UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	Chapter 11
	)	
PLATINUM PROPERTIES, LLC, et al.,[1]	)	Case No. 11-05140
	)	
Debtors.	)	JOINTLY ADMINISTERED

MOTION FOR ORDER AUTHORIZING DEBTOR TO OBTAIN POSTPETITION FINANCING FROM PALMER PROPERTIES, LLC

Platinum Properties, LLC, one of the debtors and debtors-in-possession (the "Debtor") in the above-captioned Chapter 11 case, files this motion (this "Financing Motion") for entry of an order authorizing the Debtor to obtain postpetition financing from Palmer Properties, LLC (the "Lender"). The proposed form of the order (the "Financing Order") is attached hereto as Exhibit A. In support of this Financing Motion, the Debtor states as follows:

SUMMARY OF RELIEF REQUESTED AND TERMS OF AND CONDITIONS TO THE CHAPTER 11 FINANCING (FRBP 4001(c) AND LOCAL BANKRUPTCY RULE B-4001-2)

1. By this Financing Motion, the Debtor seeks authority to secure postpetition financing to provide general working capital necessary for continued operations and to allow the Debtor to effect a successful reorganization. After arms-length negotiations, the Debtor has successfully negotiated an agreement for postpetition financing with the Lender. The Lender has agreed to provide a secured line of credit to the Debtor to allow the Debtor to pay its ordinary and necessary operating expenses. A copy of the Loan Agreement is attached hereto as Exhibit B (the "Loan Agreement"). The Senior Secured Promissory Note in the principal amount of $600,000 (the "Note") is attached hereto as Exhibit C. The Loan Agreement, the Note

[1] The Debtor entities are Platinum Properties, LLC and PPV, LLC.

and all documents executed in connection therewith shall be collectively referred to herein as the "Loan Documents".

2. The proposed postpetition financing (the "DIP Financing") grants the Lender a first priority mortgage lien on twelve (12) platted lots in the Bellewood subdivision located in Hamilton County, Indiana (the "DIP Collateral").

3. First Internet Bank of Indiana ("First Internet") has a first priority security interest in and lien on the DIP Collateral to secure the Debtor's obligation to First Internet of approximately $56,000.00. As part of the DIP Financing, First Internet will be fully repaid from the initial draw at closing under the approved DIP loan. First Internet will contemporaneously therewith release its lien on the DIP Collateral.

4. Pursuant to Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtor makes the following disclosures as to the terms and conditions of the proposed DIP Financing:

> (a) The DIP Financing will serve as a general operating line of credit. The Note provides that the Debtor may borrow, repay, reborrow and repay the principal amount of the Note. *Note* p. 1. However, the total principal outstanding under the Loan Documents (the "Loan") shall not exceed the lesser of (i) $600,000 or (ii) an amount equal to sixty percent of the aggregate Gross Sales Price (as defined in the Loan Agreement) of the DIP Collateral that is subject to the Lender's mortgage at any given time of reference. *Loan Agreement* §1.1; *Note* p. 1.
>
> (b) The Debtor's obligations to Lender under the Loan Documents will be secured by a valid first priority mortgage lien on the DIP Collateral. *Loan Agreement* § 4.6.
>
> (c) Advances made pursuant to the Loan Documents may be made not more frequently than monthly, and each advance request requires the following:
>
> i. An indication of the date and amount of the proposed advance;
> ii. A description of the use of the proceeds thereof; and
> iii. A title policy endorsement.

Loan Agreement §1.3(a).

(d) The Debtor may use the loan proceeds for general working capital purposes. *Loan Agreement* § 1.2.

(e) Upon a sale of any lot comprising the DIP Collateral, the Debtor will make a payment in the amount equal to the remainder of the Gross Sales Price of the purchased lot less the sum of the Builder Deposit Credit (as defined in ¶12 herein) and all closing costs to be paid by the Debtor in connection with each sale. *Note* p. 1-2.

(f) The Loan will be made at the rate of twelve percent (12%) per annum. Interest shall become due and payable with each payment and at maturity. *Note* p.1.

(g) The Note will mature on December 31, 2013. *Loan Agreement* § 1.1, *Note* p.2.

(h) "Events of Default" under the Loan Agreement include (1) the Debtor's failure to pay principal or interest when it becomes due, (2) the Debtor's failure to comply with the terms of any of the Loan Documents, or (3) any representation or warranty made by the Debtor proves to have been false or materially incorrect. *Loan Agreement* § 8.

(i) The Debtor is responsible for all costs and expenses, including reasonable attorneys' fees, incurred by the Lender in connection with the transactions contemplated in the Loan Documents and in connection with any amendments, waivers or consents under or in respect of the Loan Documents. *Loan Agreement* § 11.1.

(j) The Debtor agrees to indemnify and hold the Lender harmless against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Lender in any way relating to or arising out of the Loan Documents or the transactions contemplated thereby, except for loss resulting from the Lender's gross negligence or willful misconduct. *Loan Agreement* § 11.2.

(k) The Lender's agreement to provide the postpetition financing is conditioned on the Court's entry of an order approving the DIP Financing. *Loan Agreement* § 3.6.

(l) The proposed DIP Financing provides that the Lender is entitled to the protections of 11 U.S.C. § 364(e). *Financing Order* ¶ 9.

(m) The Lender is entitled to an expedited hearing seeking termination of the automatic stay as to the DIP Collateral upon an Event of Default (as defined in the Financing Order). *Financing Order* ¶ 3.

JURISDICTION AND VENUE

5. On April 25, 2011 (the "Petition Date"), the Debtor filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court"), its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the "Bankruptcy Code") commencing the Debtor's Chapter 11 case.

6. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

7. No trustee or examiner has been appointed in the above-captioned Chapter 11 case.

8. This Court has jurisdiction to consider this Financing Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

9. The statutory bases for the relief sought herein are Sections 105 and 364 of the Bankruptcy Code and Bankruptcy Rule 4001.

BACKGROUND

10. The Debtor is a residential real estate developer. It is in the business of manufacturing and selling residential real estate lots. It acquires land, designs the projects, obtains zoning and other approvals, and constructs roads, drainage, utilities, and other infrastructure of residential subdivisions. The sale of the finished, platted lots is the Debtor's primary source of revenue.

11. The Debtor, PPV, LLC ("PPV") and Pulte Homes of Indiana, LLC ("Pulte") are parties to a Lot Purchase Agreement dated April 24, 2008 (together with all amendments thereto, and as may be amended, modified and renewed from time to time

collectively, the "Lot Purchase Agreement"). The Lot Purchase Agreement provides, in part, for the sale by the Debtor to Pulte of certain lots in the Bellewood subdivision, including the DIP Collateral.

12. Pursuant to the Lot Purchase Agreement, the purchase price for each of the lots comprising the DIP Collateral is $100,000 (the "Gross Sales Price"). The Lot Purchase Agreement further provides that Pulte is to receive a $10,000 credit (the "Builder Deposit Credit") against each lot purchase of any lot comprising the DIP Collateral in order to recoup a builder's deposit.

13. On July 26, 2011, the Debtor and PPV filed a motion seeking authority to assume the Lot Purchase Agreement as modified by the Fourth Amendment to Lot Purchase Agreement dated June 23, 2011 [Docket No. 200]. The Court entered its order granting the requested relief on August 23, 2011 [Docket No. 215].

RELIEF REQUESTED

14. By this Financing Motion, the Debtor seeks (i) authorization under Sections 105 and 364 of the Bankruptcy Code to obtain postpetition financing from the Lender pursuant to the terms and conditions set forth herein, in the Financing Order, and in the Loan Documents and (ii) this Court's entry of the Financing Order, substantially in the form of attached Exhibit A, which has been negotiated with, and the Debtor believes is acceptable to, the Lender.

BASIS FOR RELIEF

15. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, then the Court, after notice and hearing, may authorize the debtor to obtain credit or incur debt:

(a) with priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code; or

(b) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(c) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

16. Rule 4001(c) of the Bankruptcy Rules governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part, "The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion." Accordingly, the Court is authorized to grant the relief requested herein after notice and a hearing.

17. Courts often apply a three-part test in reviewing requests for approval of postpetition financing under 11 U.S.C. §364(c). The Debtor must show that:

(1) [It is] unable to obtain unsecured credit per 11 U.S.C. § 364(b), i.e. by allowing a lender only an administrative claim per 11 U.S.C. § 503(b)(1)(A);

(2) The credit transaction is necessary to preserve the assets of the estate; and

(3) The terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Los Angeles Dodgers, LLC, 2011 WL 2937905, *2 (Bankr. D. Del. July 22, 2011); *accord In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

18. The Debtor has been unable to procure the requisite financing in the form of unsecured credit or unsecured debt with administrative priority. As credit has contracted even in the non-insolvency world, the number of lenders in the insolvency world has decreased and the terms of any such lending has become more demanding. Obtaining unsecured credit in the real estate industry is particularly difficult in this economic climate.

19. Having determined that financing was available only under section 364(c) of the Bankruptcy Code, the Debtor negotiated the DIP Financing pursuant to its business

judgment. Provided that this judgment does not run afoul of the provisions of and policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g.*, *In re YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) ("Courts have generally deferred to a debtor's business judgment in granting section 364 financing."); *Bray v. Shenandoah Fed. Sav.& Loan Ass'n*, 789 F.2d 1085, 1088 (4th Cir. 1986) (approving debtor-in-possession financing necessary to sustain seasonal business); *In re Ames Department Stores*, 115 B.R. 34, 40 (S.D.N.Y. 1990) ("Cases consistently reflect that the court's discretion under Section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or their purpose is not so much to benefit the estate as it is to benefit parties in interest.").

20. The Debtor has determined that the DIP Financing is necessary to preserve the assets of the Debtor's estate. The Debtor's primary source of revenue is the sale of lots. Since the Petition Date, the Debtor has entered into – and the court has approved—agreements with the Debtor's various project lenders pursuant to which a small percentage of the lot sale proceeds are designated as "Operating Proceeds" used to fund the Debtor's ordinary and necessary operating expenses. Lot sales are typically slower during the winter off-season, thereby diminishing the Debtor's funding of its necessary operating expenses. Further, lot sales can fluctuate significantly from month to month. Without operating capital, the Debtor's revenue through the winter season and in slower sales months will likely not be sufficient to fund payroll and other expenses for its continued operation of its business and the management and preservation of its assets and properties.

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21. The relief requested herein is necessary, essential and appropriate for the continued operation of the Debtor's business and the management of its assets and properties. The DIP Financing will provide a line of credit to provide for the Debtor's general operating expenses, which will permit the Debtor to continue to operate its business and will facilitate the Debtor's successful reorganization. Accordingly, the Debtor believes that the DIP Financing is in the best interests of the Debtor's estate and creditors and will allow the Debtor to maximize the value of its assets for all creditors.

22. The DIP Financing and the documents to be executed in connection therewith are the result of arm's length negotiations between the Debtor and the Lender. In addition, the terms and provisions of the DIP Financing are fair and reasonable. The Debtor has determined that the DIP Financing, under the terms and conditions set forth herein, is the most favorable financing available and best addresses the Debtor's postpetition financing needs.

NOTICE

23. The Debtor will provide notice of this Financing Motion and the hearing thereon upon: (i) the office of the United States Trustee for the Southern District of Indiana; (ii) the Internal Revenue Service; (iii) the Debtor's twenty (20) largest general unsecured creditors; (iv) any party who has filed an appearance and served same on the Debtor prior to service; and (v) any other party to whom the Court directs that notice shall be given.

WHEREFORE, the Debtor respectfully requests that the Court (i) authorize the Debtor to obtain postpetition financing from the Lender pursuant to the terms and conditions set forth herein, in the Financing Order, and in the Loan Documents, (ii) enter the Financing Order substantially in the form and substance of Exhibit A attached hereto, and (iii) grant such other relief as is just and proper.

Respectfully submitted,

BAKER & DANIELS LLP

By: /s/ Kayla D. Britton

Counsel for the Debtors and Debtors-in-Possession

Jay Jaffe (#5037-98)
Jennifer A. Pearcy (#27460-29)
600 E. 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: (317) 569-4687
Facsimile: (317) 569-4800
jay.jaffe@bakerd.com
jennifer.pearcy@bakerd.com

Kayla D. Britton (#29177-06)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
kayla.britton@bakerd.com

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2011, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Kayla D. Britton kayla.britton@bakerd.com	Brandt N. Hardy bhardy@plunkettcooney.com	Jay Jaffe jay.jaffe@bakerd.com
Alan K. Mills alan.mills@btlaw.com	Shiv Ghuman O'Neill shiv.oneill@bakerd.com	Mark R. Owens mowens@btlaw.com
Jennifer A. Pearcy jennifer.pearcy@bakerd.com	U.S. Trustee ustpregion10.in.ecf@usdoj.gov	Charles R. Wharton charles.r.wharton@usdoj.gov
Howard Russell Cohen hcohen@fbtlaw.com	Henry A. Efroymson henry.efroymson@icemiller.com	Kevin Alonzo Morrissey kmorrissey@lewis-kappes.com
John R. Humphrey jhumphrey@taftlaw.com	David J. Jurkiewicz DJurkiewicz@boselaw.com	Elliott D. Levin edl@rubin-levin.net
George W. Hopper ghopper@hopperblackwell.com	David M Bullington dbullington@hopperblackwell.com	Jeremy Daniel Schreiber jschreib@chapman.com
Mark Douglas Rasmussen rasmusse@chapman.com	Nick J Cirignano ncirignano@zsws.com	James S. Kowalik jsk@hostetler-kowalik.com
Thomas B. Allington tallington@rubin-levin.net	Roberto A Ramirez roberto.ramirez@icemiller.com	James M. Matthews jmatthews@fbtlaw.com

I further certify that on November 16, 2011, a copy of the foregoing pleading was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

Duke Construction Limited Partnership
600 E. 96th Street, Suite 100
Indianapolis, IN 46240

Star Financial Bank
3610 River Crossing Parkway
Indianapolis, IN 46240

Bond Safeguard Insurance Company
c/o HUB International Scheers
601 Oakmont Lane, Suite 400
Westmont, IL 60559

Pulte Homes of Indiana, LLC
11590 N. Meridian St., Ste 530
Carmel, IN 46032

First Merchants Bank, N.A.
10333 N. Meridian, Suite 350
Indianapolis, IN 46290

Northern Trust
50 South LaSalle Street
Chicago, IL 60675

Palmer Properties, LLC
2929 S. Holt Rd.
Indianapolis, IN 46241

KB Homes Indiana, Inc.
10990 Wilshire Blvd., Suite 700
Los Angeles, CA 90024

James J. Nelson and Jane A. Nelson
4861 Keswick Way
Naples, FL 34105

Hamilton County Treasurer
33 N. 9th Street, Suite 112
Noblesville, IN 46060

Hancock County Treasurer
111 American Legion Pl., Suite 205
Greenfield, IN 46140-2371

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

RH of Indiana, L.P.
9025 N. River Rd., Suite 100
Indianapolis, IN 46240

M/I Homes of Indiana, L.P.
8500 Keystone Crossing, Suite 190
Indianapolis, IN 46240

Long Ridge Estates Homeowners Association, Inc.
9757 Westpoint Dr., Suite 600
Indianapolis, IN 46256

Heather Knoll Homeowners Association, Inc.
9757 Westpoint Dr., Suite 600
Indianapolis, IN 46256

City of Carmel
One Civic Center
Carmel, IN 46032

Alan J. Dansker
Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204

Kristin E. Richner
Squire, Sanders & Dempsey (US) LLP
41 South High Street, Suite 2000
Columbus, OH 43215

/s/ Kayla D. Britton