

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS

Eagle’s Nest Holistic Mental Health, Inc. )  
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 ) Case No. 17-20956  
 Debtor, )  
 ) Chapter 11  
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MOTION FOR AUTHORITY TO USE CASH COLLATERAL

COMES NOW, Debtor-in-Possession, Eagle’s Nest Holistic Mental Health Inc., (the “Debtor”), by and through Phillips & Thomas LLC, hereby files its Motion for Authority to Use Cash Collateral, pursuant to 11 U.S.C. § 363 and other applicable provisions, and in support thereof, respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicate for the relief requested in this Motion is 11 U.S.C. §§ 105 and 363 and Rule 4001(d)(1)(D) of the Federal Rules of Bankruptcy Procedure.

**BACKGROUND**

3. On May 24, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Petition Date”). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtor is operating a

business and managing its affairs as a debtor in possession. As of the date hereof, not trustee, examiner, or statutory committee has been appointed in this Chapter 11 case.

4. The Debtor holds and controls property listed on Schedule B of its bankruptcy schedules.
5. The Debtor has filed this case to restructure its debt and pursue a Chapter 11 reorganization plan by paying the liquidation value to its unsecured creditors and to service its debts to creditors over time through some plan of reorganization. Debtor is a provider of psychiatric and mental health services to patients and is owned by Dr. Lois Wilkins.

### **RELIEF REQUESTED**

6. By this Motion, the Debtor seeks the entry of an Order authorizing its use of cash collateral pursuant to 11 U.S.C. § 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4001-3; and granting such other and further relief as is just and proper.
7. The Debtor requires the use of cash collateral to fund all necessary operating expenses of the Debtor's business.
8. The Debtor will suffer immediate and irreparable harm if it is not authorized to use cash collateral to fund monthly expenses. Absent such authorization, the Debtor will not be able to continue with providing psychiatric services to its patients.
9. Debtor seeks the use of Cash Collateral in the ordinary course of business.

### **CASH COLLATERAL AND THE RELIEF SOUGHT BY THE DEBTOR**

10. The Debtor's use of property of the estate is governed by section 363 of the Bankruptcy Code, which provides that:

If the business of the debtor is authorized to be operated under section ... 1108 ... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, any may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1). A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the

right to use property of the estate in compliance with Section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

11. When a Chapter 11 debtor-in-possession is operating a business, it may use property of the estate in ordinary course of business.

12. “Cash collateral” is defined by the Bankruptcy Code as, “cash, negotiable instruments, documents of title securities, deposit accounts or other cash equivalents whenever acquired in the which the estate an entity other than the estate have an interest...” 11 U.S.C. § 363(a).

13. The Debtor proposes to use the Cash Collateral in order to meet normal and required operating expenses.

### **APPLICABLE AUTHORITY FOR RELIEF REQUESTED**

#### **A. The Use of Cash Collateral will Preserve the Debtor’s Going Concern Value Which will Inure to the Benefit of the Creditors**

14. The continued operation of the Debtor’s business will preserve its going concern value, enable the Debtor to capitalize on that value through a reorganization strategy, and ultimately facilitate the Debtor’s ability to confirm a Chapter 11 plan. If the Debtor is not allowed to use cash collateral, it will be unable to operate and potentially cause harm to business property.

15. The Debtor will use the cash collateral during the interim cash collateral period to pay utilities, employees, conduct repairs, and otherwise maintain and protect business assets and records.

16. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor has a going concern. A debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use cash collateral in its effort to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll, utilities etc., the congressional policy favoring rehabilitation over economic failure would be frustrated. *In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984).

17. Accordingly, courts authorize the use of cash collateral to enhance or preserve the debtor’s going concern value. For example, see *In re Constable Plaza Assoc.*, 125 B.R. 98, 105 (Bankr. S.D.N.Y.

1991) (debtor's reinvestment of rents to maintain and operate office building will serve to preserve or enhance the value of the building which, in turn, will protect the collateral covered by [the] mortgage); *In re Dynaco Corp.*, 162 B.R. 389, 395-396 (Bankr. D. N.H. 1983) (finding that the alternative to the debtor's use of cash collateral, termination of its business, would doom reorganization and any chance to maximize value for all creditors); *In re Karl A. Neise, Inc.*, 156 B.R. 600, 602 (Bankr. S.D. Fla. 1981) (marginally secured creditor adequately protected by lien on postpetition property acquired by debtor, debtors can use cash collateral in the normal operation of their business).

18. If the Debtor cannot use cash collateral, it will be forced to cease operations. By contrast, granting authority will allow the Debtor to maintain operations and preserve the going concern value of its business which will inure to the benefit of creditors.

19. The Debtor believes that use of Cash Collateral pursuant to the terms and conditions set forth above is fair and reasonable. For all of the reasons stated above, this Court's approval of the Debtor's use of cash collateral is proper herein.

20. The Debtor believes that the approval of this Motion is in the best interest of the Debtor, its creditors and its estate because it will enable the Debtor to (i) continue the orderly operation of its business and avoid an immediate total shutdown of operations; and (ii) meet its obligations for necessary ordinary course expenditures, and other operating expenses, thereby avoiding immediate and irreparable harm to the Debtor's estate.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (a) authorizing the Debtor's use of cash collateral as discussed herein; (b) granting such other and further relief that is just and proper.

Respectfully submitted,

Phillips & Thomas LLC

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