

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

In re:

CREEKSIDE CANCER CARE, LLC,
EIN: 27-0468155,

Debtor.

Case No. 16-21943-MER

Chapter 11

**EXPEDITED MOTION OF DEBTOR FOR AUTHORITY
TO USE CASH COLLATERAL**

Creekside Cancer Care, LLC (the “**Debtor**”), the debtor and debtor in possession in the above-captioned case, hereby files this motion (the “**Motion**”) for the entry of an order pursuant to section 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 4001(b), 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) authorizing the Debtor’s use of cash collateral on an interim basis, setting a final hearing on the use of cash collateral, and providing adequate protection to properly perfected secured creditors. In support of this Motion, the Debtor relies upon and incorporates by reference the *Declaration of Matthew O’Rourke in Support of Motion Seeking Expedited Entry of Orders* (the “**O’Rourke Declaration**”), filed contemporaneously herewith. In further support of this Motion, the Debtor respectfully states as follows:

SUMMARY OF RELIEF REQUESTED

1. The Debtor respectfully requests that the Court enter an interim order, substantially in the form attached hereto, (i) authorizing the Debtor to use cash collateral in accordance with the Budget attached hereto as **Exhibit 1**;¹ (ii) granting replacement liens to the

¹ The Budget includes an estimated \$10,000 per month in professionals’ fees. For the avoidance of doubt, the Debtor does not intend to pay, and does not hereby seek authority to pay, any professionals’ fees on an interim basis. Professionals’ fees will be paid solely pursuant to separate order(s) of the Court, including any interim compensation order that may be entered.

Debtor's secured creditors in accordance with their relative priorities, as described in more detail below.

2. The Debtor further requests that the Court schedule a final hearing, as early as the Court's schedule will permit, to consider granting the relief requested herein on a final basis and entering a final order substantially in the form that will be filed with the Court in advance of the final hearing.

3. Pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-3(2), the Debtor provides the following summary of the relief requested herein:

Items Required by Bankruptcy Rule 4001(b)(1)(B)	
The name of each entity with an interest in the cash collateral.	<p>The following entities have security interests in the cash collateral (each as defined below): MidFirst; CLS; NorthEast Bank; LiftForward.</p> <p>The following entities may also assert an interest in the cash collateral (each as defined below): AccuRay and Byline.</p>
The purposes for the use of the cash collateral.	To fund the Debtor's ordinary course operations, including rent, payroll, and utilities, in accordance with the Budget.
The material terms, including duration, of the use of cash collateral.	The Debtor proposes to use the cash collateral in accordance with the Budget attached hereto.
Any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral.	The Debtor proposes to grant replacement liens to each entity with an interest in the cash collateral pursuant to Bankruptcy Code section 361(2). The replacement liens will attach to the Debtor's postpetition accounts and income in accordance with the secured creditors' relative prepetition priorities. All rights of the Debtor and the secured creditors are reserved with respect to relative priority.

Items Required by Local Rule 4001-3	
Whether the proposed form of order contains any provision of the type indicated in the appendix at L.B.R. 4001-3(a)App.	None.
Use of funds limitations.	Cash collateral shall be used in accordance with the Budget, subject to a 15% aggregate monthly variance.
Protections afforded under 11 U.S.C. §§ 363 and 364.	None.

JURISDICTION AND VENUE

4. The Court has jurisdiction over the Debtor, its estate, and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are section 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b), 6003, and 6004.

BACKGROUND

A. General Background.

5. On December 9, 2016 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. The Debtor is operating its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in this case.

7. The Debtor is engaged in business as a cancer care and treatment center. The Debtor provides a range of non-invasive radiation therapy treatment options to its patients. The Debtor is based in Lafayette, CO.

8. Additional factual background regarding the Debtor is set forth in the O'Rourke Declaration.

B. Creditors With a Claimed Interest in Cash Collateral.

9. The cash collateral is derived primarily from collection of the Debtor's accounts receivable. As of the Petition Date, the Debtor's accounts receivable total approximately \$600,000.

10. As set forth in the O'Rourke Declaration, several secured creditors claim an interest in the Debtor's cash collateral by virtue of their security agreements and UCC filings.

11. MidFirst Bank ("**MidFirst**") is a secured creditor with two secured claims against the Debtor. MidFirst holds a claim in the approximate amount of \$2,399,000, secured by substantially all assets of the Debtor pursuant to a Business Loan Agreement dated as of March 8, 2013 (as amended) by and between the Debtor and Steele Street Bank & Trust (as predecessor-in-interest to MidFirst) and perfected with a UCC Financing Statement filed on March 14, 2013. This loan was issued pursuant to the U.S. Small Business Administration's CDC/504 loan program. MidFirst also holds a claim in the approximate amount of \$199,000, secured by, *inter alia*, the Debtor's accounts and proceeds thereof pursuant to a Business Loan Agreement dated as of April 17, 2013 (as amended) by and between the Debtor and Steele Street Bank & Trust (as predecessor-in-interest to MidFirst) and perfected with a UCC Financing Statement filed on April 18, 2013.

12. Colorado Lending Source, Ltd. ("**CLS**"), is a secured creditor with a secured claim in the approximate amount of \$1,588,592. The claim of CLS is secured by substantially

all assets of the Debtor pursuant to that certain Security Agreement dated as of November 5, 2013 and perfected with a UCC Financing Statement filed on November 5, 2013. This loan is also part of the SBA's CDC/504 loan program.

13. LiftForward, Inc. is a secured creditor with a secured claim in the approximate amount of \$63,166.12. LiftForward's claim is secured by substantially all assets of the Debtor pursuant to that certain LiftForward Credit Agreement dated as of September 21, 2015 and perfected with a UCC Financing Statement filed on September 29, 2015.

14. Northeast Bank is a secured creditor with a secured claim in the approximate amount of \$1,750,000. Northeast Bank's claim is secured by substantially all assets of the Debtor pursuant to that certain Security Agreement—Commercial dated as of October 13, 2015 and perfected with a UCC Financing Statement filed on October 14, 2015.

15. In addition to the foregoing secured creditors, the following entities may claim a security interest in the Debtor's cash collateral:

- a) TomoTherapy Incorporated, a wholly owned subsidiary of Accuray Incorporated ("**Accuray**") pursuant to that certain Accuray TomoHD System Shared Ownership Agreement dated as of September 30, 2011 by and between the Debtor and Accuray. On January 11, 2012, Accuray filed a UCC Financing Statement covering certain equipment and "proceeds generated by [the Debtor] therefrom."
- b) Byline Financial Group, as successor-in-interest to Baytree National Bank & Trust Company ("**Baytree**") pursuant to that certain Lease Agreement dated as of June 6, 2013 by and between the Debtor and Baytree. Byline is owed approximately \$31,284 under the capital lease. On June 17, 2013, Baytree filed a UCC Financing Statement covering substantially all assets of the Debtor.

C. Use of Cash Collateral

16. The Debtor's revenues are derived from the provision of cancer and tumor treatment services. Revenues are received from customers directly and from insurers. All customer and insurer revenue is generally cash collateral. The Debtor is replacing its accounts and cash in the ordinary course of operations on a daily basis.

17. In order to maintain ongoing operations, the Debtor needs to pay for operating expenses such as employee wages, utilities, insurance, rent, equipment maintenance, and other expense items accompanying the budget attached hereto as **Exhibit 1** (the “**Budget**”). If the Debtor is not permitted to use cash collateral, the Debtor will not be able to pay its ordinary course expenses and its operations will cease.

RELIEF REQUESTED AND BASIS FOR RELIEF

18. The Debtor plans to continue operation of its business throughout this chapter 11 case and propose a plan of reorganization that provides for the continuation of the Debtor’s business. It is only through a plan and the continued operation of the business that unsecured creditors will receive a substantial recovery on account of their claims.

19. In order to pay necessary operating expenses, the Debtor must immediately use cash collateral in which one or more creditors may have an interest. The Debtor proposes to use cash collateral on an interim basis until such time as the Court schedules a final hearing on the use of cash collateral. At the final hearing, the Debtor will seek entry of a final cash collateral order permitting the Debtor to use cash collateral during the term of this chapter 11 case.

20. Without the use of cash collateral, the Debtor will have insufficient funding for business operations. The Debtor does not have material unencumbered cash. Therefore, the Debtor’s use of cash collateral during the interim period is necessary to avoid immediate and irreparable harm to the estate. Without the use of cash collateral, the Debtor will not be able to pay employees, rent, utilities, and other costs associated with treatment services provided.

21. The Debtor will be replacing its accounts, cash, and cash equivalents in the course of its daily operations and therefore the collateral base will remain stable and is expected to improve over time. The Debtor’s cash position is expected to be positive after meeting expenses during the term of this chapter 11 case.

22. In order to provide adequate protection for the Debtor's use of cash collateral to secured creditors, the Debtor has proposed adequate protection for secured creditors in the order of their relative priorities as set forth below. The proposal provides the following treatment on account of cash collateral:

- a) The Debtor will provide secured creditors with a postpetition lien on all postpetition accounts and income derived from the operation of the business and assets, to the extent that the use of the cash results in a decrease in the value of the secured creditors' interest in the collateral pursuant to 11 U.S.C. § 361(2);
- b) The Debtor will only use cash collateral in accordance with the Budget attached to this Motion as **Exhibit 1** subject to an aggregate monthly deviation not to exceed 15% without the prior agreement of MidFirst, CLS, and Northeast Bank or an order of the Court;
- c) The Debtor will keep all collateral fully insured;
- d) The Debtor will provide secured creditors with a complete accounting, on a monthly basis, of all revenue, expenditures, and collections through the filing of the Debtor's Monthly Operating Reports; and
- e) The Debtor will maintain in good repair all of the secured creditors' collateral.

23. Should the Debtor default in the provision of adequate protection, the Debtor's approved use of cash collateral will cease and the secured creditors will have the opportunity to obtain further relief from this Court.

24. The Debtor's request to use cash collateral is made with a complete reservation of rights of secured creditors to their various claims and lien positions in and to the Debtor's assets.

25. Approval of the Debtor's use of cash collateral in accordance with this Motion is, on an interim and final basis, in the best interest of the Debtor, its creditors, and the estate, as it will allow the Debtor to maintain its ongoing business operations, allow the Debtor to generate revenue, and provide the Debtor with an opportunity to propose a meaningful chapter 11 plan.

EMERGENCY INTERIM RELIEF IS NECESSARY AND APPROPRIATE

26. Bankruptcy Rule 4001(b)(2) provides that the Court may authorize interim use of cash collateral to the extent “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” The Debtor’s use of cash collateral in accordance with the Budget is necessary to fund the Debtor’s ongoing business operations. Accordingly, the requirements of Rule 4001(b)(2) are satisfied.

PROPOSED FINAL HEARING AND NOTICE PROCEDURES

27. The Debtor proposes that it serve a copy of the interim order within three business days of its entry, together with a notice (in conformity with Local Rule 9013-1) of the final hearing on the Motion, by overnight mail, facsimile, email, or hand delivery, on the Notice Parties (as defined below) and on any party that files a request for notice pursuant to Rule 2002 of the Bankruptcy Rules.

28. The Debtor requests that the Court set an objection deadline for objections to the final order, which deadline will be included in the notice referenced above.

NOTICE

29. In compliance with Local Rule 2081-1(b), notice of this Motion has been or will immediately be provided by the Debtor, whether by facsimile, email, overnight mail, or hand delivery, to: (i) the United States Trustee for the District of Colorado; (ii) the Debtor's twenty largest non-insider unsecured creditors; (iii) the IRS and the other government entities listed on the Certificate of Service filed concurrently herewith; (iv) all parties known to assert an interest or lien in any of the Debtor's assets, as listed on the Certificate of Service filed concurrently herewith; and (v) all parties requesting notices pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE, the Debtor respectfully requests this Court (i) enter an interim order, substantially in the form annexed hereto, authorizing the Debtor's use of cash collateral in accordance with the Budget; (ii) schedule a final hearing; (iii) following the final hearing, enter a final order authorizing the Debtor to use cash collateral for the pendency of this chapter 11 case; and (iv) grant such other and further relief as may be just and proper.

Dated December 16, 2016.

Respectfully submitted,

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