

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	Chapter 11
	§	
1776 AMERICAN PROPERTIES IV LLC, et. al.¹	§	CASE NO. 17-30422-H5
	§	
	§	Joint Administered
	§	

**MOTION FOR AUTHORITY TO INCUR POST PETITION
INDEBTEDNESS UNDER 11 U.S.C. §364(B), §503(b) AND §105
AND (III) REQUEST FOR FINAL HEARING**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 14 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

THE COURT WILL CONDUCT A FINAL HEARING ON THIS MATTER ON JUNE 26, 2017, AT 10:30 A.M., COURTROOM 403, 515 RUSK, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

¹ The debtors in these cases (the “Debtors”), along with the last four digits of their respective taxpayer ID numbers, are 1776 American Properties IV LLC (3677), 1776 American Properties V LLC (4327), 1776 American Properties VI LLC (8392), 1776 American Properties VII LLC (9340), 1776 American Properties VIII LLC (8277), APRF SP1-1 LLC (3543), Arica Lane LLC (2643), Austin Road Partners LLC (2582), Hazelwood Brownstone LLC (0949), Hazelwood Management Services LLC (1694) Independence Construction and Finance Inc. (8618), Reims Holdings LLC (8989) and Staunton Street Partners LLC (2406).

1776 American Properties V LLC, (“1776 V” or “Debtor”), hereby files this Motion to Incur Unsecured Post-Petition Debt under 364(b)(1), allowable under section 503(b) as an Administrative Expense (the "Motion") and in support thereof, respectfully states as follows:

I. SUMMARY OF REQUESTED RELIEF

1. 1776 V requests authority to incur unsecured indebtedness in an amount up to \$375,000.00, for purposes of paying off Noble Capital first lien on lots 6-11, Block 2, Edison Park Subdivision, Harris County, Texas, in order protect the Debtor’s interest in the six lots (6) tracts of land. Pursuant to the Court’s local procedures, 1776 V is self-calendaring this matter for a final hearing on June 26, 2017 at 10:30 a.m.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. §157(b)(2)(A) and (D). The relief requested herein is authorized under Sections 364(b) and 105 of the Bankruptcy Code, and Bankruptcy Rule 4001(v). Venue of the Debtors’ Chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1408(1) and (2) and 11 U.S.C. § 101(2)(A).

III. PROCEDURAL BACKGROUND

3. These Chapter 11 cases were filed on January 27, 2017 (“Petition Date”).

4. The Debtors continue to operate their business and manage their assets as Debtors-in-Possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No Trustee or examiner has been appointed in the Debtors’ chapter 11 cases, nor has any creditors’ or other official committee been appointed herein pursuant to the section 1102 of the Bankruptcy Code.

5. Prior to the Petition Date, the debtors each retained Erich Munding to serve as Vice President and Chief Restructuring Officer.

IV. FACTUAL BACKGROUND

A. Operations.

6. Historically, the debtors were managed by Jeff Fisher. Jeff Fisher was raised in the Houston area and in 1994, Mr. Fisher moved to Asia as part of his United States Military service. In 1997 Mr. Fisher relocated to Hong Kong and has lived in Hong Kong with his wife and family since that time. In 2008, Mr. Fisher began investing in real estate in the Houston area. Mr. Fisher worked with family and friends in Asia who decided to invest in special purpose entities organized in the Cayman Islands. The offshore companies would then loan money to Delaware based limited liability companies, who in turn invested in real estate in the United States. By 2012, the US based LLC's had acquired over 70 properties worth over \$10 million.

7. The Debtors' businesses generally fit within one of two business models:

Category 1 -- Buy and Hold Rental Properties. Each of these particular Debtors purchase rental properties based upon certain risk and return evaluations. Most of the rental properties are financed through mortgages from the Cayman Islands based lender. The underlying notes require interest only payments with balloon payment upon maturity. The offshore lenders are largely funded through Asian based investors. Two of the Debtors have traditional bank financing arrangements that are secured by deeds of trusts and security agreements.

Category II – New Home Construction. The Debtors obtained loans from a Cayman Islands based lender and then use the funds to purchase vacant lots in residential subdivisions. The lots are then marketed to homebuilders as part

of a financing package allowing the value of the lots to be used as an equity down payment on a construction loan. The lots are deeded to the builder by the debtor and the debtor takes a subordinated loan position behind the construction loan. The debtors and the homebuilders also enter into an agreement to split the profits on the ultimate sale of the home. When the homes are sold, the proceeds are paid first to the construction lender, then to the respective debtor for the subordinated debt, and then a profit split between the homebuilder and debtor. In some circumstances, the applicable debtor would contract directly with the homebuilder to construct the home on the lot.

8. Collectively, as of the Petition Date, the Debtors owned one hundred sixteen (116) rental single family homes / apartment units, four (4) single family homes, and seventy five (75) vacant lots. In addition, Debtors 1776 IV, 1776 V, 1776 VII and 1776 VIII hold promissory notes and profit sharing arrangements with various builders on approximately fifty eight (58) lots.²

V. DIP FINANCING AND LEGAL STANDARD

9. In 2015, as part of a townhome development in Bellaire, Texas, Debtor 1776 American Properties V LLC purchased lots 6-11 for \$140,000.00, each. The Debtor then deeded the six lots identified herein to Pinnacle Construction Services (PCS), and accepted a subordinated lien position to a construction loan obtained by PCS. PCS never began construction on the on single family homes but encumbered the six lots with a first lien construction loan with Noble Capital. The Debtor has second liens and profit sharing agreements on lots 6-11. Collectively, lots 6-11 are referred to herein as the “Noble Collateral.” PCS apparently drew down on the construction loans in the approximate

² On February 14, 2017, the single family residence located at 5633 Mina Way, Houston, Texas was sold to an unrelated third party and the Debtor 1776 V was paid in full on its second lien claim.

collective amount of \$52,500. PCS has not made the monthly note payments to Noble Capital.

10. On March 27, 2017, Noble Capital filed a Motion for Relief from the Automatic Stay to pursue foreclosure on lots 6-11, among other properties. Debtor and Noble reached the terms of an agreed order that provides, among other things, the automatic stay remains in place on the Noble Collateral through August 10, 2017, and that through that date, Noble will release said collateral upon payment to Noble of an amount equal to the indebtedness on the underlying note. *See* Doc. #153, page 4. The collective payoff of the Noble Capital indebtedness related to the Noble Collateral is 347,548.37, through July 15, 2017. A breakdown of the payoff amounts are as follows:³

Address	Payoff
5605 Mina Way	\$ 58,000.39
5609 Mina Way	\$ 57,749.79
5613 Mina Way	\$ 57,050.29
5606 Woodbrook Way	\$ 60,647.32
5610 Woodbrook Way	\$ 57,050.29
5614 Woodbrook Way	\$ 57,050.29
Total	\$ 347,548.37

11. American Property Recovery Fund SPC – Property Loan Development Fund SP2 (“SP2”), the largest unsecured creditor to 1776 V, is willing to provide DIP financing to the 1776 V (“DIP Financing Agreement”) during the pendency of this case. The funds are required to payoff the Noble Capital first lien deeds of trust on lots 6-11.

12. Pursuant to 11 U.S.C. § 364(b), the DIP Financing Agreement shall be allowed as an administrative expense pursuant to 11 U.S.C. §503(b)(1).

³ Copies of the payoff statements from Noble Capital are attached hereto as **Exhibit “A”**

13. The DIP Financing Agreement will be used to pay-off the Noble first lien deeds of trusts on the Noble Collateral.

14. If the DIP Financing Agreement is not approved, 1776 V will be unable to protect its initial \$840,000 investment in lots 6-11, and it will incur a significant loss, causing a substantial economic loss to the estate.

15. Currently, the Debtor owns the completed townhomes located on lots 2 through 10, Block 2, Section 1, located in the Edison Park subdivision, Harris County, Texas (the “Townhomes”), which are being marketed for sale. As provided for in the DIP Promissory Note, the DIP loan shall be repaid through the sale of those townhomes (subject to payment of prior existing mortgages held by Peer Street), and subject to a reserve of \$15,000.00 per property for the estate to cover administrative expenses and costs and U.S. Trustee fees related to the sale. To be clear, the net proceeds of the townhome sales will be paid to the estate, with all but \$15,000 then being paid to DIP Lender in repayment of the DIP Loan. The Debtor expects that upon the sale of four to five townhomes, the DIP Loan will be repaid in full.

16. The material terms of the DIP Promissory Note are as follows:

Amount: up to \$375,000.00 USD

Interest Rate: 0.00 %

Maturity Date: Note comes due on the earlier (a) March 31, 2018; (b) the effective date of a plan of reorganization or arrangement in the Chapter 11 Case; (c) the sale of the completed townhomes owned by the Debtor located in the Edison Park subdivision; or (d) conversion of the case to a Chapter 7.

Collateral/lien: None

Treatment/priority: Administrative expense under 11 U.S.C. § 503(b)(1), subject only to administrative fees and expenses of professionals allowed under Section 327 of the Bankruptcy Code.

Additional Adequate Protection:

None

Releases or waivers: None

Indemnifications: None

17. A copy of the DIP Promissory Note is attached as **Exhibit “B.”** 1776 V requests that this credit facility be allowed under 11 U.S.C. § 503(b) as an administrative expense, subject only to administrative fees and expenses of professionals allowed under Section 327 of the Bankruptcy Code.

18. The Debtor believes that it has business justification for entering into the DIP Promissory Note in order to ensure that future construction operations are funded to preserve the Debtor’s equity in lots 6-11.

19. Thus, the Debtor asks for this Court to authorize 1776 V to enter into the DIP Promissory Note with SP2, in an amount up to \$375,000.00 which will be entitled to administrative expense priority under 11 U.S.C. § 503(b).

20. 1776 V is unable to obtain alternative financing on reasonable terms with such short notice. Further, the proposed terms of the DIP Financing Agreement are favorable and it is unlikely that better terms could otherwise be negotiated.

21. Bankruptcy Rule 4001(c)(2) states that 14 days’ notice must be given before final approval of such cash collateral use is given. With the exception of the respective property taxing authorities, 1776 VIII does not have any secured creditors. With this Motion, the Debtor is providing the US Trustee and all other parties listed on the master mailing matrix, and any other party requesting notice with notice between the time of the filing of this Motion and is self calendaring the matter for a final hearing on **June 26, 2017 at 10:30 a.m.** 1776 V requires court approval to enter into the DIP Financing Agreement and that the Court conduct an immediate hearing on this Motion. The Debtor will suffer irreparable harm if the Motion is not immediately

considered as it does not have the funds to protect its second lien position on the lots. Without payment of the Noble Capital lien, the Debtor's equity in lots 6-11 will be completely lost. There is no harm to general unsecured creditors under this agreement because without the loan, any potential return on Lots 6-11 will be completely lost. Thus, if the 1776 V cannot fund and finalize the payoff of Noble first lien, there will be very little, if nothing for unsecured creditors. Further, interest at 14% continue to accrue on the Noble Capital indebtedness. Accordingly, emergency consideration of this motion is required.

VI. CONCLUSION

WHEREFORE, the 1776 American Properties V LLC respectfully requests that the Bankruptcy Court enter a final order authorizing the debtor to incur post-petition indebtedness as an administrative claim and granting all such other and further relief as is just and proper.

Respectfully submitted,

ANDREWS MYERS, PC

/s/ T. Josh Judd

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2017, a true and correct copy of the foregoing Motion was forwarded by email to the parties listed below by the Court's ECF notification system, and the parties on the attached service list via US Mail.

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4824-2754-7973, v. 1

**1776 AMERICAN PROPERTIES IV LLC, ET. AL.
JOINTLY ADMINISTERED UNDER CASE NO. 17-30422**

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