

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE:	)	
	)	Case No. 17-16064
Aspen Court, LLC, an Illinois limited liability Company,	)	Chapter 11
	)	Judge Timothy A. Barnes
	)	
Debtor/Debtor-in-Possession.	)	

**NOTICE OF MOTION**

TO: ATTACHED SERVICE LIST:

PLEASE TAKE NOTICE that on the 31<sup>st</sup> day of May, 2017 at 10:00 a.m. or as soon thereafter as counsel can be heard, I shall appear before the Honorable Timothy A. Barnes, Bankruptcy Judge, in the room usually occupied by him as courtroom 744 in the United States Bankruptcy Court in the Everett McKinley Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, or before any other Judge who may be sitting in his place and stead and shall present the **Motion for Authority to Use Cash Collateral and For Related Relief**, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith.

AT WHICH TIME and place you may appear if you so see fit.

/s/David K. Welch  
Crane, Heyman, Simon, Welch & Clar  
135 S. LaSalle St., Suite 3705  
Chicago, Illinois 60603  
(312) 641-6777

**CERTIFICATE OF SERVICE**

The undersigned, being first duly sworn on oath deposes and states that he caused a copy of the foregoing Notice and attached Motion for Authority to Use Cash Collateral and For Related Relief to be served on all the parties listed on the attached service list via Electronic Mail and/or Federal Express Overnight Delivery, properly addressed, on the 24<sup>th</sup> day of May, 2017.

/s/David K. Welch

**SERVICE LIST**

United States Trustee  
Dirksen Federal Building  
219 South Dearborn Street  
Suite 873  
Chicago, IL 60604  
**Via ECF**

Bryan J. Segal  
Barack Ferrazzano Kirschbaum  
& Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, IL 60606  
**Email:** [bryan.segal@bfkn.com](mailto:bryan.segal@bfkn.com)

Western Courier  
1 University Circle  
Macomb, IL 61455  
**Email:** [Micour@wiu.edu](mailto:Micour@wiu.edu)

Sears  
1820 E. Sky Harbor Circle South  
Phoenix, AZ 85034  
**Federal Express Delivery**

Maintenance USA  
PO Box 404295  
Atlanta, GA 30834  
**Email:** [customercare@e-musa.com](mailto:customercare@e-musa.com)

Waste Management  
PO Box 4648  
Carol Stream, IL 60197  
**Email:** [drockhol@wm.com](mailto:drockhol@wm.com)

Lambasio Plumbing  
401 E. Berrien Street  
Galesburg, IL 61401  
**Email:** [lambasioinc@grics.net](mailto:lambasioinc@grics.net)

Lucie, Scalf & Bougher  
315 E. Jackson St.  
Macomb, IL 61455  
**Email:** [lisa@lucielaw.com](mailto:lisa@lucielaw.com)

Ameren Illinois  
300 Liberty Street  
Peoria, IL 61602  
**Email:** [AmerenILCredit@ameren.com](mailto:AmerenILCredit@ameren.com)

Comcast  
3517 N. Dries Lane  
Peoria, IL 61604  
**Federal Express Delivery**

Munson's Water Conditioning Pool & Spa  
850 E. Main Street  
Galesburg, IL 61401  
**Email:** [info@munsonspoolandspa.com](mailto:info@munsonspoolandspa.com)

City Macomb Water Department  
PO Box 377  
Macomb, IL 61455  
**Email:** [waterclk@cityofmacomb.com](mailto:waterclk@cityofmacomb.com)

West Side Lumber  
1301 W. Jackson  
Macomb, IL 61455  
**Email:** [skipc@westsidelumber.com](mailto:skipc@westsidelumber.com)

McDonough County Voice  
26 West Side Square  
Macomb, IL 61455  
**Email:** [lisa@gatehousemedia.com](mailto:lisa@gatehousemedia.com)

Connor Co.  
433 North Campbell  
Macomb, IL 61455  
**Email:** [cheth@connorco.com](mailto:cheth@connorco.com)

Security Alarm  
PO Box 665  
1511 East Main  
Salem, IL 62881  
**Email:** [angel@securityalarm.com](mailto:angel@securityalarm.com)

Frontier  
63 Stone Street  
Second Floor  
Rochester, NY 14646  
**Federal Express Delivery**

Old Second National Bank  
333 W. Wacker Drive, #710  
Chicago, IL 60606  
Attn: Daniel C. Siadak  
**Email: [dsiadak@oldsecond.com](mailto:dsiadak@oldsecond.com)**

apartments.com  
2563 Collection Center Drive  
Chicago, IL 60693  
**Email: [billing@apartments.com](mailto:billing@apartments.com)**

Heartland Bank  
401 N. Hershey Rd.  
Bloomington, IL 601702-0067  
**Email: [lhervath@hbtbank.com](mailto:lhervath@hbtbank.com)**

Hub Printing  
101 Maple Ave.  
Rochelle, IL 61068  
**Email: [hubprint@hubprint.net](mailto:hubprint@hubprint.net)**

Commerce Bank  
Bloomington Banking Center  
120 N. Center  
Bloomington, IL 61704  
**Email: [Byron.blotcky@commercebank.com](mailto:Byron.blotcky@commercebank.com)**

Yellow Pages Unlimited  
Po Box 41140  
Melbourne, FL 32941  
**Email: [service@originalyello.com](mailto:service@originalyello.com)**

Reliable Pest  
PO Box 627  
Hannibal, MO 63401  
**Email: [karau@reliablepestsolutions.com](mailto:karau@reliablepestsolutions.com)**

Arnold Brothers Heating & Cooling  
1729 West Jackson Street  
Macomb, IL 61455  
**Email: [kayla@arnbros.com](mailto:kayla@arnbros.com)**

Angela G. Graves  
McDonough County Collector  
1# Courthouse Square  
Macomb, IL 61455-2200  
**Email: [Angela@treasurer.mcdonough.il.us](mailto:Angela@treasurer.mcdonough.il.us)**

Soy Capital Bank  
1501 E. Eldorado Street  
Decatur, IL 62521  
**Email: [RodWeigelmann@soybank.com](mailto:RodWeigelmann@soybank.com)**

IN THE UNITED STATES BANKRUPTCY COURT  
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EASTERN DIVISION

IN RE:	)	
	)	Case No. 17-16064
Aspen Court, LLC, an Illinois limited liability Company,	)	Chapter 11
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Debtor/Debtor-in-Possession.	)	

**MOTION FOR AUTHORITY TO USE  
CASH COLLATERAL AND FOR RELATED RELIEF**

Aspen Court, LLC, Debtor/Debtor-in-Possession herein, by and through its Attorneys, makes its Motion pursuant to Section 363 of the Bankruptcy Code, Rule 4001(b) of the Federal Rules of Bankruptcy Procedure and Rule 4001-2 of the Local Rules of this Court For Authority to Use Cash Collateral and For Related Relief; and in support thereof, states as follows:

**Introduction**

1. On May 17, 2017, the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code (“Petition Date”).
2. The Debtor is operating its business and managing its financial affairs as Debtor in Possession. No trustee, examiner or committee of unsecured creditors has been appointed to serve in this reorganization case.
3. By this Motion, the Debtor requests that this Court authorize it to use certain cash and cash equivalents that allegedly serve as collateral for claims asserted against the Debtor and its property by Soy Capital Bank, Old Second National Bank, Commerce Bank and Heartland Bank (collectively, the “Lenders”).
4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 157

and 1334.

5. This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. Section 157(b)(2)(A), (M) and (O).

6. The statutory predicates for the relief requested in this Motion are Section 363 of the Bankruptcy Code, Rule 4001(b) of the Federal Rules of Bankruptcy Procedure and Rule 4001-2 of the Local Rules of this Court.

### **Relevant Factual Background**

7. The Debtor is a limited liability company that was formed in October 2000 pursuant to, and is in good standing under, the laws of the State of Illinois. The Debtor’s principal place of business for purposes of establishing the proper venue for this Chapter 11 case is at 39W876 Old Burlington Road, Campton Hills, Kane County, Illinois 60175 (“Kane County Office”).<sup>1</sup>

8. The Debtor was formed for the purpose of acquiring land in Macomb, Illinois to develop and construct off-campus housing for students at Western Illinois University. The owners of the Debtor have been engaged in the development, construction, ownership, operation and management of off-campus student housing throughout the State of Illinois since 1971.

9. Specifically, in October 2000, the Debtor first acquired approximately four (4) acres of land adjacent to Western Illinois University on the corner of Elting and Albert Streets in Macomb. Over an eighteen (18) month period, the Debtor developed and constructed the first

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<sup>1</sup>Venue for this Chapter 11 case is proper in this Court since the Kane County Office is where the Debtor’s major management decisions are made. The Kane County Office is the location of the Debtor’s primary decision-maker and is the “nerve center” for all of the Debtor’s critical business decisions. *In Re Peachtree Lane Associates Ltd.*, 150 F.3d 788, 795 (7th Cir. 1998). *In Re Commonwealth Oil Ref. Co.*, 596 F.2d 1239, 1246 (5<sup>th</sup> Cir. 1979) cert. denied, 444 U.S.1045, 100 S.Ct. 732, 62 L.Ed 2d 731 (1980). See also, *In Re West Coast Interventional Pain Medicine, Inc. et al.*, 435 B.R. 569, 574 (Bankr.N.D. Ind. 2010).

project by completing 89 apartment units, an office and a maintenance garage. A five (5) bedroom rental house was also purchased that has development potential. Shortly thereafter, the Debtor acquired two (2) other smaller parcels of land on Wigwam Hollow Drive and on the 400 block of West Adams Street, both in Macomb and constructed an additional 35 units on these properties that are comprised of 24 apartments (on Wigwam Hollow Drive) and 11 townhomes (on West Adams Street). Finally, in 2003, the Debtor acquired an additional ten (10) acres of land on the 1500 block of West Jackson Street in Macomb and built an additional 193 apartment units, plus an office, maintenance garage, swimming pool and clubhouse on this last site.<sup>2</sup>

10. As of the Petition Date, the Debtor has 317 apartment units in four (4) separate locations surrounding the main campus of Western Illinois University. These apartment units are comprised of 63 single bedroom/single bathroom units, 170 two bedroom/two bathroom units, 50 three bedroom/three bathroom units, 33 four bedroom/two and half bathroom townhome units and a five bedroom/three bathroom house. Tenants also have the use of and access to a swimming pool, fitness room, outdoor recreation area and a computer lab. As of the Petition Date, the aggregate occupancy rate for all four (4) locations was approximately 54%.

11. The Debtor self-manages its Properties and conducts all leasing activity with its own personnel.

12. The Debtor has four (4) separate mortgage lenders that are asserting liens against specific Properties and the rents generated therefrom as follows:

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<sup>2</sup>These apartment units and related amenities are collectively referred to in this Motion as the "Properties."

<u>Lender</u>	<u>Aggregate Amount Due</u>
Soy Capital Bank	approx. \$9,800,000.00
Old Second National Bank	approx. \$5,200,000.00
Commerce Bank	approx. \$1,300,000.00
Heartland Bank	approx. \$41,000.00

13. The mortgage loans to Old Second National Bank (“Old Second”) have matured according to the terms thereof. For weeks, the Debtor has been attempting to negotiate an extension of the Old Second mortgage loans with Old Second without success.

14. On May 22, 2017, Old Second filed a Complaint and Confession of Judgment (“Confession Action”) in the Circuit Court of Kane County, Illinois (“Kane County Court”) pursuant to which Old Second was attempting to confess a judgment against the Debtor and others in an amount of approximately \$5,300,000.00 without notice. The filing of the Confession Action in the Kane County Court by Old Second and the inability to reach a resolution of the issues with Old Second were the primary triggering events for the commencement of this Chapter 11 case.

15. As a result, in order to protect certain of its Properties from foreclosure by Old Second and to protect the overall viability of its business and assets for the benefit of all creditors, the Debtor filed this Chapter 11 case.

16. The Debtor has several options for an exit strategy from this Chapter 11 case. Each of these options provides a mechanism for the payment of all creditors’ claims in the context of a confirmable Plan of Reorganization.

**Use of Cash Collateral**

17. The Lenders assert first position mortgage liens on the Properties and security

interests against the Debtor's personal property to secure their respective mortgage indebtedness. None of the Properties are subject to more than one mortgage lien of the Lenders. In other words, each Lender has a distinct mortgage lien on a particular Property and there is no overlap of liens on any of the Properties.

18. Based upon the underlying loan documents of the Lenders, the cash collateral issues in this Chapter 11 case relate to the rents generated at the Properties and the funds on deposit in accounts maintained by the Debtor.

19. In order for the Debtor to continue to operate its business and manage its financial affairs in the ordinary course and effectuate an effective reorganization, it is essential that the Debtor be authorized to use cash collateral for, among other things, the following purposes:

- A) Maintenance and Repairs to the Properties;
- B) Leasing;
- C) Insurance;
- D) Utilities;
- E) Payroll;
- F) Current real estate taxes; and
- G) Other miscellaneous items needed in the ordinary course of business.

Attached to this Motion as **Exhibit A** are the Debtor's monthly cash flow projections for the period May 2017, through August 2017, (the "Budget"). This Budget itemizes the Debtor's cash needs during the relevant period.

20. The Properties generate more than sufficient cash flow to cover all operating and related expenses at the Properties.



21. Use of cash collateral to pay the actual, necessary and ordinary expenses to maintain the Debtor's business, as set forth in the Budget, will preserve the value of the Debtor's assets and business and thereby insure that the interests of creditors that have or may assert an interest in both cash collateral and the Debtor's other assets are adequately protected within the meaning of Sections 361, 362 and 363 of the Bankruptcy Code.

22. The Debtor proposes, subject to the approval of this Court, to use cash collateral in which the Lenders assert an interest. The Debtor's proposal will permit the Debtor to sustain its business operations and reorganize its financial affairs through the implementation of a successful Plan of Reorganization. Furthermore, the Debtor's proposal will adequately protect the purported secured interests of the Lenders.

23. Unless the Debtor is authorized to use cash collateral in which the Lenders assert an interest, the Debtor will be unable to continue to operate its business and manage its property, thereby eliminating any reasonable prospect for a successful reorganization. The cessation of normal business operations by the Debtor will cause irreparable harm to the Debtor, its creditors and this estate.

24. The Debtor proposes to use cash collateral and provide adequate protection to the Lenders upon the following terms and conditions:<sup>3</sup>

- A. The Debtor will permit the Lenders to inspect, upon reasonable notice, within reasonable hours, the Debtor's books and records;
- B. The Debtor shall maintain and pay premiums for insurance to cover all of its assets from fire, theft and water damage;

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<sup>3</sup>Based upon the Debtor's proposal for the use of cash collateral, none of the disclosures required under Rule 4001-2 of the Local Rules of this Court is necessary.

- C. The Debtor shall, upon reasonable request, make available to the Lenders evidence of that which purportedly constitutes its collateral or proceeds, including the Properties;
- D. The Debtor will properly maintain the Properties in good repair and properly manage its business; and
- E. The Lenders shall be granted valid, perfected, enforceable security interests in and to Debtor's post-petition assets, including all proceeds and products which are now or hereafter become property of this estate to the extent and priority of their alleged pre-petition liens, if valid, but only to the extent of any diminution in the value of such assets during the period from the commencement of the Debtor's Chapter 11 case through the next hearing on the use of cash collateral.

25. Further cash flow budgets, if necessary, will be submitted to this Court pursuant to this Motion. The Debtor will make the expenditures set forth on Exhibit A to this Motion plus no more than 10% of the total proposed expense payments, unless otherwise agreed by the Lenders or upon further Order of this Court. Furthermore, any expenses that are budgeted for payment in one month but are not paid in such month shall be carried over for payment in subsequent months.

### **Conclusion**

26. The Debtor requests, pursuant to Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure, that this Court conduct a preliminary hearing to authorize the Debtor's interim use of cash collateral pending a final hearing on this Motion.

27. The Debtor believes that it is in the best interests of the Debtor, its creditors and this estate to authorize it to use that portion of its cash, all or a portion of which may constitute cash collateral, in that, without the limited use of such cash as herein requested, the Debtor will be unable to pay and satisfy its current operating expenses thereby resulting in immediate and irreparable harm and loss to the Debtor, creditors and this estate.

28. For the reasons set forth herein, this Court should grant the relief requested in this Motion.

WHEREFORE, Aspen Court, LLC, as Debtor/Debtor-in-Possession herein, requests the entry of an Order as follows:

- A. Authorizing the Debtor to use cash collateral in which the Lenders assert liens, upon the terms and conditions set forth in this Motion, until further Order of this Court;
- B. Preliminarily authorizing the Debtor to use cash collateral pending a final hearing on this Motion;
- C. Setting a final hearing on this Motion; and
- D. Granting such other relief as this Court deems just and appropriate.

Aspen Court, LLC,  
Debtor/Debtor-in-Possession

By: /s/David K. Welch

One of its Attorneys

**DEBTOR'S COUNSEL:**

David K. Welch, Esq. (Atty. No. 06183621)  
Arthur G. Simon, Esq. (Atty. No. 03124481)  
Jeffrey C. Dan, Esq. (Atty. No. 06242750)  
Brian P. Welch, Esq. (Atty. No. 6307292)  
Crane, Heyman, Simon, Welch & Clar  
135 South LaSalle Street, Suite 3705, Chicago, IL 60603  
TEL: (312) 641-6777 FAX: (312) 641-7114

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