

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

<b>In re:</b>	)	
	)	
<b>RAIN TREE HEALTH CARE</b>	)	<b>Case No. 16-32071</b>
<b>OF WINSTON SALEM, LLC</b>	)	<b>Chapter 11</b>
	)	
<b>TAX ID # 6151</b>	)	
	)	
<b>Debtor</b>	)	

**DEBTOR'S EMERGENCY MOTION**  
**FOR AUTHORIZATION TO USE CASH COLLATERAL**  
**PURSUANT TO 11 U.S.C. § 363**

COMES NOW Rain Tree Health Care of Winston Salem, LLC (hereafter "Debtor"), by and through its undersigned counsel, and respectfully moves this Court for an Order authorizing the Debtor to use cash collateral pursuant to 11 U.S.C. § 363. Furthermore, the Debtor respectfully requests an emergency hearing before this Court, pursuant to Rule 4001(b)(2) of the Bankruptcy Rules, in order to avoid immediate and irreparable harm to the Estate. In support of this Motion the Debtor shows unto this Court the following:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)
2. The Debtor filed its petition pursuant to Chapter 11 of the United States Bankruptcy Code on December 30, 2016, and operates as a Debtor-in-Possession.
3. The Debtor is a limited liability corporation headquartered in Charlotte, North Carolina and is engaged in the management and operation of an adult care home for the mentally and physically disabled in Winston Salem, North Carolina.

4. Upon information and belief, on or about October 25, 2012, the Debtor executed a Loan Agreement in favor of Yellowstone in the principal amount of \$25,000.00. (hereinafter, "Yellowstone Note"). The Yellowstone Note is secured by a Security Agreement, taking a first lien in all assets now owned or hereafter acquired and wherever located. On October 25, 2012, Yellowstone filed a UCC-1 Financing Statement with the North Carolina Secretary of State (File #: 20120099809A) covering among other things in all assets now owned or hereafter acquired and wherever located, including but not limited to the following subcategories of assets: a. accounts, including but not limited to, Credit Card Receivables, b. Chattel Paper, c. Inventory, d. Equipment, e. Instruments, including but not limited to, Promissory Notes; f. Investment Property; g. Documents; h. deposit Accounts; i. Letter of Credits; Rights; j. General Intangibles; k. Supporting Obligations; and l. Proceeds and Products of the foregoing.

5. On Upon information and belief, on or about April 24, 2015, the Debtor executed a Security Agreement in favor of DCR Mortgage VI Sub II, LLC in the principal amount of \$150,000. (hereinafter, "DCR Note"). The DCR Note is secured by a Security Agreement, taking a second lien in all assets now owned or hereafter acquired and wherever located. On October 25, 2012, DCR Mortgage VI Sub II, LLC filed a UCC-1 Financing Statement with the North Carolina Secretary of State (File #: 20150038122F) covering in relevant part, among other things all of Debtor's right, title and interest in all of Debtor's personal property, including, without limitation, the following described property, where ever located or arising: (a) all accounts, instruments and tangible or electronic chattel paper and general intangibles including without limitation, or rights of the debtor to payment for goods sold or leased, or to be sold or to be leased, or for services rendered or to be rendered, howsoever evidenced or incurred, all license, fees, rents, contracts, contract rights, certificate of deposit, documents, drafts, acceptances and other forms of obligation

and receivables, whether or not earned by performance, all whether now owned or hereafter acquired or arising, ( “the Accounts Receivable Collateral”); (b) all inventory of the Debtor whether now owned or hereafter acquired, wherever located, specifically including without limitation, all goods held for display or demonstration, goods on lease or consignment, all raw materials,...(“the Inventory Collateral”) ; (c) all equipment and fixtures of the Debtor, whether now owned or hereafter, acquired, wherever located, including goods, manuals, books, records, data files, storage media furniture, apparatus, furnishings, fixtures machinery motors vehicles tools used or useful in the Debtor's business operations, appliances, computer hardware operating systems and equipment. (“the Equipment Collateral”); (d) all general intangibles of Debtor, whether now or existing wherever located , specifically including, without limitation, including without limitation all copyrights, royalties, tax refunds, right to tax refunds, trademarks, trade names, service marks, patent and proprietary rights, blue print, drawings, designs, trade secrets, plans, diagrams, schedules, and assembly and display materials related thereto, all customer list, all books and records, and all computer software and programs.. (“the Intangible Collateral”); (e) all products and/or proceeds of any and all of the foregoing, including, without limitation, insurance claims and proceeds.

6. The Debtor is currently anticipating a continuation of operations by way of this proposed reorganization. The Debtor believes that in order to maintain existing operations, and retain maximum value of its business, the Debtor will be required to incur certain operating expenses. A significant source of the Debtor’s income is derived from state and federal funding it receives from the government to provide services to adults residing in its adult care home for the mentally and physically disabled located in Winston Salem, NC 27612. The Debtor has no other readily available cash with which to operate its business. As a result, the Debtor respectfully requests a

preliminary hearing on this Motion in order to avoid a closing down of operations and immediate, irreparable harm to the Estate.

7. The Debtor will require necessary funds for operating its business and other expenses. These expenses include payroll, maintenance, insurance and other operating expenses, as well as applicable taxes.

8. The Debtor maintains one or more Debtor in Possession (D.I.P”) bank accounts, into which it will deposit all cash, checks and other cash items.

9. The Debtor represents that a reorganization and continuation of its operations will generate the greatest source of funds for creditors, including secured creditors. The Debtor will require access to the cash collateral generated by federal grant money and the operation of its business in order to allow it to continue operations.

10. Section 363(c)(2) of the Bankruptcy Code provides that the Debtor may not use cash collateral unless each entity that has an interest in the cash collateral consents, or the Court authorizes the Debtor to use the cash collateral.

11. Absent the consent of the secured creditor, courts will normally allow a debtor to use cash collateral only if the secured creditor’s interest in the collateral is adequately protected. In this case, Yellowstone and DCR Mortgage VI Sub II, LLC’s, interests in cash collateral is adequately protected because the Debtor will grant both Yellowstone and DCR Mortgage VI Sub II, LLC, replacement liens on the same assets that Yellowstone and DCR Mortgage VI Sub II, LLC’s, had pre-petition, to the same extent and with the same priority that such liens existed on the Petition Date.

12. Additionally, the Debtor asserts that the value of its personal property based upon a recent comparable valuations completed by the Debtor, is in excess of six hundred thousand dollars,

(\$600,000.00) therefore rendering Yellowstone and DCR Mortgage VI Sub II, LLC's, and Yellowstone and DCR Mortgage VI Sub II, LLC, as over secured creditors with an equity cushion.

13. Additionally, the Debtor asserts that all of its property, including property securing the Indebtedness, is fully insured.

14. Furthermore, if the use of cash collateral is not immediately approved, the Estate will suffer immediate and irreparable harm, in that it will not be able to pay its expenses from funds on hand from its federally funded grant money. If the Debtor is unable to maintain constant cash flow, it cannot possibly succeed in bankruptcy. Rule 4001 (b)(2) of the Bankruptcy Rules reads as follows:

(2) Hearing. The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14 day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Pursuant to Rule 4001, the Debtor respectfully requests a preliminary hearing authorizing it to use cash collateral as specified in this Motion.

15. In accordance with Rules 1007(d) and 4001(b) of the Bankruptcy Rules, any creditors' committee in this case, pursuant to § 1102 of the Code, will be chosen from the twenty largest unsecured creditors of the Debtor, all of whom are named in the list which accompanies this Motion.

WHEREFORE, the Debtor respectfully prays for the following relief:

1. For a preliminary hearing on this Motion in order that immediate harm to the Estate can be avoided;
2. For leave of the Court to pay necessary business operation expenses utilizing current

cash collateral on hand and generated by the above described operations;

3. For an Order authorizing the Debtor's use of cash collateral in accordance with 11 U.S.C. § 363; and

4. For such other and further relief that this Court deems just and appropriate.

DATED: February 6, 2017

s/Robert Lewis, Jr.  
ROBERT LEWIS, JR.  
GORDON & MELUN PLLC  
5400 Glenwood Ave, Suite 218  
Raleigh, North Carolina 27612  
(919) 533-5510  
(919) 578-8816 (Facsimile)  
N.C. State Bar #35806  
rlewis@gorlaw.com

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

<b>In re:</b>	)	
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<b>RAIN TREE HEALTH CARE</b>	)	<b>Case No. 16-32071</b>
<b>OF WINSTON SALEM, LLC</b>	)	<b>Chapter 11</b>
	)	
<b>TAX ID # 6151</b>	)	
	)	
<b>Debtor</b>	)	

**NOTICE OF MOTION**

NOTICE IS HEREBY GIVEN of the **DEBTOR'S EMERGENCY MOTION FOR AUTHORIZATION TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C. §363** ("Motion") filed simultaneously herewith in the above captioned case; and,

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for a hearing is made by a party in interest in writing to the Clerk of this Court on or before February 14, 2017; and

FURTHER NOTICE IS HEREBY GIVEN, that a hearing will be conducted on the Emergency Motion at the U.S. Court House 401 West Trade Street, 1<sup>st</sup> Floor on **February 15, 2017 at 9:30 a.m.**

DATED: February 6<sup>th</sup> 2017

Gordon & Melun, PLLC

/s/Robert Lewis, Jr.  
ROBERT LEWIS, JR.  
Attorney for Debtor  
NC Bar # 35806  
5400 Glenwood Ave, Suite 218  
Raleigh, NC 27612  
Telephone: 919-533-5510  
Facsimile: 919-578-8816  
rlewis@gorlaw.com

**CERTIFICATE OF SERVICE**

I, Robert Lewis, Jr., 5400 Glenwood Ave, Suite 218, North Carolina 27612 certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on this day, I have served copies of **DEBTOR'S EMERGENCY MOTION**, and **NOTICE OF MOTION to** the parties listed below, by depositing a copy of the same in the United States mail bearing sufficient postage or electronically as indicated.

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: February 6, 2017

cc: Bankruptcy Administrator (via CM/ECF)

Attn: Officer or Managing Agent  
DCR Mortgage VI Sub, LLC  
333 Third Ave North, Suite 400  
Saint Petersburg, FL 33701

Attn: Officer or Managing Agent  
Yellowstone Capital, LLC  
160 Pearl Street 5<sup>th</sup> Floor  
New York, NY 10005

Raintree Health Care of Winston Salem, LLC (U.S. Mail)  
P.O. Box 668611  
Charlotte, CN 28266

See Attached Mailing Matrix

This the 6<sup>th</sup> day of February, 2017.

Gordon & Melun, PLLC

/s/Robert Lewis, Jr.  
ROBERT LEWIS, JR.  
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