

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

In re:

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

Debtor.

Case No. 16-21943-MER

Chapter 11

SECOND INTERIM ORDER GRANTING EXPEDITED MOTION OF DEBTOR FOR
AUTHORITY TO USE CASH COLLATERAL

THIS MATTER came before the Court on December 21, 2016 for an initial hearing and on January 11, 2017 for a second interim hearing to consider the motion (the “**Motion**”)¹ of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of an order authorizing the use of cash collateral (“**Cash Collateral**”) on an interim basis and setting a final hearing. Due and proper notice of the Motion having been given, and having considered the O’Rourke Declaration filed in support of the Motion, and any additional papers filed in opposition thereto and in further support thereof, the presentations of the Debtor and other parties in interest, it appears as follows:

A. On December 9, 2016 (the “**Petition Date**”), the Debtor filed the above-referenced petition for relief under chapter 11 of the United States Bankruptcy Code (“**Bankruptcy Code**”) (the “**Case**”). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor remains in possession of its assets and continues to operate its business as debtor in possession. This Court has jurisdiction over this matter.

B. Prior to the Petition Date, the Debtor entered into certain credit agreements (“**Prepetition Credit Agreements**”) with MidFirst Bank (“**MidFirst**”, formerly known as Steele Street Bank & Trust) and other lenders (together the “**Prepetition Lenders**”). Pursuant to

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

the Prepetition Credit Agreements, MidFirst claims a first priority lien on, and security interest in, most of the Debtor's assets, both tangible and intangible, real and personal, including, among other categories of collateral, the Debtor's cash, accounts, and the proceeds thereof (the "**MidFirst Collateral**"). As such, MidFirst claims a perfected first-priority security interest in the MidFirst Collateral, specifically including the Cash Collateral. The Debtor and MidFirst assert that the cash on hand as of the Petition Date and cash generated after the Petition Date constitutes "cash collateral" as such term is used in section 363 of the Bankruptcy Code.

C. On December 23, 2016, the Court entered its Interim Order Granting Expedited Motion of Debtor For Authority to Use Cash Collateral (the "First Interim Order") authorizing the Debtor to use cash collateral from the Petition Date to the hearing date scheduled for January 11, 2017 pursuant to the terms and budget attached the First Interim Order. Following the entry of the First Interim Order, the Debtor erroneously paid from Cash Collateral \$8,447.12 in rent expense that was not authorized by the First Interim Order (the "**Partial Rent Payment**"). The Debtor has represented that the Partial Rent Payment will be reimbursed to the Debtor's Debtor-in-Possession account at Guaranty Bank (the "**DIP Account**") no later than January 11, 2017.

D. An immediate need exists for the Debtor to use Cash Collateral to continue to operate strictly in compliance with the budget covering the period of January 11, 2017 through a final hearing attached hereto as Exhibit "A" (the "**Second Interim Budget**") and this Order to, *inter alia*, pay wages and other direct operating expenses, to maintain vendor and customer support and generally conduct its business affairs so as to avoid immediate and irreparable harm to its estate and the value of its assets.

E. MidFirst consents to the Debtor's continued interim use of Cash Collateral until a final hearing only on the express terms and conditions forth in this Order.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis and, subject to the reimbursement of the Partial Rent Payment by January 11, 2017, the Debtor may use Cash Collateral to pay its ordinary and necessary customary business expenses from January 11, 2017 through the date of a final hearing pursuant to and in conformity with this Order and the Second Interim Budget attached hereto as Exhibit A provided that such use shall not be in excess of cash on hand, or collections actually received in connection with accounts existing on the Petition Date and generated thereafter. In no event shall the Debtor use Cash Collateral to pay any items except as set forth in the Second Interim Budget or as may be consented to by MidFirst.

2. MidFirst is not required to advance to the Debtor any amounts that may be available for lending under the Prepetition Credit Agreements.

3. In addition to the existing rights and interests of the Prepetition Lenders in the Cash Collateral and for the purposes of providing adequate protection for the use of Cash Collateral on an interim basis, the Court approves the following:

- a) The Debtor hereby grants MidFirst and other secured creditors a valid, perfected and enforceable post-petition security interest and lien (“**Replacement Liens**”) in and upon all post-petition accounts and income that are derived from operation of the Debtor’s business and operation of the Debtor’s assets, to the extent that the use of cash results in a decrease in the value of secured creditor’s interest in the collateral pursuant to 11 U.S.C. § 361(2); *provided, however*, that the Replacement Liens shall not attach to any causes of action under chapter 5 of the Bankruptcy Code. All replacement liens will hold the same relative priority to assets as did the prepetition liens as of the Petition Date. The Replacement Liens

herein granted shall be in addition to all security interests, liens, and rights of setoff in favor of MidFirst and the other Prepetition Lenders, and shall be valid, perfected, enforceable and effective as of the date of the entry of this Second Interim Order without any further action by the Debtor or the Prepetition Lenders and without the necessity of the execution, filing or recordation or any financing statements, security agreements, or other perfection documents.

- b) The Debtor will only use cash collateral in accordance with the Second Interim Budget attached hereto as Exhibit A, subject to an aggregate deviation not to exceed 10% without the prior agreement of MidFirst, the SBA, and Northeast Bank or an order of the Court;
- c) The Debtor will maintain all insurance policies in effect as of the Petition Date and keep all collateral fully insured;
- d) The Debtor will provide MidFirst by every Friday, a report showing the following information for the preceding week:
 - a. Cash balance.
 - b. Expenditures (by providing a copy of the check/disbursement register).
 - c. Accounts receivable aging report;
- e) The Debtor will maintain in good repair all of the secured creditors' collateral; and
- f) The reimbursement in respect of the Partial Rent Payment as described herein, once deposited in the Debtor's DIP Account, shall be subject to the security interests of secured creditors in the same relative priority as prepetition security interests in the Debtor's accounts.

4. The Debtor's use of cash collateral pursuant to this Order is authorized with a complete reservation of rights of secured creditors to their various claims and lien positions in and to the Debtor's assets. The adequate protection approved and granted by this Order is not a determination as to the adequacy of adequate protection for use of Cash Collateral beyond the interim period and all parties rights are hereby expressly reserved as to the use of Cash Collateral after the interim period.

5. The Motion is set for a final hearing before this Court at **9:30 a.m.** on **February 10, 2017** (the "**Final Hearing**"), at which time any party in interest may present any timely filed objections to the entry of a final order approving the Motion. Within two business days of the date hereof, the Debtor shall serve a copy of this Second Interim Order by regular mail upon (i) all parties on whom the Motion was served, and (ii) all other creditors and parties in interest who have filed a notice of appearance. Objections to entry of the Final Order on the Motion shall be in writing and shall be filed with the United States Bankruptcy Clerk for the District of Colorado, no later than **February 3, 2017**, which objections shall be served so that the same are actually received on such date by counsel to the Debtor.

Dated: January 13, 2017


UNITED STATES BANKRUPTCY JUDGE