

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)

(Jointly Administered)

**MOTION OF THE DEBTORS FOR ENTRY OF AN INTERIM AND FINAL
ORDER: (I) APPROVING DEBTORS' PROPOSED FORM OF ADEQUATE
ASSURANCE OF PAYMENT TO UTILITY COMPANIES; (II) ESTABLISHING
PROCEDURES FOR RESOLVING ADDITIONAL ADEQUATE ASSURANCE
REQUESTS; AND (III) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICE**

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"),² respectfully state the following in support of this motion (this "Motion").

RELIEF REQUESTED

1. Corner Bakery seeks entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the "Interim Order") and **Exhibit B** (the "Final Order"): (a) approving the Debtors' proposed form of adequate assurance of payment to utility companies, (b) establishing procedures for resolving additional adequate assurance request; (c) prohibiting utility companies from altering, refusing, or discontinuing service; and (d) granting related relief. In

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 Lane, Suite 301, Newtown PA 18940.

² 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 Jignesh Pandya, Chief Executive Officer and Chief Operating Officer of Corner Bakery, in Support of Chapter 11 Petitions and Certain First Day Emergency Motions* (the "First Day Declaration"), filed on February 23, 2023 at Doc. No. 0022.



addition, Corner Bakery requests that the Court schedule a final hearing as soon as practicable to consider approval of this Motion on a final basis.

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 REQUESTED

5. The bases for the relief requested in this Motion are sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

BACKGROUND

A. General Background

6. Corner Bakery is a fast-casual restaurant serving kitchen-crafted breakfast, lunch, and dinner and catering to guests. Its restaurants have been a neighborhood favorite since the brand was established in 1991. The original American Italian bakery cafe was founded on a philosophy

of creating a warm and comfortable place for people to relax with friends, family, and neighbors. Today, the restaurant features artisan-inspired, seasonal menu options made with fresh ingredients, while delivering a premier bakery cafe experience in the heart of neighborhoods and urban markets across California, Texas, Pennsylvania, Illinois, Virginia, Maryland, and the District of Columbia.

7. On the February 22, 2023 (the “Petition Date”), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. 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.

B. The Debtors’ Utilities

8. In the ordinary course of business, the Debtors obtain utility services related to the day-to-day operation of their businesses from numerous utility providers (the “Utility Companies”), such water, electricity, gas, trash, waste disposal, telephone and internet services (the “Utility Services”). A nonexclusive list of the Utility Companies that provide Utility Services to the Debtors as of the Petition Date (the “Utility Services List”) is attached hereto as **Exhibit C**.

9. Uninterrupted Utility Services are essential to the continued operation of the Debtors’ businesses and, consequently, to the success of their Chapter 11 Cases. Should any Utility Company alter, refuse, or discontinue service, even for a brief period, the Debtors’ business operations could be severely disrupted, and such disruption would jeopardize the Debtors’ restructuring efforts. Accordingly, the process that the Debtors propose for providing adequate assurance to their Utility Companies without hindering the Debtors’ ability to function as a going concern is essential.

10. Based recent average monthly patterns—and taking into account that the Debtors are in the process of vacating certain store locations and rejecting the associated leases—the Debtors estimate that the monthly cost for Utility Services during the pendency of these cases will be no more than approximately \$350,000 (not including any deposits to be paid). To the best of the Corner Bakery's knowledge, it does not have any existing prepayments with respect to any Utility Companies. However, as of the Petition Date, the Debtors had placed security deposits with certain Utility Companies in the total amount of **\$26,745** (the "Pre-Petition Security Deposits").

C. Proposed Adequate Assurance of Payment

11. The Debtors intend to pay their undisputed, postpetition obligations to the Utility Companies on a timely basis. Cash on the Debtors' balance sheet, cash generated in the ordinary course of business, and cash available to the Debtors pursuant to their proposed postpetition debtor in possession financing facility are projected to provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice. *

12. Consistent with section 366(c)(1)(A) of the Bankruptcy Code, which defines the phrase "assurance of payment" to include a "cash deposit," the Debtors propose to deposit \$150,000 into a segregated account (the "Adequate Assurance Deposit"), which represents an amount equal to approximately one half of the Debtor's total average monthly cost of Utility Services, net of the Pre-Petition Security Deposits, calculated based on the Debtors' average utility expenses over the last twelve months. The Adequate Assurance Deposit will be held for the duration of these chapter 11 cases in a segregated account (the "Adequate Assurance Account") for the benefit of the Utility Companies and may be applied to any postpetition defaults with respect to Utility Services. No liens will encumber the Adequate Assurance Deposit or the

Adequate Assurance Account. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future utility services in accordance with their prepetition practices (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility Companies in full satisfaction of section 366 of the Bankruptcy Code. Nonetheless, if any Utility Company believes additional assurance is required, the Debtors request that the Court establish certain procedures, described below, by which a Utility Company may request such assurance.

13. All funds held in the Adequate Assurance Deposit Account will be returned to Corner Bakery upon the earliest to occur of: (a) confirmation of a chapter 11 plan of reorganization or liquidation with respect to the Debtors; (b) the closing of a transaction or series of transactions that in aggregate result in the sale of substantially all of the Debtors' assets; (c) conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; (d) dismissal of these Chapter 11 Cases; or (e) conclusion of these Chapter 11 Cases.

D. The Adequate Assurance Procedures

14. In light of the severe consequences to the Debtors' business and operations that would result from any interruption in Utility Services, and to address the right of any Utility Company under section 366(c)(2) of the Bankruptcy Code to seek additional adequate assurance satisfactory to it, the Debtors propose that the following procedures (the "**Adequate Assurance Procedures**") be adopted:

- a. The Debtors will serve a copy of this Motion and the order granting the relief requested herein to each Utility Company within three business days after entry of the order by the Court.
- b. Any Utility Company desiring assurance of future payment for Utility Services beyond the Proposed Adequate Assurance must serve a request (an "Additional Assurance Request") upon the following parties: (i) the Debtors, c/o Krupa Patel, Treasurer, 121 Friends Lane, Ste. 301, Newtown, PA, 18940 and by email to kpaten@pandyagr.com; and (ii) Debtors'

counsel, Culhane Meadows PLLC to Mette Kurth by email at MKurth@CM.Law and Lynnette Warman at LWarman@CM.Law (collectively, the “Notice Parties”).

- c. Any Additional Assurance Request must: (i) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (ii) be made in writing; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iv) describe any deposits or other security currently held by the requesting Utility Company; (v) explain whether the Debtors prepay for the Utility Company’s services; (vi) describe any payment delinquency or irregularity by the Debtors for the postpetition period, if any; and (vii) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- d. Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility to resolve such Additional Assurance Request.
- e. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, payments of prepetition balances, prepayments, other forms of security, or any combination of the above, if the Debtors believe such additional assurance is reasonable.
- f. If the Debtors determine that an Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility, the Debtors shall, upon reasonable notice, calendar the matter (“Adequate Assurance Dispute”) for the next regularly scheduled omnibus hearing date to determine the adequacy of assurances of payment made to the requesting Utility Company.
- g. Pending the resolution of the Additional Assurance Request, the Utility Company making such request shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- h. Any Utility Company that does not comply with the Adequate Assurance Procedures is deemed to find the Proposed Adequate Assurance satisfactory to it and is prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of any unpaid prepetition

charges, or requiring additional assurance of payment beyond the Proposed Adequate Assurance.

E. Subsequent Modification of the Utility Companies List

15. The Debtors request that they be allowed, without further order of the Court, to supplement the Utility Companies List if any Utility Company has been inadvertently omitted from the list (the “Additional Utility Company”). If the Debtors determine that the Utility Companies List should be supplemented, the Debtors will, as soon as reasonably practicable, file with the Court an amendment to Exhibit C adding the name of any Additional Utility Company (the “Supplement”). The Debtors will then serve by email or by facsimile transmission (or where the Debtors do not have the email address or fax number of a Utility Company, by First Class Mail) a copy of this Motion and the signed Interim Order or Final Order, as appropriate, on any Additional Utility Company. The Debtors request that any Additional Utility Company be subject to the terms of the Interim Order and Final Order, as appropriate, including the Adequate Assurance Procedures.

16. The Debtors may amend the Utility Companies List to delete a Utility Company, or may seek to terminate a Utility Company, only if they have provided two weeks’ advance notice to such Utility Company and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete unless and until the two-week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

ARGUMENT

A. Section 366 of the Bankruptcy Code Grants the Court Discretion to Determine the Adequacy of the Debtors' Proposed Assurance

17. Congress enacted section 366 of the Bankruptcy Code to protect a debtor from immediate termination of utility services after filing for bankruptcy, while at the same time providing the utility companies with adequate assurance of payment for postpetition utility services. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. Section 366 defines “assurance of payment” to mean several forms of security, including, cash deposits, letters of credit, and prepayment of utility services. 11 U.S.C. § 366(c)(1)(A). Section 366(c)(1)(B) explicitly excludes, however, offering administrative expense priority as adequate assurance of payment.

18. While section 366(c) of the Bankruptcy Code sets forth what constitutes adequate assurance of payment, the bankruptcy court nonetheless retains discretion to determine what, if any, adequate assurance is necessary to satisfy section 366’s requirement that assurance of payment must only be adequate. See *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) (“The bankruptcy courts are in agreement that Section 366(b) vests in the bankruptcy court the exclusive responsibility for determining the appropriate security which a debtor must provide to his utilities to preclude termination of service for non-payment of prepetition utility bills.”); *Marion Steel Co. v. Ohio Edison Co. (In re Marion Steel Co.)*, 35 B.R. 188, 198 (Bankr. N.D. Ohio 1983) (same). Accordingly, a court is not required to give the utility companies an “absolute guarantee of payment,” or require that the adequate assurance take the form of a deposit, bond, letter of credit, or similar security. *In re Caldor, Inc. - N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996).

19. Rather, in considering the facts and circumstances of each case, the Court must only ensure that the utility is not subject to an unreasonable risk of non-payment for postpetition services. *See In re Adelphia*, 280 B.R. at 80; *Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (1st Cir. B.A.P. 1981). The Court, therefore, must strike a careful balance between satisfying the utility company's need for adequate assurance and ensuring that the debtor provides no more than what is adequate, as the debtor has a conflicting need to conserve financial resources. *See In re Magnesium Corp. of Am.*, 278 B.R. 698, 714 (Bankr. S.D.N.Y. 2002) (holding that to require the debtor to allocate valuable liquidity to provide further "adequate assurance" to satisfy a utility's obligations before their amount has been fixed would prejudice the entirety of the debtor's unsecured creditor body for the benefit of a single one).

20. In determining whether a utility is subject to an unreasonable risk of nonpayment, the Court may consider whether the utility would seek the same additional security from another non-bankruptcy debtor. *See In re Caldor, Inc. - N.Y.*, 199 B.R. at 3 (finding that the utility companies were not seeking additional security for an adequate assurance of future payment, but solely because their monopoly position permitted them to capitalize on the debtors' bankruptcy filing); *In re Whittaker*, 84 B.R. 934, 941-42 (Bankr. E.D. Pa. 1988), *aff'd*, 92 B.R. 110 (E.D. Pa. 1988), *aff'd*, 882 F.2d 791 (3d Cir. 1989). The Court may not consider, however, the absence of security before the petition date, the debtor's history of timely payments, or the availability of an administrative expense priority. 11 U.S.C. § 366(c)(3)(B).

B. The Debtors' Proposed Adequate Assurance Has Been Upheld as Adequate by Courts in this District and Other Jurisdictions

21. Given that this Court has the discretion to determine the assurance necessary to satisfy the Utility Companies' needs, the Debtors submit that the Proposed Adequate Assurance is more than adequate to ensure that the Debtors will meet their postpetition utility obligations.

Indeed, the Debtors' proposal is similar to the relief granted in other chapter 11 cases commenced in this jurisdiction. *See, e.g., In re Enjoy Technology, Inc.*, Case No. 22-10580 (JKS) (Bankr. D. Del. July 1, 2022) [D.I. 71] (order deeming utility providers adequately assured of future performance upon a deposit equal to two weeks of utility services); *In re Armstrong Flooring, Inc.*, Case No. 22-10426 (MFW) (Bankr. D. Del. May 11, 2022) [D.I. 101] (same) *In re WB Supply LLC*, Case No. 21-10729 (BLS) (Bankr. D. Del. May 17, 2021) [D.I. 111] (same); *In re MobiTV, Inc.*, Case No. 21-10457 (LSS) (Bankr. D. Del. March 26, 2021) [D.I. 119] (same).

22. Here, the Debtors are proposing the same type of assurance that has been proposed in previous chapter 11 cases in this district and believe that the Adequate Assurance Deposit Account, together with the proposed Adequate Assurance Procedures, strikes a fair balance between the rights of the Utility Companies and the interests of the Debtors' estates. If the Utility Companies altered, refused, or discontinued service, even for a brief period, the Debtors' business operations would be severely disrupted. Such disruption could have a devastating impact on the Debtors' business operations and revenues, thereby jeopardizing the Debtors' restructuring efforts. By contrast, the Utility Companies will have received the protection of a cash deposit equal to one month's worth of Utility Services and may receive this deposit in the event that the Debtors fail to timely pay their postpetition utility charges. It is, therefore, critical that this Court grant the relief requested in this Motion and prohibit the Utility Companies from altering, refusing, or discontinuing the Debtors' necessary Utility Services during these Chapter 11 Cases.

RESERVATION OF RIGHTS

23. 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 right 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

24. 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)

25. 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

26. 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) SSCP Restaurant Investors LLC (“SSCP”), the Debtor's prepetition lender, Ken Schwab (kschwab@sscpmanagement.com), and counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201, Attn: Holland N. O'Neil (honeil@foley.com), Mark C. Moore (mmoore@foley.com), and Stephan A. Jones (sajones@foley.com) and Ashby & Geddes, P.A, 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE. 19899, Attn: Ricardo Palacio (RPalancio@ashbygeddes.com); (d) the United States Attorney's Office for the District of Delaware, Attn: Linda Casey (Linda.Casey@usdoj.gov); (f) the Internal Revenue Service; (g) the office of the attorneys general for the states in which the Debtors operate; (h) the parties identified on the attached Utility Companies List; and (h) 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

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

[Remainder of Page Intentionally Left Blank]

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 27, 2023
Wilmington, Delaware

/s/ Mette H. Kurth

Mette H. Kurth (DE Bar No. 6491)

CULHANE MEADOWS, PLLC

3411 Silverside Road

Baynard Building, Suite 104-13

Wilmington, Delaware 19810

Telephone: (302) 289-8839, Ext. 100

Email: mkurth@cm.law

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 (KB)

(Jointly Administered)

Re: D.I. No. [●]

**INTERIM ORDER (I) AUTHORIZING DEBTORS' PROPOSED FORM OF
ADEQUATE ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II)
ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY
COMPANIES, AND (III) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICE**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for an Interim Order: (i) authorizing Debtors' proposed form of adequate assurance of payment to utility companies, (ii) establishing procedures for resolving objections by utility companies, and (iii) prohibiting utility companies from altering, refusing, or discontinuing service 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 an interim 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;

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 Lane, Suite 301, Newtown PA 18940.

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

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 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** on an interim basis as set forth herein.
2. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Companies to the Debtors on and after the Petition Date.
3. The Debtors shall provide an Adequate Assurance Deposit for all Utility Companies identified on **Exhibit C** to the Motion by depositing **\$150,000**, an amount equal to approximately two weeks of total Utility Services (an "**Adequate Assurance Deposit**"), into a segregated bank account designated for the Adequate Assurance Deposit (the "**Adequate Assurance Deposit Account**") within 20 calendar days after the Petition Date.
4. The Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "**Proposed Adequate Assurance**"), constitute sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.
5. The Utility Companies are prohibited from (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges; or (b) requiring additional

adequate assurance of payment other than the Proposed Adequate Assurance as a condition of the Debtors receiving such Utility Services.

6. The following Adequate Assurance Procedures are approved:

- a. Any Utility Company desiring assurance of future payment for Utility Services beyond the Proposed Adequate Assurance must serve a request (an **“Additional Assurance Request”**) on the following parties: the Debtors, c/o Krupa Patel, Treasurer, 121 Friends Lane, Ste. 301, Newtown, PA, 18940 and by email to kpaten@pandyagrp.com; and (ii) Debtors’ counsel, Culhane Meadows PLLC to Mette Kurth by email at MKurth@CM.Law and Lynnette Warman at LWarman@CM.Law (collectively, the **“Notice Parties”**).
- b. Any Additional Assurance Request must: (i) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (ii) be made in writing; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); describe any deposits or other security currently held by the requesting Utility Company; (v) explain whether the Debtors prepay for the Utility Company's services; (vi) describe any payment delinquency or irregularity by the Debtors for the postpetition period, if any; and (vii) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility to resolve such Additional Assurance Request.
- d. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, payments of prepetition balances, prepayments, other forms of security, or any combination of the above, if the Debtors believe such additional assurance is reasonable. If the Debtors and requesting Utility Company resolve the Additional Assurance Request, the Debtors may, by mutual agreement with the requesting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Company’s estimated two-week utility expense.
- e. If the Debtors determine that an Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the

applicable Utility, the Debtors, shall upon reasonable notice, calendar the matter (“**Adequate Assurance Dispute**”) for the next regularly scheduled omnibus hearing date to determine the adequacy of assurances of payment made to the requesting Utility Company.

- f. Pending the resolution of the Additional Assurance Request, the Utility Company making such request shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- g. Any Utility Company that does not comply with the Adequate Assurance Procedures is deemed to find the Proposed Adequate Assurance satisfactory to it and is prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment beyond the Proposed Adequate Assurance.

7. The Debtors may supplement the Utility Companies List without further order of the Court if any Utility Company has been inadvertently omitted from the Utility Companies List (the “Additional Utility Company”), and the Debtors will, as soon as reasonably practicable, file with the Court an amendment to **Exhibit C** to the Motion adding the name of any Additional Utility Company (the “Supplement”). The Debtors will then serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of a Utility Company, by First Class Mail) a copy of the Motion and either this Interim Order or the Final Order on any Additional Utility Company. The Debtors will increase the Adequate Assurance Deposit Account by an amount equal to the Debtor’s average monthly utility consumption for any added Utility Company.

8. Any Additional Utility Company is subject to the terms of this Interim Order, including the Adequate Assurance Procedures.

9. No money may be withdrawn from the Adequate Assurance Deposit Account except (a) in compliance with the Adequate Assurance Procedures, (b) by mutual agreement of the

Debtors and the applicable Utility Company, or (c) by further order of the Court. If the Debtors fail to pay for any legitimate postpetition Utility Services when due, a Utility Company may access only that portion of the Adequate Assurance Deposit owing to it in the Adequate Assurance Deposit Account.

10. The Debtors may amend the Utility Companies List to delete a Utility Company, or may seek to terminate a Utility Company, only if they have provided two weeks' advance notice to such Utility Company and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete unless and until the two-week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

11. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Interim Order.

12. Notwithstanding anything to the contrary in any other order of this Court, no creditor shall have any interest in or lien on the Adequate Assurance Deposit.

13. Nothing in the Motion or this Interim Order, including the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, or a waiver of the Debtors' right to dispute any claim, or an approval or assumption, or rejection of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

14. Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Companies List.

15. Within three (3) business days of the date of this Interim Order, the Debtors shall serve a copy of this Interim Order and the Motion on each Utility Company identified on the Utility Companies List, and within three (3) business days of filing any Supplement, the Debtors shall serve a copy of this Interim Order and the Motion on any Additional Utility Company.

16. Without further order of the Court, all funds held in the Adequate Assurance Deposit Account shall be returned to Debtors upon the earliest to occur of: (a) confirmation of a chapter 11 plan of reorganization or liquidation with respect to the Debtors; (b) the closing of a transaction or series of transactions that in aggregate result in the sale of substantially all of the Debtors' assets; (c) conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; (d) dismissal of these Chapter 11 Cases; or (e) conclusion of these Chapter 11 Cases.

17. Notwithstanding anything to the contrary in any other Order of this Court, including any DIP financing orders, the interests of any party, including but not limited to the Debtors' post-petition or pre-petition lenders, in, or lien on, the Adequate Assurance Deposit shall be subordinate to the Utility Companies' interest in any Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors, or as otherwise ordered by the Court.

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

19. The requirements of Bankruptcy Rules 6003(b) and 6004(a) are satisfied by the contents of the Motion or otherwise deemed waived.

20. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

21. The final hearing on the Motion shall be held **on** _____, **2023 at** __ (Time), and any objections or responses to the Motion shall be in writing, filed with the court, and served on or before _____, 2023 **at** __ **(Eastern Time)**.

22. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

23. 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.

Exhibit B

Proposed Final Order

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

In re:

CBC RESTAURANT CORP., et al.,³

Debtors.

Chapter 11

Case No. 23-10245 (KBO)

(Jointly Administered)

**FINAL ORDER AUTHORIZING DEBTORS' PROPOSED FORM OF ADEQUATE
ASSURANCE OF PAYMENT TO UTILITY COMPANIES, (II) ESTABLISHING
PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES, AND
(III) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICE**

Upon the motion (the "Motion")⁴ of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for a Final Order: (i) authorizing Debtors' proposed form of adequate assurance of payment to utility companies, (ii) establishing procedures for resolving objections by utility companies, and (iii) prohibiting utility companies from altering, refusing, or discontinuing service 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 an interim 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

³ 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 Lane, Suite 301, Newtown PA 18940.

⁴ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

appropriate under the circumstances and 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** on a final basis as set forth herein.
2. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Companies to the Debtors on and after the Petition Date.
3. The Debtors shall provide an Adequate Assurance Deposit for all Utility Companies identified on **Exhibit C** to the Motion by depositing \$150,000, an amount equal to approximately two weeks of total Utility Services (an “**Adequate Assurance Deposit**”), into a segregated bank account designated for the Adequate Assurance Deposit (the “**Adequate Assurance Deposit Account**”) within 20 calendar days after the Petition Date.
4. The Adequate Assurance Deposit, in conjunction with the Debtors’ ability to pay for future Utility Services in the ordinary course of business (collectively, the “**Proposed Adequate Assurance**”), constitute sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.
5. The Utility Companies are prohibited from (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges; or (b) requiring additional

adequate assurance of payment other than the Proposed Adequate Assurance as a condition of the Debtors receiving such Utility Services.

6. The following Adequate Assurance Procedures are approved:

- a. Any Utility Company desiring assurance of future payment for Utility Services beyond the Proposed Adequate Assurance must serve a request (an “Additional Assurance Request”) on the following parties: the Debtors, c/o Krupa Patel, Treasurer, 121 Friends Lane, Ste. 301, Newtown, PA, 18940 and by email to kpaten@pandyagr.com; and (ii) Debtors’ counsel, Culhane Meadows PLLC to Mette Kurth by email at MKurth@CM.Law and Lynnette Warman at LWarman@CM.Law (collectively, the “Notice Parties”).
- b. Any Additional Assurance Request must: (i) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; (ii) be made in writing; (iii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iii) describe any deposits or other security currently held by the requesting Utility Company; (v) explain whether the Debtors prepay for the Utility Company's services; (vi) describe any payment delinquency or irregularity by the Debtors for the postpetition period, if any; and (vii) explain why the requesting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- c. Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility to resolve such Additional Assurance Request.
- d. The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, payments of prepetition balances, prepayments, other forms of security, or any combination of the above, if the Debtors believe such additional assurance is reasonable. If the Debtors and requesting Utility Company resolve the Additional Assurance Request, the Debtors may, by mutual agreement with the requesting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Company’s estimated two-week utility expense.
- e. If the Debtors determine that an Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility, the Debtors, shall upon reasonable notice, calendar the

matter (“**Adequate Assurance Dispute**”) for the next regularly scheduled omnibus hearing date to determine the adequacy of assurances of payment made to the requesting Utility Company.

- f. Pending the resolution of the Additional Assurance Request, the Utility Company making such request shall be restrained from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- g. Any Utility Company that does not comply with the Adequate Assurance Procedures is deemed to find the Proposed Adequate Assurance satisfactory to it and is prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment beyond the Proposed Adequate Assurance.

7. The Debtors may supplement the Utility Companies List without further order of the Court if any Utility Company has been inadvertently omitted from the Utility Companies List (the “Additional Utility Company”), and the Debtors will, as soon as reasonably practicable, file with the Court an amendment to **Exhibit C** to the Motion adding the name of any Additional Utility Company (the “Supplement”). The Debtors will then serve by email or by facsimile transmission (or, where the Debtors do not have the email address or fax number of a Utility Company, by First Class Mail) a copy of the Motion and either this Interim Order or the Final Order on any Additional Utility Company. The Debtors will increase the Adequate Assurance Deposit Account by an amount equal to the Debtor’s average monthly utility consumption for any added Utility Company.

8. Any Additional Utility Company is subject to the terms of this Final Order, including the Adequate Assurance Procedures.

9. No money may be withdrawn from the Adequate Assurance Deposit Account except (a) in compliance with the Adequate Assurance Procedures, (b) by mutual agreement of the Debtors and the applicable Utility Company, or (c) by further order of the Court. If the Debtors

fail to pay for any legitimate postpetition Utility Services when due, a Utility Company may access only that portion of the Adequate Assurance Deposit owing to it in the Adequate Assurance Deposit Account.

10. The Debtors may amend the Utility Companies List to delete a Utility Company, or may seek to terminate a Utility Company, only if they have provided two weeks' advance notice to such Utility Company and have not received any objection from such Utility Company. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete unless and until the two-week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court.

11. The Debtors shall administer the Adequate Assurance Deposit Account in accordance with the terms of this Final Order.

12. Notwithstanding anything to the contrary in any other order of this Court, no creditor shall have any interest in or lien on the Adequate Assurance Deposit.

13. Nothing in the Motion or this Final Order, including the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, or a waiver of the Debtors' right to dispute any claim, or an approval or assumption, or rejection of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code.

Nothing contained herein constitutes a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Companies List.

14. Without further order of the Court, all funds held in the Adequate Assurance Deposit Account shall be returned to Debtors upon the earliest to occur of: (a) confirmation of a chapter 11 plan of reorganization or liquidation with respect to the Debtors; (b) the closing of a transaction or series of transactions that in aggregate result in the sale of substantially all of the Debtors' assets; (c) conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; (d) dismissal of these Chapter 11 Cases; or (e) conclusion of these Chapter 11 Cases.

15. Notwithstanding anything to the contrary in any other Order of this Court, including any DIP financing orders, the interests of any party, including but not limited to the Debtors' post-petition or pre-petition lenders, in, or lien on, the Adequate Assurance Deposit shall be subordinate to the Utility Companies' interest in any Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors, or as otherwise ordered by the Court. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

16. The requirements of Bankruptcy Rules 6003(b) and 6004(a) are satisfied by the contents of the Motion or otherwise deemed waived.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

18. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT C**UTILITY COMPANIES LIST**

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT #345	CPS ENERGY - CITY PUBLICSERVICE BOARD
AQUA WATER	EL TORO WATER DISTRICT
ATMOS ENERGY	FLAGG CREEK WATER RECLAMATION DISTRICT
AW BILLING SERVICES	GAS SOUTH
BGE-(ELEC/GAS)	GEORGIA POWER
BURBANK WATER AND POWER	IRVINE RANCH WATER DISTRICT
CALIFORNIA WATER SERVICES	LOS ANGELES
CITY OF ANAHEIM	LOS ANGELES DEPT OF WATER & POWER
CITY OF AUSTIN	MESA WATER DISTRICT
CITY OF BALTIMORE	MIDAMERICAN ENERGY SERVICES
CITY OF BREA	MOULTON NIGUEL WATER
CITY OF DALLAS	NICOR GAS
CITY OF FORT WORTH WATER DEPARTMENT	PECO
CITY OF FOUNTAIN VALLEY (WATER)	PEOPLES GAS
CITY OF GENEVA	PEPCO
CITY OF GLENDORA	PLANO CITY OF EXCELLENCE
CITY OF LA HABRA	PSEG
CITY OF LONG BEACH	ROWLAND WATER DISTRICT
CITY OF MANHATTAN BEACH	SAN ANTONIO WATER SYSTEM
CITY OF PASADENA	SAN DIEGO GAS & ELECTRIC
CITY OF RANCHO CUCAMONGA MUNICIPAL UTILITY	SCV WATER
CITY OF WARRENVILLE	SO CAL GAS
CITY OF WHITTIER	SOUTHERN CALIFORNIA EDISON
COMED	SOUTHERN CALIFORNIA GAS (THE GAS CO.)
CONSTELLATION	SOUTHLAKE WATER UTILITIES
CONSERV	TECO TEMPA ELECTRIC
COUNTY OF FAIRFAX	TEXAS GAS SERVICES
COUNTY OF LOS ANGELES	UGI ENERGY SERVICES
CUCAMONGA VALLEY WATER DISTRICT	VILLAGE OF ARLINGTON HEIGHTS
DEKALB COUNTY FINANCE	VILLAGE OF HINSDALE
DOMINION ENERGY	VILLAGE OF LA GRANGE (WATER/SEWER)
EL TORO WATER DISTRICT	VILLAGE OF OAK LAWN
TARRANT COUNTY	WASHINGTON GAS