

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

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245-KBO

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF AN INTERIM
ORDER: (A) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL; (B)
SCHEDULING A FINAL HEARING; AND (C) FOR RELATED RELIEF**

CBC Restaurant Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, "Corner Bakery" or the "Debtors"), respectfully state the following in support of this motion (this "Motion").

RELIEF REQUESTED

1. Corner Bakery seeks entry of interim and final orders, in substantially in the form attached hereto as **Exhibit A** and **Exhibit B** (the "Interim Order" and "Final Order," respectively, and together, the "Cash Collateral Orders"): (a) authorizing the Debtors' use of cash collateral; and (b) scheduling a final hearing to consider entry of an order granting the relief requested in the Motion on a final basis. Corner Bakery has notified its secured lender of this Chapter 11 filing and is currently in discussions with the lender and seeking its consent to the use of cash collateral on the limited, short-term basis outlined herein.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors' service address is 121 Friends Land, Suite 300, Newtown PA 18940.



JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.).

3. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BASIS FOR RELIEF

5. The statutory predicates for the relief requested herein pursuant to Sections 105(a), 361, 363(b), and 363(c)(2) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); Bankruptcy Rules 2002, 4001, and 9014; and Local Rule 4001-2

BACKGROUND

A. The Business and Events Leading to These Bankruptcy Filings

6. On February 22, 2023, Corner Bakery commenced cases under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

7. A detailed description of the Debtors and their business, and the facts and circumstances giving rise to these Chapter 11 cases and supporting this motion, is set forth in detail in the Detailed descriptions of the Debtors and their business and the facts and circumstances supporting this Motion and the Debtors' chapter 11 cases are set forth in detail in the *Declaration of Jay Pandya, Chief Executive Officer and Chief Operating Officer of CBC Restaurant Corp. in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), which is incorporated herein by reference.

B. Corner Bakery's Prepetition Capital Structure

8. Pursuant to a certain Credit and Guaranty Agreement, dated as of November 10, 2017 (as amended or otherwise modified from time to time, the ("Credit Agreement")) by and among CBC Restaurant Corp., a Delaware corporation ("Company"), Corner Bakery Holding Company (f/k/a IFCB Holding Corporation), a Delaware corporation ("Holdings"), and certain subsidiaries of the Company, as Guarantors (Holdings and such other Guarantors, and together with Company, each a ("Credit Party") and collectively, the ("Credit Parties")), the Lenders party thereto from time to time and SSCP Restaurant Investors, LLC as the successor by assignment from Goldman Sachs Specialty Lending Group, L.P., as Administrative Agent and Collateral Agent (in each such capacity, "Agent"), the Lenders agreed to extend credit facilities in an aggregate amount not to exceed \$177,500,000, consisting of \$155,000,000 aggregate amount of Tranche A Term Loans, and \$22,500,000 aggregate principal amount of Revolving Commitments (subject to a \$9,500,000 sublimit for Revolving Loans and a \$13,000,000 sublimit for Letters of Credit (the "Credit Facility")). The Credit Facility was amended and/or extended as of September 11, 2019, March 31, 2020, April 16, 2020, June 30, 2020, August 7, 2020, September 10, 2020, October 21, 2020, October 28, 2020 and June 15, 2021.

9. Certain Credit Parties also entered into a Pledge and Security Agreement dated as of November 10, 2017 (as amended or otherwise modified from time to time, including the Pledge Supplement dated September 30, 2019, and a Trademark Security Agreement, also dated as of November 10, 2017, granted in connection with the Credit Facility. As of the Petition Date, the amount allegedly due under the Credit Agreement (and disputed by the Debtors) is approximately \$33.8 million.

C. Proposed Terms of Cash Collateral Usage

10. By way of this Motion, Corner Bakery is seeking the use of cash collateral for the limited purpose of funding up to \$2.4 million for the purposes of paying its regular payroll due on February 23, 2023, as set forth in the accompanying *Motion of the Debtors for Entry of Interim and Final Orders: (1) Authorizing Debtors to Pay Prepetition Employee Obligations, Prepetition Withholding Obligations, and Postpetition Employee Obligations in the Ordinary Course; and (B) Authorizing Banks to Honor Related Transfers* and to make certain payments to essential post-petition food vendors in the amount of up to \$1 million (the "Critical Operating Expenses"). The Debtors are preparing a separate motion to be filed shortly seeking approval of debtor-in-possession financing and longer-term usage of cash collateral.

11. The following chart contains a summary of the material terms of the Interim Order, in accordance with Bankruptcy Rules 4001(b)(1) and Local Rule 4001-2.

Material Terms	Summary of Material Terms	Paragraphs of the Interim Order
Cross Collateralization <i>LBR 4001-2(a)(i)(A)</i>	None	N/A
Findings re Validity/Perfection/Debt Amount/Challenge Period <i>LBR 4001-2(a)(i)(B)</i>	None	N/A

506(c) Waiver <i>LBR 4001-2(a)(i)(c)</i>	None	N/A
Prepetition Secured Creditor Liens <i>LBR 4001-2(a)(i)(D)</i>	None	N/A
Provisions Deeming Pre-Petition Debt to be Postpetition Debt Local Bankruptcy Rule <i>LBR 4001-2(a)(i)(E)</i>	None	N/A
Disparate Treatment for Committee Professionals from the Debtors' Professionals <i>LBR 4001-2(a)(i)(F)</i>	None	N/A
Non-Consensual Priming <i>LBR 4001-2(a)(i)(G)</i>	None	N/A
552(b) Waiver <i>LBR 4001-2(a)(i)(H)</i>	None	N/A
Purpose for the Use of Cash Collateral <i>LBR 4001-2(a)(ii)</i>	The Debtors seek authority to use Cash Collateral to pay critical operating expenses during this Chapter 11 case, to be further supplemented by DIP financing to be submitted to this Court for approval roughly contemporaneously with the Final Hearing on this motion	¶[●]
Budget	Except as otherwise expressly provided in the Interim Order, Cash Collateral may be used	¶[●]

<i>LBR 4001(b)(1)(B)(ii)</i>	at the times, in the amounts, and for the purposes set forth herein.	
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THE USE OF CASH COLLATERAL IS NECESSARY AND APPROPRIATE

12. Corner Bakery's need to use cash collateral is immediate and critical in order to continue to operate their business and to administer and preserve the value of their estates. The events leading up to the Debtors' financial circumstances are more fully described in the First Day Declaration. Corner Baker does not have sufficient sources of working capital or available without the authorized use of Cash Collateral.

A. The Debtors' Use Of Cash Collateral.

13. Bankruptcy Code section 363(a) defines cash collateral, which includes, *inter alia*, deposit accounts, whether existing before or after the commencement of a case under the Bankruptcy Code.

14. Section 363(c) further provides as follows:

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(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 cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provision of this section.

11 U.S.C. § 363(c)(1)-(2).

15. Notwithstanding the objection of a party with an interest in cash collateral, pursuant to section 363(e), the court may authorize the use of cash collateral if such creditor's interest in the cash collateral is adequately protected.

16. The Debtors' use of cash collateral to pay the Critical Operating Expenses under the circumstances of these Chapter 11 Cases is authorized pursuant to Bankruptcy Code section 363(c).

17. The principal purpose of adequate protection "is to assure that the lender's economic position is not worsened because of the bankruptcy case." *In re DeSardi*, 340 B.R. 790, 804 (Bankr. S.D. Tex. 2006). A secured creditor is "not entitled to adequate protection payments without a showing of economic depreciation." *In re Immenhausen Corp.*, 164 B.R. 347, 352 (Bankr. M.D. Fla. 1994) (citing *United Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 369-73 (1988)). The interest in property that is entitled to protection is value of the collateral securing such claim. *Id.* It follows therefore that where a secured creditor's interest and the value of the collateral is not diminishing by its use, sale or lease, the secured creditor's interest is adequately protected. *Id.* The Bankruptcy Code does not explicitly define adequate protection, but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including other relief resulting in the indubitable equivalent of the secured creditor's interest in such property. *See* 11 U.S.C. § 361. Because the term "adequate protection" is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp. Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (citing *In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1995) (same); *In re Senior Care Props., Inc.*, 137 B.R. 527, 528 (Bankr. N.D. Fla. 1992) (same); *In re Family Place P'ship*, 95 B.R. 166, 171 (Bankr. E.D. Cal. 1989); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); *see also* S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978) and H.R. Rep. No. 595, 95th Cong., 2d Sess. 339 (1978) (acknowledging that the statute confers upon "the parties

and the courts flexibility by allowing such other relief as will result in the realization by the protected entity of the value of its interest in the property involved.”).

18. Preserving the value of the collateral against the decline in value that would result from a precipitous liquidation is a crucial factor to consider in making an adequate protection determination. *In re Snowshoe Co. Inc.*, 789 F.2d 1085, 87 (4th Cir. 1986) (affirming 364(d) financing order where trustee reported that the collateral would lose from 50% to 90% of its value if operations ceased); *In re Ralar Distribs., Inc.*, 166 B.R. 3, 6 (Bankr. D. Mass. 1994), *aff'd* 182 B.R. 81 (D. Mass.), *aff'd* 69 F.3d 1200 (1st Cir. 1995).

19. Accordingly, to meet the general rehabilitative purpose of chapter 11, which requires that debtors have the ability to access their cash to operate, the Debtors request authority to use their cash collateral to fund the Critical Operating Expenses.

20. In these Chapter 11 Cases, SSCP is adequately protected because without the use of the cash collateral to pay the Critical Operating Expenses, it is extremely unlikely that the Debtors can remain in business and successfully reorganize. Without the ability to fund payroll and purchase food and inventory for its restaurants, Corner Bakery will no longer be able to operate and the value of the lender's collateral will decline precipitously.. Corner Bakery must be permitted to preserve its value.

21. Based on the foregoing, Corner Bakery respectfully submits that entry of an Order authorizing the interim use of cash collateral and scheduling a Final Hearing to approve the use of cash collateral on a final basis is necessary and appropriate.

D. The Debtors' Ability to Make Adequate Assurance Payments to SSCP

22. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). If the debtors’ determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use. *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 482-483 (Bankr. N.D. Ohio 1992) (a section 363 sale may be authorized when a sound business purpose dictates such action); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (section 363 of the Bankruptcy Code requires that the debtor’s decision be supported by a “sound business purpose”); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999).

23. Once a debtor articulates a valid business judgment, “the business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *In re Engman*, 331 B.R. 277, 289 (Bankr. D. Mich. 2005) (the business judgment rule creates a presumption in favor of the fiduciary). The business judgment rule has vitality in chapter 11 cases and shields a debtor’s management from judicial second guessing. *Integrated Res.*, 147 B.R. at 656.

24. Additionally, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a). The “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. It is well established that a bankruptcy court has authority to authorize payment of prepetition claims where the payment

of such claims is necessary to facilitate reorganization. For example, under the “necessity of payment” doctrine, a bankruptcy court can exercise its equitable powers to permit the payment of prepetition claims of those parties whose goods or services are critical to the debtor’s reorganization. *See In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (supporting principle that bankruptcy court can authorize payment of prepetition claims where such payment is necessary to survival of debtor); *In re SIS Corp.*, 108 B.R. 608,609-10 (Bankr. N.D. Ohio 1989) (recognizing that courts may authorize payments on account of prepetition claims premised upon overriding practical and policy reasons); *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931-932 (Bankr. S.D. Ohio 1988) (agreeing in “principle that a bankruptcy court may exercise its equitable powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”) (citation omitted); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (“[I]f payment of a claim which arose prior to reorganization is essential to the continued operation of the railroad during reorganization, payment may be authorized even if it is made out of corpus.”); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation); *In re Columbia Gas Sys.* 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (necessity of payment doctrine is applicable where “payment is essential to continued operation of business”); *In re Ionosphere Clubs*, 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989) (stating that the rationale of the necessity of payment rule corresponds with the paramount goal under chapter 11 of reorganizing the debtor and that section 105(a) allows the bankruptcy court to “authorize the

payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor”) (citation omitted)

25. Accordingly, the Debtors request authority to use Cash Collateral on the terms set forth herein.

REQUEST FOR A FINAL HEARING

26. Pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2(c), the Debtors request that the Court set a date for the Final Hearing and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion.

RESERVATION OF RIGHTS

27. Nothing contained in this Motion is intended or should be construed as an admission as to the validity of any claim against Corner Bakery, a waiver of the Debtors’ rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. Corner Bakery expressly reserves its rights to contest any claim related to the relief sought in this Motion. Likewise, if the Court grants the relief sought in this Motion, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

THE REQUIREMENTS OF BANKRUPTCY RULES 6003 ARE SATISFIED

28. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, authorizing the relief requested in this Motion is integral to Corner Bakery’s ability to transition its operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely

disrupt its operations at this critical juncture. For the reasons discussed herein, the relief requested in this Motion is necessary in order for Corner Bakery to operate its business in the ordinary course and preserve the ongoing value of its operations and maximize the value of its estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

WAIVER OF BANKRUPTCY RULES 6004(a) and 6004(h)

29. To implement the foregoing successfully, Corner Bakery requests that the Court enter an order providing that notice of the relief requested in this Motion satisfies Bankruptcy Rule 6004(a) and that it has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

30. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the lender under the Debtors’ debtor in possession financing facility and counsel thereto; (d) the United States Attorney’s Office for the District of Delaware; (e) the Internal Revenue Service; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking “first day” relief, the Debtors will serve copies of this Motion and any order entered on this Motion as required by Local Rule 9013-1(m). Corner Bakery submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

31. No prior request for the relief sought in this Motion has been made by Corner Bakery to this or any other court.

WHEREFORE, Corner Bakery respectfully requests that the Court enter an Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: February 23, 2023
Wilmington, Delaware

/s/ Mette H. Kurth

Mette H. Kurth (DE Bar No. 6491)
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Proposed Counsel to the Debtors and Debtors In Possession

Exhibit A

Proposed Interim Order

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

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245-KBO

(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS' USE OF CASH
COLLATERAL, (II) SCHEDULING A FINAL HEARING AND (III) GRANTING
RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"): (a) authorizing the Debtors' interim and final use of cash collateral, (b) scheduling a final hearing and (c) granting related relief; and it appearing that the Court has jurisdiction over this matter, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court finding that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors' service address is 121 Friends Land, Suite 300, Newtown PA 18940.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. Pursuant to Bankruptcy Code Sections 105(a), 363(b), and 363(c)(2), the Debtors are authorized to use cash collateral on an interim basis in order to fund the Critical Operating Expenses as set forth in the Motion. Nothing in this Order shall be construed as a judgment as to the validity of any prepetition liens nor as a waiver of any party's right to later challenge such liens, all such rights being expressly reserved.
3. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the Local Rules are satisfied by such notice.
4. Nothing contained in this Interim Order or in the Motion is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, or (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim. Likewise any payment made pursuant to this Interim Order is not intended to be, and shall not be construed as, an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.
5. Nothing in this Interim Order or the Motion is intended or shall be construed to constitute relief from the automatic stay pursuant to section 362 of the Bankruptcy Code.

6. The terms and conditions of this Order are effective and enforceable immediately upon its entry.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

9. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on _____, **2023 at __:00 .m. (EST)**; and any objections to entry of such order shall be in writing, filed with this Court, and served upon (i) counsel to the Debtors, (ii) the Secured Creditors, (iii) the U.S. Trustee, and (iv) counsel for any statutory committee appointed in these Chapter 11 Cases, in each case so as to be received no later than **4:00 p.m. (EST) on _____, 2023.**

Exhibit A

Proposed Order

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

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245-KBO

(Joint Administration Requested)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS' USE OF CASH
COLLATERAL, (II) SCHEDULING A FINAL HEARING AND (III) GRANTING
RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"): (a) authorizing the Debtors' interim and final use of cash collateral, (b) scheduling a final hearing and (c) granting related relief; and it appearing that the Court has jurisdiction over this matter, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court finding that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

10. The Motion is **GRANTED** as set forth herein.

11. Pursuant to Bankruptcy Code Sections 105(a), 363(b), and 363(c)(2), the Debtors are authorized to use cash collateral on an final basis in order to fund the Critical Operating Expenses as set forth in the Motion. Nothing in this Order shall be construed as a judgment as to the validity of any prepetition liens nor as a waiver of any party's right to later challenge such liens, all such rights being expressly reserved.

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the Local Rules are satisfied by such notice.

13. Nothing contained in this Order or in the Motion is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, or (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim. Likewise any payment made pursuant to this Order is not intended to be, and shall not be construed as, an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

14. Nothing in this Order or the Motion is intended or shall be construed to constitute relief from the automatic stay pursuant to section 362 of the Bankruptcy Code.

15. The terms and conditions of this Order are effective and enforceable immediately upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

17. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.