

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
WOODBRIIDGE GROUP OF COMPANIES LLC, <i>et al.</i> , ¹	:	Case No. 17-12560 (KJC)
	:	
	:	(Jointly Administered)
	:	
Debtors.	:	Ref Docket No. 713
	:	

**LIMITED RESPONSE AND RESERVATION OF RIGHTS OF
THE AD HOC NOTEHOLDER GROUP FORMED PURSUANT TO
JANUARY 23, 2018, ORDER [D.I. 357] WITH RESPECT TO
THE PROPOSED SALE OF THE 11541 BLUCHER AVENUE PROPERTY**

The Ad Hoc Group of Noteholders Formed Pursuant to January 23, 2018, Order [D.I. 357] (the “Ad Hoc Noteholder Group”), by and through its undersigned proposed counsel, hereby files this limited response reservation of rights (the “Response”) with respect to the *Debtors’ Motion for Entry of an Order (I) Authorizing the Sale of 11541 Blucher Avenue, Granada Hills, California Property Owned by the Debtors Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Approving the Related Purchase Agreement; and (III) Granting Related Relief [D.I. 713] (the “Sale Motion”).* In support of this Response, the Ad Hoc Noteholder Group respectfully represents as follows:

GENERAL BACKGROUND

1. On December 18, 2017, the Ad Hoc Committee of Promissory Notes of Woodbridge Mortgage Investment Fund Entities and Affiliates (the “Movant Ad Hoc”

¹ The last four digits of Woodbridge Group of Companies, LLC’s federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. A complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses may be obtained on the website of the Debtors’ noticing and claims agent at www.gardencitygroup.com/cases/WGC.

Committee”) filed a motion [D.I. 85] (the “Committee Appointment Motion”) pursuant to section 1102(a)(2) of the Bankruptcy Code for entry of an order directing appointment of an official committee of Woodbridge noteholders (the “Noteholders”). The motion was opposed by the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) [D.I. 288]. On January 23, 2018, the Court entered an order approving a global resolution of several pending contested matters, including the Committee Appointment Motion [D.I. 357] (the “Settlement Order”).

2. On February 1, 2018, in accordance with the Settlement Order, the Movant Committee formed the Ad Hoc Noteholder Group [D.I. 470].

3. Under the Settlement Order, the Ad Hoc Noteholder Group is “tasked with litigating and/or negotiating any aspects of Noteholder treatment in the cases,” including “traditional secured creditor protections such as adequate protections for the Noteholders and upon sales of properties the use of the sales proceeds.” (Sett. Ord. Ex. 1 ¶ 12.) In furtherance of these responsibilities, the Ad Hoc Noteholder Group was invested with party-in-interest status under section 1109 of the Bankruptcy Code, as well as the right to perform such services as are in the interests of Noteholders. (*Id.* ¶ 13.)

4. On March 8, 2018, the Court entered its final order approving the Debtors’ post-petition financing [D.I. 724] (the “Final DIP Order”), which established certain protections for Noteholders in connection with future sales of real property by the Debtors. (*See* Final DIP Ord. ¶ 3.1.2.4.) Such protections included the reservation of (i) 10% of net sale proceeds for the benefit of Noteholders, if any, holding Adequate Protection Liens in the subject property (as defined in the Final DIP Order), and (ii) an additional 10% of the net sale proceeds for the benefit of Noteholders holding interests or liens in (A) the subject property or (B) “any

instrument or payment intangible in favor of a Debtor that is payable directly or indirectly from the proceeds of the sale of” the subject property. (*Id.*) The Final DIP Order expressly provided that the protections provided therein did not preclude any Noteholder or the Ad Hoc Noteholder Group from objecting to the sale of any property or the use of any sale proceeds (subject to exceptions not relevant to this Response) on any grounds. (*Id.*)

5. At the hearing to consider entry of the Final DIP Order, the Debtors represented on the record that, (i) in connection with each real property sale, they would provide the Noteholder Group with a proposed budget showing the anticipated use of proceeds of the sale, and (ii) there would be detailed intercompany accounting for and estate-by-estate allocation of any use of such proceeds.

RELEVANT BACKGROUND

6. As noted in the Sale Motion, the 11541 Blucher Avenue in Granada Hills, California (the “Property”) is subject to certain liens for the benefit of Debtor Woodbridge Mortgage Investment Fund 4, LLC (“Fund 4”), which secure certain intercompany indebtedness. Specifically, on information and belief, this secured intercompany debt consists of (i) a promissory note (the “Senior Intercompany Note”) from Debtor Pennhurst Investments, LLC (“PropCo”) to Fund 4, which is secured by a first-priority deed of trust in the Property, and (ii) a promissory note (the “Intercompany Mezzanine Note”) from Debtor Pennhurst Holding Company, LLC (“MezzCo”) to Fund 4, which is secured by a collateral pledge of MezzCo’s 100% equity interest in PropCo.

7. On information and belief, the Senior Intercompany Note was pledged as collateral to secure payment of Fund 4’s obligations to 122 retail Noteholders under certain

promissory notes (the “Senior Retail Notes”).² Upon further information and belief, the amount outstanding under the Senior Intercompany Note exceeds the aggregate amount outstanding under the Senior Retail Notes.

8. On information and belief, the Intercompany Mezzanine Note was pledged as collateral to secure payment of Fund 4’s obligations to 69 retail Noteholders under certain promissory notes (the “Retail Mezzanine Notes”).³ Upon further information and belief, the amount outstanding under the Intercompany Mezzanine Note is greater than the amount outstanding under the Retail Mezzanine Notes.

9. The mezzanine financing structure utilized by the Debtors in connection with the Property is fairly typical in the real estate context. And under this structure, the net proceeds of the sale of the Property should be accounted for as (i) a distribution from PropCo to Fund 4 in payment of the Senior Intercompany Note, (ii) an equity distribution of any remaining amounts by PropCo to MezzCo,⁴ and (iii) a distribution by MezzCo to Fund 4 in payment of the Intercompany Mezzanine Note. Thus, with proper accounting, the net sale proceeds of the Property are properly viewed as the cash collateral of Fund 4 (as proceeds of its liens in the Property and in MezzCo’s equity in PropCo) and the Noteholders (as proceeds of their security interests in the Senior Intercompany Note and Intercompany Mezzanine Note).

² Whether the resulting security interests in the Senior Intercompany Note are perfected is one of several issues pertinent to the ongoing chapter 11 plan discussions between the Debtors, the Ad Hoc Noteholder Group, the Ad Hoc Unitholder Group, and the Official Committee of Unsecured Creditors.

³ Whether the resulting security interests in the Intercompany Mezzanine Note are perfected is one of several issues pertinent to the ongoing chapter 11 plan discussions between the Debtors, the Ad Hoc Noteholder Group, the Ad Hoc Unitholder Group, and the Official Committee of Unsecured Creditors.

⁴ Assuming there are no other creditors of PropCo, which the Ad Hoc Noteholder Group understands to be the case.

10. The Sale Motion proposes for Fund 4 to release its lien in the Property without that lien attaching to the sale proceeds. It further provides for those proceeds to be paid into the general account of Debtor Woodbridge Group of Companies, LLC (“WGC”), which is Fund 4’s indirect parent.⁵

11. The Property is an “Adequate Protection Property” under the Final DIP Order. Thus, 20% of the net sale proceeds of the Property will be reserved in accordance with paragraph 3.1.2.4 of the Final DIP Order. Prior to the objection deadline for the Sale Motion, counsel for the Ad Hoc Noteholder Group contacted counsel for the Debtors to request a budget showing the proposed use of the remaining 80% proceeds of the sale of the Property (the “Non-Reserved Proceeds”).

12. The primary concerns for the Ad Hoc Noteholder Group were to ensure that the Non-Reserved Proceeds would (i) to the extent possible, be converted to another form of property rather than dissipated, so as to preserve the value of Fund 4’s (or any Noteholder’s) liens in the proceeds, and (ii) be traceable as an accounting matter, so that the proceeds would remain identifiable for purposes of maintaining perfection of Fund 4’s (or any Noteholder’s) liens in the proceeds, to the extent previously perfected.

13. The Debtors’ counsel informed counsel to the Ad Hoc Noteholder Group that they believed, consistent with the Final DIP Order, that the Debtors could use the Non-Reserved Proceeds for any purpose, subject to the proper accounting agreed to on the record at the hearing on the Final DIP Order, and that any Noteholders with alleged interests in the Property were not entitled to any additional adequate protection beyond that already provided in the Final DIP Order.

⁵ Fund 4 is wholly owned by Debtor WMF Management, LLC, which in turn is wholly owned by WGC.

14. Following discussions between Debtors' counsel and the Ad Hoc Noteholder Group's counsel, the Debtors agreed to use the Non-Reserved Proceeds to retire third-party secured debt on real property owned by a Debtor entity. The Debtors' agreement as to net proceeds use fully addresses the Ad Hoc Noteholder Group's primary concerns about value preservation, accounting, and appropriate means to protect affected noteholders' rights.

RESPONSE AND RESERVATION OF RIGHTS

15. To be clear, the Ad Hoc Noteholder Group supports the proposed sale of the Property, and files this Response for the limited purpose of confirming the agreement of the Noteholder Group and the Debtors that the Noteholder Group' demand for adequate protection pursuant to 11 U.S.C. § 363(e) on behalf of any Noteholders having valid and perfected liens in the Non-Reserved Proceeds has been resolved by the Debtors' agreed use of the Non-Reserved Proceeds.

16. The Ad Hoc Noteholder Group believes that, subject to memorialization in an appropriate revised form of order, the Debtors' agreement to use the Non-Reserved Sale Proceeds to retire third-party secured debt on real property owned by a Debtor provides adequate protection to Noteholders who hold valid and perfected liens in the Non-Reserved Sale Proceeds. Accordingly, the Ad Hoc Noteholder Group reserves all rights with respect to the proposed revised form of order so as to ensure it provides that the Debtors will use the Non-Reserved Proceeds to retire third-party secured debt on real property owned by a Debtor entity.

CONCLUSION

WHEREFORE, the Ad Hoc Noteholder Group respectfully requests that the order granting the Sale Motion include appropriate language memorializing the Debtors' agreement with respect to the use of the Non-Reserved Proceeds described above.

Dated: March 23, 2018
Wilmington, Delaware

DRINKER BIDDLE & REATH LLP

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