

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

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

MOTION TO EXTEND EXCLUSIVE PERIODS

ASPEN COURT, LLC, Debtor/Debtor-in-Possession (“Debtor”) herein, by and through its Attorneys, makes its Motion pursuant to Section 1121(d) of the Bankruptcy Code to Extend Exclusive Periods (the “Motion”); and in support thereof, states as follows:

Introduction

1. On May 24, 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. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 157 and 1334.
4. This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. Section 157(b)(2)(A) and (O).
5. The statutory predicate for the relief requested in this Motion is Section 1121(d) of the Bankruptcy Code.

6. By this Motion, the Debtor seeks the entry of an Order extending the exclusive periods set forth in Sections 1121(b) and 1121(c)(3) of the Bankruptcy Code.

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").

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 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.¹

¹ These apartment units and related amenities are collectively referred to in this Motion as the "Properties."

10. As of the Petition Date, the Debtor has 318 apartment units in five (5) 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%. Notably, as of the filing of this Motion, this aggregate occupancy rate is now approximately 91.7%.

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:

Lender	Aggregate Amount Due
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 prior to the Petition Date, the Debtor had 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. On July 13, 2017, the Debtor filed a Complaint against Old Second for Declaratory and Injunctive Relief Under Section 105 of the Bankruptcy Code in this Court. Thereafter, the Debtor filed its Motion for Entry of Temporary Restraining Order and/or Preliminary Injunction (“Injunction Motion”) against Old Second.

17. In the Injunction Motion, the Debtor sought a preliminary injunction against Old Second from proceeding with the Confession Action in the Kane County Court against Paul S. Sauser, Jonathan P. Sauser, and Rolf A. Anderson (collectively the “Guarantors”). The evidentiary hearing on the Injunction Motion was scheduled to commence before this Court on August 30, 2017.

18. Immediately prior to the commencement of the hearing on the Injunction Motion, the Debtor and Old Second resolved the issues presented in the Injunction Motion and Old Second’s objections thereto. This resolution is embodied in an Agreed Order for Injunction (“Injunction”) to be entered by this Court that generally provides that Old Second is enjoined from proceeding with the Confession Action against the Guarantors through November 30, 2017, subject to the satisfaction of certain conditions by October 31, 2017. This resolution is further conditioned upon the Debtor making certain adequate protection payments to Old Second.

19. The Debtor has also entered into adequate protection agreements with Commerce Bank, Soy Capital Bank and Old Second which have been approved by this Court.

20. 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.

21. The Debtor continues to negotiate with third parties with respect to financing to support the funding of a Plan and the sale of the Properties.

Cause Exists For Extension of the Exclusive Periods

22. Pursuant to Section 1121(b) of the Bankruptcy Code, the Debtor holds the exclusive right to file a Plan through and including December 15, 2017 and, pursuant to Section 1121(c)(3) of the Bankruptcy Code, the Debtor holds the exclusive right to obtain acceptances of its Plan through and including March 31, 2018 (collectively, the "Exclusive Periods"). Pursuant to Section 1121(d) of the Bankruptcy Code, this Court may extend the Exclusive Periods. As set forth in this Motion, cause exists for this Court to extend the Exclusive Periods.

23. The Debtor has been diligently pursuing the administration of this Chapter 11 case with a view toward formulating a prompt exit strategy.

24. One prior extension of the Exclusive Periods in this Chapter 11 case has been requested by the Debtor and granted by this Court.

25. Importantly, pursuant to the Cash Collateral Orders, the secured interests of the various Lenders are adequately protected and will remain adequately protected throughout the duration of this Chapter 11 case.

26. The Debtor is aggressively pursuing refinancing possibilities from multiple sources that would provide funds to pay-off the Lenders' secured claims in whole or in part. As a secondary strategy, the Debtor is also exploring several opportunities for the sale of the Properties. Several

interested parties have signed confidentiality agreements and have undertaken significant due diligence relating to the possibilities of refinancing or sale. One potential new lender has even obtained an appraisal at its own cost in furtherance of its interest in making a loan to the Debtor. The Debtor has also entered into adequate protection agreements with Commerce Bank, Old Second and Soy Bank that provide the Debtor with a standstill from these mortgage lenders so as to enable the Debtor to continue with its efforts at formulating an exit strategy from this Chapter 11 case. Since the last extension of the Exclusive Periods, the Debtor has made substantial progress with potential lenders.

27. The above circumstances coupled with the Debtor's positive performance in this Chapter 11 case (which positive performance includes an increase of more than 37% in the overall occupancy rate at the Properties in less than 3 months) constitute "cause" for the extension of the Exclusive Periods.

Conclusion

28. By this Motion, the Debtor requests an extension of the Exclusive Periods to and including February 28, 2018, and April 30, 2018, respectively.

29. Extending the Exclusive Periods will facilitate the Debtor's efforts in completing its Chapter 11 case and formulating a Plan. Clearly, under these circumstances, cause exists for extending the Exclusive Periods.

30. The Debtor states that this request is not being made for the purpose of causing undue delay and believes that the requested extensions are in the best interests of its estate and its creditors.

31. No creditor will be prejudiced or harmed by extending the Exclusive Periods as requested in this Motion.

WHEREFORE, ASPEN COURT, LLC, Debtor and Debtor-in-Possession herein, requests the entry of an Order extending the Exclusive Periods set forth in Sections 1121(b) and 1121(c) of the Bankruptcy Code to and including February 28, 2018, and April 30, 2018, respectively; and granting such other relief as may be just and appropriate.

Respectfully submitted,

ASPEN COURT, LLC,
Debtor and Debtor in Possession

By: /s/ David K. Welch
One of Its Attorneys

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