

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re: Case No. 17-_____

LE CENTRE ON FOURTH, LLC¹, Chapter 11

Debtor.

_____ /

**MOTION FOR ORDER AUTHORIZING THE DEBTOR
(A) TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C.
§ 363, AND (B) TO GRANT ADEQUATE PROTECTION IN CONNECTION
THEREWITH PURSUANT TO 11 U.S.C. §§ 361, 363 AND 507**

Le Centre on Fourth, LLC (“Le Centre” or the “Debtor”), by and through its undersigned counsel, hereby files its motion seeking entry of an order, pursuant to sections 105, 361, 362, 363, and 507(b) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1(G) of the Local Rules of United States Bankruptcy Court for the Southern District of Florida (the “Local Rules”), authorizing the Debtor to (a) to use cash collateral, and (b) provide adequate protection. In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105, 361, 362 363 and 507(b) of the Bankruptcy Code, Bankruptcy Rule 4001.

¹ The last four digits of the taxpayer identification number for the Debtor are (8977). The mailing address for the Debtor is 10463 Harrier Street, Plantation, FL 33324.

Disclosures Required By Bankruptcy Rules and Local Rules

4. The Debtor provides the following disclosures in conformity with the requirements of Bankruptcy Rule 4001(b), and Local 9013-1(G):

a. Cash Collateral: Any collateral constituting “Cash Collateral”, as such term is defined in section 363 of the Bankruptcy Code. As of October 10, 2017, the Debtor held approximately \$4,361,000 in Cash Collateral;

b. Parties With an Interest in Cash Collateral:

(i) U.S. Bank, N.A. (“U.S. Bank”) has a security interest in substantially all the assets of the Debtor. As of November 8, 2017, the Debtor owed U.S. Bank \$33,554,494;

(ii) Pursuant to various loan documents that are part of the tax credit structure described in the *Chapter 11 Case Management Summary*, filed contemporaneously herewith, Stonehenge Community Development LXVIII, LLC; Stonehenge Community Development LX, LLC; Stonehenge Community Development LXI, LLC (collectively, the “Stonehenge Lenders”) and LeCentre on Fourth Master Tenant, LLC (“Master Tenant”) assert an interest in the Cash Collateral that is subordinate to U.S. Bank. The security interests asserted by each of the Stonehenge Lenders and Master Tenant are *pari passu*. In the aggregate, the Debtor owes the Stonehenge Lenders approximately \$23 million. The Debtor owes Master Tenant approximately \$7.7 million.

c. Proposed Use of Cash Collateral: The Debtor proposes to use Cash Collateral for those purposes and in the amounts set forth in the operating budget attached hereto as Exhibit B (the “Budget”); as and when such expenses become due and payable

provided, however, that the Debtor's compliance with the Budget shall be subject to deviation, per line item, of no more than 10%, and an aggregate deviation of no more than 10%, and any deviation of more than 10% on any line item or in the overall Budget shall require Court approval;

d. Termination Date: The Debtor seeks authority to continue to use Cash Collateral during the pendency of this chapter 11 case;

e. Adequate Protection: As adequate protection for the Debtor's use of Cash Collateral, the Debtor shall (i) grant U.S. Bank, the Stonehenge Lenders and Master Tenant replacement liens on all property that is of the same nature and type as the pre-petition collateral, in the same priority as the liens existed as of the Petition Date (the "Replacement Liens"); provided, however, that the Replacement Liens shall not attach to Avoidance Actions (as defined below) or their proceeds and shall be subordinate to the Carve-Out (as defined below); and (ii) pay periodic cash payments of interest at the non-default rate; and

f. Cash Collateral Order: The proposed form of Cash Collateral Order will be in substantially the same form as is attached hereto as **Exhibit A**.

Background²

5. On the date hereof (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court.

6. The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been

² For a detailed description of the Debtor, its assets, liabilities and operations, the Debtor respectfully refers the Court and parties in interest to the Case Management Summary.

made for the appointment of a trustee or examiner and no official committee has yet been appointed in this chapter 11 case.

7. The Debtor is the fee owner of certain real property located in Louisville, Jefferson County, Kentucky, consisting generally of a 340,754 square foot Class A mixed-use commercial building that includes a 304 room *Embassy Suites Hotel*, 51,016 square feet of Class A office space, 966 square feet used as office space by the property manager and 25,096 square feet of Class A retail space (the “Property”).

8. The Debtor financed the acquisition and renovation of the Property, in part, through a loan provided by U.S. Bank in the original principal amount of \$38,427,580. The loan is secured by a first priority lien on substantially all of the Debtor’s assets, including the Property. The loan matured and became due and payable on October 18, 2016. The loan is accruing at the Default Rate of interest (9.464%) set forth in the U.S. Bank loan documents.

9. The Debtor also obtained approximately \$23 million in financing from the Stonehenge Lenders to finance the improvements to the Property. This indebtedness is also secured by liens on the Property that are junior and subordinate to the U.S. Bank indebtedness. By letter dated December 21, 2016, the Stonehenge Lenders provided written notice of the occurrence of events of default by virtue of, *inter alia*, the maturity of the U.S. Bank, N.A. indebtedness.

10. Master Tenant also advanced a loan to the Debtor in the amount of \$7.7 million.

11. The claims of the secured creditors are summarized as follow:

•	U.S. Bank, N.A.	\$33,554,494
•	Stonehenge Comm. Dev. LXVIII	\$ 3,740,631
•	Stonehenge Comm. Dev. LX	\$10,000,000
•	Stonehenge Capital Dev. LVI	\$10,000,000
•	Master Tenant	\$ 7,759,369

12. In addition to the maturity of the loan and other alleged events of default, the Debtor's members have been involved in litigation in Kentucky over their respective rights and obligations under the operating agreement and other operative documents.

Cash Collateral

13. The Cash Collateral proposed to be used by the Debtor includes cash on-hand as of the Petition Date and cash generated from the continued operations of the Property, including payments received by the Debtor under the Master Lease. The Debtor believes that the cash may constitute "Cash Collateral" as that term is defined in the Bankruptcy Code. See 11 U.S.C. § 363(a). As section 363(a) states, cash collateral includes:

cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

14. Through this Motion, the Debtor seeks to utilize Cash Collateral in order to maintain its business and to fund administrative costs of this chapter 11 case. The Debtor's request for use of Cash Collateral is intended to cover the Debtor's expenses in the Budget, to preserve the value of the Debtor's assets and maximize the return to its stakeholders through an open and competitive sale, all in accordance with Section 363 of the Bankruptcy Code. The expenses include payment of subcontractors, laborers, taxes, insurance, professional fees and other expenses of the Debtor.

15. Unless authorized to use Cash Collateral the Debtor will be unable to operate its business.

16. As adequate protection for the use of Cash Collateral, the Debtor shall, with the Court's permission, (a) grant U.S. Bank, the Stonehenge Lenders and Master Tenant, *nunc pro tunc* to the Petition Date, replacement liens on and in the Postpetition Collateral (as defined in the Cash Collateral Orders), which excludes Avoidance Actions (as defined below), (b) make monthly cash payments of interest only at the non-default rate set forth in the applicable loan documents, and (c) continue to maintain and insure the Property.

17. The filing of this Motion does not constitute an admission by the Debtor that U.S. Bank, the Stonehenge Lenders, Master Tenant or any other party which may claim a lien on assets of the estate, holds valid liens on the Debtor's cash or cash equivalents or any other assets. The Debtor reserves all of its rights.

Argument and Citation of Authority

18. Bankruptcy Code section 363(c)(2), which governs the postpetition use of cash collateral by a debtor in possession, provides as follows:

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless —

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2)(A), (B).

19. The Debtor seeks authority to use Cash Collateral pursuant to 11 U.S.C. § 363(c)(2)(B). If the Debtor is unable to use Cash Collateral or obtain such additional liquidity, it will not be able to meet essential obligations thereby forcing a shutdown of its operations.

20. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. 11 U.S.C. § 361(1)-(3). What constitutes adequate protection must be decided on a case-by-case basis. *See MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-12397 (10th Cir. 1987); *Martin v. U.S. (In re Martin)*, 761 F.2d 472, 474 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003).

21. The focus of the adequate protection requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“[t]he whole purpose of adequate protection for a creditor is to insure that the creditor receives the value of which he bargained pre-bankruptcy”) (internal citations omitted); *see also In re Carbone Companies, Inc.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“[t]he test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral”). It is well-established that a bankruptcy courts grant the use of cash collateral in order to preserve or enhance a debtor’s ability to remain a going-concern. *In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). In addition, the grant of a replacement lien provides ample adequate protection of a secure creditor’s interest in cash collateral. *O'Connor*, 808 F.2d at 1397.

22. In exchange for the use of Cash Collateral and other transactions contemplated hereby, the Debtor proposes, as adequate protection pursuant to sections 361 and 363 of the Bankruptcy Code, as applicable, to grant U.S. Bank, the Stonehenge Lenders and Master Tenant valid, perfected and enforceable replacement liens to, on and in the Postpetition Collateral with

the same validity, priority and extent as held by each as of the Petition Date, and pay monthly interest at the non-default rate.

23. The Debtor requests that the replacement lien granted to U.S. Bank, the Stonehenge Lenders or Master Tenant, as well as any administrative expense claim granted to U.S. Bank, the Stonehenge Lenders or Master Tenant pursuant to the terms of the Case Collateral Order, be at all times subject and junior to (a) fees due the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) fees due the Clerk of Court; (c) fees and expenses due to the Debtor's professionals in the amount set forth in the Budget; and (c) following a Termination Event (as defined in the Cash Collateral Order), up to \$50,000 in fees and expenses incurred by the Debtor's professionals.

24. For the avoidance of any doubt, U.S. Bank, the Stonehenge Lenders and Master Tenant shall not be granted a replacement lien on or against any claims or causes of action arising under sections 542 through 550 of the Bankruptcy Code (collectively, the "Avoidance Actions") or on or against any proceeds of the Avoidance Actions.

25. Notice of this motion was served, in compliance with Federal Rule of Bankruptcy Procedure 4001(b), upon U.S. Bank, the Stonehenge Lenders, the Master Tenant, the Office of the United States Trustee, the Internal Revenue Service, and the persons and/or entities identified in the list of 20 largest unsecured creditors of the Debtor, as no unsecured creditors' committee has been appointed.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order substantially in the form attached hereto as **Exhibit A**: (i) authorizing the Debtor's use of Cash Collateral on an interim basis as set forth herein; and (ii) granting the Debtor such other and further relief as may be proper and just.

Dated: November 10, 2017

Respectfully submitted,

BERGER SINGERMAN LLP
Proposed Counsel for Debtor-in-Possession
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Miami, FL 33131
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By: /s/ Jordi Guso

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EXHIBIT A
(Proposed form of Order)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re: Case No. 17- _____
LE CENTRE ON FOURTH, LLC¹, Chapter 11
Debtor.
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**ORDER AUTHORIZING THE DEBTOR
(A) TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C.
§ 363, AND (B) TO GRANT ADEQUATE PROTECTION IN CONNECTION
THEREWITH PURSUANT TO 11 U.S.C. §§ 361, 363 AND 507**

THIS MATTER came before the Court in Fort Lauderdale, Florida on _____,
2017 at ____ a.m./p.m. upon the *Motion For Order (I) Authorizing The Debtor (A) to Use Cash
Collateral Pursuant To 11 U.S.C. § 363, and (B) to Grant Adequate Protection In Connection
Therewith Pursuant To 11 U.S.C. §§ 361, 363 and 507* [ECF No. ____] (the “Cash Collateral

¹ The last four digits of the taxpayer identification number for the Debtor are (8977). The mailing address for the Debtor is 10463 Harrier Street, Plantation, FL 33324.

Motion”).² The Court having considered the Cash Collateral Motion, the record in this matter and having heard argument of counsel for the Debtor, U.S. Bank, the Stonehenge Lenders and Master Tenant and finding good cause for granting the relief requested in the Motion, it is

ORDERED as follows:

1. The Motion is GRANTED.
2. The Debtor is authorized to use Cash Collateral for those purposes and in those amounts set forth in the Budget, attached hereto as **Exhibit “1”** (the “Budget”) as and when such expenses become due and payable; provided, however, that the Debtor’s compliance with the Budget shall be subject to deviation, per line item, of no more than 10%, and an aggregate deviation of no more than 10%, and any deviation of more than 10% on any line item or in the overall Budget shall require Court approval or consent of the secured creditors.
3. Each of U.S. Bank, the Stonehenge Lenders and Master Tenant is granted an administrative expense claim pursuant to Sections 507(a)(1) and (b) and 503(b) of the Bankruptcy Code to the extent of the diminution, if any, in the value of their interests in the Cash Collateral as of the Petition Date (the “Administrative Expense Claim”).
4. Each of U.S. Bank, the Stonehenge Lenders and Master Tenant is also granted a replacement lien (the “Replacement Lien”) on and in all property, owned acquired or generated post-petition by the Debtor and its continued operations to the same extent and priority and of the same kind and nature as U.S. Bank, the Stonehenge Lenders and Master Tenant had prior to the filing of this bankruptcy case (the “Post-Petition Collateral”). The Post-Petition Collateral excludes all proceeds of property recovered or transfers avoided by or on behalf of the Debtor,

² Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

its estate or any subsequently appointed trustee, pursuant to Sections 544 through 550, inclusive, of the Bankruptcy Code (the “Avoidance Actions”).

5. The Administrative Expense Claim and the Replacement Lien shall be junior and subordinate to (a) fees due the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) fees due the Clerk of Court; (c) fees and expenses due to the Debtor’s professionals in the amount set forth in the Budget and as allowed by the Court after notice and a hearing; and (c) following a Termination Event, up to \$50,000 in fees and expenses incurred by the Debtor’s professionals from and after the Termination Event (collectively, the “Carve-Out”).

6. The replacement lien in the Post-Petition Collateral (the “Replacement Lien”) granted to U.S. Bank, the Stonehenge Lenders and Master Tenant is deemed to be valid and perfected to the same extent as existed as of the Petition Date without the need for the execution, filing or recording of any further documents or instruments, otherwise required to be executed or filed under non-bankruptcy law;

7. Debtor is further authorized to provide adequate protection in the form of monthly payments of interest at the non-default, contract rate to each of U.S. Bank, the Stonehenge Lenders and Master Tenant.

8. Notwithstanding any other provision of this Cash Collateral Order, the finding that U.S. Bank, the Stonehenge Lenders and Master Tenant interests are adequately protected is without prejudice to the rights of U.S. Bank, the Stonehenge Lenders and Master Tenant to seek modification of the adequate protection provided in this Interim Order and without prejudice to the rights of the Debtor or any other party in interest to contest any such requested modification;

9. The Debtor shall furnish U.S. Bank, the Stonehenge Lenders and Master Tenant with such financial and other information as each reasonably requests.

10. Nothing in this Order is intended to be a determination of the extent, validity, or priority of the lien rights of U.S. Bank, the Stonehenge Lenders and Master Tenant, the value of collateral purporting to secure the indebtedness due from the Debtor to any of U.S. Bank, the Stonehenge Lenders and Master Tenant pre-petition claim, or the need for additional adequate protection to U.S. Bank, the Stonehenge Lenders and Master Tenant. The Debtor reserves all such rights to challenge the validity, priority and extent of U.S. Bank, the Stonehenge Lenders and Master Tenant lien rights and claimed indebtedness.

11. The Debtor's right to use Cash Collateral shall terminate upon the entry of an order (a) directing the appointment of a trustee for the Debtor, (b) dismissing or converting this case to a case under Chapter 7, (c) determining that the Debtor is in default of its obligations under this Order (in each case a "Termination Event").

12. The Court retains jurisdiction for the purpose of interpreting and enforcing this Order.

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Submitted by:

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Copies to:

Jordi Guso, Esq.
(Attorney Guso shall serve a copy of this Order upon all interested parties upon receipt and file a certificate of service.)

EXHIBIT 1
(Budget)

Le Centre on Fourth LLC
Cash Flow Projection

Description	Budget													TOTAL		
	11/18/17	11/25/17	12/02/17	12/09/17	12/16/17	12/23/17	12/30/17	01/06/18	01/13/18	01/20/18	01/27/18	02/03/18	02/10/18			
Receipts																
Rent/UCAM - Master Tenant	\$ 603,831	\$ -	\$ -	\$ -	\$ 603,831	\$ -	\$ -	\$ -	\$ 634,023	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,841,685
Other																\$ -
Total Receipts	603,831				603,831				634,023							\$ 1,841,685
Disbursements																
LCF - Controller	-	3,000	-	3,000	-	3,000	-	3,000	-	3,000	-	3,000	-	3,000	-	\$ 18,000
Building Manager	-	3,125	-	3,125	-	3,125	-	3,125	-	3,125	-	3,125	-	3,125	-	\$ 18,750
Bookkeeping	-	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	1,000	-	\$ 3,000
Attorney - Vince Cox Townsend	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	-	-	1,000	\$ 4,000
Misc. - R&M (Bldg. exterior)	1,000	-	-	-	1,000	-	-	-	1,000	-	-	-	-	-	1,000	\$ 4,000
Interest - US Bank Loan	-	-	-	268,115	-	-	-	268,115	-	-	-	-	-	250,159	-	\$ 766,388
Interest - Stonehenge Loans	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ 113,720
Miscellaneous	1,000	-	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	\$ 13,000
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ -
Operating Outflows	3,000	8,125	1,000	275,240	3,000	7,125	2,000	275,240	3,000	120,845	2,000	257,284	3,000	960,859	\$ 960,859	
Operating Cash Flow	600,831	(8,125)	(1,000)	(275,240)	600,831	(7,125)	(2,000)	(275,240)	631,023	(120,845)	(2,000)	(257,284)	(3,000)	880,826	\$ 880,826	
Legal Fees (Berger Singerman)	62,500	-	-	-	62,500	-	-	-	62,500	-	-	-	-	62,500	\$ 250,000	
CFO Fees (GlassRatner)	75,000	-	-	-	70,000	-	-	-	62,000	-	-	-	-	62,000	\$ 269,000	
US Trustee	-	-	-	-	-	-	-	-	-	4,875	-	-	-	-	\$ 4,875	
Creditors Committee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ -	
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ -	
Total Bankruptcy Fees	137,500				132,500				124,500	4,875			124,500	\$ 523,875		
Total Disbursements	140,500	8,125	1,000	275,240	135,500	7,125	2,000	275,240	127,500	125,720	2,000	257,284	127,500	\$ 1,484,734		
Net Change in Cash	463,331	(8,125)	(1,000)	(275,240)	468,331	(7,125)	(2,000)	(275,240)	506,523	(125,720)	(2,000)	(257,284)	(127,500)	\$ 743,735		
Beginning Balance	\$ 4,361,008	\$ 4,824,340	\$ 4,816,215	\$ 4,815,215	\$ 4,539,975	\$ 5,008,306	\$ 5,001,181	\$ 4,999,181	\$ 4,723,942	\$ 5,230,464	\$ 5,104,744	\$ 5,102,744	\$ 4,845,460	\$ 4,361,008		
Ending Balance	\$ 4,824,340	\$ 4,816,215	\$ 4,815,215	\$ 4,539,975	\$ 5,008,306	\$ 5,001,181	\$ 4,999,181	\$ 4,723,942	\$ 5,230,464	\$ 5,104,744	\$ 5,102,744	\$ 4,845,460	\$ 4,717,960	\$ 5,104,744		

Notes: Based on best available information as of 11/18/17

- [1] Source: Master Lease Schedule.
- [2] Monthly interest calculated as follows:

US Bank (Default Rate)	Principal	Rate	Interest
	\$ 33,354,494	9.65%	268,115
- [3] Quarterly interest calculated as follows:

Stonehenge LX	Principal	Rate	Interest
	\$ 10,000,000	1.92%	\$ 47,901
Stonehenge LVI		1.92%	\$ 47,901
Stonehenge LXVIII		1.92%	\$ 17,918
	\$ 23,740,631		\$ 113,720
- [4] Opening cash balance based on information as of 10/10/17.

US Bank - Operating Account	\$ 3,670,229
US Bank - Payroll Account	\$ 2,322
US Bank - Other Account	\$ 688,457
	\$ 4,361,008