

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) NOTICE OF **PRELIMINARY**
) HEARING ON MOTION
) FOR USE OF CASH COLLATERAL
) TO OBTAIN CREDIT
Debtor(s)) (*Check One*)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, _____, filed a Motion For Use of Cash Collateral To Obtain Credit (*check one*). A copy of the motion is attached; and it includes (i) the statement required by [Local Form #541.5](#), and (ii) the following allegations:

a. The immediate and irreparable harm that will come to the estate pending a final hearing is _____.

b. The amount of cash collateral credit (*check one*) necessary to avoid the harm detailed above prior to the final hearing is _____.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: _____.

3. A **PRELIMINARY** HEARING on the motion WILL BE HELD ON _____ AT _____ IN _____.
Testimony will be received if offered and admissible.

4. If you wish to object to the motion, you must do one or both of the following: (1) attend the preliminary hearing; and/or (2) file with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), a written response, which states the facts upon which you will rely and, if the response is filed within three business days before the hearing, notify the judge's chambers by telephone immediately after filing the document, as required by LBR 9004-1(b).

5. On _____ copies of this notice and the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any creditors' committee chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any creditors' committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

Signature of Moving Party or Attorney

OSB #

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

541.1 (6/1/15)

LAW OFFICE OF STEPHEN T. BOYKE
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Portland, OR 97219
(503) 227-0417 • steve@boykelaw.com

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(503) 227-0417
Attorney for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. 16-33768-pcm11
)
Deer Meadows, LLC)
) Chapter 11
)
Debtor.) DEBTOR’S EMERGENCY MOTION
) FOR INTERIM ORDER (1)
) AUTHORIZING USE OF CASH
) COLLATERAL; AND (2) SETTING
) FINAL HEARING
)
) *EXPEDITED HEARING REQUESTED*

Debtor moves the Court pursuant to 11 U.S.C. § 363(c), Fed. R. Bankr. P. 4001(b)(d), L.R. 4001-1(D), and LBR 9013-1(E) for the entry of an order (1) authorizing, on an interim basis, the Debtor's use of cash collateral pursuant to a budget proposed by Debtor and submitted herewith as the attached Exhibit A; and (2) setting a final hearing. This motion does not request any of the provisions set forth in LBF 541.7.

Debtor respectfully represents:

1. On September 29, 2016 ("Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

1 2. Debtor has continued in possession of its property as debtor-in-possession
2 pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3 3. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and
4 1334. Venue is proper pursuant to 28 USC §§ 1408 and 1409. This is a core proceeding
5 pursuant to 28 USC § 157(b)(2). The statutory predicates for the relief requested herein are
6 sections 105, 361, 362, and 363 of the Bankruptcy Code and Rules 4001 and 9014 of the
7 Federal Rules of Bankruptcy Procedure.

8 4. Debtor’s primary asset is an assisted living facility located in Sheridan, Oregon
9 (“Property”). The Property has 47 tenants and is fully occupied.

10 5. DCR Mortgage and/or its affiliates has a lien covering the Property
11 (“Creditor”). It also has lien on tenant rents (“Cash Collateral”). No other creditor has a lien
12 on tenant rents.

13 6. In order to service the tenants and maintain the Property, Debtor must pay for
14 employee wages, utilities, taxes, insurance, maintenance, management fees and similar
15 expenses. Without the immediate use of Cash Collateral to pay these bills as they become
16 due, Debtor will breach the various tenant leases it intends to assume as part of its
17 reorganization and may harm the tenants themselves, all of whom requires various levels of
18 assisted care from Debtor’s medical staff. Without payment, certain services, utilities,
19 insurance and management, will be turned off or cancelled, resulting in additional damages
20 to the tenants and risk to the bankruptcy estate. Employees may quit. Debtor needs to use
21 the Cash Collateral to meet these obligations.

22 7. Attached hereto as Exhibit 1 is 120 day budget (“Cash Collateral Budget”).
23 Debtor seeks an interim order allowing it to use Cash Collateral in accordance with the Cash
24 Collateral Budget, with an allowance for up to a 10% (ten percent) variance in any expense
25 line item within the Cash Collateral Budget, on a cumulative basis.

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8. Debtor believes the Property is worth significantly more than the debt which secures it.

9. The Cash Collateral Budget projects a positive cash flow for the first 120 days of this case.

10. Debtor also asks the Court to set a final hearing on this motion.

11. A copy of the proposed order is attached as Exhibit 2.

Wherefore, Debtor prays for the relief requested above.

Dated: September 30, 2016

Law Office of Stephen T. Boyke

/s/ Stephen T. Boyke
Stephen T. Boyke, OSB # 881628
Attorney For Debtor

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Exhibit 1

Deer Meadows, LLC Cash Collateral Budget

				Oct 2016	Nov 2016	Dec 2016	Jan 2016
			Income	132,465	132,465	132,465	132,465
			Expense				
			Activity Supplies	59	59	59	59
			Auto Repair	70	70	70	70
			Bad Debts Write Off	1,789	1,789	1,789	1,789
			Bank Fees	123	123	123	123
			Computer and Internet	250	250	250	250
			Continuing Education	204	204	204	204
			Contract Labor	-	-	-	-
			Management Fee	7,400	7,400	7,400	7,400
			Bookkeeping	500	500	500	500
			Dietary Supplies	119	119	119	119
			Dining Services Equipment	19	19	19	19
			Dues & Subscriptions	100	100	100	100
			Employee Health Ins	3,274	3,274	3,274	3,274
			Employee Meals-100%	7	7	7	7
			Employee Recruiting	12	12	12	12
			Food Purchases	8,667	8,667	8,667	8,667
			Housekeeping Chemicals	118	118	118	118
			Housekeeping Supplies	83	83	83	83
			Insurance	7,608	7,608	7,608	7,608
			Janitorial	6	6	6	6
			Laundry Chemicals	11	11	11	11
			Marketing/ Advertising	33	33	33	33
			Meals and Entertainment	163	163	163	163
			Miscellaneous	1,500	1,500	1,500	1,500
			Mortgage	-	-	-	-
			Debt Service § 362(d)(3)	-	-	8,333	8,333
			Real Property Taxes	4,200	4,200	4,200	4,200
			Nursing Supplies	191	191	191	191
			Office Supplies	486	486	486	486

Deer Meadows, LLC Cash Collateral Budget

				Oct 2016	Nov 2016	Dec 2016	Jan 2016
			Payroll	60,966	60,966	60,966	60,966
			Payroll Fees	381	381	381	381
			Payroll Taxes	6,073	6,073	6,073	6,073
			Postage & Shipping	1,033	1,033	1,033	1,033
			Total Repair & Maintenance	1,789	1,789	1,789	1,789
			Small Equipment	33	33	33	33
			Special Events/Promotional	143	143	143	143
			Staff Recruitment	4	4	4	4
			Taxes & Licenses	17	17	17	17
			Travel	-	-	-	-
			Gasoline	164	164	164	164
			Mileage Reimbursement	500	500	500	500
			Utilities	10,176	10,176	10,176	10,176
			Utility Deposit	10,176	-	-	-
			Total Expense	128,449	118,273	126,606	126,606
			Projected Cash Flow				
			Net Income for Month	132,465	132,465	132,465	132,465
			Starting Cash	2,000	6,015	20,207	26,065
			Remaining Cash	6,015	20,207	26,065	31,923

Exhibit 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. 16-33768-pcm11
)
Deer Meadows, LLC)
)
Debtor.) Chapter 11
)
) **(PROPOSED)**
)
) FIRST INTERIM ORDER (1)
) AUTHORIZING USE OF CASH
) COLLATERAL; AND (2) SETTING
) FINAL HEARING

This matter came before the Court on hearing of DEBTOR’S EMERGENCY MOTION FOR INTERIM ORDER (1) AUTHORIZING USE OF CASH COLLATERAL; AND (2) SETTING FINAL HEARING [Dkt#___] on _____ (“Motion”). Based on the Motion, the statements and representations of counsel for Debtor and DCR Mortgage (“DCR Mortgage”) and the statements of the United States Trustee made at the hearing, and the court record herein, the Court finds as follows:

Exhibit 2 - Page 1 of 6 - FIRST INTERIM ORDER (1) AUTHORIZING USE OF CASH COLLATERAL; AND (2) SETTING FINAL HEARING

A. On September 29, 2016 (“Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Code”). The Debtor continues in possession of its property as debtor in-possession, in accordance with 11 USC §§ 1107 and 1108. No trustee, examiner or committee has been appointed.

B. The Court has jurisdiction over this case under 28 USC §§ 157 and 1334. Venue of this case is properly in this District under 28 USC §§ 1408 and 1409. This matter is a core proceeding under 28 USC §157(b), 11 USC §§ 105 (a) and 363 of the Code, FRBP 4001 and LBR 4001-1(c).

C. Other than DCR Mortgage, no parties hold an interest in or lien on the rents and other income of real property Debtor owns as the same existed on the Petition Date (“Cash Collateral”).

D. A need exists for the Debtor to use Cash Collateral to make payments required in connection with its ownership of real property (“Deer Meadows Facility”).

E. The Debtor has prepared a budget, a copy of which is attached as Exhibit 1 (the “Budget”). The Budget sets forth the Debtor’s projected use of the Cash Collateral for the period from October 1, 2016 through January 31, 2016 (the “Budget Period”).

F. Without the use of the Cash Collateral, the Debtor has insufficient funds to meet its expenses and other payments as set forth in the Budget.

G. This bankruptcy case is a single asset real estate case as defined in 11 USC §101(51B). The Debtor has agreed to and shall comply with the provisions of 11 USC § 362(d)(3).

H. Debtor’s business is a health care business as defined in 11 USC § 101(27A).

I. This Order does not contain any of the “disfavored provisions” listed in LBF #541.7.

Based on the foregoing, it is ORDERED as follows:

CASH COLLATERAL

1. The Debtor is authorized to use Cash Collateral not to exceed the amounts specified in the Budget for the purposes specified in the Budget.
2. The Debtor's authority to use Cash Collateral is limited to the amounts and uses of the Cash Collateral set forth in the Budget; provided however, that the Debtor may make expenditures in excess of the amounts specified in the Budget, subject to the limitation that the aggregate budget variance per line item shall not exceed ten percent (10%) of the total projected expenditures under the Budget for the Budget Period. The Debtor's authority to use the Cash Collateral may be extended beyond the amount in Paragraph 1 or the Budget Period by mutual agreement of the Debtor and DCR Mortgage. In the event of such agreement, the Debtor may submit a further order allowing the use of Cash Collateral without additional motion or hearing.
3. The Debtor's authority to use Cash Collateral hereunder shall terminate upon the occurrence of any of the following events (each a "Termination Event"), in each case, subject to DCR Mortgage's right to waive or modify the Termination Event:
 - (a) The expiration of the Budget Period;
 - (b) This Chapter 11 case is either dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;
 - (c) A trustee is appointed in this Chapter 11 case; or
 - (d) The Debtor defaults in any material respect in the performance of or compliance with any term or provision in this Order, and in each case such default is not remedied within 20 calendar days after DCR Mortgage gives the Debtor written notice of such default.

ADEQUATE PROTECTION

4. As adequate protection to DCR Mortgage for the Debtor's use of Cash Collateral, DCR Mortgage is granted the following:

(a) DCR Mortgage is granted a replacement lien on property of the Debtor of the same nature, kind and priority as secured Debtor's debt to DCR Mortgage on the Petition Date, specifically including all rents and income of the Deer Meadows Facility; provided, however, that such replacement lien shall not attach to avoidance or recovery actions of the Debtor's estate under Chapter 5 of the Code (the "Replacement Collateral").

(b) DCR Mortgage's lien in the Replacement Collateral shall have the same relative priority as the liens it held on the Petition Date.

(c) The Debtor shall timely perform and complete all actions necessary and appropriate to protect the Cash Collateral against diminution in value.

(d) The Debtor shall provide to DCR Mortgage, on or before the 21st day of each month (or, if such day falls on a day other than a business day then on the next business day), beginning on November 21, 2016, a Budget Reconciliation form, in form reasonably satisfactory to DCR Mortgage and certified by the Debtor's manager to be accurate to the best of her knowledge, information and belief, that compares the Debtor's actual cash receipts and disbursements to the Budget for the calendar month immediately preceding the month in which the report is due.

(e) The Debtor shall at all times cause to be maintained policies of insurance with respect to the Deer Meadows Facility as were in effect on the Petition Date and as required by the United States Trustee.

(f) The Debtor shall at all times reasonably manage and preserve the Deer Meadows Facility and Debtor's other assets.

5. Nothing in this Order shall be construed to (a) prejudice a right of any party in interest (including the Debtor) to contest the validity, priority or extent of the liens or security interests of any party in any collateral or in the proceeds thereof, as of, on, or after the Petition Date; (b) grant a security interest in the debtor-in-possession or trustee's avoidance powers; (c) convert any pre-petition obligations into post-petition obligations; (d) require payment of any obligations on confirmation of a plan of reorganization; (e) alter, improve, limit or impair the rights, if any, of parties claiming to have rights of reclamation against the Debtor, or its assets, or (f) enhance the secured position of any creditor as of the Petition Date.

7. Nothing contained in this Order shall constitute a determination as to the amount, validity or priority of any prepetition obligation, security interest or lien, and all rights of parties in interest to claim that any prepetition lien or security interest in the Debtor's property is unperfected, unenforceable, invalid or voidable, are reserved.

ADDITIONAL PROVISIONS

8. Concurrently with the filing of its financial reports under Bankruptcy Rule 2015, the Debtor shall provide a copy of such reports to DCR Mortgage's attorney of record.

9. The provisions hereof and the effect of any actions taken hereunder shall survive issuance and entry of any order (a) confirming any plan of reorganization (unless such confirmed plan of reorganization specifically affects the provisions and effects of this Order); (b) appointing a trustee or examiner for the Debtor; (c) converting this case to one under Chapter 7 of the Code; or (d) dismissing this bankruptcy case.

10. In the event any or all of the provisions of this Order are hereafter modified, amended or vacated by a subsequent order of this or any other court, no such modification, amendment or vacation shall affect the validity and enforceability of any lien or priority authorized or created hereby. Notwithstanding any such modification,

amendment or vacation, any claim granted hereunder arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provision of this Order.

FINAL HEARING

11. A final hearing on Debtor's motion to use cash collateral shall be held on _____ at _____ in Courtroom ____.

###

LBR 9021-1(a)(2)(A) CERTIFICATION

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

Presented by:

Law Office of Stephen T. Boyke

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cc: See attached list of Interested Parties

/Users/Steve/Documents/Law Office/Clients/Deer Meadows LLC/Bankruptcy Case/Main/Cash Coll/P First Interim Cash Collateral Order Final Draft for exhibit.pages