



SO ORDERED.

SIGNED this 15 day of February, 2013.

Stephani W. Humrickhouse

**Stephani W. Humrickhouse
United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

CHAPTER 11

SOMERSET PROPERTIES SPE, LLC,

CASE NO. 10-09210-8-SWH

Debtor.

**TWENTY-SIXTH INTERIM CONSENT ORDER AUTHORIZING THE DEBTOR TO
USE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363**

This matter coming before the Court on the Motion for Order Allowing Use of Cash Collateral, Turnover of Funds in Bank Accounts, for Order Shortening Notice Time, and Requesting a Hearing on the Use of Cash Collateral (the "Motion") filed by Somerset Properties SPE, LLC ("Somerset" or "Debtor"), and the parties having indicated their consent by signing below, the Court finds as follows:

1. On November 8, 2010, Somerset filed a voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code") in the Eastern District of North Carolina.
2. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2)(M).
3. Somerset owns six office buildings (the "Properties") in Raleigh, North Carolina.

4. CSFB 2001-CP4 Bland Road, LLC and CSFB 2001-CP4 Falls of Neuse, LLC, claim to be the current holders of loans (the “Loans”) to Somerset, each in the original principal amount of \$15,500,000, and further claim that the Loans are secured by liens on all of Somerset’s assets including but not limited to the Properties and all rents, royalties, issues, profits, revenue, income, deposits, securities, and other “cash collateral” as that term is defined in section 363(a) of the Bankruptcy Code.

5. CSFB 2001-CP4 Bland Road, LLC and CSFB 2001-CP4 Falls of Neuse, LLC claim to be North Carolina limited liability companies created for and owned by a securitized trust (the “Trust”) that purchased the Loans from the original lender and to whom the Loans were transferred and assigned by the Trust in anticipation of foreclosure.

6. LNR Partners, LLC (“LNR”) is the “Special Servicer” of the Loans, and the non-owner manager and representative of CSFB 2001-CP4 Bland Road, LLC and CSFB 2001-CP4 Falls of Neuse, LLC in this chapter 11 case. CSFB 2001-CP4 Bland Road, LLC, CSFB 2001-CP4 Falls of Neuse, LLC, and LNR are hereafter referred collectively and individually as the “Lenders.”

7. Midland Loan Services, Inc. (“Midland”) is the “Master Servicer” of the Loans, asserts that it is not a manager or representative of CSFB 2001-CP4 Bland Road, LLC and CSFB 2001-CP4 Falls of Neuse, LLC in this case, and asserts no interest in cash collateral.

8. The Debtor disputes the claims of the Lenders and Midland.

9. The Lenders and Midland have not consented to Somerset’s use of cash collateral, except as indicated in this Order, and on November 16, 2010, the Lenders filed an opposition (the “Opposition”) to the Motion.

10. A First Interim Order Granting Motion for Cash Collateral was entered on December 3, 2010. A Second Interim Order was entered on December 23, 2010. A Third

Interim Order was entered on January 21, 2011. A Fourth Interim Order was entered on February 28, 2011. A Fifth Interim Order was entered on April 5, 2011. A Sixth Interim Order was entered on May 4, 2011. A Seventh Interim Order was entered on June 1, 2011. An Eighth Interim Order was entered on June 28, 2011. A Ninth Interim Order was entered on July 27, 2011. A Tenth Interim Order was entered on August 30, 2011. An Eleventh Interim Order was entered on September 27, 2011. A Twelfth Interim Order was entered on October 27, 2011. A Thirteenth Interim Order was entered on December 1, 2011. A Fourteenth Interim Order was entered on December 23, 2011. A Fifteenth Interim Order was entered on January 24, 2012. A Sixteenth Interim Order was entered on February 28, 2012. A Seventeenth Interim Order was entered on March 29, 2012. An Eighteenth Interim Order was entered on April 24, 2012. A Nineteenth Interim Order was entered on May 22, 2012. A Twentieth Interim Order was entered on June 19, 2012. A Twenty-First Interim Order was entered on July 30, 2012. A Twenty-Second Interim Order was entered on August 22, 2012. A Twenty-Third Interim Order was entered on October 4, 2012. A Twenty-Fourth Interim Order was entered on November 1, 2012. A Twenty-Fifth Interim Order was entered on November 20, 2012.

11. Rents owed to Somerset are paid to lockbox accounts at U.S. Bank with account numbers ending 1527 and 1576 (the "Lockbox accounts") controlled by the Lenders and/or Midland. The Debtor believes that, at the time of the petition, the Lenders and/or Midland were holding at least \$903,000 of the Somerset's rents in the Lockbox accounts. The Debtor also believes that the Lenders and/or Midland were holding at least \$376,000 in an escrow account (together, the lockbox and escrow accounts are hereinafter referred to as the "Held Funds"). The Lenders assert that the amount of the Held Funds is less than that contended by the Debtor. The Debtor contends that the Lenders and/or Midland are obligated to turn over the Held Funds. The Lenders contend that the Debtor must seek turnover of the Held Funds by adversary proceeding

rather than by motion and that they need only turn over so much of the Held Funds as are needed by the Debtor to pay the ordinary and necessary operating expenses of the Properties pursuant to an approved budget and acceptable Court order providing the Lenders with adequate protection.

12. At the hearing, counsel for the Debtor and counsel for the Lender proposed, and the court agreed, that consideration of the full turnover relief requested in the Motion and the objection thereto be deferred to a later date.

13. Somerset believes that it is operating profitably and will successfully reorganize. Somerset believes that it has sufficient cash flow to pay all post-petition debts as they come due and to pay any secured debts owed on reasonable market terms. The Lenders do not agree with these beliefs.

14. The Debtor has opened a debtor-in-possession general operating account (the "DIP account") with Branch Banking and Trust (the "Bank"). That account number ends in 7310.

15. Pursuant to a consent order ("Consent Order") entered in this case on October 13, 2011 (Dkt.# 361), (i) U.S. Bank is required to wire to the DIP account all funds then being held in the Lockbox accounts (except for a minimum balance of \$1,000 to be retained in each Lockbox account and after monthly adequate protection payments through October 2011); (ii) U.S. Bank is required to wire to the DIP account all additional funds received into either of the Lockbox accounts above the \$1,000 minimum on a monthly basis on or about the 10th of each month; and (iii) commencing November 2011, the Debtor is to make all adequate protection payments to the Lenders from the DIP account on or about the 1st day of each month pursuant to wire instructions provided to the Debtor by LNR. Thus far, U.S. Bank has complied with its obligation under the Consent Order to wire funds from the Lockbox accounts to the DIP

Account, and the Debtor has complied with its obligation under the Consent Order to make adequate protection payments to Lenders.

16. Somerset needs to use its rents, including the Held Funds, which Lenders contend are their cash collateral (hereinafter collectively the "Cash Collateral"), to make payment of its ordinary and necessary operating expenses including utilities, payroll, and maintenance.

IT IS ORDERED, ADJUDGED AND DECREED that the Debtor is authorized to use Cash Collateral, subject to the following terms and conditions:

1. The Debtor may use Cash Collateral totaling \$620,372.00 for December 2012, unless otherwise prohibited by this Order, for the purposes and subject to the limits as set forth in the budget (the "Budget") for such period, a copy of which is attached hereto as Exhibit "A," subject to a ten percent line item variance.

2. The Debtor is not authorized to use Cash Collateral for legal fees and expenses, management fees, or other professional fees of any kind, absent court approval.

3. Lenders shall be allowed online viewing access to the DIP account.

4. The Debtor shall provide the Lenders, upon reasonable request, information and bank records evidencing all deposits, disbursements and other activity in the DIP account.

5. The Debtor shall promptly deposit into the DIP account any other Cash Collateral in its current or future custody, possession or control, including the balance remaining its pre-petition operating account.

6. The Debtor shall segregate Cash Collateral and not commingle any other funds with Cash Collateral in the DIP account.

7. To the extent of Cash Collateral used by the Debtor, the Lenders are granted liens in all of the Debtor's post-petition leases, rents, royalties, issues, profits, revenue, income, deposits, securities, and other benefits of the Properties to the same extent, priority, and

perfection as they have in such collateral pre-petition. Nothing in this Order shall prejudice, waive, impair or affect in any way (i) the Lenders' claims that they already have liens in all of the Debtor's post-petition leases, rents, royalties, issues, profits, revenue, income, deposits, securities, and other benefits of the Properties without regard to the extent of the use of Cash Collateral and (ii) the Debtor's objections to the claims and asserted liens of the Lenders and Midland.

8. The Debtor shall allow the Lenders to inspect their asserted collateral including the Debtor's books and records relating thereto.

9. The Lenders are authorized and directed to continue receiving in the Lockbox accounts all post-petition payments by tenants of the Properties as they did pre-petition; provided that all such payments shall be wired monthly by U.S. Bank to the DIP account and Debtor shall make adequate protection payments to Lenders from the DIP account, all in accordance with the terms of the Consent Order and findings paragraph 15 above.

10. The Debtor shall dispose of no asset of the Debtor outside the ordinary course of business, except upon the Lenders' prior written consent or further order of this Court.

11. The Debtor shall maintain adequate insurance on all tangible collateral subject to the liens of the Lenders.

12. The Debtor shall serve notice of this Order on all parties entitled to receive the same pursuant to Rules 1007 and 4001 of the Bankruptcy Rules.

13. The Debtor's use of Cash Collateral shall expire or terminate on the earliest of: (i) the date the Debtor ceases operations of its business; (ii) the non-compliance or default of the Debtor with any terms and provisions of this Order; or (iii) another order concerning Cash Collateral is entered, or (iv) dismissal or conversion of this chapter 11 case to chapter 7.

14. Nothing herein shall prejudice the right of any party to assert or contest any security interest referenced herein.

15. Nothing herein shall prejudice the right of any party to assert a section 506(c) charge against the collateral or to object to such charge.

16. If any or all of the provisions of this Order are hereafter vacated, modified or stayed by subsequent Order of the Court or any other court, such vacation, modification or stay shall not affect the validity or enforceability of any security interest, lien or priority authorized or created by this Order. The validity and enforceability of all security interest, liens, and priorities shall survive the conversion of the case to a case under Chapter 7 and the dismissal of this case, if any. The provisions of this Order shall be binding upon and inure to the benefit of the Lenders, the Debtor and their respective successors and assigns. This Order shall be binding on any trustee hereafter appointed, whether in chapter 11 or chapter 7 of the Bankruptcy Code.

We Consent:

JANVIER LAW FIRM, PLLC

/s/ William P. Janvier
William P. Janvier
Attorney for Debtor

and

Womble, Carlyle, Sandridge & Rice, LLP

/s/ William B. Sullivan
William B. Sullivan
Attorney for CSFB 2001-CP4 Bland Road, LLC & CSFB 2001-CP4 Falls of Neuse, LLC

END OF DOCUMENT

SOMERSET PROPERTIES SPE, LLC
Somerset Corporate Center / Operating Budget

Total building square footage 373,375

	Account Number	December 2012 BUDGET	Comments
INCOME			
Lease Income	4110-0000	\$ 384,483	
Expense Recoveries	4710-0000	2,027	
Late Fees / NSF Fees	4520-0000	-	
Tenant Project Income	4800-0000	-	
Interest Income	5120-0000	-	
Miscellaneous Income	5100-0000	-	
TOTAL INCOME		\$ 386,510	
EXPENSES			
OPERATING EXPENSES			
General Maintenance	6111-0000	\$ 750	
Electrical	6112-0000	1,500	
Plumbing	6114-0000	1,000	
Parking Lot Maintenance	6115-0000	-	
Exterminating	6116-0000	247	
Elevator- Preventive Maintenance	6117-0000	-	
Roof Repairs	6120-0000	2,000	
Elevator Repairs	6121-0000	-	
Janitorial- Contract	6131-0000	21,458	
Janitorial- Other	6132-0000	135	
Janitorial- Window cleaning	6133-0000	-	
Janitorial- Dumpster	6134-0000	1,876	
Janitorial- Recycling	6135-0000	560	
Landscaping- Grounds Maintenance	6141-0000	3,900	
Landscaping- Seasonal Flowers	6143-0000	-	
Landscaping- Straw/Mulch	6144-0000	-	
Landscaping- Irrigation	6147-0000	-	
HVAC - Maintenance	6151-0000	18,000	
HVAC - Preventive Maintenance	6152-0000	-	
HVAC - Emergency Repair	6153-0000	-	
Security- Contract	6161-0000	3,800	
Security- Fire System Testing	6162-0000	-	
Security- Fire Extinguisher Maint	6163-0000	-	
Security- Alarm Monitoring	6164-0000	-	
Security- Fire Sprinkler/Pump Maint	6165-0000	-	
Security- Emergency Services	6166-0000	600	
Security- Keying Expense/Access Cards	6167-0000	250	
Security- Fire/Life Safety Phone	6168-0000	1,775	
Interior Plantings	6172-0000	786	
Snow Removal	6175-0000	-	
Water Treatment	6176-0000	185	
Insurance	6205-0000	-	
Tenant Project Expenses	6302-0000	2,500	
Legal	6306-0000	8,476	
Accounting / Audit	6307-0000	-	
Bank Charges	6308-0000	1,400	
Management Fees			
-Asset Management	6184-0000	1,000	
-Property Management	6183-0000	15,000	
Management Salary Reimbursables	6181-0000	24,731	
Maintenance Allocation	6185-0000	11,538	
Management Expense Reimbursables	6182-0000	3,730	
Marketing	6310-0000	-	
Miscellaneous	6305-0000	-	
Professional Fees	6311-0000	-	
Real Estate Taxes	6201-0000	363,957	2012 Real Estate Taxes - Full Payment
Travel & Entertainment	6182-0000	-	
Utilities:			
-Electricity	6191-0000	54,000	
-Water & Sewer	6192-0000	4,800	
TOTAL EXPENSES		\$ 549,956	
NET OPERATING INCOME		\$ (163,446)	
CAPITAL ITEMS / INTEREST EXPENSE			
Leasing Expenses	1410-0000	\$ -	
Leasing Construction	1742-0000	-	
Common Area Improvements	1711-0000	70,416	HVAC units in Park / Final Payment (#4 of 4)
TI Reimbursements	4110-0000	(37,346)	
Bankruptcy Administration Fee	8530-0000	-	
Interest Expense	8510-0000	-	
TOTAL CAPITAL ITEMS		\$ 33,070	
Principal Reduction	2110-0000	\$ -	
TI/Commission/Repair Escrow	1230/1235	-	
TOTAL PRINCIPAL / ESCROWS		\$ -	
NET CASH FLOW - TOTAL		\$ (196,515)	
NET CASH FLOW - OPERATIONS		\$ (163,446)	
(Excludes TI's, LC's & CapEx)			
TOTAL FUNDING REQUIRED		\$ 620,372	Operating Expenses & Capital Expenditures