

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: _____)) Wheatland Marketplace, LLC)) Debtor.)	Case No. 13-46492 Chapter 11 Honorable Pamela S. Hollis
---	---

INTERIM ORDER AUTHORIZING DEBTOR TO USE CASH COLLATERAL, AND GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363

Upon the motion (the "Motion") of Wheatland Marketplace, LLC (the "Debtor"), pursuant to sections 361 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of an order authorizing the Debtor to use cash collateral and providing adequate protection to U.S. Bank National Association, as Trustee, successor to Bank of America, National Association, successor by merger to LaSalle Bank National Association, as Trustee for Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2003-TOP12 acting by and through C-III Asset Management LLC (f/k/a ARCap Servicing, Inc.), a Delaware limited liability company, in its capacity as special servicer pursuant to that certain Pooling and Servicing Agreement dated October 1, 2003 (the "Noteholder"); the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties-in-interest; and it appearing that notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. **Jurisdiction.** This Court has core jurisdiction over this bankruptcy case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper in this court pursuant to 28 U.S.C. §§1408 and 1409.
2. **Objections.** All objections to the entry of this interim order (the "Interim Order"), if any, are resolved hereby or, to the extent not resolved, are overruled.
3. **Use of Cash Collateral.** The Debtor is hereby authorized to use cash collateral, as defined in 11 U.S.C. § 363(a) and in the Motion (the "Cash Collateral") *nunc pro tunc* to December 3, 2013, (the "Petition Date") which shall include any cash or cash equivalents, funds or proceeds of or from that certain improved real property (the "Property") described in that certain Mortgage and Security Agreement dated August 27, 2003 (the "Mortgage") executed by the Debtor for the benefit of Principal Commercial Funding, LLC (the "Original Lender") to pay operating expenses of the Property, including, without limitation, the Property's maintenance and

repair expenses, utilities, management fees, post-petition vendors, insurance and taxes in accordance with the budget attached hereto as Exhibit A that has been approved by the Noteholder (the "Approved Budget"), provided that the Debtor shall be authorized: (i) to exceed any line item on the Approved Budget by an amount up to five percent (5%) of each such line item with respect to the pertinent budgetary period; or (ii) to exceed any line item by more than five percent (5%) so long as the total of all amounts in excess of all line items for the Approved Budget do not exceed five percent (5%) in the aggregate of the total Approved Budget, except as otherwise agreed to by the Noteholder. Provided that the foregoing variance is not exceeded, each individually budgeted line item amount in the Approved Budget for any month may be increased by the excess, if any, of (i) the cumulative amount budgeted for such line item for the preceding periods covered by the Approved Budget over (ii) the cumulative amount of the Debtor's actual expenditures under such line item for such prior time period. Except as expressly permitted in the preceding sentence, no unused portion of any line item amount for any type of expenditure set forth in the Approved Budget shall be used to pay amounts set forth in any other line item for any time period or to pay amounts set forth in the same line item for any other time periods. The Debtor's use of Cash Collateral is authorized on a preliminary basis through January 31, 2014 and may not be extended other than on the express written consent of the Noteholder or order of the Court.

4. The Property shall be operated and maintained in the ordinary course of business, and, without limiting the generality of the foregoing, all pertinent real estate taxes shall be timely paid and all insurance coverage required by that certain Loan Agreement, dated August 27, 2003 by and between the Debtor and the Original Lender and all other notes, loan documents and security documents executed in connection therewith (collectively with the Mortgage the "Loan Documents") shall be properly and continuously maintained. Without limiting the generality of the preceding sentence, Cash Collateral shall not be used to pay any fees and expenses of the Debtor's bankruptcy attorneys or other professionals. The Debtor shall provide Lender with satisfactory proof of insurance for the Property.

5. Adequate Protection. As adequate protection for the Debtor's use of Cash Collateral, (a) the Debtor shall make a \$95,020.58 payment to the Noteholder on or before January 15, 2014 (which is equal to the interest and tax escrow payments due in December 2013 and January 2014 respectively under the Loan Documents, \$36,237.76 of which shall be held in a separate escrow in accordance with the Loan Documents for payment of the real estate taxes when due); provided, however, that the application of such payment by the Noteholder against any of the indebtedness owing in accordance with the terms of the Loan Documents shall be provisional only and subject to further order of the Court, and (b) the Noteholder shall have *nunc pro tunc* as of the commencement of this chapter 11 case, a replacement lien and security interest pursuant to 11 U.S.C. §361(2) on all property acquired or generated postpetition by the Property, including without limitation any cash or cash equivalents, funds or proceeds of or from the Property, to the same extent and priority and of the same kind and nature as Noteholder's prepetition liens and security interests in the Cash Collateral (other than causes of action under Chapter 5 of the Bankruptcy Code or the proceeds thereof), which replacement lien and security interest shall be junior only to all valid, enforceable and perfected prior liens in existence as of the petition date (other than any fees of the Office of the United States Trustee that Noteholder's liens may be subject to pursuant to 28 U.S.C. § 1930). The liens and security interests granted to Noteholder pursuant to this paragraph shall be valid and perfected as of the petition date without

the need for the execution or filing of any further documents or instruments otherwise to be executed or filed under applicable non-bankruptcy law. The Debtor shall, however, at the request of the Noteholder, execute and deliver any and all documents permitting such security interest to be filed or recorded with any appropriate agency or official. Such filing or recording shall be deemed to have been filed or recorded on the date of the entry of this Interim Order.

6. No later than the twenty-first (21st) day of each succeeding calendar month, the Debtor shall deliver to the Noteholder a copy of the monthly report provided to the Debtor by Edgemark Asset Management, LLC (the "Property Manager"). In addition, and upon reasonable notice to the Debtor, the Debtor agrees to furnish, and to cause the Property Manager to furnish, the Noteholder with such reasonable financial and other information, access to the Debtor's books and records relating to the Property, and access to the Property itself, as required by the Loan Documents.

7. Termination of Use of Cash Collateral. Notwithstanding anything to the contrary contained herein, the Debtor's right to use Cash Collateral shall expire on the earliest to occur of: (a) January 31, 2014; (b) notice to the Debtor by the Noteholder of any violation of the terms of this Interim Order, to the extent Debtor does not cure such violation, to the Noteholder's satisfaction, within ten (10) days of its receipt of such notice; (c) the entry by this Court of an order reversing, amending, supplementing, staying, vacating or otherwise modifying the terms of this Interim Order; (d) the conversion of the Debtor's bankruptcy case to a case under chapter 7 of the Bankruptcy Code; (e) the appointment of a trustee or examiner or other representative with expanded powers for the Debtor; and (f) the occurrence of the effective date or consummation of a plan of reorganization (the first such occurrence being hereinafter referred to as the "Termination Event"). On and after the Termination Event, the Debtor shall immediately cease using any of the Cash Collateral.

8. Entry of this Interim Order shall not be deemed to prejudice or limit any of Noteholder's rights under the Bankruptcy Code, any agreement with or relating to the Debtor, other creditors and/or other parties in interest, or other applicable law. Without limiting the generality of the preceding sentence, (a) Noteholder, by not objecting to entry of this Interim Order or otherwise, shall not be deemed to have, among other things, (i) waived its right to adequate protection under section 361 of the Bankruptcy Code with respect to the use of Cash Collateral other than as contemplated by this Interim Order, (ii) consented, expressly or implicitly, to any surcharge of its collateral under or pursuant to section 506(c) of the Bankruptcy Code, and Noteholder expressly reserves its right to oppose any relief that may be sought by the Debtor, any trustee, any other estate representative, or any creditor or other party in interest with respect to surcharge of collateral pursuant to section 506(c) of Bankruptcy Code, (iii) waived its right to assert any right or remedy available to it in connection with this Interim Order or otherwise, and (b) the rights of Noteholder under section 507(b) or other priority provisions of the Bankruptcy Code are not waived, but instead are expressly reserved, in the event that the relief provided herein proves inadequate and Noteholder establishes entitlement to a priority claim under section 507(b).

9. Effectiveness. This Interim Order shall take effect immediately upon entry hereof and shall be without prejudice to the right of the Noteholder to make legal arguments or contest factual matters with respect to any future proceedings.

10. Notice. On or before seven business days following the entry of this Interim Order, the Debtor shall serve a copy of this Interim Order by the first-class mail upon; (a) the United States Trustee; (b) the Noteholder; (c) any party who filed a request for notices in this chapter 11 case pursuant to Bankruptcy Rule 2002 as of the date of this Interim Order; and (d) any other parties entitled to notice hereof.


11. Further Hearing. A further hearing on the Debtor's use of the Cash Collateral, which may be a final hearing, shall be held on January 28, 2014 at 10:30 a.m. Objections to the further use of Cash Collateral shall be filed by January 22, 2014, although the scheduling of such a hearing shall not preclude the Debtors, Noteholder or another creditor or party in interest from seeking a continuance thereof.

12. This Court shall retain jurisdiction to resolve all matters arising out of or related to the Motion or this Order.

Enter:

Dated:

DEC 17 2013


United States Bankruptcy Judge

Prepared by:

Thomas W. Toolis of
Jahnke, Sullivan & Toolis, LLC
10075 W. Lincoln Highway
Frankfort, IL 60423
708-349-9333

WHEATLAND MARKETPLACE CASH BUDGET		
December 2013 & January 2014		
	Dec-13	Jan-14
ACCOUNT		
TOTAL REVENUE	92,849.00	85,620.00
CAM EXPENSES:		
Snow Removal	5,500.00	7,000.00
Landscaping	0.00	0.00
Grounds & Maintenance	1,000.00	1,000.00
Utilities	3,500.00	3,500.00
Property Repairs	1,500.00	1,500.00
Fire, Safety & Security	200.00	200.00
Management Fees	4,000.00	4,000.00
Administrative - Misc.	100.00	100.00
Total CAM Expenses	15,800.00	17,300.00
REAL ESTATE TAXES	18,118.88	18,118.88
INSURANCE	3,077.00	1,100.00
LANDLORD EXPENSES:		
Grounds Maintenance	0.00	0.00
Vacancy Expense	1,300.00	1,300.00
Bldg & General Repairs	5,500.00	2,500.00
Legal/Professional	1,000.00	1,000.00
Promotion	0.00	0.00
Loan Interest	29,391.41	29,391.41
Administrative	150.00	150.00
TOTAL LANDLORD EXP	37,341.41	34,341.41
TOTAL OPERATING EXP	53,141.41	51,641.41
NET OPERATING INCOME	39,707.59	33,978.59

Ex. A