines, in its business judgment, after consultation with the Committee and Lender, will achieve the maximum value for all parties in interest and is not inconsistent with any of the provisions of these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court entered in connection herewith.

First, the Sellers will conduct an auction for the Business Enterprise. The purchase price for the initial competing bid must be at least \$44,000,000. Each successive bid must be in increments of \$200,000. At the conclusion of the bidding for the Business Enterprise, the Sellers, in consultation with the Committee and the Lender, shall select the party who has submitted the highest or otherwise best offer for the Business Enterprise.

The Sellers will then conduct an auction for each Facility in the order to be announced at the commencement of the Auction. Any bidder that has submitted a bid for a specific Facility (either as a single Facility or as part of a bid for two or more Facilities) may participate in the Auction with respect to such individual Facility or if there are competing bids for multiple Facilities, an Auction will be held for the sale of such multiple Facilities together. The purchase

price for the initial competing bid must be (i) \$18,180,000 for Wesley Court; (ii) \$3,235,000 for Parks; and (iii) \$22,585,000 for Craig with each successive bid to be set at the Auction (plus any break-up fee and/or expense reimbursement to be paid to a Stalking Horse pursuant to the Bidding Procedures). At the conclusion of all bidding for each of the Facilities (or a combination thereof, as the case may be), the Sellers, in consultation with the Committee and Lender, shall select the party who has submitted the highest and best offers for each of the Facilities.

After concluding the Auction for each of the Facilities (or a combination thereof, as the case may be), the Sellers will reopen the Auction for the Business Enterprise. The Sellers will compare the aggregate purchase price received for the Business Enterprise with the individual purchase prices received for each of the Facilities. The Sellers, in consultation with the Committee and the Lender, will make a determination as to which bid or bids provide for the highest and best return for the Sellers' assets.

### **Closing the Auction**

The Auction shall continue until there is only one offer that the Sellers determine, in consultation with the Committee and Lender, subject to Bankruptcy Court approval, is the highest or best offer from among the Qualified Bidders (including the Stalking Horse and Lender) submitted at Auction (the "Successful Bid"). The Qualified Bidder submitting such Successful Bid shall become the "Successful Bidder," and shall have such rights and responsibilities of a purchaser, as set forth in the APA (or Modified Agreement, as applicable).

Immediately prior to the conclusion of the Auction, after consultation with the Committee and Lender, the Sellers shall (1) review each bid made at the Auction on the basis of financial and contractual terms and such other factors as may be relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale Transaction; (2) identify the Successful Bid; and (3) notify all Qualified Bidders at the Auction, prior to its conclusion, of the name or names of the Successful Bidder and the amount and other material terms of the Successful Bid.

The Sellers shall also select a back-up bid (the "Back-Up Bid"), which shall remain open and irrevocable until one (1) business day after the closing of the sale with the Successful Bidder. In the event that, for any reason, the Successful Bidder fails to close the transaction contemplated by the Successful Bidder, the Sellers may elect to regard the Back-Up Bid as the highest or best bid for the Facilities, or any combination thereof as the case may be, and the Sellers will be authorized to consummate the transaction contemplated by the Back-Up Bid without further order of the Bankruptcy Court.

### **Acceptance of Qualified Bids**

The Sellers presently intend to sell substantially of its assets to the Stalking Horse, subject to the submission by any Qualified Bidder(s) of the higher and better bid(s). The Sellers' presentation to the Bankruptcy Court for approval of any Successful Bid does not constitute the Sellers' acceptance of such bid. The Sellers will be deemed to have accepted a bid only when it has been approved by the Bankruptcy Court at the Sale Hearing (defined below). After conclusion of the Auction, but prior to the Sale Hearing, all Successful Bidders shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which their Successful Bid was made and make and pay for all necessary filings with all applicable governmental or other authorities.

### **Assumption of Executory Contracts and Unexpired Leases**

The APA provides for the assumption and assignment of executory contracts and unexpired leases to the Stalking Horse ("Assigned Contracts"). In all circumstances, the Successful Bidder(s) shall be responsible for all cure amounts relating to the Assigned Contracts under Bankruptcy Code section 365 for the respective Facilities and shall assume all obligations under the Residency Agreements (including without limitation deposit refund amounts thereunder) in connection with the respective Facilities.

### **Modifications**

The Sellers may, after consultation with the Committee and Lender, (1) determine, in their business judgment, which bid or bids, if any, constitute the highest or otherwise best offer for the Sellers' assets; (2) reject, at any time before entry of an order of the Bankruptcy Court approving any bid as the Successful Bid, any bid that, in the Sellers' sole discretion, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (c) contrary to the best interests of the Sellers, their estates and creditors; and (3) withdraw, in its business judgment, the Motion if contrary to the best interests of the Sellers and their estates and creditors. The Sellers may extend or alter any deadline contained herein that will better promote the maximization of the value of its estate, after consultation with the Committee and Lender. The Bid Procedures set forth herein are for the benefit of the Sellers and their estates. The Sellers may waive or modify these provisions or adopt additional procedures as it sees fit in its business judgment.

### **Sale Hearing**

The Sellers will seek entry of an order from the Bankruptcy Court at a hearing (the "Sale Hearing") to begin on January [23], 2015 at 10:00 a.m. (prevailing Central Time), to approve and

authorize the Sale Transaction to the Successful Bidders on terms and conditions determined in accordance with the Bid Procedures.

### **Back-Up Bidder and Return of Earnest Money Deposit**

If an Auction is conducted, the Qualified Bidder or Qualified Bidders with the next highest or otherwise best Qualified Bid both with respect to joint bids and individual bids (including the Stalking Horse), as determined by the Sellers in the exercise of its business judgment, after consultation with the Committee and Lender, at the Auction shall be required to serve as back-up bidders (the "Back-Up Bidders") and keep such bid open and irrevocable until one (1) business day after the closing of the Sale Transaction with the Successful Bidder(s). Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder(s), the Back-Up Bidder(s) will be deemed to be the new Successful Bidder(s), and the Sellers will be authorized, but not required, to consummate the sale with the Back-Up Bidders without further order of the Bankruptcy Court.

Except as otherwise provided herein or in the APA, all Earnest Money Deposits shall be returned to each bidder not selected by the Sellers as the Successful Bidder or the Back-Up Bidder(s) by no later than the fifth (5th) business day following the Sale Hearing. The Earnest Money Deposit of the Back-Up Bidder(s) shall be held by the Sellers until one (1) business day after the closing of the Sale Transaction with the Successful Bidder.

**Exhibit 2**

**Proposed Auction and Sale Notice**

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 (admitted *pro hac vice*)  
thomas.califano@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

ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

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

<b>In re:</b>	§	<b>CASE NO. 14-32821-11</b>
	§	
<b>SEARS METHODIST RETIREMENT</b>	§	<b>CHAPTER 11</b>
<b>SYSTEM, INC., <i>et al.</i><sup>1</sup></b>	§	
	§	<b>Jointly Administered</b>
<b>Debtors.</b>	§	
	§	
		<b><u>NOTICE OF AUCTION AND SALE</u></b>

**PLEASE TAKE NOTICE** that on November 24, 2014, Sears Methodist Centers, Inc. (“SMC”), Sears Permian Retirement Corporation (“Permian”), and Sears Panhandle Retirement Corporation (“Panhandle” and together with Permian and SMC, collectively, the “Sellers”), as debtors and debtors in possession in the above captioned cases, filed a Motion for Orders

---

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four (4) digits of their taxpayer identification numbers, are: Sears Methodist Retirement System, Inc. (6330), Canyons Senior Living, L.P. (8545), Odessa Methodist Housing, Inc. (9569), Sears Brazos Retirement Corporation (8053), Sears Caprock Retirement Corporation (9581), Sears Methodist Centers, Inc. (4917), Sears Methodist Foundation (2545), Sears Panhandle Retirement Corporation (3233), Sears Permian Retirement Corporation (7608), Sears Plains Retirement Corporation (8233), Sears Tyler Methodist Retirement Corporation (0571) and Senior Dimensions, Inc. (4016). The mailing address of each of the debtors, solely for purposes of notices and communications, is 2100 Ross Avenue, 21st Floor, c/o Paul Rundell, Dallas, Texas 75201.

(i) approving bid procedures and providing certain protections to a stalking horse (the “Stalking Horse”); and (ii) authorizing the (a) sale of substantially all of the Sellers’ assets, free and clear of all liens, claims and encumbrances, and (b) the assumption and assignment of certain executory contracts and leases (the “Sale Motion”)<sup>2</sup> with the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). Specifically, the Sellers are seeking to sell each and all of the following operating senior care facilities (each, a “Facility”, and collectively the “Facilities”):

- (i) Wesley Court Methodist Retirement Community located in Abilene, Texas;
- (ii) Parks Methodist Retirement Community located in Odessa, Texas; and
- (iii) Craig Retirement Community located in Amarillo, Texas.

The Sellers are currently soliciting bids from other parties interested for (i) any individual Facility; (ii) any combination of the Facilities, or (iii) all three Facilities. All parties that may be interested in submitting a bid for substantially all of the Sellers’ assets, or any portion thereof, or taking part in the Auction must read carefully both the Bid Procedures and the order approving the Bid Procedures (the “Bid Procedures Order”).

**PLEASE TAKE FURTHER NOTICE** that on December [\*], **2014**, following a hearing held on **December [19], 2014**, the Bankruptcy Court entered the Bid Procedures Order and scheduled a hearing to consider the Sale Motion for **January [23], 2015 at [10:00] a.m.** (prevailing Central Time) (the “Sale Hearing”). You may obtain a copy of the Sellers’ proposed asset purchase agreement negotiated and agreed to with the Stalking Horse (the “APA”) by making a written request to the undersigned counsel.

---

<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Bid Procedures.

Only those parties that submit Qualified Bids may participate in the Auction; if you are interested in determining how to submit such a Qualified Bid, you must comply with the terms of the Bid Procedures. Any party in interest wishing to receive a complete set of the APA, the Sale Motion, and the Bid Procedures Order may do so free of charge by contacting DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020 Attn: Evelyn Rodriguez.

**PLEASE TAKE FURTHER NOTICE** that any party that wishes to take part in this process and submit a bid for all of the Facilities, any portion thereof, or other of the Sellers' assets, must submit their Qualified Bid prior to **January 19, 2015 at 4:00 p.m. (prevailing Central Time)**. (the "Bid Deadline") to: (1) counsel for the Sellers, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attn: Thomas R. Califano (thomas.califano@dlapiper.com) and DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent Slusher (vince.slusher@dlapiper.com); (2) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com); (3) Alvarez & Marsal Healthcare Industry Group, LLC, 55 West Monroe, Chicago, IL 60603, Attn: Paul Rundell (prundell@alvarezandmarsal.com); (4) counsel for Wells Fargo Bank, National Association, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Attn: Daniel S. Bleck, Esq. (dsbleck@mintz.com); (5) counsel for the Committee, Greenberg Traurig LLP, 2200 Ross Avenue, Suite 5200, Dallas, TX 75201, Attn: Clifton R. Jessup (jessupC@gtlaw.com) and Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601, Attn: Nancy A. Peterman (petermann@gtlaw.com); (6) Office of the Attorney General for the State of Texas; (7) the Texas Department of Aging and Disability Services, c/o the Texas Attorney General's Office, Bankruptcy & Collections Division, P.O. Box 12548-MC

008, Austin, Texas 78711, Attn: Casey Roy (Casey.Roy@texasattorneygeneral.gov); and (8) the CMS RO - Centers for Medicare & Medicaid Services Regional Office, 1301 Young Street, RM. 714, Dallas, TX 75202 (collectively, the "Notice Parties"). The Sellers shall determine whether a bidder is a Qualified Bidder, after consultation with the Committee and Lender.

**PLEASE TAKE FURTHER NOTICE** that if more than one Qualified Bid for any or all of the Facilities are received by the Bid Deadline, an auction (the "Auction") with respect to a contemplated transaction shall take place on **January [21], 2014, at 10:00 a.m.** (prevailing Central Time) at the offices of DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201. If, however, if no Qualified Bid is received by the Sellers (other than the Stalking Horse Bid) for any asset of the Sellers is received by the Bid Deadline, then the Auction will not be held as to such asset, the Stalking Horse will be deemed the Successful Bidder and the APA will be the Successful Bid, and, at the Sale Hearing, the Sellers will seek approval of and authority to consummate the transaction contemplated by such APA.

Only a Qualified Bidder who has submitted a Qualified Bid will be eligible to participate at the Auction. Only Qualified Bidders, members of the Official Creditors Committee, the Stalking Horse, Lender, and their respective legal or financial professionals are eligible to attend the Auction. At the Auction, Qualified Bidders will be permitted to increase their bids. The bidding at the Auction for all of the Facilities shall start at the purchase price stated in the Stalking Horse Bid as disclosed to all Qualified Bidders prior to commencement of the Auction, and continue in increments of at least \$200,000 in cash or cash equivalents. The bidding at the Auction for each of the Facilities shall start at the following purchase prices: (i) \$18,180,000 for Wesley Court; (ii) \$3,235,000 for Parks; and (iii) \$22,585,000 for Craig with each successive bid to be set at the Auction (plus any break-up fee and/or expense reimbursement to be paid to a

Stalking Horse pursuant to the Bidding Procedures). The Successful Bid(s) shall be determined by the Sellers in their discretion, in consultation with the Creditors Committee and the Lender, or as determined by the Bankruptcy Court in the event of a dispute.

At the Sale Hearing, the Sellers will present the Successful Bid(s) to the Bankruptcy Court for approval. The Sellers will sell their assets or any portion thereof to the Successful Bidder(s). If a Successful Bidder fails to consummate an approved Sale because of a breach or a failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid, as approved at the Sale Hearing, shall be deemed to be the Successful Bid and the Sellers shall be authorized to effect such Sale without further order of the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon: (a) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Room 976, Dallas, Texas 75242; (b) the Notice Parties; and (c) all those persons and entities that have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002 and the Local Bankruptcy Rules, so as to be actually received no later than **January 19, 2015 at 4:00 p.m.** (prevailing Central Time). Only those responses

that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection may result in entry of orders granting the Motion as requested by the Sellers.

Dated: November [ \* ], 2014.

**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 (admitted pro hac vice)  
thomas.califano@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

Attorneys for the Debtors and Debtors-in-Possession

**Exhibit 3**

**Proposed Assignment Notice**

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 (admitted *pro hac vice*)  
thomas.califano@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

ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

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

<b>In re:</b>	§	<b>CASE NO. 14-32821-11</b>
	§	
<b>SEARS METHODIST RETIREMENT SYSTEM, INC., et al.<sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

**NOTICE OF INTENT OF DEBTORS SEARS METHODIST CENTERS, INC. SEARS  
PERMIAN RETIREMENT CORPORATION AND SEARS PANHANDLE  
RETIREMENT CORPORATION TO ASSUME AND ASSIGN  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**PLEASE TAKE NOTICE** that, on June 10, 2014, Sears Methodist Centers, Inc. (“SMC”), Sears Permian Retirement Corporation (“Permian”), and Sears Panhandle Retirement Corporation (“Panhandle” and together with Permian and SMC, collectively, the “Sellers”), as debtors and debtors in possession in the above captioned cases (and together with the other debtors and debtors in possession in the above-captioned cases, the “Debtors”), filed a voluntary

---

<sup>1</sup> 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 Tyler 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.

petition under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). The Sellers continue to operate its business and manage its property as a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that, on November [•], 2014, the Sellers filed a motion [Docket No. •] (the “Motion”)<sup>2</sup> with the Bankruptcy Court seeking, among other things, approval of certain procedures (the “Assignment Procedures”) applicable to the identification, assumption and assignment of certain executory contracts and unexpired leases (collectively, the “Assigned Contracts”) in connection with the sale by which the Sellers intend to sell all or substantially all of its assets.

**PLEASE TAKE FURTHER NOTICE** that, on December [•], 2014, the Bankruptcy Court entered an order granting the Motion [Docket No. [•]] (the “Order”) and approving the procedures for the assumption and assignment of the Assigned Contracts. A copy of the Order is attached hereto as Exhibit A.

**PLEASE TAKE FURTHER NOTICE** that the Sellers intend to assume and assign to [•], the Successful Bidder at the Auction, the Assigned Contracts listed on Exhibit B, attached hereto, pursuant to section 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Sellers have set forth on Exhibit B hereto the amounts due and owing, if any, under the Assigned Contracts through the date hereof (the “Cure Amounts”). The Bankruptcy Code requires that the Cure Amounts (which include any amounts owing on account of the Sellers’ prepetition obligations under the Assigned Contracts) be paid in full to the parties owed such amounts upon the Sellers’ assumption of the Assigned Contracts.

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY SEEKING TO ASSERT AN OBJECTION TO THE ASSUMPTION BY THE SELLERS AND ASSIGNMENT TO THE SUCCESSFUL BIDDER OF THE ASSIGNED CONTRACTS, INCLUDING THE VALIDITY OF ANY CURE AMOUNT AS DETERMINED BY THE SELLERS OR TO OTHERWISE ASSERT THAT ANY OTHER AMOUNTS, DEFAULTS, CONDITIONS OR PECUNIARY LOSSES MUST BE CURED OR SATISFIED UNDER THE ASSIGNED CONTRACTS MUST FILE AND SERVE ITS OBJECTION (ANY SUCH OBJECTION, AN “ASSUMPTION OBJECTION”) SETTING FORTH WITH SPECIFICITY ANY AND ALL CURE OBLIGATIONS OR OTHER CONDITIONS WHICH SUCH PARTY ASSERTS MUST BE CURED OR SATISFIED WITH RESPECT TO SUCH ASSIGNED CONTRACT SO THAT SUCH ASSUMPTION OBJECTION IS ACTUALLY RECEIVED ON OR BEFORE FOURTEEN (14) DAYS FOLLOWING SERVICE OF THIS NOTICE (THE “OBJECTION DEADLINE”) by (1) counsel for the Sellers, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attn: Thomas R. Califano (thomas.califano@dlapiper.com) and DLA Piper LLP (US),**

---

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent Slusher (vince.slusher@dlapiper.com); (2) RBC Capital Markets, LLC; Attn: David B. Fields, One Logan Square, 130 North 18th Street, Philadelphia, PA 19103-6933 (david.fields@rbccm.com); (3) Alvarez & Marsal Healthcare Industry Group, LLC, 55 West Monroe, Chicago, IL 60603, Attn: Paul Rundell (prundell@alvarezandmarsal.com); (4) counsel for Wells Fargo Bank, National Association, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, Attn: Daniel S. Bleck, Esq. (dsbleck@mintz.com); (5) counsel for the Committee, Greenberg Traurig LLP, 2200 Ross Avenue, Suite 5200, Dallas, TX 75201, Attn: Clifton R. Jessup (jessupC@gtlaw.com) and Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601, Attn: Nancy A. Peterman (petermann@gtlaw.com); (6) Office of the Attorney General for the State of Texas; (7) the Texas Department of Aging and Disability Services, c/o the Texas Attorney General's Office, Bankruptcy & Collections Division, P.O. Box 12548-MC 008, Austin, Texas 78711, Attn: Casey Roy (Casey.Roy@texasattorneygeneral.gov); and (8) the CMS RO - Centers for Medicare & Medicaid Services Regional Office, 1301 Young Street, RM. 714, Dallas, TX 75202

**PLEASE TAKE FURTHER NOTICE THAT UNLESS AN ASSUMPTION OBJECTION IS FILED AND SERVED BY A PARTY TO AN ASSIGNED CONTRACT BY THE OBJECTION DEADLINE, ALL PARTIES WHO HAVE RECEIVED ACTUAL NOTICE OR CONSTRUCTIVE NOTICE HEREOF SHALL BE DEEMED TO HAVE WAIVED AND RELEASED ANY RIGHT TO ASSERT AN ASSUMPTION OBJECTION AND TO HAVE OTHERWISE CONSENTED TO ASSUMPTION AND ASSIGNMENT AND SHALL BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE SELLERS, THE SUCCESSFUL BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT ASSUMED AND ASSIGNED CONTRACT THAT ANY ADDITIONAL AMOUNTS ARE DUE OR DEFAULTS EXIST, OR CONDITIONS TO THE ASSUMPTION OR ASSIGNMENT MUST BE SATISFIED, UNDER SUCH CONTRACT OR LEASE.**

**PLEASE TAKE FURTHER NOTICE** that Assumption Objections must set forth the cure amount or other obligation that the objecting party asserts is due, the specific types and dates of the alleged defaults, pecuniary losses and conditions to the assignment and the support thereof, if any.

**PLEASE TAKE FURTHER NOTICE** that if, as to any Assigned Contract, no Assumption Objection is received by the Objection Deadline, such Assigned Contracts shall be deemed assumed by the Sellers and assigned to the Successful Bidder without further order of the Bankruptcy Court, effective as of the later of (i) the Objection Deadline; or (ii) payment of the applicable Cure Amount, if any, set forth in Exhibit B hereto. If an Assumption Objection is received by the Objection Deadline and the Sellers and/or Successful Bidder is unable to resolve such objection consensually, the proposed assumption and assignment which is the subject of the Assumption Objection shall be subject to further order of the Bankruptcy Court and the Sellers and/or the Successful Bidder shall promptly schedule a hearing to consider the Assumption Objection.

**PLEASE TAKE FURTHER NOTICE** that hearings with respect to Assumption Objections shall be held on such date as the Bankruptcy Court may designate.

**PLEASE TAKE FURTHER NOTICE** that if you agree with the Cure Amounts set forth on Exhibit B and do not otherwise object to the Sellers' assumption and assignment of your Assigned Contract, you need not take any further action.

**PLEASE TAKE FURTHER NOTICE** that a complete copy of the Motion may be obtained by (a) sending a written request to counsel to the Sellers, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020, Attn: Thomas R. Califano (thomas.califano@dlapiper.com), or (b) accessing the website of the Sellers' noticing agent, GCG, Inc., at <http://cases.gcginc.com/smr/>.

Dated: December [•], 2014  
Dallas, Texas

**DLA PIPER LLP (US)**

By: /s/ Vincent P. Slusher  
Vincent P. Slusher, State Bar No. 00785480  
vincent.slusher@dlapiper.com  
Andrew Zollinger, State Bar No. 24063944  
andrew.zollinger@dlapiper.com  
DLA Piper LLP (US)  
1717 Main Street, Suite 4600  
Dallas, Texas 75201-4629  
Telephone: (214) 743-4500  
Facsimile: (214) 743-4545

Thomas R. Califano (admitted *pro hac vice*)  
thomas.califano@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

Attorneys for the Debtors and Debtors-in-Possession

**EXHIBIT B**  
**SALE ORDER**

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

<b>In re:</b>	§	<b>CASE NO. 14-32821-11</b>
	§	
<b>SEARS METHODIST RETIREMENT SYSTEM, INC., <i>et al.</i><sup>1</sup></b>	§	<b>CHAPTER 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>
	§	

**ORDER AUTHORIZING AND APPROVING (I) THE SALE OF SUBSTANTIALLY  
ALL OF THE ASSETS OF DEBTORS SEARS METHODIST CENTERS, INC.,  
SEARS PERMIAN RETIREMENT CORPORATION, AND SEARS PANHANDLE  
RETIREMENT CORPORATION TO SUCCESSFUL BIDDER(S);  
AND (II) RELATED RELIEF**

---

<sup>1</sup> 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”)<sup>2</sup> of Sears Methodist Centers, Inc. (“SMC”), Sears Permian Retirement Corporation (“Permian”), and Sears Panhandle Retirement Corporation (“Panhandle” and together with Permian and SMC, collectively, the “Sellers”), as debtors and debtors in possession in the above captioned cases (and, together with the other debtors and debtors in possession in the above-captioned cases, the “Debtors”), pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure 2002, 6004, 9007 and 9014 (the “Bankruptcy Rules”), for entry of an order authorizing and approving, among other things, the sale of substantially all of the Sellers’ assets to the Successful Bidder(s) free and clear of all liens, claims and encumbrances and related relief (Docket No. [\_\_]) (the “Motion”);<sup>3</sup> and the Order Approving Bid Procedures and Providing Certain Bid Protections and Granting Related Relief (Docket No. [\_\_]) (the “Bid Procedures Order”); and it appearing that due and appropriate notice of the Motion, the Bid Procedures Order, the Bid Procedures, the Auction and the Sale Hearing having been given; and it appearing that no other notice of the relief granted by this Order need be given; and the Court having conducted a hearing on the Motion on [ [\*\_\_\_\_\_] , 2014] (the “Sale Hearing”) at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Sellers having conducted a marketing process in compliance with the Bid Procedures Order and determined that the Successful Bidder has submitted the highest and best bid for the Sellers’ assets; and all parties in interest having been heard, or having had the opportunity to be heard, regarding entry of this Order and approval of the Sale Transaction and APA; and this Court

---

<sup>2</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion or Bid Procedures.

being fully advised in the premises; this Court, based upon the arguments, testimony and evidence presented to it, hereby makes the following findings of fact and conclusions of law:

A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. This proceeding is a “core proceeding” within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

D. The statutory predicates for the Motion are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007 and 9014.

E. As evidenced by the affidavits of service filed with the Court, and based upon the representations of counsel at the Sale Hearing, (i) proper, timely and adequate notice of the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction, the Auction and the Bid Deadline as approved herein has been provided in accordance with Bankruptcy Rules 2002, 6004, 9007 and 9014, (ii) such notice was good, sufficient and appropriate under the circumstances, and (iii) no other or further notice of the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction, the Auction or the Bid Deadline as provided herein is necessary or shall be required.

F. A reasonable opportunity to object or be heard with respect to the Motion and the Sale Transaction has been afforded to all interested persons and entities, including, without limitation: (i) the U.S. Trustee, (ii) counsel for the Stalking Horse(s), (iii) counsel for the Committee, (iv) counsel to the Sellers' secured lenders, (v) all entities known by the Sellers to have expressed an interest in acquiring the Sellers' assets in the previous calendar year, (vi) all entities known to have asserted any lien, interest or encumbrance upon the Sellers' assets; (vii) appropriate state regulatory agencies; and (viii) all other parties who filed requests for notice under Bankruptcy Rule 2002 in these cases.

G. Notice, as specified in the preceding paragraph and as evidenced by the affidavits of service filed with the Court, has been provided in the form and manner specified in the Motion and required by the Bid Procedures Order, and such notice is reasonable and adequate.

H. The process for the sale of the Sellers' assets was conducted in accordance with the Bid Procedures Order. At the conclusion of the Auction, [\_\_\_\_\_] was deemed the Successful Bidder with the highest and best offer for the Sellers' assets.

J. The Auction was conducted in accordance with the Bid Procedures Order. The Auction was conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Sellers' assets.

K. The Successful Bidder is purchasing the Sellers' assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision.

L. The purchase agreement attached hereto as Exhibit 1 (the "APA") was negotiated, proposed and entered into by the Sellers and the Successful Bidder without collusion, in good

faith and from arms-length bargaining positions. Neither the Sellers nor any Successful Bidder has engaged in any conduct that would cause or permit the Sale Transaction or any part of the transactions contemplated by the APA to be avoidable under section 363(n) of the Bankruptcy Code.

M. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, the Sellers afforded interested potential purchasers a full and fair opportunity to qualify as Qualified Bidders under the Bid Procedures and to submit an offer for the Sellers' assets.

N. No Successful Bidder is an "insider" of any of the Sellers as that term is defined in section 101(31) of the Bankruptcy Code.

O. The consideration provided by the Successful Bidders for the Sellers' assets pursuant to the APA (i) is fair and reasonable, (ii) is the highest and best offer for the Sellers' assets, (iii) will provide a greater recovery for all of the Sellers' stakeholders than would be provided by any other practical available alternative and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act and all other applicable laws.

P. The Sellers' have demonstrated a sufficient basis and compelling circumstances requiring the Sellers to enter into the APA and sell their assets under section 363 of the Bankruptcy Code, and such actions are appropriate exercises of the Sellers' business judgment and are in the best interests of the Sellers, their estates and their creditors.

Q. The marketing and bidding processes implemented by the Sellers and their advisors, as set forth in the Motion, were fair, proper, and reasonably calculated to result in the best value received for the Sellers' assets.

R. The Sellers have full authority and power to execute and deliver the APA and related agreements and all other documents contemplated by the APA, to perform its obligations therein and to consummate the Sale Transaction. No additional consents or approvals are necessary or required for the Sellers to enter into the APA, perform its obligations therein and consummate the Sale Transaction.

S. The Successful Bidder would not have entered into the APA and would not consummate the Sale Transaction, thus adversely affecting the Sellers, their residents, the Sellers' estates and creditors, if the Sellers' assets were not sold to it free and clear of all Encumbrances or if the Successful Bidder would, or in the future could, be liable for any Encumbrances against the Sellers' assets.

T. Not selling the Sellers' assets free and clear of all Encumbrances would adversely impact the Sellers' estate, and the sale of the Sellers' assets other than one free and clear of all Encumbrances would be of substantially less value to the Sellers' estates.

U. The provisions of section 363(f) of the Bankruptcy Code have been satisfied. All holders of Encumbrances, if any, who did not object, or withdrew their objections to the Sale Transaction, are deemed to have consented to the Sale Transaction.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE  
IMMEDIATELY, AS FOLLOWS:**

1. The relief requested in the Motion is granted and approved in all respects. The Sellers' entry into the APA and the Sale Transaction is hereby approved in all respects. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits.

2. The Sellers are authorized and directed to take any and all actions necessary or appropriate to (a) consummate the Sale Transaction in accordance with the Motion, the APA and this Order, and (b) perform, consummate, implement and close fully the Sale Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA.

3. Those holders of Encumbrances and other non-Debtor parties who did not object, or who withdrew their objections to entry of this Order, the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction and the APA is deemed to have consented to this Order, the Bid Procedures Order, the Sale Transaction and the APA pursuant to section 363(f)(2) of the Bankruptcy Code and are enjoined from taking any action against the Successful Bidder, its affiliates, or any agent of the foregoing to recover any claim which such person or entity has solely against the Sellers or any of their affiliates. Those holders of Encumbrances and other non-Debtor parties who did object, if any, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Encumbrances, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against or in which they assert a Encumbrance.

#### Sale and Transfer of the Sellers' Assets

4. Upon closing of a Sale Transaction with a Successful Bidder (each a "Closing"), the Sellers' assets transferred, sold and delivered to the Successful Bidder shall be free and clear of all Encumbrances of any person or entity. The transfer of the Sellers' assets to the Successful Bidder constitutes a legal, valid and effective transfer of the Sellers' assets and shall vest the Successful Bidder with all right, title and interest of in and to the Sellers' assets described in the APA.

5. Upon any such Closing, this Order shall be construed as, and shall constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Sellers' assets pursuant to the terms of the APA.

6. Effective on the date of entry of this Order, all entities, including, but not limited to, the Sellers, creditors, employees, former employees and shareholders, administrative agencies, tax and regulatory authorities, governmental departments, secretaries of state, federal, state and local officials, and their respective successors or assigns, including, but not limited to, persons asserting any Encumbrance against the Sellers' assets, shall be permanently and forever barred, restrained and enjoined from commencing or continuing in any manner any action or other proceeding of any kind against the Sellers or Successful Bidder as alleged successor or otherwise with respect to any Encumbrances on or in respect of the Sellers' assets.

7. Each and every term and provision of the APA with the Successful Bidder, together with the terms and provisions of this Order, shall be binding in all respects upon all entities, including, but not limited to the Sellers, the Successful Bidder, creditors, employees, former employees and shareholders, administrative agencies, governmental departments, secretaries of state, federal, state and local officials and their respective successors or assigns, including but not limited to persons asserting any Encumbrance against or interest in the Sellers estates or the Sellers' assets, including any subsequent appointment of a trustee or other fiduciary under any section of the Bankruptcy Code.

8. All entities holding Encumbrances of any kind and nature against the Sellers' assets hereby are barred from asserting such Encumbrances against the Successful Bidder and/or the Sellers' assets and, effective upon the transfer of the Sellers' assets to the Successful Bidder

upon closing, the Encumbrances shall attach to the proceeds of the Sale Transaction with the same force, validity, priority and effect, if any, as against the Sellers' assets.

9. This Order (a) is and shall be effective as a determination that, upon Closing, all Encumbrances existing as to the Sellers' assets conveyed to the Successful Bidder have been and hereby are adjudged to be unconditionally released, discharged and terminated, with all such Encumbrances attaching automatically the proceeds in the same manner and priority, and (b) shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Sellers' assets conveyed to the Successful Bidder. All Encumbrances of record as of the date of this Order shall be removed and stricken as against the Sellers' assets in accordance with the foregoing. All entities are authorized and specifically directed to strike all such recorded Encumbrances against the Sellers' assets from their records, official or otherwise.

10. If any person or entity which has filed financing statements, mortgage, lis pendens or other documents or agreements evidencing Encumbrances on the Sellers' assets shall not have delivered to the Sellers prior to closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all Encumbrances which the person or entity has or may assert with respect to the Sellers' assets, the Sellers are

hereby authorized and directed upon closing, and the Successful Bidder is hereby authorized upon closing, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Sellers' assets. Upon closing of the Sale Transaction, each of the Sellers' creditors is authorized and directed to execute such documents and take all such actions as may be necessary to release their respective Encumbrances against the Sellers' assets.

11. Upon a Closing, the Successful Bidder shall not be deemed to be (a) a successor to any of the other Debtors, (b) a de facto merger of the Successful Bidder and any of the other Debtors or (c) a mere continuation of any of the other Debtors. Without limiting the generality of the foregoing, and except as specifically provided in the APA, the Successful Bidder shall not be liable for any claims against any of the other Debtors or any of its predecessors or affiliates, other than as expressly provided for in such APA.

12. On or before 7 days prior to the Closing, a Successful Bidder shall provide (i) documentation identifying all executory contracts or unexpired leases of the Sellers (each a "Contract") that the Successful Bidder wishes to be assumed by the Sellers and assigned by the Sellers to the Successful Bidder at Closing; (ii) documentation identifying all Contracts that the Successful Bidder may, at a later date, wish to be assigned by the Sellers (the "Designated Contracts"); and (iii) all Contracts that the Successful Bidder will not be seeking to be assigned by the Seller (the "Excluded Contracts"). At any time between the Closing and the 30th day following the Closing, the Successful Bidder may, upon not less than 7 days prior notice to the Sellers, re-designate any Designated Contract as either a Transferred Contract or an Excluded Contract. The Sellers agree not to reject any Contract on or before the 30th day following the Closing except for Excluded Contracts. The Successful Bidder shall be responsible for any

payments that arise under any Designated Contract prior to the Successful Bidder's re-designation of any such Designated Contract as an Excluded Contract. The Sellers shall file one or more motions to assume in the Bankruptcy Case, any Transferred Contract that is designated by the Successful Bidder to the Sellers on or before the 30th Day following the Closing, provided that the Successful Bidder shall pay all cure amounts in connection with such assumption, and assign said Designated Contracts to the Successful Bidder. The proposed assignments shall take place pursuant to an order of the Court.

13. The Successful Bidder is assuming all Residency Agreements and all existing resident obligations.

Additional Provisions

14. The provisions of this Order and the APA with the Successful Bidder and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered (a) confirming or consummating any plan of reorganization of the Sellers, (b) converting the each of the Sellers' bankruptcy cases from chapter 11 to chapter 7, (c) dismissing the Sellers' bankruptcy cases or (d) appointing a chapter 11 trustee or examiner, and the terms and provisions of the APA as well as the rights and interests granted pursuant to this Order and the APA shall continue in this or any superseding case and shall be binding upon the Sellers, the Successful Bidder and their respective successors and permitted assigns.

15. Each and every federal, state and governmental agency or department and any other person or entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

16. Upon Closing, the Successful Bidder shall pay to the Sellers the purchase price set forth in the APA, less the Earnest Money Deposit. The consideration provided by the Successful

Bidder for the Sellers' assets under the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act and all other applicable laws.

17. Nothing contained in any order of any type or kind entered in these chapter 11 cases or any related proceeding subsequent to entry of this Order, nor in any chapter 11 plan confirmed in these chapter 11 cases, shall conflict with or derogate from the provisions of the APA or the terms of this Order. Further, the provisions of this Order and any actions taken pursuant hereto shall survive the entry of an order confirming any plan of reorganization or liquidation for the Sellers, the conversion of each of the Sellers' bankruptcy cases from chapter 11 to cases under chapter 7 of the Bankruptcy Code or the dismissal of the Sellers' bankruptcy cases.

18. To the extent, if any, anything contained in this Order conflicts with a provision in the APA, this Order shall govern and control.

19. The Successful Bidder is purchasing the Sellers' assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision. The consideration provided by the Successful Bidder for the Sellers' assets is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

20. This Court retains jurisdiction, even after conversion of these chapter 11 cases to cases under chapter 7, to (a) interpret, implement and enforce the terms and provisions of this Order (including any injunctive relief provided in this Order) and the terms of the APA, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith; (b) protect the Successful Bidder and the Sellers' assets from

and against any of the Encumbrances; (c) resolve any disputes arising under or related to the APA or the Sale Transaction; (d) adjudicate all issues concerning (alleged) pre-Closing Encumbrances and any other (alleged) interest(s) in and to the Sellers' assets, including the extent, validity, enforceability, priority and nature of all such (alleged) Encumbrances and any other (alleged) interest(s); and (e) adjudicate any and all issues and/or disputes relating to the Sellers' right, title or interest in the Sellers' assets, the Motion and/or the APA.

21. From and after the date hereof, the Sellers shall act in accordance with the terms of the APA with the Successful Bidder, and the Sellers, to the extent they has not already done so, shall execute the APA at or prior to Closing.

22. This Order constitutes an authorization of conduct by the Sellers and nothing contained herein shall be deemed to constitute a ruling with regard to the sovereign immunity of any state. The failure of any state to object to the entry of this Order shall not operate as a waiver with respect thereto.

23. This Order and the APA with Successful Bidder shall be binding in all respects upon all creditors (whether known or unknown) of the Sellers, all successors and assigns of the Successful Bidder, the Sellers and their affiliates and subsidiaries, the Sellers' assets, and any subsequent trustees appointed in each of the Sellers' chapter 11 case or chapter 7 case or upon (a) a conversion of any of the Sellers' chapter 11 case to a case under chapter 7 or (b) dismissal of the Sellers' bankruptcy cases.

24. The failure specifically to include any particular provisions of the APA in this Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the APA with the Successful Bidder and each and every provision, term and condition thereof be, and therefore is, authorized and approved in its entirety.

25. The provisions of this Order are nonseverable and mutually dependent.

26. The automatic stay of section 362(a) of the Bankruptcy Code shall not apply to and otherwise shall not prevent the exercise or performance by any party of its rights or obligations under the APA with Successful Bidder, including, without limitation, with respect to any cash held in escrow pursuant to the provisions thereof.

27. This Sale Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(g), 6004(h), 6006(d), 7062, or otherwise.

**###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 (admitted *pro hac vice*)

thomas.califano@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

Attorneys for the Debtors  
and Debtors in Possession

**EXHIBIT 1**

**APA WITH SUCCESSFUL BIDDER**

**[SEE ATTACHED]**

**EXHIBIT C**

**Sears Methodist Centers, Inc.****List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
1. SYSCO WEST TEXAS 714 2ND PLACE LUBBOCK, TX 79401-1502	SYSCO WEST TEXAS 714 2ND PLACE LUBBOCK, TX 79401-1502 FAX: 806-747-1103	TRADE		\$ 54,066.35
2. STEPHENS CUTTERS, LLC ATTN: JEFFERY B. STEPHENS	STEPHENS CUTTERS, LLC ATTN: JEFFERY B. STEPHENS 810 COUNTY ROAD 337 ABILENE, TX 79606	TRADE		\$ 20,504.00
3. A. CASTILLO PAINTING 1330 STATE STREET ABILENE, TX 79601	A. CASTILLO PAINTING 1330 STATE STREET ABILENE, TX 79601 TEL: 325-668-6585	TRADE		\$ 20,162.50
4. SELECT MEDICAL REHABILITATION SERVICES 4714 GETTYSBURG ROAD MECHANICSBURG, PA 17055	SELECT MEDICAL REHABILITATION SERVICES 4714 GETTYSBURG ROAD MECHANICSBURG, PA 17055 TEL: 888-735-6332	TRADE		\$ 16,476.36
5. ROYCE BROOKS GARAGE 809 OAK STREET ABILENE, TX 79602	ROYCE BROOKS GARAGE 809 OAK STREET ABILENE, TX 79602 TEL: 325-673-4916	TRADE		\$ 6,537.49
6. MAYFIELD PAPER 1115 SOUTH HILL STREET SAN ANGELO, TX 76903	MAYFIELD PAPER 1115 SOUTH HILL STREET SAN ANGELO, TEXAS 76903 FAX: 325-653-7031 E-MAIL: <a href="mailto:info@mayfieldpaper.com">info@mayfieldpaper.com</a>	TRADE		\$ 4,630.10
7. ADMIRAL LINEN & UNIFORM SERVICE 2030 KIPLING STREET HOUSTON TX, 77098-9869	ADMIRAL LINEN & UNIFORM SERVICE 2030 KIPLING STREET HOUSTON TX, 77098-9869 TEL: 713-529-2608 FAX: 713-529-3061	TRADE		\$ 3,122.40
8. MCKESSON MEDICAL SURGICAL CORPORATE HEADQUARTERS 8741 LANDMARK RD RICHMOND, VA 23228	MCKESSON MEDICAL SURGICAL CORPORATE HEADQUARTERS 8741 LANDMARK RD RICHMOND, VA 23228 E-MAIL: <a href="mailto:corporatesecretary@mckesson.com">corporatesecretary@mckesson.com</a>	TRADE		\$ 2,262.18

List Of Creditors Holding 20 Largest Unsecured Claims

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
9. SAM'S CLUB – ATLANTA 2101 S.E. SIMPLE SAVINGS DRIVE BENTONVILLE, AR 72716	SAM'S CLUB – ATLANTA 2101 S.E. SIMPLE SAVINGS DRIVE BENTONVILLE, AR 72716 TEL: 479-277-7000 FAX: 479-277-1830	TRADE		\$ 1,947.08
10. GANDY'S DAIRIES, INC. 201 UNIVERSITY AVE. LUBBOCK, TX 79415	GANDY'S DAIRIES, INC. 201 UNIVERSITY AVE. LUBBOCK, TX 79415 TEL: 806-765-8833	TRADE		\$ 1,798.45
11. LOWE'S COMPANIES, INC. 1000 LOWE'S BLVD MOORESVILLE, NC 28117	LOWE'S COMPANIES, INC. 1000 LOWE'S BLVD MOORESVILLE, NC 28117 Tel: 704-758-1000	TRADE		\$ 1,689.61
12. BATJER SERVICE, LLC 2825 PINE STREET ABILENE, TX 79601	BATJER SERVICE, LLC 2825 PINE STREET ABILENE, TX 79601 TEL: 325-673-2556	TRADE		\$ 1,348.82
13. FARMER BROTHERS CO. 20333 S. NORMANDIE AVE. TORRANCE, CA 90502	FARMER BROTHERS CO. 20333 S. NORMANDIE AVE. TORRANCE, CA 90502 TEL: 310-787-5200  FARMER BROTHERS CO. 2100 S.E. 10TH AVE. AMARILLO, TX 79102 TEL: 806-373-7194 FAX: 806-373-2505	TRADE		\$ 1,247.00
14. TOTAL FIRE & SAFETY INC. 542 N. 13 <sup>TH</sup> ABILENE, TX 79601	TOTAL FIRE & SAFETY INC. 542 N. 13 <sup>TH</sup> ABILENE, TX 79601 TEL: 326-676-3253	TRADE		\$ 1,239.65
15. NTS COMMUNICATIONS 1220 BROADWAY LUBBOCK, TX 79401	NTS COMMUNICATIONS 1220 BROADWAY LUBBOCK, TX 79401 TEL: 806-797-0687 FAX: 806-788-3398 E-MAIL: INFO@NTSCOM.COM	TRADE		\$ 1,152.29

List Of Creditors Holding 20 Largest Unsecured Claims

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
16. HEALTHMEDX LLC 5100 N TOWNE CENTRE DR OZARK, MO 65721	HEALTHMEDX LLC 5100 N TOWNE CENTRE DR OZARK, MO 65721 FAX: 417-582-0296 E-MAIL: <a href="mailto:info@healthmedx.com">info@healthmedx.com</a>	TRADE		\$ 1,140.00
17. AIRGAS USA, LLC 2780 IRVING BLVD DALLAS, TX 75207	AIRGAS USA, LLC ATTN BRENT SPARKS, PRESIDENT OF SOUTHWEST REGION 2780 IRVING BLVD DALLAS, TX 75207 TEL: 214-748-4721 FAX: 214-748-2321 E-MAIL: <a href="mailto:brent.sparks@airgas.com">brent.sparks@airgas.com</a>	TRADE		\$ 1,128.68
18. CUSTOM WHOLESALE SUPPLY DBA 2324 KERMIT HWY. ODESSA, TX 79761	CUSTOM WHOLESALE SUPPLY DBA 2324 KERMIT HWY. ODESSA, TX 79761	TRADE		\$ 1,074.89
19. BARR ROOFING COMPANY 1681 WALNUT STREET ABILENE, TX 79601	BARR ROOFING COMPANY 1681 WALNUT STREET ABILENE, TX 79601 TEL: 325-672-8417	TRADE		\$ 1,012.00
20. BLUE BELL CREAMERIES, L.P 1101 SOUTH BLUE BELLS ROAD BRENHAM, TX 77843	BLUE BELL CREAMERIES, L.P 1101 SOUTH BLUE BELLS ROAD BRENHAM, TX 77843 TEL: 979-830-2190	TRADE		\$ 1,006.38
21. BADGER DIRT & SEPTIC, LP 1055 FARM TO MARKET 126 MERKEL, TX 79536	BADGER DIRT & SEPTIC, LP 1055 FARM TO MARKET 126 MERKEL, TX 79536 TEL: 325-928-5744	TRADE		\$ 990.00
22. SIGN PRO 2541 SOUTH TREADWAY ABILENE, TX 79602	SIGN PRO 2541 SOUTH TREADWAY ABILENE, TX 79602 TEL: 325-698-7446 FAX: 325-698-8785 E-MAIL: CUSTOMERSERVICE@SIGNPROA BILENE.COM	TRADE		\$ 988.70

**List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
23. SLS FINANCIAL SERVICES 8341 NW MACE ROAD, SUITE 200 KANSAS CITY, MO 64152	SLS FINANCIAL SERVICES 8341 NW MACE ROAD, SUITE 200 KANSAS CITY, MO 64152 TEL: 816-587-3400 FAX: 816-587-7455	TRADE		\$ 839.71
24. 7 M PLUMBING 6755 COUNTY ROAD 107 ABILENE, TX 79601-7767	7 M PLUMBING 6755 COUNTY ROAD 107 ABILENE, TX 79601-7767 TEL: 325-725-4105	TRADE		\$ 737.86

**Sears Panhandle Retirement Corp.**  
**List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
1. SYSCO WEST TEXAS 714 2ND PLACE LUBBOCK, TX 79401-1502	SYSCO WEST TEXAS 714 2ND PLACE LUBBOCK, TX 79401-1502 FAX: 806-747-1103	TRADE		\$ 75,198.32
2. OMNICARE, INC. 900 OMNICARE CENTER 201 E FOURTH STREET CINCINNATI, OH 45202	OMICARE, INC. 900 OMNICARE CENTER 201 E FOURTH STREET CINCINNATI, OH 45202 E-MAIL: results@omnicare.com	TRADE		\$ 36,161.84
3. SELECT MEDICAL REHABILITATION SERVICES 4714 GETTYSBURG ROAD MECHANICSBURG, PA 17055	SELECT MEDICAL REHABILITATION SERVICES 4714 GETTYSBURG ROAD MECHANICSBURG, PA 17055 TEL: 888-735-6332	TRADE		\$ 26,890.94
4. MCKESSON MEDICAL SURGICAL CORPORATE HEADQUARTERS 8741 LANDMARK RD RICHMOND, VA 23228	MCKESSON MEDICAL SURGICAL CORPORATE HEADQUARTERS 8741 LANDMARK RD RICHMOND, VA 23228 E-MAIL: corporatesecretary@mckesson.com	TRADE		\$ 15,227.81
5. BEN E KEITH 7001 WILL ROGERS BLVD. FORT WORTH, TEXAS 76140	BEN E KEITH 7001 WILL ROGERS BLVD. FORT WORTH, TEXAS 76140 FAX: 817-568-2652  BEN E KEITH 2300 NORTH LAKESIDE DRIVE AMARILLO, TX 79108 TEL: 806-376-6257 FAX: 806-677-2278	TRADE		\$ 11,127.95
6. MAYFIELD PAPER 1115 SOUTH HILL STREET SAN ANGELO, TX 76903	MAYFIELD PAPER 1115 SOUTH HILL STREET SAN ANGELO, TEXAS 76903 FAX: 325-653-7031 E-MAIL: info@mayfieldpaper.com  MAYFIELD PAPER COMPANY 617 S.E. 2ND AMARILLO, TX 79101 TEL: 806-331-6200 FAX: 806-331-6126	TRADE		\$ 9,904.12

**List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
7. SALON PS TEXAS LLC 55 PUBLIC SQUARE SUITE 1180 CLEVELAND, OH 44113	SALON PS 55 PUBLIC SQUARE SUITE 1180 CLEVELAND, OH 44113 TEL: 440-600-1595 FAX: 440-848-8560 E-MAIL: info@salonps.com	TRADE		\$ 6,773.70
8. OPEN ROAD MOBILITY 6669 CANYON DRIVE AMARILLO, TX 79110	OPEN ROAD MOBILITY 6669 CANYON DRIVE AMARILLO, TX 79110 TEL: 806-353-2747	TRADE		\$ 6,580.00
9. VALMED HOME HEALTH SOLUTIONS, INC. 3 CARE CIRCLE AMARILLO, TX 79124	VALMED HOME HEALTH SOLUTIONS 3 CARE CIRCLE AMARILLO, TX 79124 TEL: 806-350-MEDS FAX: 806-352-9456  VALMED HOME HEALTH SOLUTIONS 5500 W. 9TH AMARILLO, TX 79106 TEL: 806-467-7490 FAX: 806-467-7486	TRADE		\$ 6,073.30
10. STERICYCLE INC. 28161 N. KEITH DRIVE LAKE FOREST, IL 60045	STERICYCLE INC. 28161 N. KEITH DRIVE LAKE FOREST, IL 60045 FAX: 847-367-9493	TRADE		\$ 5,513.06
11. OTIS ELEVATOR COMPANY 1416 WEST 8TH ST ROOM #108 AMARILLO, TX 79109	OTIS ELEVATOR COMPANY 1416 WEST 8TH ST ROOM #108 AMARILLO, TX 79109 TEL: 806-372-5886 E-MAIL: generalinquiry@otis.com	TRADE		\$ 4,260.63
12. PLAINS DAIRY PRODUCTS PO BOX 30 300 N. TAYLOR AMARILLO, TX 79105	PLAINS DAIRY COMPANY PO BOX 30 300 N. TAYLOR AMARILLO, TX 79105 E-MAIL: customerservice@plainsdairy.com	TRADE		\$ 4,099.69
13. FARMER BROTHERS CO. 20333 S. NORMANDIE AVE. TORRANCE, CA 90502	FARMER BROTHERS CO. 20333 S. NORMANDIE AVE. TORRANCE, CA 90502 TEL: 310-787-5200  FARMER BROTHERS CO. 2100 S.E. 10TH AVE. AMARILLO, TX 79102 TEL: 806-373-7194 FAX: 806-373-2505	TRADE		\$ 4,002.12

**List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
14. TEXAS TECH UNIVERSITY HSC SCHOOL OF PHARMACY 1300 S. COULTER AMARILLO, TX 79106	TEXAS TECH UNIVERSITY HSC SCHOOL OF PHARMACY 1300 S. COULTER AMARILLO, TX 79106 TEL: 806-414-9277 FAX: 806-356-4017	TRADE		\$ 3,600.00
15. LOWE'S COMPANIES, INC. 1000 LOWE'S BLVD MOORESVILLE, NC 28117	LOWE'S COMPANIES, INC. 1000 LOWE'S BLVD MOORESVILLE, NC 28117 TEL: 704-758-1000 FAX: 704-758-4766	TRADE		\$ 3,449.50
16. GENERAL ELECTRIC COMPANY, INC. 3135 EASTON TURNPIKE FAIRFIELD, CT. 6828	GENERAL ELECTRIC COMPANY, INC. 3135 EASTON TURNPIKE FAIRFIELD, CT. 6828 TEL: 203-373-2211	TRADE		\$ 3,407.00
17. BSA HOSPITAL CORPORATION 1600 WALLACE BOULEVARD AMARILLO, TX 79106	BSA HOSPITAL CORPORATION 1600 WALLACE BOULEVARD AMARILLO, TX 79106 TEL: 806-212-2000	TRADE		\$ 3,080.37
18. RON K. RANKIN, M.D. 400 SW 14TH AVE. AMARILLO, TX 79101	RON K. RANKIN, M.D. 400 SW 14TH AVE. AMARILLO, TX 79101 TEL: 806-352-4887	TRADE		\$ 3,000.00
19. MORRIS PUBLISHING GROUP, LLC 725 BROAD STREET AUGUSTA, GA 30901	MORRIS PUBLISHING GROUP, LLC 725 BROAD STREET AUGUSTA, GA 30901 TEL: 706-724-0851	TRADE		\$ 2,863.00
20. MOBILEXUSA 930 RIDGE ROAD 3RD FLOOR SPARKS GLENCOE, MD 21152	MOBILEXUSA 930 RIDGE ROAD 3RD FLOOR SPARKS GLENCOE, MD 21152 TEL: 212-442-0660 EXT 4630 E-MAIL: bill.glynn@mobilexusa.com	TRADE		\$ 2,828.79
21. DIRECT SUPPLY, INC. 6767 N. INDUSTRIAL ROAD MILWAUKEE, WI 53223	DIRECT SUPPLY, INC. 6767 N. INDUSTRIAL ROAD MILWAUKEE, WI 53223 TEL: 800-634-7328	TRADE		\$ 2,537.62
22. BAPTIST ST. ANTHONY'S HEALTH SYSTEM 1600 WALLACE BOULEVARD AMARILLO, TX 79106	BAPTIST ST. ANTHONY'S HEALTH SYSTEM 1600 WALLACE BOULEVARD AMARILLO, TX 79106 TEL: 806-212-2000	TRADE		\$ 2,492.37
23. WALMART COMMUNITY BRC 702 SW 8TH ST BENTONVILLE, AK 72716	WALMART COMMUNITY BRC 702 SW 8TH ST BENTONVILLE, AK 72716 TEL: 479-273-4000	TRADE		\$ 2,213.62

Sears Roebuck Retirement Corp.

**List Of Creditors Holding 20 Largest Unsecured Claims**

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	<i>Amount of claim [if secured, also state value of security]</i>
24. AMARILLO HEART GROUP 1901 PORT LANE AMARILLO, TX 79106	AMARILLO HEART GROUP 1901 PORT LANE AMARILLO, TX 79106 TEL: 806-358-4596	TRADE		\$ 1,960.33

**Sears Permian Retirement Corp.****List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
1. SELECT MEDICAL REHABILITATION SERVICES 4714 GETTYSBURG ROAD MECHANICSBURG, PA 17055	SELECT MEDICAL REHABILITATION SERVICES 4714 GETTYSBURG ROAD MECHANICSBURG, PA 17055 TEL: 888-735-6332	TRADE		\$ 45,932.53
2. BIBBY FINANCIAL SERVICES INC 3027 TOWNSGATE ROAD, SUITE 140 WESTLAKE VILLAGE, CA 91361	BIBBY FINANCIAL SERVICES INC 3027 TOWNSGATE ROAD SUITE 140 WESTLAKE VILLAGE, CA 91361  BIBBY FINANCIAL SERVICES INC 1400 OPUS PLACE, SUITE 250 DOWNERS GROVE, IL 60515 FAX: 630-271-1400  BIBBY FINANCIAL SERVICES INC 600 TOWN PARK LANE SUITE 450 KENNESAW, GA 30144	TRADE		\$ 14,058.09
3. INFINITY COMPANY, LLC 1316 TERRA CT MIDLAND, TX 79705	INFINITY COMPANY, LLC 1316 TERRA CT MIDLAND, TX 79705	TRADE		\$ 5,500.00
4. AIRGAS USA, LLC 2780 IRVING BLVD DALLAS, TX 75207	AIRGAS USA, LLC ATTN BRENT SPARKS, PRESIDENT OF SOUTHWEST REGION 2780 IRVING BLVD DALLAS, TX 75207 TEL: 214-748-4721 FAX: 214-748-2321 E-MAIL: brent.sparks@airgas.com	TRADE		\$ 3,918.55
5. MEDLINE INDUSTRIES INC ONE MEDLINE PLACE MUNDELEIN, IL 60060	MEDLINE INDUSTRIES INC ONE MEDLINE PLACE MUNDELEIN, ILLINOIS 60060 FAX: 800-351-1512 E-MAIL: service@medline.com	TRADE		\$ 3,403.51

**Sears Permian Retirement Corp.**  
**List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
6. TEXAS PRN 720 N. POST OAK RD SUITE 630 HOUSTON, TX 77024	TEXAS PRN 720 N. POST OAK RD SUITE 630 HOUSTON, TX 77024 TEL: 713-316-9991  TEXAS PRN 2020 E. 8TH ST. ODESSA, TX 79761 TEL: 432-617-8233 FAX: 432-617-3000 E-MAIL: tbrown@texasprn.com	TRADE		\$ 2,961.25
7. HEALTHMEDX LLC 5100 N TOWNE CENTRE DR OZARK, MO 65721	HEALTHMEDX LLC 5100 N TOWNE CENTRE DR OZARK, MO 65721 FAX: 417-582-0296 E-MAIL: info@healthmedx.com	TRADE		\$ 2,660.00
8. MAYFIELD PAPER 1115 SOUTH HILL STREET SAN ANGELO, TX 76903	MAYFIELD PAPER 1115 SOUTH HILL STREET SAN ANGELO, TEXAS 76903 FAX: 325-653-7031 E-MAIL: info@mayfieldpaper.com	TRADE		\$ 2,493.26
9. MURPHY'S RESTAURANT EQUIPMENT REPAIR 2707 W INDUSTRIAL AVE MIDLAND, TX 79701	MURPHY'S RESTAURANT EQUIPMENT REPAIR 2707 W INDUSTRIAL AVE MIDLAND, TX 79701 TEL: 432-620-9911	TRADE		\$ 2,365.38
10. LEADINGAGE TEXAS 2205 HANCOCK DRIVE AUSTIN, TX 78756	LEADINGAGE TEXAS 2205 HANCOCK DRIVE AUSTIN, TX 78756 TEL: 512-467-2242 E-MAIL: info@leadingagetexas.org	TRADE		\$ 2,169.86
11. ORKIN/LESTER HUMPHREY ODESSA 5030 E UNIVERSITY BLVD STE D103 ODESSA, TX 79762	ORKIN/LESTER HUMPHREY ODESSA 5030 E UNIVERSITY BLVD STE D103 ODESSA, TX 79762 TEL: 877-250-1652 FAX: 432-366-5575	TRADE		\$ 1,649.58
12. MCKESSON MEDICAL SURGICAL CORPORATE HEADQUARTERS 8741 LANDMARK RD RICHMOND, VA 23228	MCKESSON MEDICAL SURGICAL CORPORATE HEADQUARTERS 8741 LANDMARK RD RICHMOND, VA 23228 E-MAIL: corporatesecretary@mckesson.com	TRADE		\$ 1,476.19

List Of Creditors Holding 20 Largest Unsecured Claims

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
13. STERICYCLE INC. 28161 N. KEITH DRIVE LAKE FOREST, IL 60045	STERICYCLE INC. 28161 N. KEITH DRIVE LAKE FOREST, IL 60045 FAX: 847-367-9493	TRADE		\$ 1,340.21
14. HOME DEPOT CREDIT SERVICES – OHIO 2455 PACES FERRY RD SE, #B #3 ATLANTA, GA 30339-1834	HOME DEPOT CREDIT SERVICES – OHIO 2455 PACES FERRY RD SE, #B #3 ATLANTA, GA 30339-1834 TEL: 770-433-8211 FAX: 770-384-5038  HOME DEPOT CREDIT SERVICES – OHIO 2455 PACES FERRY ROAD NW ATLANTA, GA 30339 TEL: 770-433-8211 FAX: 770-384-2356	TRADE		\$ 921.50
15. LIFE CARE SERVICES LLC CAPITAL SQUARE 400 LOCUST STE 820 DES MOINES, IA 50309-2334	LIFE CARE SERVICES LLC CAPITAL SQUARE 400 LOCUST STE 820 DES MOINES, IA 50309-2334 TEL: 515-875-4500 FAX: 515-875-4780 E-MAIL: info@lcsnet.com  LIFE CARE SERVICES LLC C/O HINCKLEY ALLEN ATTN: WILLIAM S. FISH JR. 20 CHURCH STREET HARTFORD, CT 06103 TEL: 860-725-6200 FAX: 860-278-3802 E-MAIL: wfish@hinckleyallen.com	TRADE		\$ 914.96
16. COMMERCIAL ICE MACHINE COMPANY 501 EAST 2ND STREET ODESSA, TX 79761	COMMERCIAL ICE MACHINE COMPANY 501 EAST 2ND STREET ODESSA, TX 79761 TEL: 432-242-7218	TRADE		\$ 852.48

**Sears Permian Retirement Corp.**  
**List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
17. SIMS PLASTICS, INC. 1101 W 42ND ODESSA, TX 79764	SIMS PLASTICS, INC. 1101 W 42ND ODESSA, TX 79764 TEL: 432-368-5875  SIMS PLASTICS, INC. 2700 W FRONT MIDLAND, TX 79701 TEL: 432-684-7725  SIMS PLASTICS, INC. 5636 FRANKLIN AVE. WACO, TX 76710 TEL: 254-776-5722	TRADE		\$ 774.50
18. CUSTOM WHOLESALE SUPPLY DBA 2324 KERMIT HIGHWAY ODESSA, TX 79761	CUSTOM WHOLESALE SUPPLY DBA 2324 KERMIT HIGHWAY ODESSA, TX 79761 TEL: 432-580-4009	TRADE		\$ 756.88
19. ALLIANCE MEDICAL SUPPLY 2333 E 8TH ST. ODESSA, TX 79761	ALLIANCE MEDICAL SUPPLY 2333 E 8TH ST. ODESSA, TX 79761 Tel: 432-580-0171 FAX: 432-580-7686 E-MAIL: darren.berryhill@alliancemedicalsupply.com	TRADE		\$ 640.00
20. BRIGGS CORPORATION CORPORATE HEADQUARTERS 7300 WESTOWN PARKWAY SUITE 100 WEST DES MOINES, IA 50266	BRIGGS CORPORATION CORPORATE HEADQUARTERS 7300 WESTOWN PARKWAY SUITE 100 WEST DES MOINES, IA 50266 TEL: 800-247-2343 FAX: 800-222-1996	TRADE		\$ 586.83
21. LOWE'S COMPANIES, INC. 1000 LOWE'S BLVD MOORESVILLE, NC 28117	LOWE'S COMPANIES, INC. 1000 LOWE'S BLVD MOORESVILLE, NC 28117 TEL: 704-758-1000	TRADE		\$ 583.66

**Sears Permian Retirement Corp.**  
**List Of Creditors Holding 20 Largest Unsecured Claims**

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
22. AUTOMATED COPY SYSTEMS, INC. 2611 POST OAK RD ABILENE, TX 79605	AUTOMATED COPY SYSTEMS, INC. 2611 POST OAK RD ABILENE, TX 79605 TEL: 325-698-8560 FAX: 325-698-1458	FEES AND INTEREST		\$ 553.80
23. MOBILEXUSA 930 RIDGEBROOK ROAD 3RD FLOOR SPARKS GLENCOE, MD 21152-9390	MOBILEXUSA 930 RIDGEBROOK ROAD 3RD FLOOR SPARKS GLENCOE, MD 21152-9390 TEL: 215.442.0660 E-MAIL: bill.glynn@mobilexusa.com  MOBILEXUSA 2700 RESEARCH DRIVE #200 PLANO, TX 75074	TRADE		\$ 480.00
24. CULLIGAN WATER OF W. TX., INC. 10018 WEST HIGHWAY 80 MIDLAND, TX 79711-0275	CULLIGAN WATER OF W. TX., INC. 10018 WEST HIGHWAY 80 MIDLAND, TX 79711-0275 TEL: 432-563-2690 FAX: 432-563-2814	TRADE		\$ 450.24
25. TOTAL FIRE & SAFETY INC. 542 N 13TH ST ABILENE, TX 79601	TOTAL FIRE & SAFETY INC. 542 N 13TH ST ABILENE, TX 79601 TEL: 325-676-2655  TOTAL FIRE & SAFETY INC. 7909 CARR ST DALLAS, TX 75227 TEL: 214-381-6116	TRADE		\$ 339.15

**EXHIBIT D**

**ASSET PURCHASE AND SALE AGREEMENT**

## **ASSET PURCHASE AND SALE AGREEMENT**

THIS ASSET PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of November \_\_, 2014 (the “Effective Date”), between SEARS METHODIST CENTERS, INC., a Texas non-profit corporation (“SMC”), SEARS PERMIAN RETIREMENT CORPORATION, a Texas non-profit corporation (“Permian”), and SEARS PANHANDLE RETIREMENT CORPORATION, a Texas non-profit corporation (“Panhandle” and together with Permian and SMC, collectively “Seller” or “Current Operator”), and YELLOW ROSE HEALTH HOLDINGS LLC, a Nevada limited liability company (“Buyer”).

### **RECITALS**

A. SMC owns (i) an operating senior care campus located in Abilene, Texas commonly known as “Wesley Court” with (a) 30 licensed and Medicare-certified skilled nursing beds (all of which are usable), (b) 49 independent living homes, (c) 78 independent living apartment units and (d) 19 licensed assisted living units; Panhandle owns (ii) an operating senior care campus located in Amarillo, Texas commonly known as the “Craig” with (a) 72 licensed and Medicare-certified skilled nursing beds and 48 licensed and Medicare/Medicaid-certified skilled nursing beds (all of which are usable), (b) 30-bed licensed Alzheimer’s unit, (c) 40 licensed assisted living units, (d) 108 independent living apartments and (e) 65 independent cottage homes; and Permian owns (iii) an operating senior care campus located in Odessa, Texas commonly known as the “Parks” with (a) 44 licensed and Medicare-certified skilled nursing facility beds and 46 licensed and Medicare/Medicaid-certified skilled nursing beds (all of which are usable), (b) 25 licensed assisted living units, (c) 22 independent living apartment patio homes and (d) 33 independent cottage homes; (each being, a “Facility” and collectively the “Facilities”);

B. Seller desires to sell, assign, or otherwise convey its right, title, and interest in the Facilities to Buyer, including the “Assets” as described below plus the continuing business operations therein.

B. Prior to Buyer’s acquisition of the Assets, Buyer shall designate additional affiliates to take title to certain parcels of Real Property by giving written notice to Escrow Agent and Seller.

C. Concurrently with Buyer’s acquisition of the Assets, Buyer has designated its affiliate, PALO DURO HEALTHCARE, INC., a Nevada corporation (“New Operator”) to receive an assignment of Operating Assets (as defined below) and New Operator is simultaneously entering into the Operations Transfer Agreement (“OTA”), dated as of the date hereof, in substantially the form and substance attached hereto as Appendix I, with Current Operator.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties agree as follows:

## TERMS AND CONDITIONS

### ARTICLE 1. PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell, convey, transfer, assign and deliver to Buyer free of all leases, liens, and security interests (other than Permitted Exceptions (as defined below), and Buyer agrees to purchase from Seller, all of Seller's right, title and interest in and to only the following assets, as such assets shall exist on the Closing Date with respect to the operation of the Facilities (whether or not such assets are essential to the operation of the Facilities), all of which are referred to herein collectively as the "Assets":

(i) "Real Property" which means the land as described in Exhibit 1.1(i) located in the State of Texas (the "State"), including all easements and other rights, interests and appurtenances thereto which are owned by Seller in connection therewith, together with all buildings, structures, fixtures and other improvements located in, on, at, under or above or attached to such land;

(ii) "Operating Assets," which means (a) all inventory used or held for use at the Facilities (the "Inventory") (b) all furniture, fixtures, equipment, tools, machinery, vehicles and all other tangible personal property owned by Seller and used in connection with the Facilities owned by Seller (the "Personal Property"); (c) to the extent assignable or transferable, all personal property leases with respect to ownership of the Facilities; and (d) to the extent assignable or transferable, all general intangibles related to the ownership, possession, lease or use of the Assets of the Facilities, including without limitation, lien waivers, surety agreements, bonds, warranties, guaranties, utility use agreements, covenants, commitments, permits, certificates, regulatory approvals, entitlements, service marks, trademarks and trade names owned or employed by Seller in conjunction with the ownership of the Facilities (the "Intangible Property"); provided, however, that the Assets shall not include the "Excluded Assets," as defined in Section 1.2 below.

1.2 Excluded Assets. Notwithstanding anything to the contrary in Section 1.1, Seller shall retain all of the following assets owned directly or indirectly by it (or any of Seller's affiliates), and such assets below shall not be included in the Assets to be transferred to Buyer (collectively, the "Excluded Assets"):

(a) cash, cash equivalents and short-term investments, including all pre-paid deposits held by any party;

(b) all entrance fees received and held in escrow pursuant to the *Final Order (I) Authorizing the Obligated Group Debtors to (A) Use Cash Collateral and (B) Incur Postpetition Secured Indebtedness; (II) Granting Liens and Providing Super-Priority Administrative Expense Status; (III) Granting Adequate Protection to Wells Fargo Bank, National Association, as Trustee; and (IV) Modifying the Automatic Stay [Related Document No. 23]*, entered by the Court on July 28, 2014.

(c) all accounts receivable and proceeds therefrom for services provided prior to the Closing Date or Transfer Date, as defined in the OTA, as applicable;

- (d) assets owned and provided by vendors of services or goods to the Facilities;
- (e) all of Seller's organizational record books and minute books;
- (f) all bank accounts of Seller;
- (g) all rights, claims and choses in action of Seller and its affiliates with respect to periods prior to the Effective Time, and any payments, awards or other proceeds resulting therefrom;
- (h) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;
- (i) all of Seller's interest in and to the Terminated Operating Contracts (as defined in the OTA); and
- (j) all items specifically listed on Exhibit 1.2(i)

1.3 Liabilities Excluded. THIS AGREEMENT EXCLUDES, AND BUYER AND NEW OPERATOR DO NOT ASSUME, ANY LIABILITIES OF SELLER NOT EXPRESSLY ASSUMED BY BUYER OR NEW OPERATOR IN WRITING IN THIS AGREEMENT OR IN ANY OTHER AGREEMENT RELATING TO THE TRANSFER OF THE FACILITIES FROM SELLER TO BUYER AND NEW OPERATOR INCLUDING, BUT NOT LIMITED TO THE FOLLOWING (COLLECTIVELY, THE "EXCLUDED LIABILITIES"): ALL OF SELLER'S ACCOUNTS PAYABLE AND ALL OBLIGATIONS ARISING OUT OF OR RELATED TO THE OPERATION OF THE FACILITIES PRIOR TO THE EFFECTIVE TIME (as hereinafter defined), INCLUDING COSTS, EXPENSES AND OTHER LIABILITIES AND OBLIGATIONS ARISING FROM THE OPERATION OF THE FACILITIES; LIABILITY FOR OVERPAYMENTS AND ANY FRAUD UNDER MEDICARE, MEDICAID OR ANY THIRD-PARTY PAYOR AGREEMENT; ANY OBLIGATIONS UNDER ANY COLLECTIVE BARGAINING AGREEMENT, EMPLOYMENT AGREEMENT, PENSION OR RETIREMENT PLAN, PROFIT-SHARING PLAN, STOCK PURCHASE OR STOCK OPTION PLAN, MEDICAL OR OTHER BENEFITS OR INSURANCE PLAN, COMPENSATION OR BONUS AGREEMENT, VACATION OR SEVERANCE PAY PLAN OR AGREEMENT AND ANY OTHER EMPLOYEE BENEFIT PLAN. ANY AND ALL ACCOUNTS PAYABLE OR OTHER OBLIGATIONS ACCRUING TO AND EXISTING AS OF THE EFFECTIVE TIME (INCLUDING ANY CAPITALIZED LEASE OBLIGATIONS, WHICH SHALL BE PAID OFF AT OR PRIOR TO CLOSING) ARE AND SHALL REMAIN THE SOLE OBLIGATION AND RESPONSIBILITY OF SELLER EXCEPT AS EXPRESSLY ASSUMED BY BUYER IN WRITING.

1.4 Liabilities Assumed. All amounts payable pursuant to 11 U.S.C. § 365 by the Current Operator to contractual counterparts under any Assumed Operating Contracts, ("Assumption Cure Amounts"), any paid time off accrued by all rehired employees (as defined in the OTA) (but in no event exceeding 80 such hours per such employee)

(collectively, “Assumed PTO”), and all obligations under the residency agreements (as defined in the OTA), including without limitation all refund obligations thereunder. At Closing, Buyer shall assume all obligations under the Residency Agreements (including without limitation entrance fee refund obligations thereunder).

1.5 The Escrow. The purchase and sale of the Assets shall be consummated through the establishment of an escrow (the “Escrow”) with Fidelity National Title Insurance Company (Nick De Martini, Senior Vice President, 485 Lexington Avenue, 18th Floor, New York, New York 10017, 212-845-3132, ndemartini@fnf.com) (“Escrow Agent”). Upon its deposit with the Escrow Agent, this Agreement shall constitute the parties’ joint escrow instructions to the Escrow Agent. The Escrow Agent shall act in accordance with this Agreement. The Parties agree to execute the general escrow instructions as may be requested by Escrow Agent, provided that in the event of any conflict between the provisions of such general escrow instructions and the provisions of this Agreement, the provisions of this Agreement shall control. Escrow Agent shall notify Buyer and Seller in writing of the date of receipt of this Agreement.

1.6 The Closing. Provided that all of the conditions to Closing set forth in Articles VIII and IX have been satisfied or waived, the Escrow and the transaction contemplated hereby shall close (referred to herein interchangeably as the “Close of Escrow,” the “Closing,” the “Closing Date” or by similar words or phrases) at the offices of the Escrow Agent or such other location as the parties may agree upon at 1:00 P.M. Central Standard Time on (i) February 27, 2015, or (ii) such other date agreed to in writing by Buyer and Seller. The Closing shall be deemed to have occurred and to be effective as between the parties as of the Effective Time. For purposes of this Agreement, the term “Effective Time” shall mean 12:01 A.M. Central Standard Time on March 1, 2015. On the Closing Date, Escrow Agent shall: (a) issue and deliver to Buyer the Title Policy or, alternatively, be irrevocably committed to issue the Title Policy (such Title Policy shall be effective as of the Effective Time), (b) deliver to Seller by wire transfer of immediately available funds to the account or accounts designated by Seller the Purchase Price (as adjusted by Seller and Buyer pursuant to a settlement statement executed by Seller and Buyer at Closing), and (c) deliver to Buyer and Seller such other agreements, documents and instruments as the parties instruct in the escrow instructions.

1.7 Purchase Price. The “Purchase Price” for the Assets shall be Forty Two Million Five Hundred Thousand AND 00/100 U.S. Dollars (\$42,500,000). The Purchase Price shall be payable as follows:

(i) Deposit. Within five (5) business days after the deposit of a fully executed copy of this Agreement with the Escrow Agent, Buyer shall deliver Two Million AND 0/100 U.S. Dollars (\$2,000,000) (the “Deposit”) to Escrow in the form of a wire transfer or other immediately available funds. The Deposit shall be deposited in an interest-bearing account for Buyer’s benefit in a segregated account at the bank at which the Escrow Agent maintains its principal depository relationship. If this transaction closes, the Deposit and all interest accrued thereon (collectively, the “Deposit”) shall be credited toward the Purchase Price. If this transaction does not close, the Deposit shall be paid to the party entitled hereto pursuant to the terms of this Agreement.

(ii) Indemnification Trust Fund. On or before the Closing Date, Buyer shall cause to be deposited with Escrow Agent an amount equal to Seven Hundred and Fifty-Thousand AND 0/100 U.S. Dollars (\$750,000) (the “Indemnification Trust Fund”), which shall fund the Seller Indemnification Obligations and remain in escrow until the expiration of the Indemnification Period.

(iii) Closing Funds. On or before the Closing Date, Buyer shall cause to be deposited with Escrow Agent an amount equal to the Purchase Price minus the Deposit and Indemnification Trust Fund in cash or other immediately available funds (the “Cash Due at Closing”). If the Purchase Price is adjusted for any reason, or Escrow Agent’s balancing of the credits and debits due Buyer and Seller at Closing results in a change in the net amount due Seller hereunder, any difference shall be reflected in the Cash Due at Closing.

## **ARTICLE 2. BANKRUPTCY COURT.**

2.1 Seller is currently a debtor in a bankruptcy proceeding pending in the Bankruptcy Court (the “Bankruptcy Court”) for the Northern District of Texas, jointly administered under Case No. 14-32821-11 (the “Bankruptcy Proceeding”). In connection with the transactions contemplated by this Agreement, the Seller shall file a motion with the Bankruptcy Court seeking, among other things, an order approving the bidding procedures (the “Bid Procedures”) for the sale of the Assets (the “Bid Procedures Motion”) on or about December 2, 2014, and shall use reasonable efforts to cause the Bankruptcy Court to enter the associated bidding procedures order on or before December 20, 2014 (the “Bid Procedures Order Deadline”) substantially in the form attached hereto as Exhibit 2.1 (the “Bid Procedures Order”), which Bid Procedures Order shall include the Bankruptcy Court’s approval of (i) the payment in cash of a break-up fee in the amount of One Million Two Hundred Thousand Dollars AND 0/100 U.S. Dollars (\$1,200,000) (the “Break-Up Fee”), (ii) the payment in cash of expense reimbursements in an amount up to One Hundred Thousand Dollars (\$100,000) (the “Expense Reimbursement”), and (iii) requiring any initial overbid to Buyer’s Purchase Price at the Auction to be a minimum of Forty-Four Million and 0/100 U.S. Dollars (\$44,000,000). The Bid Procedures shall provide, among other things, that, in the event of the Assets are purchased pursuant to a credit bid or relief from the automatic stay, such lender will be obligated to first pay the Buyer the Break-Up Fee, in cash. The Bid Procedures Order shall provide that the Seller may (1) determine, in its reasonable discretion, which bid or bids, if any, to present to the Bankruptcy Court as the highest or otherwise best offer for the Assets; and (2) reject, at any time before entry of an order of the Bankruptcy Court approving any bid as the successful bid, any bid that, in the Seller’s reasonable discretion, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (c) contrary to the best interests of the Seller and its bankruptcy estate and creditors; provided, that Buyer’s bid and this Agreement, after entry of the Bid Procedures Order, may not be rejected under (a), (b) or (c) of this provision and (3) withdraw, in its business judgment, the Bid Procedures Motion if contrary to the best interests of the Seller and its bankruptcy estate and creditors. The Seller may extend or alter any deadline contained in the Bid Procedures that will better promote the maximization of value of its bankruptcy estate (the “Extension Right”). The Bid Procedures are solely for the benefit of the Seller and its bankruptcy estate.

2.2 The Seller shall use reasonable best efforts to cause the Bankruptcy Court to enter an order approving the sale of the Assets consistent with this Agreement (the "Sale Order"), on or before January 24, 2015. The Seller shall also file a sale motion with the Bankruptcy Court seeking, among other things, an order authorizing the sale of substantially all of the Seller's assets free and clear of Liens, claims, encumbrances and interests and entry of the Sale Order.

2.3 The Seller's obligations to pay the Break-up Fee or Expense Reimbursement pursuant to Section 11.2, shall constitute allowed administrative expenses (which shall be allowed super-priority administrative expense claims, senior to all other administrative expense claims and payable in accordance with Section 11.2 hereof.

2.4 The Seller shall file a motion with the Bankruptcy Court seeking, among other things, an order approving the procedures for the cure, assumption and assignment of Assumed Operating Contracts. Except as provided herein or as otherwise necessary pursuant to the OTA, the Seller shall not assume or reject any under section 365 of the Bankruptcy Code without the prior written consent of Buyer.

### **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that, as of the Effective Date, the Closing Date and the Effective Time:

3.1 Organization and Standing. Seller is a corporation duly organized and validly existing under the laws of the state of its incorporation.

3.2 Capacity; Authority; Consents. Subject to the Approval of the Bankruptcy Court, Seller has full power, legal capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations under this Agreement.

3.3 No Violation. Neither the execution and delivery by Seller of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Seller will violate conflict with or result in a breach of any material provision of the Articles of Incorporation, bylaws or other organizational documents of Seller. To Seller's actual knowledge, Seller is not in violation of any statute, rule, regulation or order of any court or Federal, state or local governmental agency or instrumentality having jurisdiction over it, the Facilities or the Assets, the violation of which would have a material adverse effect on the ownership or operation of the Facilities.

3.4 Environmental Compliance. To Seller's actual knowledge: (a) no hazardous material has been stored or exists in, on, under or around the Real Property other than asbestos, PCBs, if any, and lead emanating from lead-based paint; and (b) Seller has not caused or suffered any hazardous materials to be used, released, discharged, placed or disposed of at, on or under the Real Property or any real property adjacent thereto except in compliance with applicable environmental laws, rules and regulations. No underground storage tanks are located on the Real Property and no portion of the Real Property has ever been used as a dump for waste material. Except for matters which were previously brought

into compliance, Seller has not received any written notice from any governmental authority or any written complaint from any third party with respect to its alleged noncompliance with, or potential liability under, any applicable environmental laws, rules or regulations involving the Real Property or the Facilities, nor does it have a reasonable basis to expect the issuance of such a notice or complaint.

3.5 Seller's Broker. Seller has not engaged any finder or broker in connection with the transactions contemplated hereby other than RBC Capital Markets, LLC.

3.6 Title to Assets. Title to the Assets will be conveyed free and clear of all leases, liens and security interests, except: (i) that the Real Property shall be subject to the Permitted Exceptions (as defined in Section 6.2); (ii) as disclosed in the OTA, including the Exhibits to the OTA; or (iii) as consented to in writing by Buyer. No officer, director or employee of Seller owns or has any interest, directly or indirectly, in any of the Assets.

3.7 Knowledge. For purposes of the Agreement, the Phrase "to Seller's actual knowledge" and other similar knowledge qualifiers means the present actual (as opposed to constructive or imputed) knowledge solely of Susan T. Whittle, CEO of Seller, and Paul Rundell, Chief Restructuring Officer of Seller, after reasonable investigation. Such individuals are named in this Agreement solely for the purpose of establishing the scope of Seller's knowledge. Such individuals shall not be deemed to be a party to this Agreement nor to have made any representations or warranties hereunder, and no recourse shall be had to such individuals for any of Seller's representations and warranties hereunder (and Buyer hereby waive any liability of or recourse against such individual). Seller represents that such individuals are the employees of Seller most knowledgeable about the Facilities, and that no other employee is known to Seller to be likely to have knowledge which they do not possess.

3.8 Full Disclosure. All of the Seller's warranties, representations and covenants in this Agreement: (i) constitute a material part of the consideration hereunder; (ii) are true and complete, current and accurate as of the date hereof; (iii) shall be true and complete, current and accurate as of the Close of Escrow and the Effective Time; and (iv) shall survive the Close of Escrow and delivery of the Assets to Buyer. To Seller's actual knowledge, none of the statements, representations or warranties of Seller misstates or omits any fact which would make such statements, representations or warranties incomplete, misleading or incorrect in any material respect. Seller shall inform Buyer if any statement, representation or warranty becomes incorrect, misleading or incomplete subsequent to the date hereof.

3.9 THE ASSETS ARE BEING SOLD BY SELLER "AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED," EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO BUYER, INCLUDING, WITHOUT LIMITATION, AS TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE PROPERTY, INCLUDING THE WATER, SOIL, AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES THAT BUYER OR ANY TENANT MAY CONDUCT THEREON; (D) THE COMPLIANCE OF OR BY THE

PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (G) THE PHYSICAL CONDITION OF THE PROPERTY OR THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE PROPERTY; (H) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS; OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS EXPERIENCED IN THE OWNERSHIP AND OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY AND FULLY REVIEWED AND EVALUATED THE PROPERTY INFORMATION TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTIONS AND EVALUATIONS. BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS (OR BUYER'S REPRESENTATIVES HAVE), OR PRIOR TO THE EXPIRATION OF THE INSPECTION PERIOD WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE CONDITION OF THE PROPERTY, THE MATTERS DISCLOSED BY THE PROPERTY INFORMATION AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY), AND BUYER ACKNOWLEDGES THAT, BUYER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY AND ITS CONDITION. BUYER HEREBY AGREES THAT FROM AND AFTER THE CLOSING NEITHER SELLER NOR ITS EMPLOYEES, PARTNERS, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, ATTORNEYS, AFFILIATES, PARENT COMPANIES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS ("SELLER PARTIES") SHALL BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY, AND BUYER RELEASES AND WAIVES ANY CLAIMS OR CAUSES OF ACTION IT MAY HAVE RELATING TO THE SAME. BUYER ACKNOWLEDGES THAT ANY CONDITION OF THE PROPERTY THAT BUYER DISCOVERS OR DESIRES TO CORRECT OR IMPROVE PRIOR TO OR AFTER THE CLOSING SHALL BE AT BUYER'S SOLE EXPENSE. BUYER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT BUYER MIGHT OTHERWISE HAVE AGAINST SELLER PARTIES RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY. ANY REPAIRS PAID FOR

BY SELLER PURSUANT TO THIS CONTRACT, IF ANY, SHALL BE DONE WITHOUT ANY WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS.

#### **ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that, as of the Effective Date, the Closing Date and the Effective Time:

4.1 Organization and Standing. Buyer is a limited liability company formed, validly existing, and in good standing under the laws of the State of Nevada and is qualified to do business under the laws of the State. Buyer has the requisite power and authority to own and operate the Assets in the manner in which they are presently being operated.

4.2 Capacity; Authority; Consents. Buyer has full power, legal capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations under this Agreement. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the performance of Buyer's obligations hereunder have been duly authorized by Buyer's sole member or board of directors, as applicable, and no other proceedings on the part of Buyer are necessary in connection therewith. This Agreement constitutes, and each other instrument to be executed and delivered by Buyer will constitute, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. The individual(s) executing and delivering this Agreement on Buyer's behalf are duly authorized and empowered to bind the Buyer as contemplated hereby.

4.3 No Violation. Neither the execution and delivery by Buyer of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Buyer will violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Article of Organization, Bylaws, Operating Agreements or other organizational documents of Buyer.

4.4 No Brokers or Finders. Neither Buyer nor any affiliate of Buyer has engaged any finder or broker in connection with the transactions contemplated hereby.

4.5 Ability to Perform. Buyer has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

4.6 Full Disclosure. All of Buyer's warranties, representations or covenants in this Agreement: (i) constitute a material part of the consideration hereunder; (ii) are true and complete, current and accurate as of the date hereof; (iii) shall be true, complete, current and accurate as of the Close of Escrow and Effective Time; and (iv) shall survive the Close of Escrow and delivery of the Assets to Buyer. None of the statements, representations or warranties of Buyer misstates or omits any fact which would make such statements,

representations or warranties incomplete, misleading or incorrect in any material respect. Buyer shall inform Seller if any statement, representation or warranty becomes incorrect, misleading or incomplete subsequent to the date hereof.

## **ARTICLE 5. MUTUAL COVENANTS**

5.1 General Covenants. Following the execution of this Agreement, Seller and Buyer agree, and, where applicable, Buyer shall cause New Operator:

(i) Subject to Section 5.2, to cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions which are or may be reasonable and necessary to obtain the consent of any governmental instrumentality or any third party, to accomplish the transactions contemplated by this Agreement;

(ii) To deliver such other instruments of title, certificates, consents, endorsements, assignments, assumptions and other documents or instruments, in form reasonably acceptable to the party requesting the same and its counsel, as may be reasonably necessary to carry out and/or to comply with the terms of this Agreement and the transactions contemplated herein; and

(iii) To confer on a regular basis with the other, report on material operational matters and promptly advise the other orally and in writing of any change or event having, or which, insofar as can reasonably be foreseen could have, a material adverse effect on such party or which would cause or constitute a material breach of any of the representations, warranties or covenants of such party contained herein.

5.2 Licensing. Buyer shall cause New Operator to use, commercially reasonable efforts to obtain prior to the Closing Date (or as soon thereafter as practicable): (i) all consents, approvals and licenses necessary to permit the consummation of the transactions contemplated by this Agreement including, but not limited to, such licensure and certification approval as may be necessary to enable New Operator or its affiliates or assigns to lawfully operate the Facilities as they are operated by Current Operator effective as of the Effective Time ("Regulatory Approvals"); (ii) all consents required for the transfer or assignment of the Personal Property leases; and (iii) all consents required for the transfer or assignment of the Assumed Operating Contracts (as defined in the OTA) which will be assigned and transferred by Current Operator to New Operator pursuant to the terms of the OTA. Seller shall cooperate in all reasonable respects with Buyer and New Operator in their efforts to obtain such consents, approvals and licenses. Notwithstanding the foregoing, Buyer and New Operator agree not to notify DADS, CMS or any other regulatory authority of a pending change of ownership of the Facilities, or to file any applications for change of ownership with respect to the License or Medicaid or Medicare Provider Agreements without the prior consent of Seller.

5.3 Public Announcements. The parties may not issue any press release or any written statement with respect to this Agreement or the transactions contemplated hereby; provided, however, that nothing herein shall be construed as prohibiting (i) public disclosures in connection with securing any licensing or certification approvals, subject to the restriction

in Section 5.2 of this Agreement, or complying with regulations promulgated by the Securities and Exchange Commission or other government agencies, or (ii) private disclosures to the employees, shareholders, agents, contractors, consultants, attorneys, accountants, lenders and affiliates of the disclosing party or (iii) pursuant to public announcements (including, without limitation, press releases) made with the prior written approval of Seller and Buyer. Without limitation of the foregoing, prior to the Due Diligence Deadline, Seller may not disclose the pending sale of the Facilities to onsite personnel, patients and residents without the prior written consent of Buyer in Buyer's sole discretion. After the Due Diligence Deadline, Buyer may not disclose the pending sale of the Facilities without the prior written consent of Seller, which consent shall not be unreasonably withheld or conditioned. After the Due Diligence Deadline, Buyer and Seller will meet in good faith to discuss the nature and extent of such disclosure. If Seller consents to such disclosure, Buyer shall make such disclosure strictly in accordance with Seller's conditions to consent and only on a "need to know" basis.

5.4 Utilities. Buyer and Seller shall cooperate to take all steps necessary to transfer all utilities related to the operation of the Facilities including without limitation electric service, gas service, telephone service, sewage, water and trash removal, into Buyer's or New Operator's names, as directed by Buyer, effective as of the Effective Time.

## ARTICLE 6. COVENANTS

### 6.1 Covenants of Seller.

(i) Seller Information. To the extent in Seller's possession, Seller shall deliver such due diligence materials as Buyer has requested in the document attached as Exhibit 5.1 and copies of any other materials relating to the transfer of Assets as may be reasonably requested by Buyer, without any representation or warranty as to the accuracy of such materials (collectively the "Seller Information"). If prior to the Closing Date Seller receives, discovers or becomes aware of any material change in the Assets or any matter affecting the Assets which would render any of the materials previously given false or misleading, then Seller shall disclose such changes in writing to Buyer and deliver any additional related materials in Seller's possession to Buyer as soon as reasonably possible after such receipt or discovery.

(ii) Right of Inspection. From the date of this Agreement until the termination of this Agreement or through the Closing Date, as applicable, and subject to Section 6.2, Seller shall permit Buyer's authorized representatives to have full access to the Facilities during regular business hours, shall make its key employees and officers available to confer with Buyer and its authorized representatives, shall make available to Buyer's representatives all books and records relating to the Facilities and the obligations and liabilities of Seller including, but not limited to contracts and agreements, filings with any regulatory authority, any financial operating data and any other information relating to Seller's business activities with respect to the Facilities, as Buyer may from time to time request; provided, that Seller shall not be obligated to make available books and records or other information relating to the Excluded Assets.

(iii) Operations Transfer Agreement. Seller shall execute the OTA, on the Effective Date.

(iv) Management Agreement. If required under the terms of the OTA, Seller shall execute an interim management agreement on or before the Closing Date enabling New Operator to manage and operate the Facilities as contemplated by the OTA (the "Management Agreement").

(v) Sublease. If required under the terms of the OTA, Seller shall execute an interim sublease agreement between New Operator, as sublandlord, and Seller, as subtenant, enabling Seller to occupy the Facilities until licenses are issued to New Operator for operation of the Facilities as contemplated by the OTA (the "Sublease"). If required, Seller shall execute and deliver the Sublease to New Operator on or before the Closing Date.

## 6.2 Covenants of Buyer.

(i) Operations Transfer Agreements. Buyer shall cause New Operator to enter into the OTA on the Effective Date.

(ii) Management Agreement. If required under the terms of the OTA, Buyer shall cause New Operator to enter into the Management Agreement on or before the Closing Date.

(iii) Sublease. If required under the terms of the OTA, Buyer shall cause New Operator to execute the Sublease on or before the Closing Date.

## ARTICLE 7. DUE DILIGENCE PERIOD; TITLE

7.1 Due Diligence Period. Buyer shall have until the hearing on the Bid Procedures Motion (the "Due Diligence Deadline," and the period starting on the Effective Date and ending on the Due Diligence Deadline is the "Due Diligence Period") to approve or disapprove, at its sole and absolute discretion and at its sole expense, the suitability of the Assets for Buyer's intended use.

7.2 Due Diligence Materials. Buyer, at Buyer's own expense, shall have the right to obtain such title reports, litigation and lien searches, environmental reports, property appraisals, engineering and building condition reports, surveys, and other information and reports concerning the Assets, as Buyer may reasonably require (collectively, the "Due Diligence Materials"), and Seller agrees to cooperate with Buyer, at no expense to Seller, in locating and/or obtaining such Due Diligence Materials.

7.3 Termination Rights. If, during the Due Diligence Period, Buyer, as a matter of its sole discretion, determines for any or no reason whatsoever that the Assets are not suitable for Buyer's use, Buyer, by written notice given to Seller before the Due Diligence Deadline, shall have the right to terminate this Agreement. Any timely and proper termination of this Agreement pursuant to this Section 7.3 shall result in the automatic termination of the OTA and the Management Agreement. If this Agreement is terminated as provided in this Section 7.3: (i) the Deposit and any funds deposited into the Indemnification Trust Fund shall be returned to Buyer, and the Independent Consideration (as defined in Section 14.8) shall be retained by Seller; and (ii) except as otherwise expressly provided in this Agreement, the parties shall have no further obligations hereunder.

7.4 Title Review Period. Escrow Agent shall, at Buyer's expense, promptly cause Fidelity National Title Insurance Company (Nick De Martini, Senior Vice President, 485 Lexington Avenue, 18th Floor, New York, New York 10017, 212-845-3132, ndemartini@fnf.com) (the "Title Insurer") to issue to Buyer a current preliminary title report (the "Title Report"), together with readable copies of all instruments of record referred to therein. Buyer may, at Buyer's election, deliver to Escrow Agent and Title Insurer an ALTA survey of the Real Property and request that the Title Insurer issue an extended coverage owner's policy of title insurance, provided that issuance of such extended coverage shall not be a condition precedent to Closing. Buyer shall have until one (1) business day after the Effective Date (the "Title Review Period" and the last day of that period being the "Title Objection Deadline") to notify Seller in writing of any objection to exceptions contained in the Title Report or on an ALTA survey of the Real Property (the "Survey"). If Buyer fails to so make an objection by the Title Objection Deadline, Buyer shall be deemed to have approved the condition of title to the Real Property as reflected in the Title Report and on the Survey. If Buyer timely objects to any exception(s) in the Title Report or on the Survey, Seller shall have the right, but not the obligation, to cause the removal of such exception to title or to cause the Title Insurer to commit to issuance of an endorsement reasonably acceptable to Buyer insuring against such exception to title. In the event Seller determines that it is unable or unwilling to remove any one or more of such exception(s) to title, Seller shall so notify Buyer in writing ("Seller's Election to Not Correct Exceptions") within three (3) business days after it receives Buyer's notice of objection. Failure of Seller to so notify Buyer within such 3 business day period shall be deemed Seller's election not to remove such exceptions to title and/or not to cause the Title Insurer to commit to issuance of an endorsement reasonably acceptable to Buyer insuring against such exceptions to title. Buyer may, at its option, terminate this Agreement within one (1) business day after Buyer receives Seller's Election to Not Correct Exceptions or immediately upon Seller's failure to deliver notice of its election within the 3 day period described above. Upon such termination, Buyer shall be entitled to the return of the Deposit, and except as expressly provided herein, the parties shall have no further liability under this Agreement. Notwithstanding anything contained herein to the contrary, Buyer shall not be required to object to monetary liens, judgments, security interests and other matters identified in the Title Report, it being agreed that all such liens, judgments, encumbrances and security interests shall be removed by Seller at or prior to the Closing Date.

7.5 New Exceptions. If Seller causes any exception(s) to title after the date of the Effective Date and before the Closing Date, then Buyer's approval of such exception(s) to title shall be a condition precedent to Buyer's obligation to buy the Assets. Unless Buyer gives written notice to Seller that it disapproves any such additional exception(s) to title on the date that is three (3) business days after the disclosure of such additional exception(s) or the Closing Date, whichever is earlier, Buyer shall be deemed to have approved such additional exception(s). Seller shall have the right, but not the obligation, to cause the removal of such additional exception(s) to title or to cause the Title Insurer to commit to issuance of an endorsement reasonably acceptable to Buyer insuring against such exception(s) to title. In the event Seller determines that it is unable or unwilling to remove any one or more of such additional exception(s) to title, Seller shall so notify Buyer in writing ("Seller's Election to Not Correct Additional Exceptions") within three (3) business days after it receives Buyer's notice of objection. Failure of Seller to so notify Buyer within such 3 business day period

shall be deemed Seller's election not to remove such additional exception(s) to title and/or not to cause the Title Insurer to commit to issuance of an endorsement reasonably acceptable to Buyer insuring against such exception(s) to title. Buyer may, at their option, terminate this Agreement within three (3) business days after Buyer receive Seller's Election to Not Correct Additional Exception or immediately upon Seller's failure to deliver notice of its election within the 3 day period described above. Upon such termination, Buyer shall be entitled to the return of the Deposit and, except as expressly provided in this Agreement, the parties shall have no further liability under this Agreement. Notwithstanding the foregoing provisions, Seller covenants that they will not cause the creation of additional exception(s) to title after the Effective Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary, Buyer shall not be required to object to monetary liens, judgments, security interests and other matters identified in the Title Report, it being agreed that all such liens, judgments, encumbrances and security interests shall be removed by Seller at or prior to the Closing Date.

7.6 Title Policy. At the Closing, Seller will convey the Real Property to Buyer and, as a condition to Closing, Title Insurer shall issue to Buyer a standard Texas owner's policy of title insurance (the "Title Policy") with liability equal to the Purchase Price, showing fee simple title to the Real Property vested in Buyer, with such title coverages, endorsements or other assurances requested by Seller to cure Buyer's title or survey objections pursuant to Section 7.4 or Section 7.5, subject only to the following "Permitted Exceptions": (i) the lien of non-delinquent real property taxes and assessments; (ii) the matters approved or deemed approved as provided in Section 7.4 and Section 7.5; and (iii) such matters which have been created by or for the benefit of Buyer. If Buyer desires ALTA or extended coverage or any title endorsements or other additions to the Title Policy or any survey, or any lender's title insurance, Buyer shall be responsible therefor. Buyer shall pay for the cost of any such extended title coverages, endorsements, other assurances or survey desired by Buyer, except that Seller shall pay for standard title coverages and such title coverages, endorsements or other assurances obtained by Seller to cure Buyer's title or survey objection pursuant to Section 7.4 or Section 7.5. The willingness of the Title Insurer to issue any such additional coverages or endorsements (other than the standard Texas owner's coverage and such additional coverages and endorsements obtained by Seller pursuant to Section 7.4 or Section 7.5 to cure Buyer's title or survey objection) is not a condition of Closing.

7.7 Title and Bankruptcy Court Approval. Seller, at its sole cost, shall be obligated to seek from the Bankruptcy Court, in connection with or as part of the Sale Order (as defined below), approval the sale of the Assets pursuant to this Agreement free and clear of all mortgages, deeds of trust, mechanic's and materialmen's liens, and other liens against the Property, other than liens for taxes and assessments which are not delinquent.

## **ARTICLE 8. CONDITIONS TO OBLIGATION OF BUYER TO PERFORM**

The obligations of Buyer under this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions (the "Closing Conditions"), each of which are for the sole benefit of Buyer and may be waived by Buyer at Buyer's sole option by delivery to Seller of a written notice of such waiver.

8.1 Compliance with Agreement. Seller shall have performed all of its obligations hereunder, and Seller's representations and warranties in this Agreement and in the Seller Closing Items (as defined below) shall be true and correct in all material respects (without giving effect to any materiality qualifiers therein) on and as of the Closing Date and the Effective Time.

8.2 Regulatory Approvals. New Operator shall have either received all Regulatory Approvals, or if any Regulatory Approvals have not been received, Seller and New Operator shall have entered into the Management Agreement in accordance with the terms of the OTA.

8.3 Operation Transfer Agreement. Current Operator shall have entered into the OTA and shall not be in default of any warranty, covenant, agreement, condition or other obligation under the OTA.

8.4 Sublease. If required under the terms of the OTA, New Operator and Seller shall have entered into the Sublease.

8.5 Bankruptcy Court Approval. The Sale Order (A) shall have been entered by the Bankruptcy Court by no later than January 24, 2015, which date may be waived or extended only by mutual agreement of the parties, (B) shall not have been stayed, modified, amended, dissolved, revoked or rescinded without Buyer's consent, and (C) shall be in full force and effect on the Closing Date.

8.6 Delivery of Seller Closing Items. Seller shall have deposited in Escrow all of the Seller Closing Items (as defined below).

8.7 Delivery of Possession. Seller shall have irrevocably tendered possession of the Facilities to Buyer as of the Effective Time, subject to (a) the rights of tenants occupying the Facilities pursuant to occupancy agreements, and such other residents who have been admitted to the Facilities in the ordinary course of business; and (b) the Sublease. Notwithstanding the foregoing, Seller shall not be obligated to evict, and it shall not be deemed a condition precedent to Closing for Seller to evict, any resident occupying the Facilities as of the Closing Date.

8.8 Unfavorable Action or Proceeding. On the Closing Date, no orders, decrees, judgments or injunctions of any court or governmental body shall be in effect, and no claims, actions, suits, proceedings, arbitrations or investigations shall be pending or threatened, which challenge or seek to challenge, or which could prevent or cause the rescission of, the consummation of the transactions contemplated in this Agreement.

## **ARTICLE 9. CONDITIONS TO OBLIGATION OF SELLER TO PERFORM**

The obligations of Seller under this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, each of which may be waived by Seller by delivery to Buyer of a written notice of such waiver.

9.1 Compliance with Agreement. Buyer shall have performed all of its obligations hereunder, and Buyer's representations and warranties in this Agreement and in the Buyer

Closing Items (as defined below) shall be true and correct in all material respects (without giving effect to any materiality qualifiers contained therein) on and as of the Closing Date and the Effective Time.

9.2 Operations Transfer Agreements. New Operator shall have entered into the OTA.

9.3 Management Agreement. If required under the terms of the OTA, Seller and New Operator shall have entered into the Management Agreement.

9.4 Sublease. If required under the terms of the OTA, New Operator and Seller shall have entered into the Sublease.

9.5 Delivery of Buyer Closing Items. Buyer shall have deposited in Escrow all of the Buyer Closing Items (as defined below).

9.6 Unfavorable Action or Proceeding. On the Closing Date, no orders, decrees, judgments or injunctions of any court or governmental body shall be in effect, and no claims, actions, suits, proceedings, arbitrations or investigations shall be pending or threatened, which challenge or seek to challenge, or which could prevent or cause the rescission of, the consummation of the transactions contemplated in this Agreement.

## **ARTICLE 10. RISKS AND REMEDIES**

### **10.1 Remedies Prior to or on Closing.**

(i) Breach or Default. In the event of any material breach or default of any warranty, covenant, agreement, condition or other obligation of a party hereunder, the other party may at its option, subject to Section 11.2, terminate this Agreement by delivering written notice of termination to the defaulting party specifying with particularity the breach or default on which the notice is based. In the event of such a termination, subject to the notice and cure provisions set forth in Section 10.2 below, Escrow Agent shall cancel the Escrow and the Deposit, Break-Up Fee and Expense Reimbursement shall be handled in accordance with Article XI. In the event that Buyer terminates this Agreement prior to the end of the Due Diligence Period pursuant to Section 7.1 above, Escrow Agent shall immediately disburse the Deposit to Buyer and cancel Escrow.

10.2 Notice of Default. Notwithstanding anything contained herein to the contrary, neither party to this Agreement may claim termination or pursue any other remedy (other than injunctive relief) on account of a breach of a condition, covenant or warranty by the other, without first giving such other party written notice of such breach and not less than ten (10) days within which to cure such breach. The Closing Date and the Effective Time, if necessary, shall be postponed if necessary to afford such opportunity to cure.

10.3 Risk of Loss. Until the Closing Date, Seller (a) shall bear all risk of loss with regard to the Assets (whether or not insured), (b) shall cause to be maintained in full force and effect fire and extended coverage insurance in an amount equal to one hundred percent (100%) of the replacement cost of the Assets, and (c) shall comply with all requirements of all

such insurance policies. Prior to the Effective Time, Seller shall not reduce or cancel the amount of coverage of any insurance policy pertaining to the Assets. In the event that all or any part of the Assets are damaged or destroyed by fire, windstorm or any other casualty on or prior to the Closing Date, Seller shall immediately notify Buyer of such damage or destruction. In the event that such damage or destruction is in the aggregate more than One Hundred Thousand Dollars AND 0/100 U.S. Dollars (\$100,000), Buyer shall have the option to: (x) terminate this Agreement by written notice delivered to Seller within ten (10) days after Buyer's receipt of notice of such damage or destruction, in which case the parties shall have no further obligations hereunder, or (y) proceed with the transactions contemplated by this Agreement without abatement of the Purchase Price, in which case (i) all insurance proceeds shall be deemed to have been absolutely and irrevocably assigned to and be payable directly to Buyer, (ii) after the Close of Escrow, Buyer shall have the right to conduct all settlement proceedings with respect to the insurance claims, and (iii) Seller shall deliver to Buyer through Escrow an unconditional assignment of all insurance proceeds. If this Agreement is not terminated, Seller shall not be obligated to repair any damage or destruction.

10.4 Condemnation. If condemnation or eminent domain proceedings or an agreement with a governmental agency in lieu of such proceedings should affect all or a portion of the land or of the improvements on the land constituting the Real Property prior to the Close of Escrow, Buyer may, at its option, either (i) terminate this Agreement by written notice to Seller, in which event the Deposit shall be returned to Buyer, and neither Buyer nor Seller shall have any further liability hereunder, or (ii) elect to consummate this transaction without abatement of the Purchase Price, in which event Seller shall assign to Buyer all of its right, title and interest in and to any award made or to be made in connection with such proceedings or agreement and shall permit Buyer to conduct all negotiations and enter into all agreements with respect thereto. Buyer's rights hereunder shall be cumulative, and Buyer shall have the foregoing rights in the case of each such condemnation or eminent domain proceeding.

10.5 Seller Indemnification. For the duration of the Indemnification Period (as defined below), Seller shall indemnify, defend and hold Buyer, New Operator, and their respective officers, directors, employees, shareholders and affiliates ("Buyer Indemnified Parties"), harmless for, from and against any and all claims, losses, expenses, damages, obligations, deficiencies, or liabilities of any kind, including without limitation costs of investigation, interest, penalties, reasonable attorneys' fees, and any and all costs, expenses, and fees incident to any suit, action or proceeding, incurred, sustained or suffered by the Buyer Indemnified Parties which arise out of, result from or are related to any of the following (collectively "Seller Indemnification Obligations") solely up to the amount of the Indemnification Trust Fund:

(i) any claims against Current Operator, New Operator or the Facilities under Medicare, Medicaid, Veterans Affairs or any other third party payor programs (a) with respect to any Excluded Assets, (b) with respect to the operation of the Facilities by Current Operator prior to the Transfer Date, (c) for recapture of depreciation generated by the transaction contemplated hereby, (d) for any fees, fines or penalties assessed against the Assets or the Medicare or Medicaid provider agreements of any Facilities and attributable to periods prior to the Transfer Date, or (e) for repayment of any overpayments made to Current Operator under Medicare,

Medicaid, Veterans Affairs or any other third party payor program for services rendered at the Facilities prior to the Transfer Date, including, but not limited to, claims against New Operator in the form of offsets by Medicare, Medicaid, Veterans Affairs or any other third party payor against their payments due to New Operator or attributable to periods on and after the Transfer Date that relate to said overpayments made to Current Operator; and

(ii) any Excluded Liability.

Seller hereby acknowledges that Buyer Indemnified Parties are entitled to prompt reimbursement for any claims related to the Seller Indemnification Obligations, but that due to the Bankruptcy Proceedings, the Seller may not be able to fund such reimbursements and Buyer Indemnified Parties therefore have sole recourse for such claims to the Indemnification Trust Fund for all Seller Indemnification Obligations. Following Closing, Buyer may submit, not more frequently than one time per month, for distribution from the Indemnification Trust Fund for Seller Indemnification Obligations that may arise during a period starting on the Closing Date and ending on the one-year anniversary of the Closing Date (the “Indemnification Period”), and upon submission of such request with supporting documentation (and copies thereof to Seller), unless objected to by Seller within five (5) days from the date of the request, Escrow Agent shall distribute funds from the Indemnification Trust Fund to Buyer for such reimbursement. Escrow Agent shall, within three (3) days following the expiration of the Indemnification Period, distribute to Seller to an account designated by Seller any amounts remaining in the Indemnification Trust Fund, if any. All indemnification obligations of Seller set forth in this Agreement shall be limited to the amount of the Indemnification Trust Fund which shall be Buyer’s sole recourse, and all of Seller’s indemnification obligations in this Agreement shall be limited to the amount of the Indemnification Trust Fund which shall be Buyer’s sole recourse. All of Seller’s indemnification obligations in this Agreement shall expire following the Indemnification Period.

10.6 Buyer Indemnification. Buyer shall indemnify, defend and hold Seller and its respective officers, directors, employees, shareholders and affiliates (the “Seller Indemnified Parties”), harmless for, from and against any and all claims, losses, expenses, damages, obligations, deficiencies, or liabilities of any kind, including without limitation costs of investigation, interest, penalties, reasonable attorneys’ fees, and any and all costs, expenses, and fees incident to any suit, action or proceeding, incurred, sustained or suffered by the Seller Indemnified Parties which arise out of, result from or are related to Buyer’s or New Operator’s operation of the Facilities on and after the Effective Time.

## **ARTICLE 11. TERMINATION**

11.1 Termination. This Agreement may be terminated prior to the Closing:

(i) by the Seller or Buyer:

(a) if the Bid Procedures Order has not been entered on or before the Bid Procedures Order Deadline or if the Bid Procedures Motion is withdrawn prior to the entry of the Bid Procedures Order;

(b) if, following entry of the Bid Procedures Order, the Seller determines to abandon the process established pursuant thereto;

(ii) by mutual written consent of the Seller and Buyer;

(iii) by Buyer:

(a) if the Closing shall not have occurred on or before February 15, 2015 (the "Outside Closing Date") by reason of the failure of any condition precedent under Article 8 (unless such failure was primarily within the control of Buyer);

(b) if the Court Approval shall not have been obtained by the Outside Closing Date, the Sale Order, has been entered but stayed as of such date or has not become a Final Order within fifteen (15) days thereafter; provided that if the fifteenth (15th) day is not a Business Day then this time period shall be extended until the next Business Day (unless such delay or stay results from an action or failure to act by Buyer);

(c) if the Seller has filed any pleading or entered into any agreement (other than this Agreement and other than the Bid Procedures Motion) relating or otherwise regarding the sale, transfer, lease or other disposition, directly or indirectly, of a material portion of the Assets;

(d) subject to the terms of the Bid Procedures Order, if the Seller selects a bid by someone other than Buyer as the "highest and best offer" in accordance with the Bid Procedures Order, and said selection is not overruled by the Bankruptcy Court within seven (7) days following the conclusion of the Auction, or if the Seller consummates a sales transaction related to the Assets with a third party other than as contemplated in the Bid Procedures Order (including in either instance, for the avoidance of doubt, a credit bid, exercise of rights and remedies or foreclosure with respect to some or all of the Assets);

(e) the Bid Procedures Order has not been entered substantially in the form of Exhibit 2.1 (unless any changes thereto have been approved by the Buyer) on or before the Bid Procedures Order Deadline; or

(f) due to a material breach or default by Seller of any warranty, covenant, agreement, condition or other obligation hereunder.

(iv) by the Seller:

(a) if there has been a material breach by Buyer of any representation or warranty contained herein or in the due and timely performance of any covenant or agreement contained herein, the Seller has notified Buyer of such breach in writing, and the breach has not been cured within ten (10) Business Days after delivery of such notice; or

(b) if the Closing shall not have occurred on or before the Outside Closing Date by reason of the failure of any condition precedent under Article 9 (unless such failure was solely within the control of the Seller or related to Section 9.6); or

(c) Buyer is not diligently pursuing the Closing so that such Closing can occur on or before the Outside Closing Date, as determined by the Bankruptcy Court.

#### 11.2 Effect of Termination.

(i) A “Triggering Event” shall be deemed to have occurred if: (i) Buyer terminates this Agreement pursuant to any of Section 11.1(iii)(c) or (d) or the Buyer or Seller terminates this Agreement pursuant to Section 11.1(i)(b) (in any case, at a time when the Buyer is otherwise ready, willing and able to effectuate the Closing) or if Buyer terminates this Agreement pursuant to any of Section 11.1(iii)(a) or (b) (if such termination event was a direct and proximate result of Seller’s action or inaction) and (ii) the Seller consummates the sale or transfer of all or substantially all of its assets to another buyer, including any lender.

(ii) Immediately upon the occurrence of any termination of this Agreement by the Buyer pursuant to Section 11.1 without a Triggering Event, and provided that the Buyer is not otherwise in material breach of this Agreement, Seller shall (i) reimburse the Buyer for all of the Buyer’s reasonable and actual out of pocket costs and expenses in connection with this Agreement, not to exceed the Expense Reimbursement, and (ii) refund the Deposit and any amounts in the Indemnification Trust Fund to the Buyer as set forth herein. Alternatively, if said termination is pursuant to a Triggering Event, upon the closing of a sale of all or substantially all of the Seller’s assets to another buyer or the transfer of all or substantially all of the Seller’s assets to any prepetition lender of Seller pursuant to a credit bid or relief from the automatic stay, and provided that Buyer was not otherwise in material breach of this Agreement prior to the Triggering Event pay (i) the Break-Up Fee and (ii) refund the Deposit and any amounts in the Indemnification Trust Fund to Buyer as set forth herein.

(iii) The Break-Up Fee and the Expense Reimbursement shall each constitute a super-priority administrative expense of the Seller of the kind specified in section 364(c)(1) of the Bankruptcy Code. The Seller shall pay the Break-Up Fee and the Expense Reimbursement, as applicable, as provided herein from the proceeds from the closing of the sale or transfer of the Assets within one (1) Business Day following such closing. The Parties hereby acknowledge that the amounts payable pursuant to this Section 11.2 are commercially reasonable and necessary to induce Buyer to enter into this Agreement and consummate the transactions contemplated hereby.

(iv) In the event that this Agreement is validly terminated by Buyer pursuant to Section 11.1, the Buyer shall be entitled to receive the Break-up Fee or the Expense Reimbursement in accordance with 11.2(ii) and a refund of the Deposit and any amounts in the Indemnification Trust Fund.

(v) In the event that this Agreement is validly terminated by Seller pursuant to 11.1(iv)(a) while Buyer is in material breach of this Agreement, as its sole and exclusive remedy and complete liquidated damages, the Seller shall be entitled to receive the Deposit. In all other cases, upon termination of this Agreement (including, without limitation, a Triggering Event), the Deposit and any amounts in the Indemnification Trust Fund shall be immediately refunded to Buyer.

(vi) In the event the Seller withdraws the Bid Procedures Motion prior to the entry of the Bid Procedures Order pursuant to Section 11.1(i)(a), the Seller shall (i) reimburse the Buyer for all of the Buyer's expenses in connection with this Agreement, not to exceed the Expense Reimbursement; and (ii) refund the Deposit and any amounts in the Indemnification Trust Fund to Buyer as set forth herein. If, following entry of the Bid Procedures Order, the Seller determines to abandon the process established pursuant thereto, the Seller shall pay to the Buyer (i) the Break-Up Fee; and (ii) refund the Deposit and any amounts in the Indemnification Trust Fund to Buyer as set forth herein.

## ARTICLE 12. CLOSING

12.1 Seller's Obligations at Closing. On or before the Closing Date, Seller shall deposit into Escrow, or deliver or cause to be delivered directly to Buyer, all of the following, which are referred to herein as "Seller Closing Items":

(i) Evidence of all required board approvals authorizing the execution and performance of this Agreement;

(ii) All releases, waivers, and satisfactions necessary to deliver title and/or satisfy any requirements under Article 6 of this Agreement for issuance of the Title Policy;

(iii) A certificate of the Chief Executive Officer of Seller certifying to Buyer (a) compliance with Seller's covenants set forth in this Agreement and (b) truth of all representations and warranties of Seller set forth in this Agreement as of the Closing Date and the Effective Time;

(iv) The OTA, executed by Seller, if not previously delivered to Buyer;

(v) If required under the terms of the OTA, the Management Agreement and Sublease, executed by Seller;

(vi) All necessary instruments of transfer, properly executed by Seller acknowledged, conveying, transferring and assigning to Buyer all of Seller's right, title and interest in and to the Assets and any and all warranties or rights in connection therewith, all in form and substance reasonably satisfactory to Buyer and Seller, including without limitation:

(a) Grant Deeds from Seller to Buyer or its designated affiliates conveying the Real Property, subject only to the Permitted Exceptions;

(b) A Bill of Sale and Assignment and Assumption Agreement from Seller to New Operator, which shall include the Assets other than the Real Property and the Assets to be conveyed to the New Operator pursuant to the OTA (the "Asset Transfer Agreements"); and

(c) The original titles to all motor vehicles transferred under the OTA; provided, that Buyer may designate New Operator to take title to such motor vehicles;

(vii) All keys and combinations for all locks on the Real Property and for all motor vehicles, which Escrow Agent shall immediately deliver to Buyer upon Closing; and

(viii) Such other forms and documents as Buyer or Escrow Agent may reasonably request in order to effectuate the transactions contemplated hereby and close the Escrow.

12.2 Buyer's Obligations at Closing. On or before the Closing Date, Buyer shall deposit in Escrow, or deliver or cause to be delivered directly to Seller the following, which are referred to herein as the "Buyer Closing Items":

(i) The Cash Due at Closing, plus other amounts required to be deposited by Buyer to pay for Buyer's share of costs and prorations, by wire transfer, cashier's check or other form of immediately available funds acceptable to Escrow Agent;

(ii) The OTA, executed by New Operator, if not previously delivered to Seller;

(iii) If required under the terms of the OTA, the Management Agreement and the Sublease, all executed by New Operator;

(iv) Such other documents, forms, certifications, instructions or items as Seller or Escrow Agent may reasonably request to effectuate the transactions contemplated hereby and close the Escrow.

12.3 Costs and Prorations. The costs of the transaction and the expenses related to the ownership and operation of the Facilities shall be allocated between Seller and Buyer as follows:

(i) All items to be prorated shall be prorated (a) as of the Effective Time, with Seller responsible therefor or entitled thereto for the period prior to the Effective Time, and with Buyer responsible therefor or entitled thereto for the period from and after the Effective Time, (b) on the basis of actual days elapsed in the relevant accounting, revenue or expense period and, (c) if exact information is not available, shall be estimated based on the most recent information available. If, after netting together all credits due each party hereunder, there is a net credit due (x) Buyer, such credit shall reduce, dollar-for-dollar, the Cash Due at Closing; or (y) Seller, such credit shall increase, dollar-for-dollar, the Cash Due at Closing.

(ii) Seller shall pay any and all transfer, documentary stamp, recording fee, excise tax or other fee, tax, charge or assessment which may be imposed by any governmental agency on the sale or transfer of the Real Property to Buyer or the recording of the Grant Deeds to be delivered to Buyer as provided herein.

(iii) Buyer shall pay any sales tax due on the transfer of title to the Assets to Buyer or New Operator.

(iv) Buyer shall pay all fees and costs associated with obtaining the Regulatory Approvals.

(v) Seller shall pay the equivalent cost of a standard ALTA Owner's Title Policy, and Buyer shall pay the excess cost of ALTA extended coverage and any endorsements which it elects to secure.

(vi) Real property and personal property taxes, assessments and other impositions shall be prorated as of the Effective Time.

(vii) Seller and Buyer shall each pay their own attorneys' fees.

(viii) Buyer and Seller shall share any Escrow fees on a 50-50 basis.

(ix) Seller shall pay all costs associated with obtaining and recording any releases necessary to cause the monetary liens affecting the Real Property to be discharged in accordance with the terms of this Agreement, any liens encumbering the motor vehicles of Seller and any lien, encumbrance or other security interest affecting any of the Assets is unpaid as of the Closing. Escrow Agent shall use Seller's Purchase Price proceeds to discharge any or all such encumbrances and obtain the corresponding releases through Escrow at Closing.

(x) Utility charges accrued as of the Effective Time shall be estimated based on prior charges, and shall be prorated between the parties as of the Effective Time.

(xi) Personal property lease payments, plus all other income and expenses which are normally prorated upon the sale of assets of a going concern, advance payments, prepayments, prepaid expenses and utility deposits shall be prorated as of the Effective Time.

(xii) Except as otherwise provided herein, each party represents and warrants to the other that no real estate sales or brokerage commissions or like commissions are or will be due from the other party in connection with this transaction. Further, each party agrees to indemnify, defend and hold harmless the other party for, from and against any and all liability, loss, cost, damage or expense, including but not limited to court costs and reasonable attorneys' fees, resulting from any assertion of a right to a brokerage commission as a consequence of any act or omission of such indemnifying party.

Notwithstanding the foregoing provisions, there shall be no prorations under this Agreement for employment related matters, as such matters are governed by, and shall be prorated pursuant to, the terms of the OTA.

### **ARTICLE 13. POST-CLOSING ACCESS**

13.1 Access. In connection with (i) the transition of the Facilities pursuant to the transaction contemplated by this Agreement, (ii) Seller's rights to the Excluded Assets, and (iii) Seller's obligations under the Excluded Liabilities, Buyer shall after the Closing Date give Seller, Seller's affiliates and their respective representatives access during normal business hours to Buyer's books, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Facilities as representatives of Seller and Seller's affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Facilities.

## ARTICLE 14. GENERAL PROVISIONS

14.1 Notices. All notices, requests, demands and other communications required under this Agreement shall be in writing and shall be deemed duly given and received (i) if personally delivered, on the date of delivery, (ii) if mailed, three (3) days after deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid and addressed as provided below, (iii) if by a courier delivery service providing overnight or “next-day” delivery, on the next business day after deposit with such service, or (iv) electronic mail, addressed as follows:

If to Seller:

Attn: Susan T. Whittle  
Interim CEO  
Sears Methodist Retirement Systems  
1114 Lost Creek Boulevard, Suite 210  
Austin, Texas 78746  
Phone: (512) 329-6716  
Fax: (512) 329-0933

If to Buyer:

Yellow Rose Health Holdings LLC  
c/o Ensign Services, Inc.  
27101 Puerta Real, Suite 450  
Mission Viejo, CA 92691  
Attn: Executive Vice President  
Phone: (949) 487-9500  
Fax: (949) 540-3002  
Email: ckeetch@ensigngroup.net

with a copy to:

Thomas R. Califano, Esq.  
DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020  
Phone: (212) 335-4990  
Fax: (212) 884-8690  
Email: Thomas.califano@dlapiper.com

If to Escrow Agent:

Nick De Martini  
Senior Vice President  
Fidelity National Title Insurance Company  
485 Lexington Avenue, 18th Floor  
New York, New York 10017  
212-845-3132  
ndemartini@fnf.com

Any party may change its above-designated address by giving the other party written notice of such change in the manner set forth herein.

14.2 Effect of Termination. The termination of this Agreement shall operate to terminate the OTA, the Management Agreement and any other agreements and documents executed in connection with the transfer of the Assets to Buyer or New Operator; provided, that such termination shall not diminish a party’s rights and remedies for a breach or default by another party.

14.3 Miscellaneous. This Agreement constitutes the entire agreement among the parties and supersedes all prior and contemporaneous agreements and undertakings of the parties with respect to the subject matter hereof. No supplement, modification or amendment of this Agreement shall be binding and enforceable unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision hereof (whether or not similar) nor shall such

waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver. Exhibits referred to in this Agreement, whether attached hereto at the time of this Agreement's execution and delivery or thereafter, are hereby incorporated into this Agreement and made a part hereof. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event an action, suit or arbitration proceeding is brought by any party hereto to enforce the terms of this Agreement, the prevailing party shall be entitled to the payment of its reasonable attorneys' fees and costs, as determined by the judge of the court or the arbitrator, as applicable. The invalidity or unenforceability of any particular provision, or any part thereof, of this Agreement shall not affect the other provisions hereof and this Agreement shall be continued in all respects as if such invalid or unenforceable provision were omitted. Except as otherwise provided herein, all provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, executors, administrators, personal representatives, successors and assigns of any of the parties to this Agreement. The parties hereto agree that each party and its counsel have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. Headings contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or of any provision hereof. As used herein, the term "Medicaid" shall mean and refer to the Medicaid program or any similar reimbursement program established by the State. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

14.4 Governing Law; Jurisdiction. Except as expressly provided herein, this Agreement shall be construed in accordance with, and governed by, the laws of the State, without regard to the application of conflicts of law principles. The parties agree that any legal suit, action or proceeding arising out of or relating to this Agreement must be submitted to the Bankruptcy Court, and they hereby irrevocably submit to the jurisdiction of any such court. EACH OF THE PARTIES HERETO KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT WHICH IT MAY HAVE TO HAVE ANY DISPUTE WITH RESPECT TO THE INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT TRIED BEFORE A JURY AND AGREES THAT ALL SUCH DISPUTES SHALL BE TRIED BEFORE A JUDGE AND NOT A JURY.

14.5 Further Documentation. Each party will execute and deliver such further instruments and do such further acts and things as may be reasonably required to carry out the intent and purpose of this Agreement.

14.6 Survival of Representations, Warranties and Covenants. The respective representations, warranties, covenants and remedies of Buyer and Seller made herein or in any certificate or other document delivered pursuant to this Agreement, including without limitation the obligations of indemnity hereunder, shall survive the Closing Date, the Effective Time, the consummation of the transactions contemplated hereby and the delivery of the Assets to Buyer, and shall not be waived or merged thereby, until any applicable statute of limitations has run, notwithstanding any examination made by or for the party to whom such representations, warranties or covenants were made, the knowledge of any officers, directors,

shareholders, members, partners, employees or agents of the party, or the acceptance of any certificate or opinion.

14.7 Bulk Sales. Buyer hereby waives compliance by Seller with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other similar laws applicable to bulk sales and transfers.

14.8 Independent Consideration. Seller acknowledges the receipt from Buyer, direct and outside of Escrow, of Two Hundred Fifty and 00/100 Dollars (\$250.00) (the “Independent Consideration”), which the parties have bargained for and agreed upon as consideration for Seller’s execution, delivery and performance of this Agreement. The Independent Consideration is non-refundable in all circumstances, is not part of the Purchase Price hereunder, and is in addition to and independent of any other consideration or payment provided for in this Agreement.

14.9 Cross Default. Any material breach or default of any warranty, covenant, agreement, condition or other obligation of a party under the OTA, the Interim Management Agreement or the Sublease shall constitute a material breach or default of this Agreement and the non-breaching party shall be entitled to any and all remedies to which such non-breaching party may be entitled under the terms of this Agreement.

14.10 Bankruptcy Approval. Seller is currently a debtor in a bankruptcy proceeding pending in the Bankruptcy Court, and, notwithstanding anything herein to the contrary, Seller’s obligations hereunder are contingent upon the entry of an order from the Bankruptcy Court authorizing Seller’s accession to this Agreement.

***Signature Page Follows***

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

**SELLERS:**

SEARS METHODIST CENTERS, INC.,  
a Texas non-profit corporation

By: \_\_\_\_\_

Name:

Its:

SEARS PANHANDLE RETIREMENT CORPORATION  
a Texas non-profit corporation

By: \_\_\_\_\_

Name:

Its:

SEARS PERMIAN RETIREMENT CORPORATION  
a Texas non-profit corporation

By: \_\_\_\_\_

Name:

Its:

**BUYER:**

YELLOW ROSE HEALTH HOLDINGS LLC,  
a Nevada limited liability company

By: The Ensign Group, Inc.,  
a Delaware corporation, its  
sole Member

By: \_\_\_\_\_  
Chad A. Keetch  
Executive Vice President

**EXHIBIT 1.1(i)**

**REAL PROPERTY LEGAL DESCRIPTION**

**EXHIBIT 1.2(l)**

**None.**

**EXHIBIT 2.1**  
**BID PROCEDURES**  
**[Attached]**

**EXHIBIT 5.1**

**SELLER INFORMATION**

**None.**