

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
§ Case No. 17-36191
LAFFITE'S HARBOR §
DEVELOPMENT I, LP, et al. § Chapter 11
§
EIN: 26-2309833 § Hon. Karen K. Brown
§

§
LAFFITE'S HARBOR §
DEVELOPMENT II, LP § Case No. 17-36194
§ Jointly Administered
EIN: 26-2428202 §
Debtor(s). §

EMERGENCY MOTION FOR INTERIM ORDER (I) AUTHORIZING POST-PETITION SECURED FINANCING AND SUPER-PRIORITY ADMINISTRATIVE EXPENSE STATUS; (II) MODIFYING THE AUTOMATIC STAY; (III) AUTHORIZING THE DEBTORS TO ENTER INTO AGREEMENTS WITH SHADY BIRD LENDING, LLC; (IV) AUTHORIZING USE OF CASH COLLATERAL; (V) GRANTING RELATED RELIEF; AND (VI) SCHEDULING A 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.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 14 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**To the Honorable Judge Karen K. Brown,
United States Bankruptcy Judge:**

COMES NOW, Laffite's Harbor Development I, LP, et al, the Debtors and Debtors In Possession (the "**Debtors**"), and file this *Emergency Motion for Interim Order (I) Authorizing the Debtors to Obtain Post-Petition and Grant Security Interests and Super-Priority Administrative Expense Status; (II) Modifying the Automatic Stay; (III) Authorizing the Debtor to Enter into Agreements with Shady Bird Lending, LLC; (IV) Authorizing Use of Cash Collateral; (V) Granting Related Relief; and (VI) Scheduling a Hearing* (the "**Motion**"), pursuant to 11 U.S.C. §105, §361, §362, §363, §364, and §365 of the United States Bankruptcy Code (the "**Bankruptcy Code**" or the "**Code**"), Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Local Rules 2002-1 and 4001-2 seeking entry of an interim order (the "**Interim Order**").

In accordance with Rule 4001(c)(1)(B) of the Bankruptcy Rules, the material provisions related to the requested relief herein are more specifically described in the proposed credit agreement attached hereto as Exhibit 'A' and in the Interim Order. The proposed credit agreement and form of order include a grant of first priority senior priming liens on, and security interests in, property of the estate pursuant to §364(d) and §364(c).¹ In addition, the proposed credit agreement seeks a waiver of the provisions of 506(c) of the Bankruptcy Code.

BACKGROUND

1. On November 7, 2017, the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the Bankruptcy Code, 11 U.S.C. §101 *et seq.* The Debtors continue to operate the business and manage the property as Debtors in Possession pursuant to §1107 and §1108 of the Bankruptcy Code. The Office of the United States Trustee (the "**U.S. Trustee**") has not appointed an official committee of unsecured creditors in the Chapter 11 cases, pursuant to §1102 of the Bankruptcy Code.
2. The Debtors are in the business of buying raw land, subdividing the land, building roads, surface and drainage infrastructure, expanding municipal services, and building residential structures and improvements to be marketed, leased, and/or sold. Specifically, the

¹ The proposed grant of liens on, and security interests in, the property are further detailed in *Section 9* of Exhibit A; and, *Paragraphs 10, 11, and 12* of the Interim Order.

Debtors are developing a planned residential community with various improvements and amenities located on approximately 27 acres of raw land in an area known as the West End of Galveston, Texas. The development consists of 162 residential lots, the Stewart Mansion, a resort pool with a lazy river, a private pool serving 10 residential lots, a boardwalk, and two model homes (collectively referred to herein as the **“Property”**).

3. The Debtors do not have sufficient working capital to meet current operating expenses incurred in the ordinary course of business, such as maintenance and repairs, and have been unable to obtain additional financing through traditional lenders or other sources. Despite significant capital raised from several private investors, capital contributions and loans by the sole member of the General Partner, a bond issuance from the City of Galveston for infrastructure funding, as well as loans from Icon Bank, a New York businessman, and a professional athlete, the Debtors lack the capital required to build and sell homes. The development is otherwise “shovel ready;” that is, the roads, utilities, and various amenities have been built. What remains is the construction and sale of homes.

JURISDICTION AND VENUE

4. Pursuant to 28 U.S.C. §157(b) and §1334, this Court has core jurisdiction over the persons and property affected. Further, consideration of this Motion constitutes a core proceeding pursuant to 28 U.S.C. §157(b)(2). Venue for the Debtors’ Chapter 11 filings and proceedings on this Motion are proper in this district pursuant to 28 U.S.C. §1408 and §1409.

5. Shady Bird Lending, LLC (**“Shady Bird”** or the **“DIP Lender”**) is willing to loan the Debtors an aggregate principal amount of up to \$4,000,000 (the **“DIP Facility”**), of which \$2,500,000 may be funded upon entry of this Motion and Interim Order, subject to the terms and conditions set forth in a proposed credit agreement (the **“DIP Credit Agreement”**) and together with any ancillary, collateral, or related documents and agreements (collectively, the **“Loan Documents”**).

6. By this Motion, the Debtors seek authority to borrow up to \$4,000,000 from Shady Bird pursuant to the terms set forth in the DIP Credit Agreement, attached hereto as Exhibit A.²

7. It is in the best interest of the Debtors’ estates and creditors that the Debtors be allowed to obtain post-petition secured financing under the terms and conditions set forth in the Loan

² See Exhibit A, Section 2, *“Loan and Terms of Payment.”*

Documents. The availability of working capital and liquidity provided in the proposed post-petition financing will enable the Debtors to fund the construction and development of unimproved lots, perform routine maintenance, and conduct necessary repairs to existing improvements. The construction and development of unimproved lots will increase the overall value and marketability of the Property. Continued funding of maintenance operations and the performance of necessary repair work will prevent the Property from falling into disrepair and thereby, preserve its value.

8. Section 364 of the Bankruptcy Code provides that the Debtors may borrow money post-petition, with Court approval following notice and a hearing. If the Debtors are unable to obtain unsecured financing, then §364(c)(1) and §364(c)(2) permit the Debtors to seek financing secured by collateral. Such a secured lender may receive a priority over any or all administrative expenses specified in §503(b) or §507(b) of the Bankruptcy Code. Further, §364(d) allows a debtor to grant a senior lien on encumbered property if the debtor is unable to obtain credit otherwise and the existing lienholder of the encumbered property is adequately protected.

9. The Debtors have been unable to obtain unsecured financing, generally, despite requests made to Icon Bank and an existing lender. Further, the Debtors have been unable to secure financing in exchange for a grant of a super-priority administrative expense pursuant to §364(c)(1), or in exchange for junior liens on encumbered property pursuant to §364(c)(3). The Debtors' estates do not have unencumbered property with which it can utilize to obtain financing pursuant to §364(c)(3). The Debtors have been unable to obtain financing on terms more favorable than the financing offered by the DIP Lender pursuant to the Loan Documents.

10. Icon Bank of Texas, N.A., has a claim in the amount of approximately \$11,366,587 secured by first priority liens on substantially all of the Debtors' Property. The Robert G. Previdi Revocable Trust has a claim in the amount of approximately \$3,613,456 secured by second priority liens on substantially all of the Debtor's Property. The appraised value of the Property is approximately \$20,760,000. Therefore, the Debtors submit that all existing lienholders are adequately protected.

11. By this Motion, the Debtors seek authority to grant Shady Bird first priority, senior priming liens on and security interests in (the "**DIP Liens**") all assets and properties pursuant to §105, §363, §364(c), and §364(d), including all property constituting cash collateral (and all

proceeds thereof) pursuant to §363(a); and, to grant a super-priority administrative claim with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to §105, §326, §328, §330, §331, §364, §503(b), §506(c), §507(a), §507(b), and §546(c). Such DIP Liens shall be subject to a **“Carve-Out”** provision as it is defined in Interim Order’s Paragraph 13. The DIP Liens granted shall not be made junior to or *pari passu* with any lien, security interest, or claim heretofore or hereinafter granted in the Debtors’ Chapter 11 cases or any successor case, and shall be valid and enforceable against the Debtors, their estates, any trustee or any other estate representative later appointed or elected.³

12. The Loan Documents have been negotiated in good faith and at arms-length between the Debtors and Shady Bird. The Debtors have exercised prudent business judgment in procuring post-petition financing on the most favorable terms. The credit extensions, issuances, advancements, and financial accommodations proposed by the terms of the Loan Documents are fair, reasonable, and have been made in good faith by Shady Bird. Accordingly, the Debtors request a finding that Shady Bird be entitled to the protections afforded by §364(e) of the Bankruptcy Code.

13. The relief requested in this Motion is necessary, essential, and appropriate, and is in the best interest of and will benefit the Debtors, their creditors, and their estates, as its implementation will provide the Debtors with the necessary liquidity to (1) minimize disruption to the Debtors’ business and business operations, (2) preserve and maximize the value of the Debtors’ estates for the benefit of all of the Debtors’ creditors, and (3) avoid immediate and irreparable harm to the Debtors, their creditors, and the estates.

14. The Debtors seek interim relief on an emergency basis because the Debtors lack the working capital needed to fund maintenance, repairs, and other costs related to prevent the assets from falling into disrepair. In addition, as part of the necessity to rebrand the development and market the property, funds are needed in order to capture the spring and summer peak-season demand for rental of the two existing homes and to showcase the development. Finally, the Debtors’ property taxes and public improvement district levies are due and owing in the next forty days and will impose significant penalties if unpaid.

15. The Debtors seek authorization to use cash collateral to preserve, maintain, and

³ See Interim Order, Paragraph 13, “Carve-Out.”

maximize the value of their assets. The Debtors lack the working capital needed to fund critical maintenance and repairs to the Property that, if unperformed, will render the Property to be unsuitable for leasing during the upcoming spring season. In addition, the Debtors must make timely payments on property taxes and taxes assessed by the public improvement district. Further, the Debtors need immediate funds to recommence the marketing of the Property for lease as well as sale.

WHEREFORE, PREMISES CONSIDERED, the Debtors pray that this Court enter the attached Order authorizing the Debtors to obtain post-petition, secured financing with authorization to enter into the DIP Credit Agreement with Shady Bird Lending, LLC attached hereto as “Exhibit A,” granting to Shady Bird Lending, LLC valid, enforceable, non-avoidable, automatically and fully perfected security interests, priming liens, and super-priority claims pursuant to §364(d)(1), §364(c)(2), and §364(c)(3), and including the allowance of super-priority administrative expense claims, in all assets and properties of the Debtors; authorizing the use of cash collateral, the scheduling of a final hearing on the Motion to consider entry of a final order, *inter alia*, authorizing the borrowings under the DIP Facility on a final basis and approving notice procedures with respect thereto (the “**Final Hearing**”); and, granting Debtors such other relief to which they may be entitled.

Respectfully submitted,

Fisher & Associates,

/s/ Bennett G. Fisher

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Attorney for Debtors

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of December, 2017, a true and correct copy of the foregoing *Emergency Motion for Interim Order (I) Authorizing the Debtors to Obtain Post-Petition and Grant Security Interests and Super-Priority Administrative Expense Status; (II) Modifying the Automatic Stay; (III) Authorizing the Debtor to Enter into Agreements with Shady Bird Lending, LLC; (IV) Authorizing Use of Cash Collateral; (V) Granting Related Relief; and (VI) Scheduling a Hearing* was served on all parties through electronic mail and/or United States Postal Service, as set forth on the Consolidated Service List.

/s/ Bennett G. Fisher
Bennett G. Fisher