

Below is an Order of the Court.



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PETER C. MCKITTRICK  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re ) Case No. 16-33768-pcm11  
Deer Meadows, LLC )  
Debtor. ) Chapter 11  
)  
) FIFTH INTERIM ORDER  
) AUTHORIZING USE OF CASH  
) COLLATERAL

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Based on the the Declaration of Stephen T. Boyke [Dkt# 171] and the court record herein, the Court finds as follows:

A. On September 30, 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 and Fred and Ruth Harder (the “Harders”), 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 and operation of its assisted living facility (“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 June 1, 2017 through June 30, 2017 (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. Debtor’s business is a health care business as defined in 11 USC 101(27A).

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

I. Appropriate and sufficient notice of this matter was given.

Based on the foregoing, it is ORDERED as follows:

### **CASH COLLATERAL**

1. The Debtor is authorized on an interim basis to use Cash Collateral through June 30, 2017. During this interim period, the Debtor is authorized to use Cash Collateral for the purposes and in the amounts specified herein.

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 increased beyond the percentage stated in the preceding sentence or lengthened beyond the expiration of the Budget Period by agreement of the Debtor, DCR Mortgage, the Harders, the United States Trustee and any Creditors Committee that may be appointed in this case. 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 and the Harders' 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 5 business days after DCR Mortgage or the Harders gives the Debtor written notice of such default.

#### **ADEQUATE PROTECTION**

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

- (a) DCR Mortgage and the Harders are granted replacement liens on property of the Debtor of the same nature, kind and priority as secured Debtor's debt to DCR

Mortgage and the Harders on the Petition Date, specifically including all rents of the Deer Meadows Facility and all products, proceeds, issues, or profits that were either subject to DCR Mortgage's or the Harders' prepetition liens or acquired as a result of Debtor's use and/or expenditure of cash collateral (the "Replacement Collateral"); provided, however, that each such replacement lien shall not attach to avoidance or recovery actions of the Debtor's estate under Chapter 5 of the Code.

(b) DCR Mortgage's and the Harders' liens in the Replacement Collateral shall have the same relative priority as the liens they 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) DCR Mortgage's and the Harders' liens in the Replacement Collateral shall be in addition to all other security interests securing DCR Mortgage's or the Harders' respective allowed secured claims in existence on the Petition Date. In addition, nothing in this Order shall abridge or limit DCR Mortgage's or the Harders' security interests in proceeds, products, or profits to the extent provided under Section 552 of the Code.

(e) DCR Mortgage's and the Harders' liens in the Replacement Collateral shall be senior to the rights of Debtor and any successor trustee or estate representative in this case or any subsequent cases or proceedings under the Code except as otherwise provided by Court order.

(f) DCR Mortgage's and the Harders' liens in the Replacement Collateral shall be perfected and enforceable by operation of law upon entry of this Order without regard to whether such lien is perfected under applicable non-bankruptcy law.

(g) As additional adequate protection, Debtor shall continue to make adequate protection payments to DCR Mortgage in the amount of \$11,580.57 per month, with the next payment to be made on or before June 30, 2017.

(h) Debtor shall at all times keep DCR Mortgage's and the Harders' prepetition collateral and the Replacement Collateral free and clear of all other liens, encumbrances and security interests, other than those in existence on the Petition Date or granted by Court order.

(i) The Debtor shall continue to provide to DCR Mortgage and the Harders, 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), a Budget Reconciliation form, in form reasonably satisfactory to DCR Mortgage and the Harders 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.

(j) 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.

(k) 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.

6. 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**

7. DCR Mortgage may seek, but is not required to seek, relief from the automatic stay under Section 362 of the Code during the Budget Period.

8. During the Budget Period, Debtor and DCR Mortgage shall provide reasonable cooperation with each other to attempt to resolve and clear any disputed liens against the Deer Meadows Facility; provided that such reasonable cooperation shall be limited to the exchange of information reasonably available to either party regarding disputed liens and specifically shall not require Debtor or DCR Mortgage to disclose any confidential information or to pay any amounts to resolve or clear any disputed liens. The parties agree that the liens of DCR Mortgage are not disputed liens for purposes of this provision.

9. 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 and to the Harders.

10. 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.

11. 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.

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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

/s/ Stephen T. Boyke  
Stephen T. Boyke, OSB #881628  
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10211 SW Barbur Blvd., Suite 206A  
Portland, OR 97219  
(503) 227-0417  
Attorney for Debtor

cc: See attached list of Interested Parties

Deer Meadows, LLC Cash Collateral Budget

			June 2017
<b>Income</b>			
	Tenant Rents		141,000
	Other Income		-
<b>Total Income</b>			141,000
<b>Expense</b>			
	Activity Supplies		100
	Auto Repair		300
	Bad Debts Write Off		-
	Bank Fees		123
	Computer and Internet		55
	Continuing Education		204
	Contract Labor		
		Management Fee	7,400
		Bookkeeping	1,200
	Dietary Supplies		119
	Dining Services Equipment		75
	Dues & Subscriptions		100
	Employee Health Ins		3,274
	Employee Meals-100%		-
	Employee Recruiting		50
	Food Purchases		9,000
	Housekeeping Chemicals		-
	Housekeeping Supplies		180
	Insurance		7,608
	Janitorial		-
	Laundry Chemicals		11
	Marketing/ Advertising		100
	Meals and Entertainment		40
	Miscellaneous		1,180



Deer Meadows, LLC Cash Collateral Budget

				June 2017
		Mortgage		
		Debt Service		11,581
		Real Property Taxes		-
		Nursing Supplies		170
		Office Supplies		300
		Payroll		66,000
		Payroll Fees		381
		Payroll Taxes		6,750
		Postage & Shipping		250
		Total Repair & Maintenance		3,500
		Small Equipment		-
		Special Events/Promotional		143
		Staff Recruitment		4
		Taxes & Licenses		17
		Travel		-
		Gasoline		164
		Travel Reimbursement		750
		Utilities		7,600
		Utility Deposits		-
		UST Fees		-
		Ombudsman		9,000
		<b>Total Expense</b>		<b>137,728</b>
		<b>Projected Cash Flow</b>		
		Net Income for Month		3,272
		Starting Cash		6,528
		Remaining Cash		9,800

**LIST OF INTERESTED PARTIES**

**Debtor**

Deer Meadows, LLC 363 SW Bluff Dr., # 206 Bend, OR 97702	
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**Secured Creditors**

DCR Mortgage VI, Sub IV, LLC c/o DCR Loan Servicing, LLC 333 Third Avenue North, Suite 400 St. Petersburg, FL 33701	Fred and Ruth Harder PO Box 724 Canyonville, OR 97417
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**Twenty Largest Unsecured Creditors**

Abraham, Jennifer 777 SE Meadows Loop Sheridan, OR 97378	Advanced Mechanical Heat PO Box 1699 McMinnville, OR 97128
Deana Altman 17439 SW Sapphire Ln Beaverton, OR 97007	Baller, Srerl S 38505 Tindle Creek Rd SW Willamina, OR 97396
Christopher Kemper 1744 NW 32nd Ave Portland, OR 97210	City Of Sheridan 120 SW Mill St. Sheridan, OR 97378
Direct Supply PO Box 88201 Milwaukee, WI 53288-0201	EF Recovery 9014 Peacock Hill Ave #200 Gig Harbor, WA 98332
Ecolab Pest Elim Div 26252 Network Place Chicago, IL 60673	HD Supply Facilities Mnt PO Box 509058 San Diego, CA 92150
Vicki Holland Lefor, Rapp & Holland LLC 2735 12th St SE #200 Salem, OR 97302	Medline Industries Inc PO Box 121080 Dallas, TX 75312

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Leslie Pesterfield Ogden, Murphy Wallace 901 5th Ave Seattle, WA 98164	Oregon Employment Dept 875 Union St. NE Salem, OR 97311
PGE PO Box 4404 Portland, OR 97208-4404	Payless Drug LTC Pharmacy 601 SW 2nd Ave Portland, OR 97204
Swisher 14546 N Lombard St Portland, OR 97203	Sysco 26250 SW Parkway Center Drive Wilsonville, OR 97070
TJ's Superette 129 Main St Sheridan, OR 97378	Willamette Valley Med CT 2700 SE Stratus Ave McMinnville, OR 97128

and all ECF participants.