

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

January 10, 2018

Date of Report (Date of earliest event reported)

**Windtree Therapeutics, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation)

**000-26422**  
(Commission File Number)

**94-3171943**  
(IRS Employer Identification  
Number)

**2600 Kelly Road, Suite 100**  
**Warrington, Pennsylvania 18976**  
(Address of principal executive offices)

**(215) 488-9300**  
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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### **Item 1.01 Entry into a Material Definitive Agreement.**

On January 10, 2018 (the “**Effective Date**”), Windtree Therapeutics, Inc. (the “**Company**”) entered into a Loan Agreement (“**Loan Agreement**”) with LPH Investments Ltd., a Cayman Islands company organized and existing under the laws of Cayman Islands (“**LPH**”), and a wholly-owned subsidiary of Lee’s Pharmaceutical Holdings Limited. Under the Loan Agreement, LPH agreed to lend the Company \$1.5 million (the “**Loan**”) to support the Company’s AEROSURF<sup>®</sup> development activities and sustain its operations while the parties seek to identify and advance one or more potential strategic initiatives (“**Funding Event**,” as further defined in the Loan Agreement). The Loan, which was funded in a single installment by wire transfer on January 12, 2018, will accrue interest at a rate of 6% per annum and matures upon the earlier of the closing date of the Funding Event or December 31, 2018. The parties expect that, upon the closing of the Funding Event, the outstanding principal balance of the Loan will be applied in full satisfaction of a like amount of cash consideration payable by LPH for its participation in such Funding Event, and the Loan will be discharged in full thereby. At this time, the Company does not have an alternative source of funding available to repay the loan. Accordingly, if it is unable to complete the planned Funding Event for any reason, it likely will be forced to curtail some or all of its activities, including the AEROSURF development program and, ultimately, may be compelled to cease operations.

The foregoing description of the Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the agreement, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K. The Loan Agreement is being filed to provide investors and the Company’s stockholders with information regarding the terms thereof and in accordance with applicable rules and regulations of the Securities and Exchange Commission (“**Commission**”). Pursuant to the Loan Agreement, each of the parties thereto made customary representations, warranties and covenants, which were made by the parties to and solely for the benefit of each other and any expressly intended third party beneficiaries in the context of all of the terms and conditions of the agreements and in the context of the specific relationship between the parties. Accordingly, investors and stockholders should not rely on the representations, warranties and covenants. Furthermore, investors and stockholders should not rely on the representations, warranties and covenants as characterizations of the actual state of facts or continuing intentions of the parties, since they were only made as of the date of the Loan Agreement. Information concerning the subject matter of such representations, warranties and covenants may change, which subsequent information may or may not be fully reflected in the Company’s reports or other filings with the Commission.

### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information set forth in Item 1.01 above is incorporated into this Item 2.03 by reference.

### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

10.1 [Loan Agreement between the Company and LPH Investments Ltd.](#)

### **Cautionary Note Regarding Forward-looking Statements:**

To the extent that statements in this Current Report on Form 8-K are not strictly historical, including statements as to business strategy, outlook, objectives, future milestones, plans, intentions, goals, future financial conditions, future collaboration agreements, the success of the Company’s product development or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Current Report are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Such risks and others are further described in the Company’s filings with the Securities and Exchange Commission including the most recent reports on Forms 10-K, 10-Q and 8-K, and any amendments thereto.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**Windtree Therapeutics, Inc.**

By: /s/ Craig Fraser  
Craig Fraser  
President and Chief Executive Officer

Date: January 12, 2018

## Loan Agreement

This Loan Agreement (this "Loan Agreement"), dated as of January 10, 2018, is entered into between Windtree Therapeutics, Inc., a Delaware corporation with its principal offices at 2600 Kelly Rd., Suite 100, Warrington, PA 18976 ("Borrower"), and LPH Investments Ltd., a Cayman Islands company organized and existing under the laws of Cayman Islands with its principal offices at Unit 110-111, Bio-Informatics Centre, No. 2 Science Park West Avenue, Hong Kong Science Park, Shatin, Hong Kong ("Lender").

### RECITALS

WHEREAS, effective October 27<sup>th</sup>, 2017, LPH Investments Limited ("LPH"), a wholly-owned subsidiary of Lee's Pharmaceutical Holdings Limited ("Lee's"), invested \$10,000,000 (the "Investment") in Borrower and acquired 46,232,085 shares of Borrower's common stock (the "Shares"), at a price of \$0.2163 per share, following which purchase Lee's beneficially owned 73% of Borrower's issued and outstanding shares of common stock (the "Common Stock");

WHEREAS, Lender has agreed to provide Borrower financial support while the parties pursue potential strategic initiatives intended to provide Borrower sufficient capital to support its continuing operations, including with respect to the AEROSURF® clinical development program and that certain License Agreement dated as of June 12, 2017, by and between Borrower and Lender, pursuant to which Borrower, as Licensor thereunder, has licensed to Lender, as Licensee thereunder, certain rights with respect to Borrower's technology with the aim of advancing the Development, registration and Commercialization of the Surfaxin Product, Surfaxin LS®, Aerosurf®, and any other pharmaceutical composition containing synthetic KL4 Surfactant in the Licensed Territory (as such terms are defined in the License Agreement);

WHEREAS, to provide sufficient time for the parties to identify and advance the potential strategic initiatives, including one or more potential strategic transactions or equity offerings resulting in minimum proceeds to Borrower of at least \$15 Million Dollars in cash (after taking into account the funds advanced under this Agreement, the "Funding Event"), Lender has agreed to advance funds to Borrower on the terms provided in this Loan Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

"Loan" means the loan made by the Lender to the Borrower in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) which shall be payable in cash no later than January 5, 2018.

"Encumbrance" has the meaning set forth in Section 2.5.

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"Maturity Date" means the earlier of (i) unless otherwise agreed, the closing date (the "Closing Date") of the Funding Event, except that, to the extent that the Funding Event is completed through a series of transactions, then the Maturity Date shall be the last Closing Date to occur with respect to the Funding Event, and (ii) December 31, 2018.

## ARTICLE II

### TERM LOAN

2.1 Agreement to Make Loan. On the terms and subject to the conditions of this Loan Agreement, Lender agrees to fund the Loan to Borrower in cash no later than January 15, 2018. The proceeds of the Loan shall be paid by wire transfer to an account designated in writing by the Borrower.

2.2 Payment Terms. The entire unpaid principal balance of the Loan, together with accrued interest thereon, shall be due and payable on the Maturity Date. The parties intend that, under the terms of the Funding Event, the outstanding principal balance of the Loan shall be applied in full satisfaction of a like amount of cash consideration payable by Lender to Borrower at the closing of such Funding Event, and the Loan shall thereby be discharged in full.

2.3 Interest Rate. The Loan shall bear interest on the outstanding principal amount of the Loan at a rate per annum equal to six percent (6%) ("the Contracted Interest Rate"). If Borrower fails to repay the principal amount of the Loan on the due date, Lender shall charge Borrower interest at a rate equal to the lower of 30% above the Contracted Interest Rate (referred to as the "Defaulted Interest Rate") or the maximum interest rate permitted by law on overdue sums from and including the due date to the actual payment date. If Borrower fails to repay the accrued interest and default interest on the due date, the Default Interest Rate shall be calculated monthly on the interest payment date.

2.4 Prepayment. The Borrower may, at its option, prepay the Loan, in whole or in part, prior to the Maturity Date. Each prepayment shall include interest on the amount prepaid to the date of prepayment.

2.5 Negative Pledge. The Borrower shall not, without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed, create, suffer to exist, or permit to subsist, any mortgage, pledge, lien, charge, privilege, priority, encumbrance or other security interest of any kind or nature whatsoever and howsoever arising (referred to as the "Encumbrance") upon all or any part of its present or future undertakings, assets, or revenues, except for the following ("Permitted Encumbrances"):

(a) any such Encumbrance created in the ordinary course of the Borrower's development activities and business transactions, including without limitation,

(i) with respect to accounts maintained in the ordinary course and held at financial institutions to secure standard fees for services charged by such institutions, including liens of a collection bank arising in the ordinary course;

(ii) obligations in respect of purchase money financing, capital lease obligations and equipment financing facilities covering existing and newly-acquired equipment, including for the acquisition, installation, qualification and validation of such equipment;

(iii) liens in favor of landlords under real property leases granted by Borrower, and letter of credit deposits related thereto;

(iv) liens related to workers' compensation, unemployment insurance and other social security legislation;

(v) liens arising under leases, licenses or subleases granted to others not interfering in any material respect with the business of Borrower; and

(vi) and liens on advances in favor of a vendor providing goods or services;

(b) any Encumbrance in favor of Lender;

(c) statutory liens created by operation of law;

(d) liens for taxes, assessments or governmental charges or levies; and

(e) any Encumbrance in existence as of the date hereof and disclosed by the Borrower in writing prior to the date hereof, and any renewals or extensions thereof.

### ARTICLE III

#### DEFAULTS AND REMEDIES

3.1 Events of Default. Any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):

a) Borrower fails to make any required payment required on the Loan within five (5) days after Borrower's receipt of written notice of default from Lender;

b) if, pursuant to the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Borrower shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due; or

c) if a court enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's properties, or (iii) orders the liquidation of the Borrower.

3.2 Remedies. Upon the occurrence of an Event of Default, Lender, at its option, may take one or more of the following remedial steps:

a) Upon notice to Borrower, the entire principal amount of the Loan shall become immediately due and payable, without presentment, demand for payment, protest, notice of nonpayment or protest, notice of dishonor or any other notice or demand, all of which are hereby expressly waived; and

b) Take any action at law or in equity to collect from Borrower the payments then due and thereafter to become due under the Loan or to enforce performance and observance of any obligation or agreement of Borrower under the Loan.

3.3 No Remedy Exclusive. No remedy of Lender is intended to be exclusive of any other available remedy, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or by applicable law. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof.

#### ARTICLE IV

#### MISCELLANEOUS

4.1 Notice. Any notice to a party to this Agreement shall be in writing and sent to the respective addresses set forth in the introductory paragraph of this Agreement (or such other address as a party shall designate in writing) by certified mail, return receipt requested, or by nationally recognized overnight courier. All notices shall be effective upon the earlier of (a) three days after being sent or (b) receipt.

4.2 Successors and Assigns. This Loan Agreement contains the entire agreement of the parties with respect to its subject matter and may not be amended except by a written instrument signed by the party to be charged with such amendment. This Loan Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties, except that the Borrower shall not have the right to assign its rights or obligations hereunder.

4.3 Judicial Proceedings. This Loan Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflict of laws principles. All claims or actions arising from this Loan Agreement shall be litigated in the federal courts for the Southern District of New York or the state courts located in the county of New York. Borrower and Lender hereby irrevocably submit to the jurisdiction of such courts and waive any claim that any action brought in such a court has been brought in an inconvenient forum

4.4 Captions. The section headings of this Loan Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

4.5 Severability. If any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.

4.6 Waiver of Jury Trial. **BORROWER AND LENDER HEREBY WAIVE ALL RIGHTS TO DEMAND A JURY TRIAL FOR ANY ACTIONS ARISING FROM THIS LOAN AGREEMENT.**

4.7 Funding Event. The parties acknowledge and agree that, except as otherwise agreed, Lender shall be a party to the Funding Event and shall participate in negotiations with a goal of having the Closing Date on or before February 28, 2018. Lender's participation shall be in an amount that is at least equal to the outstanding principal balance of the Loan on the Closing Date, which balance shall be applied in full satisfaction of a like amount of the purchase price or other consideration payable by Lender in connection with its participation in the Funding Event. As a result of such participation, the Loan Agreement shall thereby be terminated and discharged in full.

**IN WITNESS WHEREOF**, the parties hereto have caused this Loan Agreement to be executed by their duly authorized officers as of the date first written above.

**WINDTREE THERAPEUTICS, INC.**

**LPH INVESTMENTS LTD.**

By: /s/ Craig Fraser  
Name: Craig Fraser  
Title: President and Chief Executive Officer

By: /s/ Benjamin Li, Ph.D.  
Name: Benjamin Li, Ph.D.  
Title: Chief Executive Officer