

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO**

In re:

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

Debtor.

Case No. 16-21943-MER

Chapter 11

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**ORDER CONFIRMING SECOND AMENDED CHAPTER 11 PLAN OF  
REORGANIZATION OF CREEKSIDE CANCER CARE, LLC**

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This matter came before the Court pursuant to the *Second Amended Chapter 11 Plan of Reorganization of Creekside Cancer Care, LLC* (Docket No. 248) (as modified by the *Minor Modification* and supplemented by the *Plan Supplement* (each as defined below), the “Plan”)<sup>1</sup>, filed by Creekside Cancer Care, LLC (the “Debtor”), the debtor and debtor-in-possession in the above-captioned chapter 11 case.

On September 15, 2017, the Debtor filed the *Debtor’s Ballot Report* (the “Ballot Report”), the *Minor Plan Modification Pursuant to Bankruptcy Rule 3019(a)* (the “Minor Modification”), and the *Amended Plan Supplement* (together with the initial *Plan Supplement* filed on August 30, 2017, the “Plan Supplement”).

All parties in interest received notice and an opportunity to be heard regarding confirmation of the Plan. Three limited objections to confirmation of the Plan were filed (Docket Nos. 291, 292 & 294) (collectively, the “Limited Objections”). As stated on the record at the confirmation hearing held on September 20, 2017 (the “Confirmation Hearing”) and reflected at Docket Nos. 305, 306, and 307, the Limited Objections have been withdrawn based on the Minor Modification and the amendments to the Plan Supplement.

Based upon the Plan, the Disclosure Statement, the evidence submitted to the Court, the offer of proof made at the Confirmation Hearing, the Ballot Report, the representations of the parties, and the record before the Court in this case,

**THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

A. The Court has jurisdiction and is empowered to enter a final and dispositive order pursuant to 28 U.S.C. §§ 157 (b)(2)(A), (I), (L), (N), and (O) and 1334.

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<sup>1</sup> Capitalized terms used but not otherwise defined in this Order shall have the meanings ascribed to them in the Plan.

B. The Plan provides for the reorganization of the Debtor's assets and property and for payments to be made to creditors by the Reorganized Debtor.

C. All parties in interest and known creditors of the Debtor have received notice and have had an opportunity to object to confirmation of the Plan and to appear and participate before the Court. Three Limited Objections were filed, all of which have been resolved, as set forth on the record at the Confirmation Hearing.

D. The Plan satisfies all requirements for confirmation of the Plan pursuant to 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code").

E. The Plan complies with the applicable provisions of the Bankruptcy Code and therefore meets the requirements of Bankruptcy Code § 1129(a)(1) for the following reasons:

i. The Plan satisfies Bankruptcy Code § 1122(a) as the classification scheme is reasonable and necessary to implement the Plan, and each of the claims or interests within each particular class is substantially similar to the other claims or interests in such class.

ii. The Plan satisfies Bankruptcy Code § 1123(a) as the Plan fully complies with each of the applicable requirements set forth therein.

iii. The Plan satisfies Bankruptcy Code § 1123(b) as all provisions of the Plan are consistent with the permissive provisions that may be incorporated into a plan under § 1123(b).

F. The Debtor, as proponent of the Plan, has complied with all applicable provisions of the Bankruptcy Code, including the requirements of Bankruptcy Code § 1125 in connection with disclosures and solicitation of acceptances of the Plan, and the Debtor, therefore, has satisfied the requirements of Bankruptcy Code § 1129(a)(2).

G. The Plan was proposed by the Debtor in good faith and not by any means forbidden by law because the Plan was proposed with a reasonable belief in the likelihood that the Plan would achieve its intended results, which are consistent with the purposes of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(3).

H. The Plan provides that all fees and expenses of professionals for services rendered prior to the Effective Date remain subject to final review for reasonableness under Bankruptcy Code § 330. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(4).

I. To the extent possible, the Plan discloses the identity and affiliations of any individual who, after confirmation, will serve as a director, officer, or voting trustee of the Debtor, any affiliate of the Debtor participating in a joint plan, or a successor to the Debtor. The service of such individuals is consistent with the interests of creditors and equity security holders

and with public policy. As of the Effective Date, the Chief Executive Officer of the Reorganized Debtor shall be Matthew O'Rourke. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(5)(A).

J. Bankruptcy Code § 1129(a)(6) is inapplicable to the Plan.

K. The Plan provides that: (i) it be accepted by each holder of a claim or interest within each class, or (ii) each non-accepting claimholder will receive at least as much under the Plan as it would receive in a Chapter 7 liquidation. Accordingly, the Plan satisfies the "best interests of creditors" test under Bankruptcy Code § 1129(a)(7).

L. Each Class has accepted the Plan, as shown in the Debtor's Ballot Report. Classes 3, 9, 11, 12, and 13 are unimpaired and thus deemed to accept the Plan. Classes 2, 4, 5, 7, 8C, 8D, 8E, 8J, 8K, 8L, and 10 affirmatively voted in favor of the Plan. Each of Classes 6, 8A, 8B, 8F, 8G, 8H, and 8I consists of a single secured creditor who received notice of the Plan and did not object to confirmation or submit a ballot rejecting the Plan; each such Class is thus deemed to have accepted the Plan for purposes of Bankruptcy Code § 1129(a)(8). *See In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988). There are no known creditors in Class 1, and no ballots were distributed to or received from any creditors in Class 1. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(8).

M. The Plan provides that all Allowed claims under Bankruptcy Code § 507(a)(2), other than the claims of professionals, are Allowed Administrative Expense Claims to be paid on the later of either (i) the Effective Date or as soon thereafter as is reasonably practicable, or (ii) the date that is 14 days after the Administrative Expense Claim is Allowed. There are no claims under Bankruptcy Code § 507(a)(3) in this voluntary case. The Plan further provides for payment of professional fees after approval of such professionals' fee applications. Accordingly, the Plan satisfies the confirmation requirements of Bankruptcy Code § 1129(a)(9)(A).

N. The Plan provides that any Allowed claims under Bankruptcy Code § 507(a)(1) and (4) through (7) are Allowed Priority Non-Tax Claims and will be paid in full under the Plan on the later of the Effective Date or the date such claim becomes an Allowed Claim, unless the Holder of such Claim agrees to a different date of payment. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(9)(B). There are no known Class 1 Priority Non-Tax Claims.

O. The Plan provides that any Allowed claims under Bankruptcy Code § 507(a)(8) (or which would otherwise meet the description of an unsecured claim of a governmental unit under § 507(a)(8) but for the secured status of such claim) are Allowed Priority Tax Claims and will be paid in full over a period of 60 months, at an interest rate of 6.0% per annum. Accordingly, the Plan satisfies the requirements of Bankruptcy Code §§ 1129(a)(9)(C) & (D).

P. As evidenced by the Ballot Report submitted by the Debtor, the Plan has been accepted by at least one impaired class, determined without including any acceptance of the Plan

by any insider. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(10).

Q. Based on the financial projections accompanying the Disclosure Statement and the offer of proof made at the Confirmation Hearing, the Court finds that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(11).

R. The Plan provides that the filing fees and the United States Trustee fees listed in 28 U.S.C. § 1930 will be paid in full on the Effective Date of the Plan. Accordingly, the Plan satisfies the requirements of Bankruptcy Code § 1129(a)(12).

S. Bankruptcy Code §§ 1129(a)(13)-(16) are inapplicable to the Plan.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Plan is confirmed. The terms of the Plan are incorporated by reference into this Order as if fully set forth herein.
2. The Debtor and the Reorganized Debtor are authorized to take or cause to be taken all actions necessary to implement and effectuate the provisions of the Plan.
3. Pursuant to the Plan, on the Effective Date, all property, assets, and rights of the Debtor shall vest in the Reorganized Debtor and shall be free and clear of all claims and interests of creditors and equity security holders, except as expressly provided in the Plan.
4. Pursuant to and subject to the terms of the Plan, on the Effective Date, all of the powers and duties of the Debtor shall vest in the Reorganized Debtor.
5. Pursuant to Bankruptcy Code § 1146, the issuance, transfer, or exchange of any security, or the making, delivery, filing, or recoding of any instrument of transfer under the Plan may not be taxed under any law imposing a stamp tax or similar tax.
6. Pursuant to §§ 365(a) and 1123(b)(2) of the Bankruptcy Code and Article VII of the Plan:
  - a. All executory contracts and unexpired leases that exist between the Debtor and any party that has not expired by its own terms on or prior to the Effective Date and that (i) the Debtor has not previously assumed and/or assigned and rejected with the approval of the Court, (ii) is not identified as an Assumed Contract in the Plan Supplement, and (iii) is not the subject of a motion to assume the same pending as of the Effective Date, shall be deemed rejected by the Debtor, and entry of this Order shall constitute approval of such rejection.

- b. With respect to Claims arising from the rejection of executory contracts or unexpired leases pursuant to Section 7.01 of the Plan, the bar date to file Proofs of Claim in this Case shall be reopened for a period of 28 days after the Effective Date, and all such Proofs of Claim must be filed with the Bankruptcy Court during that time. Any such Claim that is allowed by the Court shall be treated as a Class 10 General Unsecured Claim. Any Claim arising from the rejection of an executory contract or unexpired lease pursuant to Section 7.01 of the Plan for which a Proof of Claim is not timely filed within that time period shall be forever barred from assertion against the Estate, the Debtor, the Reorganized debtor, their successors and assigns, or their assets and properties, unless otherwise ordered by this Court or as otherwise provided herein.
- c. No objections to (a) the cure amounts set forth in the Plan Supplement with respect to the Assumed Contracts, (b) the ability of the Reorganized Debtor to provide adequate assurance of future performance, or (c) any other matter pertaining to assumption of the Assumed Contracts were filed. Accordingly, the Assumed Contracts shall be deemed assumed by the Debtor as of the Effective Date, and the Debtor shall pay the cure amounts set forth in the Plan Supplement to the counterparties to the Assumed Contracts in Cash on the Effective Date or on such other terms as the counterparties to the Assumed Contracts may agree.

7. The deadline for filing a motion seeking approval of an Administrative Expense Claim (other than a Claim for Professional Fees) shall be 28 days after the Effective Date, regardless of whether the claimant has previously asserted an Administrative Expense Claim in its proof of claim.

8. All Professionals seeking payment of professional fees or reimbursement of expenses incurred through and including the Effective Date under § 503(b)(2), (3), (4) or (5) of the Bankruptcy Code shall file their respective final applications on or before the date that is 45 days after the Effective Date. Except to the extent that the Holder of a Professional Fees Claim agrees to different treatment, the Allowed Professional Fees shall be paid in full in Cash by the Reorganized Debtor as soon as practicable after such Claim are Allowed by this Court.

9. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the classification, Distributions, releases and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, interests and controversies resolved pursuant to the Plan or relating to the contractual, legal and subordination rights that a Holder of a Claim or interest may have with respect to any Claim or interest, or any Distribution to be made on account of such Claim or interest, which compromise and settlement is hereby approved.


10. The failure to reference or discuss any particular provision of the Plan herein shall have no effect on the validity, binding effect, and enforceability of such provision, and such provision is incorporated herein and shall have the same validity, binding effect, and enforceability as every other provision of the Plan.

11. Notwithstanding the entry of this Order confirming the Plan, the Court shall retain jurisdiction of all matters arising out of and related to the Debtor's Chapter 11 case and the Plan, and as specifically set forth in Article X of the Plan, including, but not limited to, jurisdiction to determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan.

12. The 14-day stay of effectiveness set forth in Bankruptcy Rule 3020(e) is hereby shortened such that as of October 1, 2017 this Order will become effective and not subject to any stay.

Dated September 20, 2017.

BY THE COURT:



The Hon. Michael E. Romero  
United States Bankruptcy Court