



REHABILITATION CENTER, INC.; SPRING SEASON OF CUERO, INC.; SPRING SEASON OF RIVER OAKS, INC.; SPRING SEASON OF ABILENE, INC.; SPRING SEASON OF ELKHART, INC.; SPRING SEASON OF VIDOR, INC.; HILLSIDE HEALTH & REHAB, INC.; CRESTVIEW VILLA, INC.; RIVERCREST NURSING & REHAB, INC.; SUNBRANCH NURSING CENTER, INC.; Defendants, and in support thereof would respectfully show unto the Court as follows:

### **1. DISCOVERY CONTROL PLAN**

1.1 Pursuant to Rule 190.1, TEX. RULES OF CIVIL PROCEDURE, the State submits that this suit should be governed by Rule 190.3, (Level 2 discovery).

### **2. PLAINTIFF**

2.1 This suit is brought in the name of the State of Texas by and through its Attorney General, GREG ABBOTT, and the Consumer Protection and Public Health Division of the Office of the Attorney General, in the public interest and under the authority of the Constitution, statutes and laws of the State of Texas. More importantly, this suit is brought to protect the dependent residents of Defendants' facilities, to alleviate the immediate and serious threat to the health and safety of those residents as detailed in this Petition.

2.2 This suit is also brought at the request of the Commissioner of the Texas Department of Aging and Disability Services, hereinafter called DADS, as authorized by Chapter 242, TEX. HEALTH AND SAFETY CODE. DADS has received information that indicates that some of the facilities may be closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

### **3. DEFENDANTS**

3.1 Defendant FOREMOST CARE, INC., is a domestic profit corporation doing business at 901 Clinic Drive, Euless, Texas 76039-7453. Defendant's registered agent is William Paul Novick at 901 Clinic Drive, Euless, Texas 76039. Foremost Care, Inc., and the other Defendants (SPRING SEASON OF BEEVILLE, INC. doing business at 4901 N. St. Mary's,

Beeville, Texas 78102; SPRING SEASON OF MART, INC. doing business at 1201 McLennan Avenue, Mart, Texas 76664; SPRING SEASON OF SHERMAN, INC. d/b/a POST OAK CARE & REHABILITATION doing business at 1518 S. Sam Rayburn Freeway, Sherman, Texas 75090; HURST PLAZA NURSING & REHABILITATION CENTER, INC., doing business at 215 E. Plaza Blvd., Hurst, Texas 76053; SPRING SEASON OF CUERO, INC., doing business at 1010 E. McArthur, Cuero, Texas 77954; SPRING SEASON OF RIVER OAKS, INC., doing business at 2416 NW 18<sup>th</sup> Street, Ft. Worth, Texas 76106; SPRING SEASON OF ABILENE, INC., doing business at 725 Medical Drive, Abilene, Texas 79601; SPRING SEASON OF ELKHART, INC.; doing business at 214 Jones Road, Elkhart, Texas 75839; SPRING SEASON OF VIDOR, INC., doing business at 470 Moore Street, Vidor, Texas 77662; HILLSIDE HEALTH & REHAB, INC., doing business at 2<sup>nd</sup> and May Street, Wells, Texas 75976; CRESTVIEW VILLA, INC., doing business at 300 Hyde Street, Corrigan, Texas 75939; RIVERCREST NURSING & REHAB, INC., doing business at 607 Parkside Drive, Groesbeck, Texas 76642; SUNBRANCH NURSING CENTER, INC., doing business at 120 Warden Lane, San Marcos, Texas 78666) are currently under the control of William Herzog, a duly appointed Chapter 11 Bankruptcy Trustee. Mr. Herzog has agreed to accept service of this suit on behalf of all the Defendant corporations by and through service by first class mail, return receipt requested, to his Attorney of Record, David Parham at Baker & McKenzie LLP, 2001 Ross Avenue, Suite 2300, Dallas, Texas 75201.

#### 4. JURISDICTION

4.1 This Court has jurisdiction of this action under Chapter 242 TEX. HEALTH AND SAFETY CODE, and the authority granted to the Attorney General of Texas under the Constitution and laws of the State of Texas. Further, the United States Bankruptcy Court, Northern District of Texas, Dallas Division has entered an order authorizing the Chapter 11 Trustee to work with DADS to obtain the appointment of appropriate trustees under State law for these facilities.

#### 5. VENUE

5.1 Venue of this suit is proper in Travis County under TEX. HEALTH AND SAFETY CODE § 242.094(e).

## 6. PURPOSES OF SUIT

6.1 The primary purpose of this suit is to seek a temporary restraining order and emergency court appointment of trustees to address the emergency conditions at Defendants' facilities, and to alleviate the potential for an immediate and serious threat to the health and safety of residents at the facility.

6.2 In order to protect the residents of Defendants' facilities and to eliminate the potential for an immediate and serious threat to those residents' health and safety, the State of Texas seeks:

- A. The emergency appointment of temporary trustees to enter, occupy, administer and fully control the facilities for that period of time necessary to provide for the care needed to protect the health and safety of the residents of SPRING SEASON OF BEEVILLE, INC.; SPRING SEASON OF MART, INC.; SPRING SEASON OF SHERMAN, INC. d/b/a POST OAK CARE REHABILITATION; HURST PLAZA NURSING & REHAB CENTER, INC.; SPRING SEASON OF CUERO, INC.; SPRING SEASON OF RIVER OAKS, INC.; SPRING SEASON OF ABILENE, INC.; SPRING SEASON OF ELKHART, INC.; SPRING SEASON OF VIDOR, INC.; HILLSIDE HEALTH & REHAB, INC.; CRESTVIEW VILLA, INC.; RIVERCREST NURSING & REHAB, INC; SUNBRANCH NURSING CENTER, INC. and to provide for an orderly relocation of the residents of these facilities to other licensed facilities as the facts warrant after the Trustees have entered these facilities and determined the conditions and reviewed whether these facilities need to be closed;
- B. The emergency disbursement of \$600,000 to Don Miller; \$200,000 to David Crowson and \$200,000 to David French, from the Nursing and Convalescent Home Trust Fund, pursuant to TEX. HEALTH AND SAFETY CODE § 242.096;
- C. A temporary restraining order prohibiting Defendants, and their officers, agents and employees from interfering with the Trustees until they are discharged by the Court;
- D. Once the temporary restraining order has expired, no more than fourteen (14) days after it has been issued by the Court, a temporary injunction prohibiting Defendants and their officers, agents and employees from interfering with the Trustees until they are discharged by the Court; and
- E. A permanent injunction against Defendants and their officers, agents and employees prohibiting them from interfering with the Trustees until they have been discharged by the Court.

## 7. APPLICABLE LAW

7.1 TEX. HEALTH AND SAFETY CODE § 242.094 (a)(4) and (5) provides for the involuntary appointment of a Trustee if there is an immediate threat to the health and safety of the residents of a nursing home, and to operate a home, if the home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

7.2 TEX. HEALTH AND SAFETY CODE § 242.063 provides that DADS may seek injunctive relief to:

- A. Prohibit a person from continuing a violation of the standards or licensing requirements prescribed by this chapter;
- B. Restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or
- C. Grant the injunctive relief warranted by the facts on a finding by the Court that a person is violating the standards or licensing requirements prescribed by this chapter.

## 8. EXHIBITS

8.1 In support of this Petition, the State relies upon and adopts by reference for all purposes the attached Exhibit as follows:

- A. Affidavit of William F. Herzog, attached as Exhibit "A" and incorporated in this document by reference for all purposes as though set forth verbatim at this point;
- B. Affidavit of Chris Adams, attached as Exhibit "B" and incorporated in this document by reference for all purposes as though set forth verbatim at this point;
- C. Order granting Motion to Dismiss or to authorize the Trustee to seek assistance from the Texas Department of Human Services, from the United States Bankruptcy Court for the Northern District of Texas, Dallas Division;
- D. Referral letter from Lawrence Parker, on behalf of DADS Commissioner Jim Hine, to Gregg Abbott, Attorney General.

## 9. ALLEGATIONS

9.1 SPRING SEASON OF BEEVILLE, INC.; SPRING SEASON OF MART, INC.;  
SPRING SEASON OF SHERMAN, INC. d/b/a POST OAK CARE & REHABILITATION; HURST

PLAZA NURSING & REHABILITATION CENTER, INC.; SPRING SEASON OF CUERO, INC.; SPRING SEASON OF RIVER OAKS, INC.; SPRING SEASON OF ABILENE, INC.; SPRING SEASON OF ELKHART, INC.; SPRING SEASON OF VIDOR, INC.; HILLSIDE HEALTH & REHAB, INC.; CRESTVIEW VILLA, INC.; RIVERCREST NURSING & REHAB, INC.; SUNBRANCH NURSING CENTER, INC. are institutions as defined in § 242.002(6) TEXAS HEALTH AND SAFETY CODE. At all material times, Defendants owned, operated and/or managed these facilities.

9.2 On or about May 31, 2005, the United States Bankruptcy Court, Northern District of Texas, Dallas Division, appointed William F. Herzog as a Chapter 11 trustee to administer the Defendants' Debtors estates. In the course of his duties, Trustee Herzog determined the Defendants Debtors did not have sufficient funds to pay all of the employees' payroll on June 30, 2005. Additionally, Trustee Herzog determined that as a result of the lack of payroll, some employees would leave their positions, and some would not return to work. These employees include staff that is needed for the care of the health and safety of the residents. Further, Trustee Herzog determined there were not sufficient funds for payment to suppliers of goods and services critical to maintain the facilities and the well being of the residents. Additionally, Trustee Herzog has reviewed the condition of the facilities and the financial resources of the facilities and determined that some of them cannot continue to operate in the manner in which they had been operated to date.

9.3 The conditions described above, and set forth more fully in Exhibits A through D, have created an immediate and serious threat to the health and safety of the residents at Defendants' facilities listed in 9.1, necessitating the appointment of temporary Trustees to alleviate the immediate threat to the health and safety of the residents and to orderly and safely relocate residents of the facilities that must be closed.

## **10. REQUEST FOR APPOINTMENT OF TRUSTEE AND EMERGENCY DISBURSEMENT OF FUNDS**

10.1 To protect the residents of Defendants' facilities listed in 9.1, and to eliminate the potential for an immediate threat to these residents' health and safety, the State requests pursuant to § 242.094 TEXAS HEALTH AND SAFETY CODE, that Trustees be appointed as follows:

Don Miller be appointed as Trustee of the following institutions owned by Defendants:

Spring Season of Abilene, Inc.;  
Spring Season of Sherman, Inc. d/b/a Post Oak Care & Rehabilitation;  
Hurst Plaza Nursing & Rehabilitation Center, Inc.; and  
Spring Seasons of River Oaks, Inc.

David Crowson be appointed Trustee of the following institutions owned by Defendants:

Spring Season of Elkhart, Inc.;  
Hillside Health and Rehab, Inc.;  
Spring Season of Vidor, Inc.;  
Crestview Villa, Inc.; and  
Spring Season of Mart, Inc.

David French be appointed Trustee of the following institutions owned by Defendants:

Rivercrest Nursing and Rehab, Inc.;  
Sunbranch Nursing Center, Inc.;  
Spring Season of Cuero, Inc.; and  
Spring Season of Beeville, Inc.

10.2 Plaintiff requests the Court give the Trustees the following powers to be used at the sole discretion of the Trustee:

- A. To enter, occupy, administer and fully control the facility for that period of time necessary to orderly and safely relocate all residents of the Defendant' facilities to other licensed facilities;
- B. To hire and fire assistants, consultants and employees of the facilities, as reasonably necessary in the sole opinion of the Trustee to assist the Trustee in carrying out the duties described in this order;
- C. To direct the notification of residents, persons responsible for their support and nearest relatives of the residents prior to any residents being relocated;
- D. To receive any money currently held by DADS and owed to the defendant' facilities for the Trustee to perform or cause to be performed the above described duties; and to enter into contracts with DADS to carry out this provision;
- E. To take possession, control and custody of all patient records, books of account or other written material, or material stored in computers, relating to the operation of Defendant's facilities;

- F. To open accounts, as necessary to the orderly operation of Defendant's facilities, with any financial institution whose accounts are federally insured;
- G. To receive, collect and open all mail directed to Defendant's facilities or any of its agents or employees;
- H. Upon request, to receive and to cause issuance of all checks and other instruments withdrawing, depositing or transferring funds with respect to all accounts of the Defendant's facilities, insofar as such funds arise out of, are related to, or derived from the business operation of Defendant's facilities;
- I. To approve or deny access to the defendant' facilities by Defendant, their agents, servants and employees, as appropriate for carrying out the Trustee's duties and preventing interference;
- J. To negotiate and contract directly with DADS for Medicaid services, as the Trustee deems necessary for the efficient and orderly management of defendant' facilities and for the well-being of its residents;
- K. To make any records the Trustee considers appropriate documenting the condition of residents at the facilities, including photographic, video-graphic, or sound recordings, as long as the privacy rights of residents under Texas law are protected, provided that records tending to invade any resident's privacy shall not be disclosed except to the resident or the resident's responsible parties, or to agents of state or federal agencies whose access to these confidential records is authorized by law;
- L. To enter employment contracts on Defendants' behalf, after giving notice to Defendant, with Certified Nurse Aides, Licensed Vocational Nurses, Registered Nurses, and other employees deemed necessary for operation of the facilities in a manner that assures compliance with state and federal standards, on behalf of Defendants, so that staffing arrangements established by the Trustee will be reasonably permanent; and
- M. To enter any service contracts deemed necessary for training of facility staff, including the Administrator, so staff will know how to care for residents without causing physical, emotional or mental harm to the residents.

10.3 The State requests that any state, regional, or local agency contacted by the Court appointed Trustee or his staff be ordered to cooperate with the Trustee or his staff in order to facilitate the relocation of residents, if that becomes necessary, of the facility in a manner which ensures the protection of the health and safety of the residents.

10.4 The State requests pursuant to § 242.096 TEXAS HEALTH AND SAFETY CODE, that the Texas Department of Aging and Disability Services be ordered to disburse \$600,000 to Trustee Don Miller for the trusteeships of: Spring Season of Abilene, Inc.; Spring Season of Sherman, Inc. d/b/a Post Oak Care & Rehabilitation; Hurst Plaza Nursing & Rehabilitation Center, Inc.; and Spring Seasons of River Oaks, Inc.; \$200,000.00 to Trustee David Crowson for the trusteeships of Spring Season of Elkhart, Inc.; Hillside Health and Rehab, Inc.; Spring Season of Vidor, Inc.; Crestview Villa, Inc.; and Spring Season of Mart, Inc.; and \$200,000 to Trustee David French for the trusteeships of: Rivercrest Nursing and Rehab, Inc.; Sunbranch Nursing Center, Inc.; Spring Season of Cuero, Inc.; and Spring Season of Beeville, Inc..

Said disbursements are necessary to alleviate the potential for an immediate threat to the health and safety of the residents and until an orderly and safe relocation of all the residents of the facilities listed above to other licensed facilities can be made and until further order of the Court. The State further requests that Defendants be ordered to reimburse the Texas Department of Aging and Disability Services for any emergency assistance received or spent for care of the residents of the facilities listed above pursuant to § 242.098 TEXAS HEALTH AND SAFETY CODE.

## 11. REQUEST FOR TEMPORARY RESTRAINING ORDER

11.1 To protect the residents of Defendants' facilities listed in paragraph 9.1, and to eliminate the potential for an immediate threat to resident health and safety, pursuant to Chapter 242 of the TEXAS HEALTH AND SAFETY CODE, the State requests that Defendants, their officers, agents, servants and employees, be restrained as follows and that they are hereby enjoined from:

- A. Interfering with the discharge of the duties of the Trustees or any person acting for the Trustees;
- B. Destroying, altering, concealing, hypothecating, pledging, assigning, transferring or removing any books, records, property or assets of Defendants located at any of Defendants' facilities without the consent of the Trustees; and
- C. Concealing from the Trustees or removing from the Trustees' control any money related to operation of the facilities.

11.2 The State requests that Defendants be ordered to surrender to the Trustees all books, records, property, accounts and assets in its possession or under its control that may be located at or pertain to the operation of Defendants' facilities in paragraph 9.1 upon the request of the Trustees. The State further requests that the Defendants be ordered to pay the Trustees, from earnings of the property held under this order, a reasonable fee plus reasonable expenses, pursuant to TEX. CIV. PRAC. & REM. CODE, §64.051(a)(1), including reasonable attorney fees made necessary for performance of the Trustees' duties, for getting paid and/or to reimburse DADS for any emergency assistance received or spent for care of the residents or which pertain to the operation of Defendants' facilities listed in paragraph 9.1 pursuant to § 242.098 TEX. HEALTH AND SAFETY CODE.

## 12. REQUEST FOR TEMPORARY INJUNCTION

12.1 The State requests this matter be set for a hearing on the State's request for a temporary injunction restraining Defendants, their officers, agents, servants and employees as follows:

- A. Interfering with the discharge of the duties of the Trustees or any person acting for the Trustees;
- B. Destroying, altering, concealing, hypothecating, pledging, assigning, transferring or removing any books, records, property or assets of Defendants located at any of the Defendants' facilities listed paragraph 9.1 without the consent of the Trustees; and
- C. Conceal from the Trustees or remove from the Trustees' control any money related to operation of the facilities.

Plaintiff requests this be set for hearing within fourteen (14) days from the date the Court signs an order granting the temporary restraining order requested in section 11 above, **and issue an order directing Defendants to appear and show cause as to why the restraining order so issued shall not be continued as a temporary injunction.** Pursuant to § 242.063 TEX. HEALTH AND SAFETY CODE, the State requests this Court issue a temporary injunction restraining Defendants, their officers, agents, servants, and employees in conformity with the terms set forth in this section.

### 13. REQUEST FOR PERMANENT INJUNCTION

13.1 Upon entry of the temporary injunction requested in section 12 above, the State requests the Court set this matter for a final hearing, and at the conclusion of such hearing issue a permanent injunction in conformity with the terms set forth in section 12 above to be in effect pursuant to § 242.063.

### 14. PRAYER

- 14.1. For these reasons, the State respectfully requests that:
- A. The Court appoint Don Miller as Temporary Trustee with the authority to carry out the duties described in section 10 above for the following facilities: Don Miller be appointed as Trustee of the following institutions owned by Defendants: Spring Season of Abilene, Inc.; Spring Season of Sherman, Inc. d/b/a Post Oak Care & Rehabilitation; Hurst Plaza Nursing & Rehabilitation Center, Inc.; and Spring Seasons of River Oaks, Inc.;
  - B. The Court appoint David Crowson as Temporary Trustee with the authority to carry out the duties described in section 10 above for the following facilities: Spring Season of Elkhart, Inc.; Hillside Health and Rehab, Inc.; Spring Season of Vidor, Inc.; Crestview Villa, Inc.; and Spring Season of Mart, Inc.;
  - C. The Court appoint David French as Temporary Trustee with the authority to carry out the duties described in section 10 above for the following facilities: Rivercrest Nursing and Rehab, Inc.; Sunbranch Nursing Center, Inc.; Spring Season of Cuero, Inc.; and Spring Season of Beeville, Inc.;
  - D. The Court order disbursement of \$600,000.00 to Don Miller and \$200,000 to David Crowson, and \$200,000.00 to David French for the trusteeships of Defendants' facilities listed above, to be used by the Trustees, from the Emergency Nursing and Convalescent Home Trust Fund, under § 242.096 TEXAS HEALTH AND SAFETY CODE;
  - E. Defendants be ordered to pay the Trustees, from earnings of the property held under this order, a reasonable fee, pursuant to TEX. CIV. PRAC. & REM. CODE §64.051(a)(1), and attorney fees reasonably incurred by the Trustees in the performance of their duties to this Court or in the Trustees' efforts to get paid;
  - F. Defendants be ordered to reimburse the Texas Department of Human Services for any emergency assistance received or spent for care of the residents of any of defendant' facilities or which pertain to the operation of the defendant' facilities

pursuant to § 242.098 TEX. HEALTH AND SAFETY CODE;

- G. Defendants be temporarily restrained from interfering with the Trustees;
- H. The Court order Defendants to appear and show cause why the temporary restraining order entered herein should not become a temporary injunction, and upon such hearing, enter a temporary injunction prohibiting Defendants from interfering with the Trustees; and
- I. Upon a final trial upon the merits, the State be awarded judgment against Defendants as follows:
1. That Defendants be permanently enjoined from interfering with the Court appointed Trustees;
  2. Attorneys' fees pursuant to TEX. GOV'T CODE, § 402.006©);
  3. Post-judgment interest on the penalties awarded at the maximum rate allowed by law; and
  4. For such other and further relief to which the State may show itself to be justly entitled.

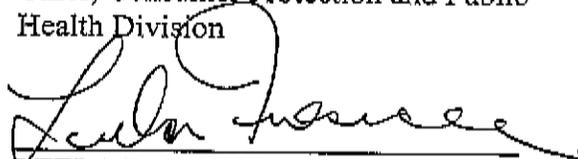
Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. MCBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection and Public  
Health Division

  
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ATTORNEY FOR PLAINTIFF

**AFFIDAVIT OF WILLIAM F. HERZOG**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned authority, personally appeared William F. Herzog, who, being by me duly sworn, deposed and stated as follows:

1. My name is William F. Herzog. I am over the age of 21 years, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein.

2. All statements in this affidavit are true and correct and within my personal knowledge.

3. I was appointed Chapter 11 Trustee for the bankruptcy estates of *In re Post Oak Care & Rehabilitation, Inc., et al.*<sup>1</sup>, which are being jointly administered under Case No. 04-82300-HDH-11 under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").

4. On or about May 31, 2005, the Bankruptcy Court signed an Order directing the appointment of a Chapter 11 trustee to administer the Debtors' estates. In accordance therewith, on June 1, 2005 (the "Appointment Date"), the U.S. Trustee's Office appointed me to serve as the Chapter 11 trustee in this case. By virtue of such appointment, I am authorized to operate the Debtors' business.

<sup>1</sup> Exhibit "A," which is attached to this Affidavit is a list of then names, address and case numbers of all of the nursing homes being jointly administered by the Bankruptcy Court. These entities will be collectively referred to herein as the "Debtors."



5. On June 20, 2005, as directed by the Bankruptcy Court, I filed the report that is attached to this Affidavit as **Exhibit "B"** in the Bankruptcy Cases. In my report, I recommended dismissal of the Bankruptcy Case because there is little likelihood of an effective chapter 11 reorganization for these Debtors.

6. After reviewing my report and hearing the arguments of other parties-in-interest in the Bankruptcy Cases, the Bankruptcy Court decided, in an order entered on June 27, 2005, to dismiss the Bankruptcy Cases effective on July 6, 2005. A copy of the Bankruptcy Court's July 27<sup>th</sup> order is attached hereto as **Exhibit "C."**

7. Payroll is due for all of the Debtors' employees on June 30, 2005. The Debtors do not have sufficient funds for me to pay all of the employees on June 30, 2005, in fact, the shortfall is in excess of \$300,000.00. I am very concerned that the failure to pay all employees on June 30, 2005 will result in some employees not returning to work. In fact, I have been told that certain employees, who are necessary for the continued care of the health and safety of the residents, will leave today if not paid. Should that happen, I believe that there will be an immediate threat to the health and safety of the residents in the Debtors' facilities.

8. It is also likely that the Debtors will not be able to meet all payroll obligations that will come due on July 15, 2005.

9. Additionally, I must pay other necessary expenses, such as medicine, food supplies and utility bills. Since the Appointment Date, the Debtors have had sufficient funds for me to meet going forward obligations so that patient care would not suffer. With the impending budgetary shortfall, however, I am concerned that there will be problems with payments to other necessary vendors that will cause an imminent threat to

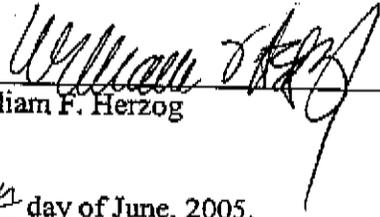
the health and safety of the residents of these homes. The nursing homes each have outstanding accounts payable that I cannot pay for lack of sufficient funds. See Exhibit "D" under the column "A/P." I only pay past due obligations as necessary to obtain current goods or services. My options to find replacement vendors is limited. Inadequate access to food and medicine caused by lack of funds in the Debtors' estates would be harmful to the residents. Moreover, with the heat index at this time of year, any problem with electricity service could have a devastating impact on the health and safety of the residents.

10. Exhibit "D" to this Affidavit shows the Debtors' budgetary shortfall as of June 30, 2005, the day payroll is due. As of June 30, 2005, there is a \$316,748.00 shortfall considering payroll only and no other necessary expenses. Faced with that shortfall and the need to pay other necessary expenses, I have elected to use the June 30<sup>th</sup> cash balance as shown on "Exhibit E."

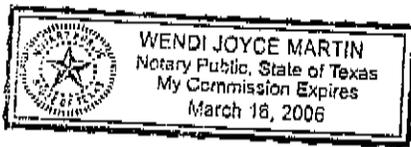
11. Based on the information I have gathered since my Appointment Date, the following four facilities do not appear to be financially viable, because of their age, location and historical financial results: (1) Spring Season of Cuero, Inc.; (2) Hillside Health and Rehab., Inc.; (3) Spring Season of Vidor, Inc.; and (4) Spring Season of Mart, Inc.

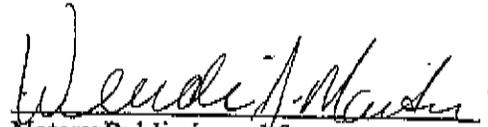
FURTHER AFFIANT SAYETH NOT.

Executed this 30 day of June, 2005.

  
\_\_\_\_\_  
William F. Herzog

Given under my hand and seal of office this 30<sup>th</sup> day of June, 2005.



  
\_\_\_\_\_  
Notary Public in and for  
the State of Texas

## FACILITIES OPERATED BY FOREMOST CARE, INC.

	<b>Bankruptcy Case Number</b>	<b>Debtor's Name</b>
1.	04-82300	Post Oak Care & Rehabilitation 1518 S. Sam Rayburn Frwy. Sherman, TX 75090
2.	04-82301	Spring Season of River Oaks 2416 Northwest 18 <sup>th</sup> Street Fort Worth, TX 76106
3.	04-82303	Spring Season of Cuero, Inc. 1010 East McArthur Cuero, TX 77954
4.	04-82304	Foremost Care, Inc. 901 Clinic Drive Euless, Texas 76039
5.	04-82305	Spring Season of Elkhart, Inc. 214 Jones Road Elkhart, TX 75839
6.	04-82307	Hillside Health & Rehab, Inc. Second And May St. Wells, TX 75976
7.	04-82308	Spring Season of Abilene, Inc. 725 Medical Drive Abilene, TX 79601
8.	04-82309	Spring Season of Beeville, Inc. 4901 N. St. Mary's Beeville, TX 78102
9.	04-82310	River Crest Nursing & Rehabilitation, Inc. 120 Warden Ln. San Marcos, TX 78666
10.	04-82311	Hurst Plaza Nursing & Rehab, Inc. 215 E Plaza Blvd Hurst, TX 76053

11.	04-82312	Sunbranch Nursing Center 607 Parkside Dr. Groesbeck, TX 76642
12.	04-82313	Spring Season of Vidor, Inc. 470 Moore St. Vidor, TX 77662
13.	04-82314	Crestview Villa, Inc. 300 Hyde St. Corrigan, TX 75939
14.	04-32315	Spring Season of Mark, Inc. 1201 McLennan Ave. Mart, TX 76664

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE:

POST OAK CARE and  
REHABILITATION, INC., et al.

(Jointly administered under)  
CASE NO. 04-82300-HDH-11

CHAPTER 11

TRUSTEE'S REPORT

*for*

THE HONORABLE HARLIN D. HALE, UNITED STATES  
BANKRUPTCY JUDGE

*Prepared by:*  
William F. Herzog  
Chapter 11 Trustee

**B**

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## **I. BACKGROUND**

The Debtors consist of 13 nursing facilities and a management company. The Debtors operations commenced in May 2004. Due to the age of the facilities, substantial maintenance expenditures have been, and likely will be, required on a going forward basis. The census, or the number of residents, has been steadily declining.

The Debtors have been unable to meet current obligations throughout the pendency of the bankruptcy proceeding as indicated by the Internal Revenue Service motion for allowance of payment of approximately \$1.6 million of administrative payroll tax liabilities. As a result, on May 27, 2005, the Bankruptcy Court ordered the appointment of a trustee to determine if the Debtors could comply with Chapter 11 requirements or whether the case should be dismissed and, if the case should not be dismissed, to evaluate the likelihood for of reorganization.

## **II. TRUSTEE'S ACTIONS**

### **A. Discussion of Trustee's Actions**

When operating a business that provides nursing and long term care to sick and aging persons, my first and overriding concern was for the wellbeing of the patients residing in the facilities. Because I was appointed to evaluate the merits of dismissing this case, and I was instructed to report on my conclusions within 20 days of my appointment, I elected not to change banking and signature authorities so there would be no interruption or confusion concerning payment for care if a critical situation arose. As an alternative, I controlled the cash by forbidding any employee to release any check or wire transfer without my approval. I also collected the debit cards held by certain employees in the field and at corporate. I received full cooperation from the Debtors in

that respect. I am not aware of any interruption of care to patients, or violation of any state statutes or regulation concerning provision of care since my appointment.

Second to my responsibilities to patients is fulfillment of fiduciary responsibilities to the Court and to creditors of the estate. To help me manage the business and complete this report, I retained Baker & McKenzie LLP as legal counsel, and Watershed Group to help me control cash expenditures, gather and analyze pertinent information, perform facility inspections, and review electronic information storage and retrieval assets and processes. With help from the Vinca Group, I was able to obtain information about demand in the marketplace. I had meaningful discussions with management concerning the continued losses occurring each month, the lack of compliance with IRS regulations concerning payment of withholding taxes, and the inability to comply with operating guidelines required by the Office of the US Trustee. I also spoke with management about possible solutions; including relinquishing operations to a third party, sources for repayment of delinquent withholding taxes and cost containment initiatives that are required at this time. I spoke to other business owners in the industry to obtain an understanding of the dynamics of a successful operation and the alternatives that may resolve this matter.

Third in my priority of responsibilities was to remain in compliance with regulatory requirements including IRS Regulations, Texas Department of Aging and Disability Services (DADS), guidelines required by the Office of the US Trustee for business operating under Bankruptcy protection and concerning my appointment as Chapter 11 Trustee. Payroll tax liabilities associated with the June 15, 2005 pay period were paid to the IRS on June 17, 2005. The Debtors have taken corrective action

required by a Life Safety Code inspection performed by the Texas Department of Aging and Disability Services (DADS) on May 12, 2005 for Spring Season of River Oaks Inc. Mr. Bill Novick, General Counsel, is coordinating with (DADS) regarding the corrective action. The Debtors have not filed a Monthly Operating Report (MOR) for April. The April MOR is being prepared and will include a significant negative adjustment to the carrying value of accounts receivable. To the best of my knowledge, with the exception of the MOR, I have satisfied the US Trustees financial and disclosure requirements of selection to serve as Chapter 11 Trustee. The Debtors have not escrowed or paid any fees for my services.

### **III. REQUIREMENTS FOR CONTINUED ADMINISTRATION OF THE ESTATE**

For continued administration of this estate in bankruptcy, the estate must have the ability to:

1. Pay administrative claims at confirmation of the plan of reorganization or obtain an agreement to a structured payout of such claims over time.
2. Generate a financial benefit to professionals and other administrative claimants at confirmation or according to an agreed structured payout of such claims over time.
3. Generate and distribute financial benefits to unsecured creditors of the estates according to an agreement between the Debtors, the Court, and creditors.
4. Emerge from bankruptcy a viable and profitable entity not likely to require bankruptcy protection in the future.

In order to meet these requirements we explored the following business strategies and opportunities:

1. Ascertain the amount of receivables that are collectible and the time and expense of pursuing collection to meet tax related and non-tax related administrative claim obligations.

2. To meet administrative claim obligations and provide distributions to creditors, begin gathering due diligence information to affect a sale transaction under Sec. 363 of the US Bankruptcy Code, which would transfer the management and operation of the facilities to a third party.

3. Evaluate the Debtors' cash flow and the opportunities for increasing occupancy and revenue derived from the facilities, and potential steps to materially reduce costs, including but not limited to, staff reductions and salary and benefit reductions of employees. These steps are also necessary in the short term in order to get back into compliance with IRS regulations regarding payment of withholding taxes, test the viability of the business going forward, and to meet obligations under structured payout arrangements.

4. The benefits of our work will be harbored by the Landlord and the Internal Revenue Service ("IRS") as the largest creditors of the estate. Accordingly, these parties were approached to determine their willingness to make concessions that would permit either a reorganization or sale of assets.

#### **IV. RESULTS OF EFFORTS TO MEET REQUIREMENTS FOR CONTINUED ADMINISTRATION OF THE ESTATE**

##### **A. Collection of Accounts Receivable**

The Debtors carry an accounts receivable balance of approximately \$6 million on their books. Upon review and investigation of the collectibility of the accounts receivable reflected on the Monthly Operating Reports filed by the Debtors, I discovered

that the accounts were generated by the prior operator of the facilities. It is unlikely that any cash will be generated from the receivables. The balances were simply carried forward in the accounting software the prior operator left behind and mistakenly included in the Debtors' financial records. Over \$4 million of the receivables balance should be reserved and written off the books and records of the Debtors.

Revenue generated by the Debtors has been billed in a timely manner, collected and deposited in the Debtors' bank accounts and applied to the correct accounts in the Debtors' books and records.

**B. Discussion With Internal Revenue Service**

On Tuesday, the 14<sup>th</sup> of June I made the following verbal proposal to Kathryn Patterson, Special Assistant United States Attorney and legal representative to the Internal Revenue Service.

1. Forebear exercising rights to payment of delinquent pre-petition and post petition withholding taxes for 90 days to allow the case to be administered.
2. Subordinate administrative payroll tax claims to fees associated with attempting to formulate a plan for emerging from Bankruptcy.
3. Allow payment of withholding tax claims over time from the profits generated by the reorganized Debtors.

On June 18<sup>th</sup> Kathryn Patterson conveyed to me that the IRS would not accept our proposal.

**C. Discussion With the Landlord of the Nursing Facilities**

On Tuesday, the 14<sup>th</sup> of June I made the following verbal proposal to John Bonds, Legal Counsel to Landlord of 12 of the Nursing Facilities:

1. Defer payment of rental obligations for 90 days in order to permit the Debtors to break even on cash flow and attempt to either formulate a plan of reorganization or select an alternate operator of the Nursing Facilities.

2. The ultimate satisfaction of deferred rental obligations will be included in the plan of reorganization and most likely be satisfied over time according to a structured payout.

On Friday June 18<sup>th</sup>, Mr. Bonds represented that his client would agree to a 50% reduction of monthly rent payments if I was committed to finding another operator of the Nursing facilities.

#### **D. Prospects to Stabilize the Operations**

Based upon a study performed by the Vinca Group, the prospects to increase revenue are limited by the excess capacity existing in the markets that the Debtors operate. Therefore, the Debtors need to be very diligent in managing expenses.

Based upon my review of Income Statements for each facility for the months of November 2004 through March 2005 I noticed the following expense trends:

- Payroll expenses approximated 67% of revenue;
- Rent expense approximated thirty to forty thousand dollars per facility per month; and
- Most of the facilities are losing money on a monthly basis.

As a result of my review I discussed with management the need to implement payroll cost reductions and the Debtors have formally begun implementing salary cuts and staffing reductions.

**E. Prospects for a Section 363 Sale Transaction**

Based upon discussion with numerous industry sources it is highly unlikely that the estate will generate additional money from transferring the management of the facilities to a third party. The reimbursement rates that exist in this region do not create value in patient care.

**V. CONCLUSIONS REACHED**

For the reasons explained above, I recommend dismissal of the cases.

  
\_\_\_\_\_  
William F. Herzog, Trustee



NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed June 27, 2005

*Harlin DeWayne Hale*  
United States Bankruptcy Judge

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

IN RE:

POST OAK CARE & REHABILITATION, INC.	§	CASE NO. 04-82300-HDH-11
SPRING SEASON OF RIVER OAKS, INC.	§	CASE NO. 04-82301-HDH-11
SPRING SEASON OF CUERO, INC.,	§	CASE NO. 04-82303-HDH-11
FOREMOST CARE, INC.,	§	CASE NO. 04-82304-HDH-11
SPRING SEASON OF ELKHART, INC.,	§	CASE NO. 04-82305-HDH-11
HILLSIDE HEALTH & REHAB, INC.,	§	CASE NO. 04-82307-HDH-11
SPRING SEASON OF ABILENE, INC.	§	CASE NO. 04-82308-HDH-11
SPRING SEASON OF BEEVILLE, INC.	§	CASE NO. 04-82309-HDH-11
RIVER CREST NURSING & REHAB, INC.	§	CASE NO. 04-82310-HDH-11
HURST PLAZA NURSING & REHAB, INC.	§	CASE NO. 04-82311-HDH-11
SUNBRANCH NURSING CENTER, INC.,	§	CASE NO. 04-82312-HDH-11
SPRING SEASON OF VIDOR, INC.	§	CASE NO. 04-82313-HDH-11
CRESTVIEW VILLA, INC.,	§	CASE NO. 04-82314-HDH-11
SPRING SEASON OF MART, INC.	§	CASE NO. 04-82315-HDH-11

Debtors.

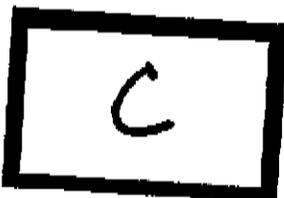
§ Jointly Administered Under  
§ Case No. 04-82300-HDH-11

ORDER OF DISMISSAL

On June 23, 2005, the Court again took up the U.S. Trustee's Motion to Dismiss these cases and, on June 24, 2005, the Court considered the request of the various K&Y landlord partnerships

ORDER OF DISMISSAL  
DALDMS/538427.2

Page - 1



(collectively the "Landlord Partnerships") to clarify the Court's bench ruling of June 23, 2005. The Court having considered the Trustee's Report filed on June 20, 2005, by the appointed Trustee, Bill Herzog, and it appearing that the Trustee supports the dismissal, the Court finds that these cases should be dismissed effective July 6, 2005.

The Court finds that the Debtors in each of these cases have paid their U.S. Trustee's fees through today's date, and the U.S. Trustee acknowledges receipt of those payments.

The Trustee, and his counsel and professionals may escrow funds to cover their fees and expenses in a trust account at Baker & McKenzie LLP and shall file fee applications, which may be in an abbreviated format. That abbreviated format shall, however, contain an itemized description of all work performed and expenses for which reimbursement is sought after June 23, 2005.

The Landlord Partnerships shall deposit a retainer with Baker & McKenzie LLP, by the close of business on June 27, 2005, in the amount of \$100,000, to secure payment of the Trustee's commission, the fees and expenses of the Trustee's professional and the U.S. Trustee fees accruing after June 23, 2005. The funds deposited by the Landlord Partnerships shall belong to the Landlord Partnerships, subject to the approval of the payment of fees and expenses incurred by, or on behalf of, the Trustee. Such funds shall not constitute property of the Debtors' estate.

In the event the Trustee determines that insufficient cash is available to pay necessary expenses, the Trustee may after adequate notice to the Debtors, the Landlord Partnerships and the Trebert entities seek emergency relief, including without limitation, the immediate dismissal of the consolidated cases.

ORDERED that, effective July 6, 2005, these cases be and are hereby dismissed with prejudice to refiling in Chapter 11 before one year from the date of the entry of this Order.

### End of Order ###

PREPARED BY:

/s/ David W. Parham

David W. Parham

State Bar No. 15459500

**BAKER & MCKENZIE LLP**

2300 Trammell Crow Center

2001 Ross Avenue

Dallas, Texas 75201

Telephone: (214) 978-3000

Facsimile: (214) 978-3099

**COUNSEL FOR WILLIAM F. HERZOG,  
CHAPTER 11 TRUSTEE**

**Post Oak Care and Rehabilitation, Inc. et al.**  
**Payable and Receivable Information by Facility**  
**June 30, 2005**

Location	Facility Name	Payroll Payable June 30			Estimated Collections		Census	Medicare Number	Vendor #	HHSC Vendor #
		Salaries	Taxes	Total	A/P*	Medicaid (July f)				
Abilene	Spring Season of Abilene	56,280	5,628	61,908	120,425	30,199	37,728	67-5530	5033	001001282
Beeville	Spring Season of Beeville	65,316	6,532	71,848	75,752	14,186	27,123	45-5608	4458	001001275
Elkhart	Spring Season of Elkhart	63,226	6,323	69,549	50,217	21,663	27,218	67-5217	5034	001001283
Hurst	Hurst Plaza Nursing & Rehab	77,896	7,790	85,686	74,600	14,737	33,573	45-5850	4588	001012582
Fort Worth	Spring Season of River Oaks	85,298	8,530	93,828	87,305	21,328	28,996	67-5091	5047	001001641
Sherman	Spring Season of Sherman	87,520	8,752	96,272	90,184	24,882	36,824	45-5548	4488	001001134
Corrigan	Crestview Villa	41,116	4,112	45,228	38,468	12,806	16,174	67-5248	5193	001012584
Cuero	Spring Season of Cuero	39,587	3,959	43,546	47,695	1,006	36,081	67-5972	4728	001001266
Groesbeck	Subbranch Nursing	49,956	4,996	54,952	85,155	14,326	37,929	45-5998	4909	001012595
Mart	Spring Season of Mart	40,922	4,092	45,014	46,574	10,468	32,957	67-5073	4482	001001281
San Marcos	River Crest Nursing and Rehab	70,878	7,088	77,966	101,636	24,920	29,891	67-5603	4349	001012588
Vidor	Spring Season of Vidor	55,070	5,507	60,577	55,746	14,125	6,438	67-5685	5100	001001276
Wells	Hillside Health and Rehab	45,368	4,537	49,905	49,105	11,246	25,535	67-5237	5169	001012583
Subtotal		778,433	77,843	856,276	932,862	215,902	376,467			
Corporate		84,098	8,410	92,508						
<b>Totals</b>		<b>\$ 862,531</b>	<b>\$ 86,253</b>	<b>\$ 948,784</b>	<b>\$ 932,862</b>	<b>\$ 215,902</b>	<b>\$ 376,467</b>			
Cash Available				<b>\$ 632,036</b>		<b>Cash per Patient</b>	<b>\$ 700</b>			
Shortfall				<b>\$ 316,748</b>						

\*Accounts payable for supplies, medicare, food, etc. already provided by vendors.



Post Oak Care & Rehabilitation Inc. et al  
Cash Roll Forward thru Friday 7/1

Available Cash June 29				632,036.45
Uses of Cash				
Paid on 6/29				
US Trustee Fee	10,500.00			
Ch. 11 Trustee Fees	2,500.00			
Accounts Payable sent 6/29	3,735.14			
Payroll for Four Homes	180,945.57			
Payroll taxes for Four Homes	16,966.74			
The Vinca Group	657.00			
Couriers on Demand	21.18			
6-15 fed unemp tax	2,818.59			
6-15 tx unemp tax	12,788.51			
				230,932.73
Payable this Week				
Field Salary Advance for 6/30/05	90,000.00	# of Emp	Per Emp	
Employees Health Claims	87,750.00	900	100.00	
Gulf South (nursing supplies)	100,000.00			
Cost Reports	30,000.00			
				307,750.00
Projected Balance July 1				93,353.72
Sources of Cash				
Medicaid 7-01-05 [estimated]	214,548.33			
Medicaid 7-05-05 [estimated]	104,485.56			
Total				319,033.89
Estimated Total Cash Balance on 7/5/05				<u>412,387.61</u> *

\*As of July 5, 2005, the Debtors will still owe \$750,871.69 for June 30, 2005 payroll. Additionally, other necessary expenses for health and safety of the residents will have accrued.

**E**

STATE OF TEXAS            §  
   §  
 COUNTY OF TRAVIS       §

### AFFIDAVIT OF CHRIS ADAMS

Before me the undersigned authority, appeared CHRIS ADAMS who by me having been duly sworn and identified by his Texas Drivers License, did upon his oath state as follows:

"My name is CHRIS ADAMS; I am of sound mind, over the age of eighteen and legally competent to make this affidavit. I have personal knowledge of the facts stated herein and state that such facts are true and correct. I have served as Director of Survey Operations for the Texas Department of Aging and Disability Services (DADS) since September 1, 2004. Prior to that I was employed by the Texas Department of Mental Health and Mental Retardation for approximately 26 years.

"One of the responsibilities of the Regulatory Services Division of DADS is to regulate nursing facilities by ensuring that they operate in compliance with the State Licensing Standards contained within Chapter 242 of the Texas Health and Safety Code and the Department's Regulations set forth in 40 TAC Chapter 19.

"On or about June 27, 2005 I was notified that the 13 facilities identified in Attachment 1 are currently in bankruptcy. A trustee was placed by the bankruptcy court on May 31, 2005 to operate the facilities, which provide services to approximately 915 residents. The bankruptcy trustee has since requested that the state take over operations of these facilities. He has indicated that the facilities do not have sufficient funds to meet June 30, 2005 payroll obligations for all employees nor will they be able to meet similar obligations on July 15, 2005. The bankruptcy trustee has also reported that 'it is highly unlikely that the estate will generate additional money from transferring the management of the facilities to a third party.' The department has been monitoring the operations of these facilities and has been notified that only four of the thirteen facilities made payroll on June 30, 2005.

"The bankruptcy trustee has expressed concern that the facility staff will not return to work because of the expected payroll shortfall. Although \$100 "bonuses" are being provided to staff who remain at the facility, the bankruptcy trustee has already received word that critical nursing staff may not return to work if they are not paid. In addition, the department has been informed that, although staff were not paid on June 30, 2005, they have been promised a payroll on July 6, 2005. It is not clear who is promising this July 6 payroll. In light of the information previously received from the bankruptcy trustee and the landlord, the department has been led to believe that neither one has the resources to make a July 6, 2005 payroll. If staff do not receive payroll checks as promised on July 6<sup>th</sup>, in all likelihood they will not continue in their employment leaving residents without necessary and required care and treatment.

Affidavit of Susan Coleman



1 of 2

“ In addition to concerns about payroll shortfalls, the bankruptcy trustee has stated that ‘[d]ue to the age of the facilities, substantial maintenance expenditures have been, and likely will be, required on an ongoing basis. The census, or the number of residents, has been steadily declining.’ He further stated that ‘prospects to increase revenue are limited by excess capacity existing in the markets that the Debtors operate.’ Due to the reported financial instability at the facilities, the residents at these 13 facilities are at immediate risk of their health care demands not being met, which jeopardizes their required delivery of care. I conclude that this financial instability poses a significant risk to, and adversely impacts, resident care.

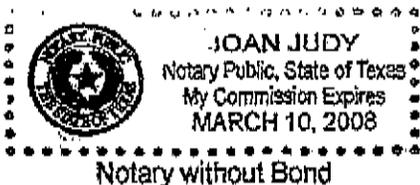
“ Based upon the facts reported by the bankruptcy trustee and field staff and based on the fact that the department has not received applications from new operators, it is my professional opinion as Director of Survey Operations, that emergency conditions exist that will create an immediate threat to the resident’s health and safety.”

*Chris Adams*

CHRIS ADAMS

SWORN TO, OR AFFIRMED, AND SUBSCRIBED TO before me on the 1<sup>st</sup> day of July, 2005.

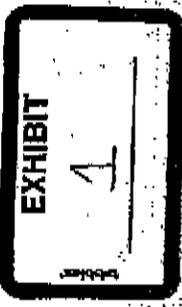
*Joan Judy*  
 NOTARY PUBLIC, STATE OF TEXAS



DADS Regulatory Services  
List of May/Eligible Facilities

Region	Facility ID	Lic Expires	Program Type	City	Beds	Census	License Holder	Landlord	Mgmt. Company
02	005033	2/16/2006	NURSING	ABILENE **	116	81	SPRING SEASON OF ABILENE INC	Hart Line Assoc. LP	
03	004488	9/1/2006	NURSING	SHERMAN **	197	93	SPRING SEASON OF SHERMAN INC		
03	004586	6/1/2006	NURSING	HURST **	112	78	HURST PLAZA NURSING & REHAB CENTER INC	Spring Season of DFW Inc & Bee Hurst Associates LP	Foremost Care Inc
03	004979	2/16/2006	NURSING	FORT WORTH **	120	100	SPRING SEASON OF RIVER OAKS INC	Fort Worth Cal Assoc. LP	Foremost Care Inc
04	005034	2/16/2006	NURSING	ELKHART **	102	79	SPRING SEASON OF ELKHART INC	Hart Line Assoc. LP	Foremost Care Inc
04	005169	6/1/2006	NURSING	WELLS **	90	55	HILLSIDE HEALTH & REHAB INC	East Texas III Assoc LLC	Foremost Care Inc
05	005100	2/16/2006	NURSING	VIDOR	144	69	SPRING SEASON OF VIDOR INC	Cherokee County Holdings Cuero Tex Assoc LP	Foremost Care Inc
05	005193	6/1/2006	NURSING	CORRIGAN **	86	49	CRESTVIEW VILLA INC	East Texas III Assoc LLC	
07	004349	6/1/2006	NURSING	SAN MARCOS	142	72	RIVERCREST NURSING & REHAB INC	Polk County Holdings Inc	Foremost Care Inc
07	004462	2/16/2006	NURSING	MART **	117	46	SPRING SEASON OF MART INC	Hart Line Assoc LP	Foremost Care Inc
07	004909	6/1/2006	NURSING	GROESBECK **	90	63	SUNBRANCH NURSING CENTER INC	East Texas III Assoc. LLC	Foremost Care Inc
08	004728	2/16/2006	NURSING	CUERO	76	52	SPRING SEASON OF CUERO INC	Limestone County Holdings Cuero Tex Assoc LP	Foremost Care Inc
11	4458	2/7/2006	NURSING	BEEVILLE	101	78	SPRING SEASON OF BEEVILLE INC	Bee Hurst Assoc. LP	Foremost Care Inc
TOTAL					1485	915			

\*Facilities identified by bankruptcy trustee as financially vulnerable  
 \*\*in discussion with Potential Operator



6/28/2005



NORTHERN DISTRICT OF TEXAS

**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the order of the Court.

Signed June 29, 2005

*Harlin DeWayne Hale*  
United States Bankruptcy Judge

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

IN RE:

POST OAK CARE AND  
REHABILITATION, INC., et al.

DEBTORS.

§  
§ (Jointly Administered under)  
§ Case No. 04-82300-HDH-11  
§  
§ CHAPTER 11  
§

ORDER GRANTING MOTION TO DISMISS OR TO AUTHORIZE THE  
TRUSTEE TO SEEK ASSISTANCE FROM THE TEXAS DEPARTMENT OF  
HUMAN SERVICES

On this day the Court considered the Trustee's Emergency Motion to Dismiss or to Authorize the Trustee to Seek Assistance from the Texas Department of Human Services (the "Emergency Motion") (Doc. No. 314). After review of the pleadings, arguments of counsel, and the record, the Court finds that the alternative relief sought in the Emergency Motion should be granted. It is therefore

ORDER GRANTING MOTION TO DISMISS OR TO AUTHORIZE THE TRUSTEE TO SEEK  
ASSISTANCE FROM THE TEXAS DEPARTMENT OF HUMAN SERVICES -- Page 1

DALDMS/538795.1



**ORDERED** that the Trustee is hereby authorized and directed to cooperate with the Texas Department of Aging and Disability Services to seek the appointment of a trustee under the TEX. HEALTH & SAFETY CODE § 242.094; and it is further

**ORDERED** that the Trustee is also authorized, but not directed, to make the payroll due at the end of June to the employees of the Debtors' facilities in Cuero, Wells, Vidor, and Mart, Texas.

### End of Order ###



# TEXAS

Department of Aging  
and Disability Services

COMMISSIONER  
James R. Hine

July 1, 2005

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

Attention: Edward Burbach

Re: Spring Season of Sherman d/b/a Post Oak Care and Rehabilitation, 1518 S. Sam Rayburn Fry,  
Sherman, Texas 75090-8798 Facility ID # 004488; Owner: Spring Season of Sherman, Inc.;

Spring Season of River Oaks, Inc., 2416 NW 18<sup>th</sup> Street, Fort Worth, Texas 76106, Facility ID # 004979,  
Owner: Spring Season of River Oaks, Inc.

Spring Season of Cuero, Inc., 1010 E. McArthur, Cuero, Texas, 77954, Facility ID # 004728;  
Owner: Spring Season of Cuero, Inc.

Spring Season of Elkhart, Inc., 214 Jones Rd., Elkhart, Texas 75839, Facility ID# 005034;  
Owner: Spring Season of Elkhart, Inc.;

Hillside Health and Rehab, Inc., Second and May Street, Wells, Texas 75976, Facility ID # 005169;  
Owner: Hillside Health & Rehab, Inc.;

Spring Season of Abilene, Inc., 725 Medical Drive, Abilene, Texas 79601, Facility ID # 005033;  
Owner: Spring Season of Abilene, Inc.

Spring Season of Beeville, Inc., 4901 N. St. Mary's, Beeville, Texas 78102, Facility ID # 004458;  
Owner: Spring Season of Beeville, Inc.

River Crest Nursing and Rehab, Inc., 120 Warden Ln., San Marcos, Texas 78666, Facility ID # 004349;  
Owner: River Crest Nursing & Rehab, Inc.;

Hurst Plaza Nursing and Rehabilitation Center, Inc., 215 E. Plaza Blvd., Hurst, Texas 76053, Facility ID  
# 004588;

Owner: Hurst Plaza Nursing & Rehab Center, Inc.;

Sunbranch Nursing Center, Inc., 607 Parkside Dr., Groesbeck, Texas 76642, Facility ID # 004909;  
Owner: Sunbranch Nursing Center, Inc.;

Spring Season of Vidor, Inc., 470 Moore St., Vidor, Texas 77662, Facility ID # 005100;  
Owner: Spring Season of Vidor, Inc.;

Crestview Villa, Inc., 300 Hyde St., Corrigan, Texas 75939, Facility ID # 005193;  
Owner: Crestview Villa, Inc.;

ENFORCEMENT UNIT

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Spring Season of Mart, Inc., 1201 McLennan Ave., Mart, Texas 76664, Facility ID # 004482;  
Owner: Spring Season of Mart, Inc.;

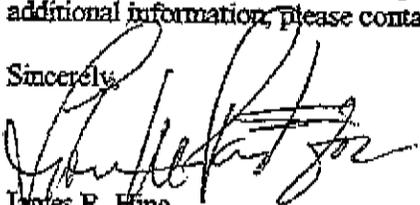
Foremost, Inc., Larry May, and Teri Ewing

The Texas Department of Aging and Disability Services has learned that the above referenced facilities are currently in bankruptcy and that a bankruptcy trustee was appointed on May 31, 2005 to operate the facilities. The bankruptcy trustee has requested that the state take over operation of the facilities and has identified conditions that support placement of a trustee under sections 242.094(a)(4) and/or 242.094(a)(5) of the Texas Health and Safety Code. I have attached a copy of the Bankruptcy Trustee's Report and Affidavit for your reference.

Please file suit for placement of three trustees, a temporary restraining order, injunctive relief, reimbursement of the nursing and convalescent home trust fund and any other relief, which may be appropriate.

Pertinent information for handling of this matter is enclosed. Should you have any questions or require additional information, please contact Debra Green, Enforcement Unit Attorney, at 438-3196.

Sincerely,



James R. Hine

Commissioner

Department of Aging and Disability Services

Attachments

JH:ac