

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

In re:

**CBC RESTAURANT CORP., et al.,<sup>1</sup>**

Debtors.

Chapter 11

Case No. 23-10245 (KB)

(Jointly Administered)

Re: Docket No. 18, 36

**CERTIFICATION OF COUNSEL REGARDING STIPULATION AND AGREED  
BRIDGE ORDER: (A) EXTENDING DEBTORS' AUTHORIZED USE OF CASH  
COLLATERAL; AND (B) GRANTING RELATED RELIEF**

I, Mette H. Kurth, counsel to the CBC Restaurant Corp., and its debtor affiliates, debtors and debtors in possession ("Corner Bakery" or the "Debtors") hereby certify that:

1. On February 23, 2023, Corner Bakery filed its *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* [D.I. No. 18] (the "Cash Collateral Motion").

2. On February 24, 2023, this Court entered its *Interim Order (A) Authorizing the Debtors' Use of Cash Collateral; (B) Scheduling a Final Hearing; and (C) Granting Related Relief* [D.I. 36] (the "First Interim Cash Collateral Order").

3. On March 3, 2023, Corner Bakery filed a proposed *Stipulation and Agreed Bridge Order: (A) Extending Debtor's Authorized Use of Cash Collateral; and (B) Granting Related Relief* [D.I. No. 80] (the "Proposed Second Cash Collateral Order").

<sup>1</sup> 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. On March 3, 2023 at 1:00 p.m. (ET) this Court held a hearing at which it approved the further use of cash collateral pursuant to the Cash Collateral Motion subject to certain modifications as set forth in the record.

5. Attached hereto at **Exhibit 1** is a revised form of order (the "Revised Order") that reflects the modifications requested by the Court. The form the Revised Order has been reviewed and approved by counsel for the Texas Comptroller of Public Accounts, the Texas Workforce Commission, Urban Edge Properties, and SSCP Restaurant Investors LLC.

6. Attached hereto as **Exhibit 2** is a blackline showing the changes to the Proposed Second Cash Collateral Order as compared to the Revised Order.

7. Accordingly, the Debtors request entry of the Revised Order at the Court's earliest convenience.

Dated: March 3, 2023  
Wilmington, Delaware

*/s/ Mette H. Kurth*

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

**Exhibit 1**

**Revised Order**

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

In re:

**CBC RESTAURANT CORP. et al.,<sup>1</sup>**

Debtors.

Chapter 11

Case No. 23-10245 (KBO)  
(Jointly Administered)

Related D.I. 18

**STIPULATION AND AGREED BRIDGE ORDER: (A) EXTENDING DEBTOR'S  
AUTHORIZED USE OF CASH COLLATERAL; AND (B) GRANTING  
RELATED RELIEF**

This stipulation and agreed bridge order (the "Stipulation and Agreed Second Interim Order") is made and entered into by and among 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"), on one hand, and SSCP Restaurant Investors LLC ("SSCP"), on the other hand. The Debtors and SSCP hereby stipulate and agree to extend the term and effect of the *Interim Order (A) Authorizing the Debtors' Use of Cash Collateral; (B) Scheduling a Final Hearing; and (C) Granting Related Relief* [D.I. 18] as forth herein.

**IT IS HEREBY ORDERED AND ADJUDGED**, that:

1. All findings and conclusions of the Interim Order are incorporated by reference in this Second Interim Order.
2. The Debtors' authorization to use Cash Collateral as set forth in the Interim Order is hereby extended as set forth in this Second Interim Order. In the event of a conflict between the terms of the Interim Order and this Second Interim Order (collectively, the "Interim Cash

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Collateral Orders”), the terms of this Second Interim Order shall control. Otherwise, the terms of the Interim Order remain in full force and effect.

3. Pursuant to Bankruptcy Code sections 105(a), 361, 362, 363, 503 and 507, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, the Debtors shall be, and hereby are, authorized to use the Cash Collateral upon (and only upon) the terms and conditions set forth in the Interim Cash Collateral Orders.

4. **Use of Cash Collateral.**

a. Cash Collateral. For purposes of this Second Interim Order, the term “**Cash Collateral**” shall mean and include all “cash collateral,” as defined in section 363 of the Bankruptcy Code, in or on which SSCP has a lien, security interest, or other interest (including, without limitation, any adequate protection liens or security interests), and shall include, without limitation:

- (i) All cash proceeds arising from the collection, sale, lease, or other disposition, use, or conversion of any property, including insurance policies, or in or on which SSCP has a perfected lien or a replacement lien, whether as part of the Collateral or pursuant to an order of the Court or applicable law or otherwise, and whether such property has been converted to cash, existed as of the commencement of these Chapter 11 Cases, or arose or was generated thereafter;
- (ii) All of the respective deposits, refund claims, and rights in retainers of the Debtors on which SSCP has a lien or replacement lien, whether as part of the Cash Collateral or pursuant to an order of the Court or applicable law or otherwise; and

(iii) The proceeds of any sale of Cash Collateral in connection with any sale consummated prior to entry of the Second Interim Order.

b. Necessity of Relief Requested. The Debtors have an immediate and critical need to continue to use the Cash Collateral in order to permit, among other things, the orderly continuation of the operation of their organization, to maintain business relationships with vendors, suppliers, and customers, to make payroll, and to satisfy other working capital and operational needs, in each such case in accordance with the terms of this Second Interim Order, including in accordance with the Budget (as defined below).<sup>2</sup> The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral and other Cash Collateral is necessary to preserve and maintain the going concern value of the Debtors' estates and is vital to the Debtors' reorganization efforts. Without the use of Cash Collateral, the Debtors would likely not have sufficient liquidity to continue to operate their organization. Entry of this Second Interim Order will preserve the assets of each Debtor's estate and its value and is in the best interests of the Debtors, their creditors, and their estates. The Adequate Protection Liens (as defined in the Interim Order), the adequate protection superpriority claims (as described in the Interim Order), and the Adequate Protection Fees and Expenses (as defined below) provided herein are consistent with and authorized by the Bankruptcy Code. Absent authorization to immediately access and use Cash Collateral, the Debtors, the estates, and their creditors would suffer immediate and irreparable harm.

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<sup>2</sup> For clarity, all references in the Interim Order to the Budget shall refer to the Budget subject to any applicable Permitted Variance (as defined herein).

c. Authorization. The Debtors are authorized to use Cash Collateral as set forth herein and strictly in accordance with the Budget attached hereto as Exhibit A, subject to the terms of the Adequate Protection provisions of the Interim Cash Collateral Orders, including the payments contemplated therein. For each weekly period set forth in the Budget: (a) the actual aggregate expenditures by the Debtors for the immediately preceding one-week period (each, a "Testing Period") shall not in any event exceed the projected amount therefor set forth in the Budget by more than fifteen percent (15%) (excluding any expenditures for Adequate Protection Payments (as defined below)); (b) the actual expenditures by the Debtors for any line item for the Testing Period shall not in any event exceed the projected amount therefor set forth in the Budget by more than fifteen percent (15%) (excluding any expenditures for Adequate Protection Fees and Expenses (defined herein)); and (c) the actual aggregate receipts of the Debtors for the Testing Period shall not in any event be less than the projected amount therefor set forth in the Budget by less than fifteen percent (15%). Any unused expenditure amounts, not receipts, in the Budget during any one-week period, by line-item, may be carried forward and applied to any amount by which that same line-item, and only that same line-item, exceeds its projected use as set forth in the Budget during the subsequent eight-week period.

d. Sales Tax Trust Funds.

- (i) (a) Texas sales tax collected by the Debtor ("Texas Sales Tax Trust Funds") are not a part of the Debtor's cash, proceeds, or accounts receivable; they do not form a part of any other secured creditor's collateral, and they may not be used by Debtor in its operations; and (b) the Debtors shall not utilize Texas Sales Tax Trust Funds for any purpose other than remittance to the

Texas Comptroller; (c) Texas sales taxes collected by the Debtor *post*-petition are not property of the estate, but instead remain property of the Texas Comptroller until paid; (d) Payment of the post-petition taxes is mandatory under 28 U.S.C. § 959(b) and 960; and (e) the Texas Comptroller does not consent to the use of its post-petition Texas Sales Tax Trust Funds for any purpose other than remitting to the Texas Comptroller

- (ii) Within five (5) business days of entry of this Order, the Debtors shall establish a "Sales Tax Escrow Account" at a qualified (under 11 U.S.C. § 345) depository institution and shall deposit in such account, no later than the close of the banking day on Tuesday of each week, all Texas sales taxes collected the prior week (Sunday – Saturday);
- (iii) The Debtors shall file all sales tax returns and remit all payments of post-petition sales taxes to the Texas Comptroller on a timely basis in accordance with state law and as mandated by 28 U.S.C. §§ 959(b) and 960.
- (iv) Upon default in complying with any of the terms set forth in Paragraphs (4)(d)(i)-(ii), above, the Texas Comptroller may transmit a notice of default to the Debtor's counsel, Culhane Meadows PLLC, Attn: Mette Kurth, by email at Mkurth@cm.law and Lynnette Warman, by email at Lwarman@cm.law and to counsel for SSCP, Foley & Lardner LLP, Attn: Holland N. O'Neil, by email at honeil@foley.com and Mark C. Moore, by email at mmoore@foley.com. If the Debtors fail to cure such default within seven (7) calendar days from transmittal of the notice of default: (a) upon 48-hours written notice to Debtors' counsel, Culhane Meadows PLLC, Attn:

Mette Kurth, by email at Mkurth@cm.law and Lynnette Warman, by email at Lwarman@cm.law, a representative of the Texas Comptroller and SSCP may inspect the books and records of the Debtors for the purpose of verifying the amount of post-petition sales taxes owed and that those amounts have been properly deposited in the Sales Tax Escrow account; and (b) the Texas Comptroller is authorized to submit to the Court a certification of non-compliance with this Order, and the Court may enter such further orders as it deems appropriate.

5. **The Budget.** The Debtors' use of Cash Collateral shall be conditioned upon the Debtors' compliance with the Budget. The Budget may be modified in writing only with the prior written consent of SSCP. The Debtors will file any amended Budget with the Court. Prior to any transfer or use of Cash Collateral by the Debtors, Teri Stratton, Managing Director for the Debtors' proposed investment banker and financial advisor, Hilco Corporate Finance, shall review and verify the proposed transfer or use of Cash Collateral for compliance with the Budget and this Second Interim Order.

6. **Variance Reporting.** On a weekly basis, no later than the following Wednesday of each week, the Debtors shall deliver to SSCP a line-by-line variance report, which shall be reviewed and verified by Ms. Stratton, and shall otherwise be in form and substance acceptable to SSCP, and which shall compare actual cash receipts and disbursements of the Debtors with corresponding amounts provided for in the Budget on a line-by-line basis for the prior Testing Period, including written descriptions in reasonable detail explaining any material positive or negative variances.

7. **Adequate Protection.** Except as otherwise set forth herein, SSCP is entitled to all Adequate Protection provided under the Interim Order during the effectiveness of this Second Interim Order. SSCP is further entitled to the following additional adequate protection obligations with respect to its asserted pre-Petition Date security interests, *nunc pro tunc* to the Petition Date, in each case solely against the Debtors and assets thereof that are encumbered under SSCP’s Prepetition Agreements, including, but not limited to, the Credit Agreement and Security Agreement:

- a. **Bank Accounts**—The Debtors shall be authorized to open new bank accounts with notice to SSCP, including, but not limited to, the segregated utilities account contemplated in the *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* [D.I. 46] [the “Utilities Motion”] and any order entered in connection therewith and the Sale Tax Account provided for herein; *provided, however*, that SSCP shall be deemed to hold executed deposit account control agreements (“DACAs”) on all such bank accounts other than the Sales Tax Account;
- b. **Information Requests**—The Debtors shall provide the following information, documents (which the Debtors shall be deemed to verify are true and correct as of the dates prepared), and/or access to same to SSCP on the following dates; *provided, however*, that in the event any referenced documents do not exist, the Debtors shall so certify in writing:

Read-only access to the Debtors' Rosnet system	March 6, 2023
Audited financial statements for 2020-2022, if such audited statements exist, and if not, unaudited financial statements for 2020-2022, if such unaudited statements exist	March 6, 2023
A listing of all bank accounts held by each Debtor from October 27, 2020 through the current date	March 7, 2023

Tax returns for each Debtor for 2020 and 2021, if such tax returns have been filed	March 8, 2023
Tax returns for each Debtor for 2022, if such tax returns have not been filed	Within 7 business days after filing
All monthly bank statements	March 10, 2023
<p>The following historical financial information in the Debtors' possession from October 27, 2020 through the Petition Date</p> <ul style="list-style-type: none"> <li>• Any existing monthly P/L statements for each store</li> <li>• Any existing monthly balance sheets for each Debtor</li> <li>• Any existing monthly statements of cash flows from each Debtor</li> <li>• Any existing monthly same store sales reports</li> <li>• Any existing monthly G&amp;A detail statements for each Debtor, including salaries by employee</li> </ul>	To be provided on a rolling basis commencing on March 6, 2023, with Debtors to use their reasonable best efforts to complete production by March 13, 2023

- c. **Adequate Protection Payments**—The Debtors are authorized and directed to pay SSCP’s actual and reasonable attorneys’ and professionals’ fees and expenses incurred in connection with these Chapter 11 Cases (the “Adequate Protection Fees and Expenses”), which shall be deemed fully earned, nonrefundable, infeasible, and irrevocable as of the date of this Order. Payment of all such Adequate Protection Fees and Expenses shall not be subject to allowances by the Court, *provided, however*, that the Adequate Protection Fees and Expenses incurred after the Petition Date shall be evidenced by a summary invoice(s) (redacted, as necessary, to protect any applicable privilege) and delivered to counsel for the Debtors, the U.S. Trustee, and any statutory committee appointed in these Chapter 11 cases (the “Parties”). The Fee Notice Parties shall have ten (10) calendar days from the date of such delivery (the “SSCP Fee Review Period”) within which to object in writing solely to the reasonableness of such fees, costs, and expenses. In the absence of any objection by the Fee Review Parties, following the expiration of the SSCP Fee Review Period, the Debtors shall pay such invoice(s) promptly, and in any event within three (3) calendar

days, without the need for further application to or order of the Court. If, within such period, the Fee Review Parties raise an objection to a particular invoice (such as disputed fees, the “Disputed Invoiced Fees”), the applicable counsel shall notify the Debtors and SSCP in writing of the objection and the Debtors shall pay the fees and expenses not subject to the objection within three (3) business days following the expiration of the SSCP Fee Review Period, without the need for further application to or order of the Court. If after seven (7) calendar days such objection remains unresolved, the parties may submit such objection to the Court for resolution. The Debtors shall pay any Disputed Invoiced Fees promptly upon resolution of the objection, including to the extent resolved through approval by the Court, to the extent of such approval. In no event shall any invoice or other statement submitted by SSCP to the Fee Review Parties, or any other interested person (or any of their respective advisors) with respect to fees or expenses incurred by any professional retained by SSCP operate to waive the attorney/client privilege, the work-product doctrine, or any other evidentiary privilege or protection recognized under applicable law;

- d. **Administrative-Expense Claims**—SSCP is hereby granted, from and after the Petition Date, allowed administrative-expense claims in an amount not to exceed the Debtors' actual usage of SSCP's cash collateral pursuant to this Order (the “Cash Collateral Usage”) with priority over any and all administrative expenses, adequate protection claims, and all other claims against the Debtors, now existing or hereinafter arising, of any kind whatsoever, solely as provided under 507(b) of the Bankruptcy Code;
- e. **Adequate-Protection Liens**—SSCP is hereby granted, from and after the Petition Date, replacement liens and security interests (the “Adequate Protection Liens”) in an amount not to exceed the Debtors' Cash Collateral Usage in all of the Debtors' assets and properties of any kind or type, whether now owned and hereafter acquired, personal property, tangible and intangible assets, and rights of any kind or nature, wherever located, including, without limitation, all pre-petition and post-petition property of the Debtors and their estates, and all products, proceeds, rents, and profits thereof, whether existing on or as of the Petition Date, or thereafter acquired, or arising upon any use, lease, sale, consumption, or other disposition of such assets and properties, including without limitation, goods and other personal property, accounts receivable, other rights to payment, cash, inventory, general intangibles, contracts, servicing rights, proceeds, and termination payments, servicing receivables, securities (including equity interests in the Debtors), chattel paper, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, commercial tort claims, insurance of any kind or type, property subject to avoided liens, and claims and causes of action including, upon the entry of the Final Order, and the products and proceeds of any and all of the foregoing (collectively, the “Adequate Protection Collateral”); *provided*,

*however*, that the Adequate Protection Liens granted to SSCP in the Adequate Protection Collateral shall be first priority but subject only to (x) any valid, perfected, and unavoidable liens in property of the Debtors in existence as of the Petition Date and (y) any valid and unavoidable liens on property of the Debtors in existence for amounts outstanding as of the Petition Date that are perfected after the Petition Date as permitted by Bankruptcy Code section 546(b) or pursuant to applicable law (the liens described in (x) and (y), the “Prior Liens”), in the same nature, extent, priority, and validity that any such liens existed on the Petition Date;

- f. Notwithstanding anything to the contrary in Paragraph 7(e), adequate Protection Liens shall not include the Debtors' leasehold interests but shall include the proceeds of such real property leasehold interests;
- g. As of the Petition Date, the Adequate Protection Liens shall be valid, perfected, enforceable and effective against the Debtors, their successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by Debtors or SSCP and without the execution, delivery, filing or recordation of any promissory notes, financing statements, security agreements or other documents. Notwithstanding the foregoing, this Second Interim Order shall be deemed a security agreement and may be filed as a financing statement and the Debtors shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that SSCP shall reasonably request to further evidence the liens and security interests granted hereby. SSCP shall have all the rights and remedies of a secured creditor in connection with the Adequate Protection Liens granted by this Second Interim Order in all Collateral; and,
- h. Subject only to and effective upon entry of a final order, waiving the Debtors' right to assert with respect to the Collateral or the Adequate Protection Collateral (i) any claims to surcharge pursuant to section 506(c) of the Bankruptcy Code, (ii) any “equities of the case” exception pursuant to section 552(b) of the Bankruptcy Code, and (iii) the equitable doctrine of “marshalling” or any similar doctrine.

8. **Disgorgement.** Notwithstanding anything to the contrary in Paragraph 7, all payments of professional or other fees, all Adequate Protection Liens, and all Adequate Protection Claims granted by this Second Interim Order are subject to being set aside, and the Court may enter any other appropriate relief, if and to the extent the Court so rules, to the extent that this Court determines that SSCP does not hold valid, first-priority, perfected and secured liens with respect to the Collateral or Cash Collateral

9. **Events of Default.** The following shall constitute events of default under this Second Interim Order (“Events of Default”):

- a. Any material failure to comply with the terms of the Interim Order or this Second Interim Order, including, but not limited to, the requirements of paragraphs 5 and 7 and all subparagraphs thereof;
- b. If a final order granting the continued use of SSCP’s Cash Collateral by the Debtors or approving postpetition financing to be provided by SSCP is not approved by the Court and entered on or before March 30, 2023, or such later date as is agreed to in writing by the Debtors and SSCP;
- c. Any attempt by any Debtor to seek approval for postpetition financing to be provided by any party other than SSCP that does not provide for the immediate and indefeasible satisfaction of any and all outstanding Adequate Protection Payments owed to SSCP or any administrative-expense claims of SSCP related to the Cash Collateral Usage;
- d. If any representation made by the Debtors after the commencement of this chapter 11 case in any report or financial statement delivered to SSCP proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading);
- e. If a trustee or examiner, with authority to affect the operation of the business of the Debtors (or any of them) is appointed in the above-enumerated chapter 11 proceedings without the consent of SSCP;
- f. The grant of any security interest, lien, or encumbrance (excluding any Prior Liens) in any of the Collateral which is *pari passu* with or senior to the liens, security interests, or claims of SSCP (including, without limitation, the Adequate Protection Liens), including, without limitation, any surcharge of the Collateral pursuant to Bankruptcy Code section 506(c), unless SSCP agrees in writing that such security interest, lien, encumbrance, or surcharge does not constitute an Event of Default;
- g. Any attempt by any Debtor to vacate or modify the Interim Cash Collateral Orders over the objection of SSCP;
- h. The entry of any order modifying, reversing, revoking, staying, rescinding, vacating, or amending the Interim Cash Collateral Orders without the consent of SSCP;

- i. The entry of an order pursuant to Bankruptcy Code section 363 approving the sale of any Collateral without the consent of SSCP;
- j. The failure of the Debtors to timely pay any and all Adequate Protection Fees and Expenses authorized or required in the Interim Cash Collateral Orders;
- k. Except for the reasonable and necessary sale of inventory and supplies and the collection of accounts receivable in the ordinary course of the Debtors' businesses and as may be provided for in the Budget and consistent with the terms hereof, the sale, transfer, lease, or disposition of, or the imposition of any encumbrance on, any of the Collateral or the Cash Collateral, without the prior written consent of SSCP;
- l. If the bankruptcy cases of the Debtors (or any of them) are converted to a case under chapter 7 without the consent of SSCP;
- m. If the bankruptcy cases of the Debtors (or any of them) are dismissed without the consent of SSCP; or
- n. If any of the Debtors file any pleading or commence any action against SSCP challenging the validity or enforceability of SSCP's pre-petition liens or claims, or seeking to avoid, disallow, subordinate or recharacterize any claim, lien or interest held by SSCP.

10. **Remedies Upon Default.** The authorization to use Cash Collateral granted herein shall automatically and immediately terminate five (5) business days after the provision of written notice to the Debtors (with a copy of such notice provided to the Fee Review Parties (the "Default Notice Period")) of an Event of Default. Upon the occurrence of an Event of Default, the Debtors shall be entitled to either cure the default within the Default Notice Period or to seek an emergency hearing with the Bankruptcy Court within the Default Notice Period. Upon the occurrence of an uncured Event of Default (and following the expiration of the Default Notice Period), the automatic stay provisions of section 362 of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit SSCP, as applicable, to exercise all rights and remedies provided in this Order and to take any or all of the following actions, as applicable, without further order of or application to this Court:

- a. the immediate termination of the Debtors' use of SSCP's Cash Collateral; and
- b. seek the entry of an order prohibiting or limiting the Debtors' further use of the SSCP's Cash Collateral;
- c. such further or other relief as provided in the Bankruptcy Code, this Interim Order or applicable non-bankruptcy law.

SSCP may seek on an emergency basis at the Continued Hearing (as defined below), a termination of the automatic stay under section 362(a) of the Bankruptcy Code following the expiration of the Default Notice Period. The rights and remedies of SSCP specified herein are cumulative and not exclusive of any rights or remedies that SSCP may have under the Prepetition Agreements, as applicable, or otherwise. The Debtors shall cooperate fully with SSCP in any permitted exercise of rights and remedies.

11. **Appointment of a Chief Restructuring Officer.** In addition to the right and remedies set forth in the preceding paragraph 10, upon the occurrence of an uncured Event of Default as a result of a material failure to comply with the requirements of Paragraph 7(b) (Information Requests) (and within three (3) business days following the expiration of the Default Notice Period), the Debtors shall appoint an individual with the traditional and customary powers of a Chief Restructuring Officer who is mutually agreeable to the Debtors and SSCP.

12. **Term.** Unless otherwise ordered by the Court or extended by written agreement between the Debtors and SSCP, the Debtors' right to use SSCP's Cash Collateral hereunder shall commence on the date hereof and expire at 5:00 PM ET on March 17, 2023. Notwithstanding such expiration or other termination, or modification hereof, SSCP shall be entitled to the liens, priorities and other rights provided herein to the extent that the Debtors have used SSCP's Cash Collateral following the date hereof.

13. **No Additional Liens.** Until such time as all amounts contemplated and approved herein as Adequate Protection, including the Adequate Protection Fees and Expenses and administrative-expense claims, shall have been indefeasibly paid and satisfied in full, the Debtors shall not be authorized to obtain credit secured by a lien or security interest in the Collateral without the prior written consent of SSCP or by order of the Court upon reasonable notice.

14. **Continuing Effect of Order.** If an order dismissing any of the cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the Adequate Protection provided herein, including the superpriority claims and the Adequate Protection Liens, shall continue in full force and effect and shall maintain their priorities as provided in this Order until all adequate protection obligations shall have been indefeasibly paid and satisfied in full (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all persons), and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

15. **Modification of Automatic Stay.** The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Second Interim Order, including, without limitation, to: (a) permit the Debtors to grant the adequate protection liens and incur the superpriority claims; (b) permit the Debtors to perform such acts as may be needed to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations under the terms of this Order; and (d) authorize the Debtors to pay, and the Debtors to retain and apply, any payments made in accordance with the terms of this Second Interim Order.

16. **Impact of Modification of Interim Cash Collateral Orders.** If any or all of the provisions of the Interim Cash Collateral Orders are hereafter purported to be, or are, modified, vacated, or stayed without the prior written consent of SSCP, such modification, vacation, or stay shall not affect (a) the validity of any obligation, indebtedness, or liability incurred by the Debtors to SSCP before the effective date of such modification, vacation, or stay, or (b) the validity or enforceability of any security interest, lien, priority or other protection authorized, granted, or created hereby. Notwithstanding any such modification, vacation, or stay, any indebtedness, obligations, or liabilities incurred by the Debtors to SSCP, before the effective date of such modification, vacation, or stay shall be governed in all respects by the original provisions of the Interim Cash Collateral Orders, and SSCP shall be entitled to all of the liens, rights, remedies, privileges, and benefits granted herein with respect to all such indebtedness, obligations, or liabilities.

17. **Written Approval Required.** No approval, agreement, or consent requested of SSCP by the Debtors pursuant to the terms of the Interim Cash Collateral Orders or otherwise shall be inferred from any action, inaction, or acquiescence of SSCP other than a writing acceptable to SSCP that is signed by SSCP (or its agent or professionals) and expressly shows such approval, agreement, or consent, without limitation.

18. **Reservation of Rights.**

a. Nothing herein shall be deemed or construed to waive, limit, or modify the rights of SSCP to obtain further adequate protection and other statutory protections for the Debtors' use of Cash Collateral, or to seek other relief in these Chapter 11 Cases in accordance with any provision of the Bankruptcy Code or applicable law. Unless expressly and specifically provided otherwise herein, nothing herein shall be deemed or construed to waive, limit, modify or prejudice

the claims, rights, protections, privileges and defenses of SSCP afforded pursuant to the Bankruptcy Code.

b. Nothing in this Order, and none of the actions or payments contemplated by this Order, shall prejudice, compromise, diminish or affect in any respect any rights of the Texas Comptroller to trace and recover any Texas Sales Tax Trust Funds which may be shown to have been in the possession of the Debtor on the Petition Date or collected after the Petition Date. To the extent the Texas Comptroller can show the existence of any Texas Sales Tax Trust Funds in the possession of the Debtor, the payment of funds pursuant to this Order shall not constitute a defense to any rights of the Texas Comptroller to recover its alleged Texas Sales Tax Trust Funds or interest thereon, and any such rights as against the Debtor and the bankruptcy estate shall remain intact notwithstanding payment of funds. The Debtor shall retain all rights to contest recovery of alleged Sales Tax Trust Funds and interest by the Texas Comptroller but may not use this Order or any payment of funds pursuant to this Order as a basis for contesting the Texas Comptroller's proof(s) of claim.

19. **Notice and Hearing, Reservation of Rights to Object.** A further interim hearing (the "Continued Hearing") shall be scheduled or on before March 17, 2023, to consider further relief. Any objections to entry of such order shall be in writing, filed with this Court, and served upon (a) the Debtors, Attn: Jay Pandya at [jaypandya@rohanguroup.net](mailto:jaypandya@rohanguroup.net); (b) the Debtors' proposed counsel, Mette H. Kurth at [MKurth@cm.law](mailto:MKurth@cm.law) and Lynnette R. Warman at [LWarman@cm.law](mailto:LWarman@cm.law); (c) SSCP, the Debtor's prepetition lender, Ken Schwab ([kschwab@sscpmanagement.com](mailto:kschwab@sscpmanagement.com)); (d) and counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201, Attn: Holland N. O'Neil ([honeil@foley.com](mailto:honeil@foley.com)), Mark C. Moore ([mmoore@foley.com](mailto:mmoore@foley.com)), and Tim Mohan ([tmohan@foley.com](mailto:tmohan@foley.com)) and Ashby & Geddes, P.A, 500 Delaware Avenue, 8<sup>th</sup> Floor, P.O.

Box 1150, Wilmington, DE. 19899, Attn: Ricardo Palacio ([RPalacio@ashbygeddes.com](mailto:RPalacio@ashbygeddes.com)); (d) the Office of the United States Trustee for the District of Delaware, Attn: Linda Casey ([Linda.Casey@usdoj.gov](mailto:Linda.Casey@usdoj.gov)); and (e) counsel for any statutory committee appointed in these Chapter 11 Cases, or if no such committee has been appointed, the holders of the 30 largest unsecured claims against the Debtors (the "Notice Parties"); in each case so as to be received no later than **4:00 p.m. (EST) on March 10, 2023**. This Second Interim Order shall be binding upon, and inure to the benefit of SSCP, the Debtors, any official committee(s) that may be appointed and their respective successors and assigns including, without limitation, any trustee appointed in this chapter 11 case or any superseding chapter 7 case.

20. **Notices.** Except as otherwise stated herein, all notices and demands hereunder shall be in writing and shall be deemed given when delivered to the Notice Parties / Full List ; on the earlier of (x) when they are actually delivered to the addressees by hand delivery, facsimile transmission, e-mail or otherwise, or (y) at 11:00 a.m. Dallas time on the Banking Day next following the deposit thereof with any recognized national overnight delivery service properly addressed to the addressees.

21. **Other.** The findings of fact and conclusions of law of this Court pursuant to this Second Interim Order shall be deemed effective upon the entry of this Second Interim Order. To the extent that such findings may constitute conclusions, and vice versa, they hereby are deemed such.

22. To the extent necessary, the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are

waived. Notwithstanding Bankruptcy Rule 6004(h), this Second Interim Order shall be effective and enforceable immediately upon entry hereof.

23. This Second Interim Order is immediately valid and fully effective upon its entry by the Court.

24. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Second Interim Order.

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

**Exhibit 2**

**Redlined Order**

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

In re:

**CBC RESTAURANT CORP. et al.,<sup>1</sup>**

Debtors.

Chapter 11

Case No. 23-10245 (KBO)  
(Jointly Administered)

Related D.I. 18

**STIPULATION AND AGREED BRIDGE ORDER: (A) EXTENDING DEBTOR'S  
AUTHORIZED USE OF CASH COLLATERAL; AND (B) GRANTING  
RELATED RELIEF**

This stipulation and agreed bridge order (the "Stipulation and Agreed Second Interim Order") is made and entered into by and among 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"), on one hand, and SSCP Restaurant Investors LLC ("SSCP"), on the other hand. The Debtors and SSCP hereby stipulate and agree to extend the term and effect of the *Interim Order (A) Authorizing the Debtors' Use of Cash Collateral; (B) Scheduling a Final Hearing; and (C) Granting Related Relief* [D.I. 18] as forth herein.

**IT IS HEREBY ORDERED AND ADJUDGED**, that:

1. All findings and conclusions of the Interim Order are incorporated by reference in this Second Interim Order.
2. The Debtors' authorization to use Cash Collateral as set forth in the Interim Order is hereby extended as set forth in this Second Interim Order. In the event of a conflict between the terms of the Interim Order and this Second Interim Order (collectively, the "Interim Cash

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<sup>1</sup> 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 300, Newtown, PA 18940.

Collateral Orders”), the terms of this Second Interim Order shall control. Otherwise, the terms of the Interim Order remain in full force and effect.

3. Pursuant to Bankruptcy Code sections 105(a), 361, 362, 363, 503 and 507, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, the Debtors shall be, and hereby are, authorized to use the Cash Collateral upon (and only upon) the terms and conditions set forth in the Interim Cash Collateral Orders.

4. **Use of Cash Collateral.**

a. Cash Collateral. For purposes of this Second Interim Order, the term “**Cash Collateral**” shall mean and include all “cash collateral,” as defined in section 363 of the Bankruptcy Code, in or on which SSCP has a lien, security interest, or other interest (including, without limitation, any adequate protection liens or security interests), and shall include, without limitation:

- (i) All cash proceeds arising from the collection, sale, lease, or other disposition, use, or conversion of any property, including insurance policies, or in or on which SSCP has a perfected lien or a replacement lien, whether as part of the Collateral or pursuant to an order of the Court or applicable law or otherwise, and whether such property has been converted to cash, existed as of the commencement of these Chapter 11 Cases, or arose or was generated thereafter;
- (ii) All of the respective deposits, refund claims, and rights in retainers of the Debtors on which SSCP has a lien or replacement lien, whether as part of the Cash Collateral or pursuant to an order of the Court or applicable law or otherwise; and

(iii) The proceeds of any sale of Cash Collateral in connection with any sale consummated prior to entry of the Second Interim Order.

b. Necessity of Relief Requested. The Debtors have an immediate and critical need to continue to use the Cash Collateral in order to permit, among other things, the orderly continuation of the operation of their organization, to maintain business relationships with vendors, suppliers, and customers, to make payroll, and to satisfy other working capital and operational needs, in each such case in accordance with the terms of this Second Interim Order, including in accordance with the Budget (as defined below).<sup>2</sup> The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral and other Cash Collateral is necessary to preserve and maintain the going concern value of the Debtors' estates and is vital to the Debtors' reorganization efforts. Without the use of Cash Collateral, the Debtors would likely not have sufficient liquidity to continue to operate their organization. Entry of this Second Interim Order will preserve the assets of each Debtor's estate and its value and is in the best interests of the Debtors, their creditors, and their estates. The Adequate Protection Liens (as defined in the Interim Order), the adequate protection superpriority claims (as described in the Interim Order), and the Adequate Protection Fees and Expenses (as defined below) provided herein are consistent with and authorized by the Bankruptcy Code. Absent authorization to immediately access and use Cash Collateral, the Debtors, the estates, and their creditors would suffer immediate and irreparable harm.

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<sup>2</sup> For clarity, all references in the Interim Order to the Budget shall refer to the Budget subject to any applicable Permitted Variance (as defined herein).

c. Authorization. The Debtors are authorized to use Cash Collateral as set forth herein and strictly in accordance with the Budget attached hereto as Exhibit A, subject to the terms of the Adequate Protection provisions of the Interim Cash Collateral Orders, including the payments contemplated therein. For each weekly period set forth in the Budget: (a) the actual aggregate expenditures by the Debtors for the immediately preceding one-week period (each, a "Testing Period") shall not in any event exceed the projected amount therefor set forth in the Budget by more than ~~fifteen~~ percent (15%) (excluding any expenditures for Adequate Protection Payments (as defined below)); (b) the actual expenditures by the Debtors for any line item for the Testing Period shall not in any event exceed the projected amount therefor set forth in the Budget by more than fifteen percent (15%) (excluding any expenditures for Adequate Protection Fees and Expenses (defined herein)); and (c) the actual aggregate receipts of the Debtors for the Testing Period shall not in any event be less than the projected amount therefor set forth in the Budget by less than fifteen percent (15%). Any unused expenditure amounts, not receipts, in the Budget during any one-week period, by line-item, may be carried forward and applied to any amount by which that same line-item, and only that same line-item, exceeds its projected use as set forth in the Budget during the subsequent eight-week period.

d. Sales Tax Trust Funds.

- (i) ~~(a)~~ Texas sales tax collected by the Debtor ("Texas Sales Tax Trust Funds") are not a part of the Debtor's cash, proceeds, or accounts receivable; they do not form a part of any other secured creditor's collateral, and they may not be used by Debtor in its operations; and (b) the Debtors shall not utilize Texas Sales Tax Trust Funds for any purpose other than remittance

to the Texas Comptroller; (c) Texas sales taxes collected by the Debtor *post-petition* are not property of the estate, but instead remain property of the Texas Comptroller until paid; (d) Payment of the post-petition taxes is mandatory under 28 U.S.C. § 959(b) and 960; and (e) the Texas Comptroller does not consent to the use of its post-petition Texas Sales Tax Trust Funds for any purpose other than remitting to the Texas Comptroller

- (ii) Within five (5) business days of entry of this Order, the Debtors shall establish a "Sales Tax Escrow Account" at a qualified (under 11 U.S.C. § 345) depository institution and shall deposit in such account, no later than the close of the banking day on Tuesday of each week, all Texas sales taxes collected the prior week (Sunday – Saturday);
- (iii) The Debtors shall file all sales tax returns and remit all payments of post-petition sales taxes to the Texas Comptroller on a timely basis in accordance with state law and as mandated by 28 U.S.C. §§ 959(b) and 960.
- (iv) Upon default in complying with any of the terms set forth in Paragraphs (4)(d)(i)-(ii), above, the Texas Comptroller may transmit a notice of default to the Debtor's counsel, Culhane Meadows PLLC, Attn: Mette Kurth, by email at Mkurth@cm.law and Lynnette Warman, by email at Lwarman@cm.law and to counsel for SSCP, Foley & Lardner LLP, Attn: Holland N. O'Neil, by email at honeil@foley.com and Mark C. Moore, by email at mmoore@foley.com. If the Debtors fail to cure such default within seven (7) calendar days from transmittal of the notice of default: (a) upon 48-hours written notice to Debtors' counsel, Culhane Meadows PLLC, Attn:

Mette Kurth, by email at Mkurth@cm.law and Lynnette Warman, by email at Lwarman@cm.law, a representative of the Texas Comptroller and SSCP may inspect the books and records of the Debtors for the purpose of verifying the amount of post-petition sales taxes owed and that those amounts have been properly deposited in the Sales Tax Escrow account; and (b) the Texas Comptroller is authorized to submit to the Court a certification of non-compliance with this Order, and the Court may enter such further orders as it deems appropriate.

5. **The Budget.** The Debtors' use of Cash Collateral shall be conditioned upon the Debtors' compliance with the Budget. The Budget may be modified in writing only with the prior written consent of SSCP. The Debtors will file any amended Budget with the Court. Prior to any transfer or use of Cash Collateral by the Debtors, Teri Stratton, Managing Director for the Debtors' proposed investment banker and financial advisor, Hilco Corporate Finance, shall review and verify the proposed transfer or use of Cash Collateral for compliance with the Budget and this Second Interim Order.

6. **Variance Reporting.** On a weekly basis, no later than the following Wednesday of each week, the Debtors shall deliver to SSCP a line-by-line variance report, which shall be reviewed and verified by Ms. Stratton, and shall otherwise be in form and substance acceptable to SSCP, and which shall compare actual cash receipts and disbursements of the Debtors with corresponding amounts provided for in the Budget on a line-by-line basis for the prior Testing Period, including written descriptions in reasonable detail explaining any material positive or negative variances.

7. **Adequate Protection.** Except as otherwise set forth herein, SSCP is entitled to all Adequate Protection provided under the Interim Order during the effectiveness of this Second Interim Order. SSCP is further entitled to the following additional adequate protection obligations with respect to its asserted pre-Petition Date security interests, *nunc pro tunc* to the Petition Date, in each case solely against the Debtors and assets thereof that are encumbered under SSCP’s Prepetition Agreements, including, but not limited to, the Credit Agreement and Security Agreement:

- a. **Bank Accounts**—The Debtors shall be authorized to open new bank accounts with notice to SSCP, including, but not limited to, the segregated utilities account contemplated in the *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* [D.I. 46] [the “Utilities Motion”] and any order entered in connection therewith and the Sale Tax Account provided for herein; *provided, however*, that SSCP shall be deemed to hold executed deposit account control agreements (“DACAs”) on all such bank accounts other than the Sales Tax Account;
- b. **Information Requests**—The Debtors shall provide the following information, documents (which the Debtors shall be deemed to verify are true and correct as of the dates prepared), and/or access to same to SSCP on the following dates; *provided, however*, that in the event any referenced documents do not exist, the Debtors shall so certify in writing:

<u>Read-only access to the Debtors’ Rosnet system</u>	<u>March 6, 2023</u>
Audited financial statements for 2020-2022, if such audited statements exist, and if not, unaudited financial statements for 2020-2022, if such unaudited statements exist	March 6, 2023
A listing of all bank accounts held by each Debtor from October 27, 2020 through the current date	March 7, 2023

Tax returns for each Debtor for 2020 and 2021, if such tax returns have been filed	March 8, 2023
Tax returns for each Debtor for 2022, if such tax returns have not been filed	Within 7 business days after filing
All monthly bank statements	March 10, 2023
<p>The following historical financial information in the Debtors' possession from October 27, 2020 through the Petition Date</p> <ul style="list-style-type: none"> <li>• Any existing monthly P/L statements for each store</li> <li>• Any existing monthly balance sheets for each Debtor</li> <li>• Any existing monthly statements of cash flows from each Debtor</li> <li>• Any existing monthly same store sales reports</li> <li>• Any existing monthly G&amp;A detail statements for each Debtor, including salaries by employee</li> </ul>	To be provided on a rolling basis commencing on March 6, 2023, with Debtors to use their reasonable best efforts to complete production by March <del>4</del> 6 <sup>13</sup> , 2023

- c. **Adequate Protection Payments**—The Debtors are authorized and directed to pay SSCP’s actual and reasonable attorneys’ and professionals’ fees and expenses incurred in connection with these Chapter 11 Cases (the “Adequate Protection Fees and Expenses”), which shall be deemed fully earned, nonrefundable, infeasible, and irrevocable as of the date of this Order. Payment of all such Adequate Protection Fees and Expenses shall not be subject to allowances by the Court, *provided, however*, that the Adequate Protection Fees and Expenses incurred after the Petition Date shall be evidenced by a summary invoice(s) (redacted, as necessary, to protect any applicable privilege) and delivered to counsel for the Debtors, the U.S. Trustee, and any statutory committee appointed in these Chapter 11 cases (the “Parties”). The Fee Notice Parties shall have ten (10) calendar days from the date of such delivery (the “SSCP Fee Review Period”) within which to object in writing solely to the reasonableness of such fees, costs, and expenses. In the absence of any objection by the Fee Review Parties, following the expiration of the SSCP Fee Review Period, the Debtors shall pay such invoice(s) promptly, and in any event within three (3) calendar

days, without the need for further application to or order of the Court. If, within such period, the Fee Review Parties raise an objection to a particular invoice (such as disputed fees, the “Disputed Invoiced Fees”), the applicable counsel shall notify the Debtors and SSCP in writing of the objection and the Debtors shall pay the fees and expenses not subject to the objection within three (3) business days following the expiration of the SSCP Fee Review Period, without the need for further application to or order of the Court. If after seven (7) calendar days such objection remains unresolved, the parties may submit such objection to the Court for resolution. The Debtors shall pay any Disputed Invoiced Fees promptly upon resolution of the objection, including to the extent resolved through approval by the Court, to the extent of such approval. In no event shall any invoice or other statement submitted by SSCP to the Fee Review Parties, or any other interested person (or any of their respective advisors) with respect to fees or expenses incurred by any professional retained by SSCP operate to waive the attorney/client privilege, the work-product doctrine, or any other evidentiary privilege or protection recognized under applicable law;

- d. **Administrative-Expense Claims**—SSCP is hereby granted, from and after the Petition Date, allowed administrative-expense claims in an amount not to exceed the Debtors' actual usage of SSCP's cash collateral pursuant to this Order (the “Cash Collateral Usage”) with priority over any and all administrative expenses, adequate protection claims, and all other claims against the Debtors, now existing or hereinafter arising, of any kind whatsoever, solely as provided under 507(b) of the Bankruptcy Code;
- e. **Adequate-Protection Liens**—SSCP is hereby granted, from and after the Petition Date, replacement liens and security interests (the “Adequate Protection Liens”) in an amount not to exceed the Debtors' Cash Collateral Usage in all of the Debtors' assets and properties of any kind or type, whether now owned and hereafter acquired, personal property, tangible and intangible assets, and rights of any kind or nature, wherever located, including, without limitation, all pre-petition and post-petition property of the Debtors and their estates, and all products, proceeds, rents, and profits thereof, whether existing on or as of the Petition Date, or thereafter acquired, or arising upon any use, lease, sale, consumption, or other disposition of such assets and properties, including without limitation, goods and other personal property, accounts receivable, other rights to payment, cash, inventory, general intangibles, contracts, servicing rights, proceeds, and termination payments, servicing receivables, securities (including equity interests in the Debtors), chattel paper, fixtures, machinery, equipment, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, commercial tort claims, insurance of any kind or type, property subject to avoided liens, and claims and causes of action including, upon the entry of the Final Order, and the products and proceeds of any and all of the foregoing (collectively, the “Adequate Protection Collateral”); *provided*,

*however*, that the Adequate Protection Liens granted to SSCP in the Adequate Protection Collateral shall be first priority but subject only to (x) any valid, perfected, and unavoidable liens in property of the Debtors in existence as of the Petition Date and (y) any valid and unavoidable liens on property of the Debtors in existence for amounts outstanding as of the Petition Date that are perfected after the Petition Date as permitted by Bankruptcy Code section 546(b) or pursuant to applicable law (the liens described in (x) and (y), the “Prior Liens”), in the same nature, extent, priority, and validity that any such liens existed on the Petition Date;

- f. Notwithstanding anything to the contrary in Paragraph 7(e), adequate Protection Liens shall not include the Debtors' leasehold ~~interest~~interests but shall include the proceeds of such real property leasehold ~~interest~~interests;
- g. As of the Petition Date, the Adequate Protection Liens shall be valid, perfected, enforceable and effective against the Debtors, their successors and assigns, including any trustee or receiver in this or any superseding chapter 7 case, without any further action by Debtors or SSCP and without the execution, delivery, filing or recordation of any promissory notes, financing statements, security agreements or other documents. Notwithstanding the foregoing, this Second Interim Order shall be deemed a security agreement and may be filed as a financing statement and the Debtors shall execute and deliver such notes, security agreements, assignments, financing statements and other documents that SSCP shall reasonably request to further evidence the liens and security interests granted hereby. SSCP shall have all the rights and remedies of a secured creditor in connection with the Adequate Protection Liens granted by this Second Interim Order in all Collateral; and,
- h. Subject only to and effective upon entry of a final order, waiving the Debtors' right to assert with respect to the Collateral or the Adequate Protection Collateral (i) any claims to surcharge pursuant to section 506(c) of the Bankruptcy Code, (ii) any “equities of the case” exception pursuant to section 552(b) of the Bankruptcy Code, and (iii) the equitable doctrine of “marshalling” or any similar doctrine.

8. **Disgorgement.** Notwithstanding anything to the contrary in Paragraph 7, all payments of professional or other fees, all Adequate Protection Liens, and all Adequate Protection Claims granted by this Second Interim Order are subject to being set aside, and the Court may enter any other appropriate relief, if and to the extent the Court so rules, to the extent that this

Court determines that SSCP does not hold valid, first-priority, perfected and secured liens with respect to the Collateral or Cash Collateral

9. **Events of Default.** The following shall constitute events of default under this Second Interim Order ("Events of Default"):

- a. Any material failure to comply with the terms of the Interim Order or this Second Interim Order, including, but not limited to, the requirements of paragraphs 5 and 7 and all subparagraphs thereof;
- b. If a final order granting the continued use of SSCP's Cash Collateral by the Debtors or approving postpetition financing to be provided by SSCP is not approved by the Court and entered on or before March 30, 2023, or such later date as is agreed to in writing by the Debtors and SSCP;
- c. Any attempt by any Debtor to seek approval for postpetition financing to be provided by any party other than SSCP that does not provide for the immediate and indefeasible satisfaction of any and all outstanding Adequate Protection Payments owed to SSCP or any administrative-expense claims of SSCP related to the Cash Collateral Usage;
- d. If any representation made by the Debtors after the commencement of this chapter 11 case in any report or financial statement delivered to SSCP proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading);
- e. If a trustee or examiner, with authority to affect the operation of the business of the Debtors (or any of them) is appointed in the above-enumerated chapter 11 proceedings without the consent of SSCP;
- f. The grant of any security interest, lien, or encumbrance (excluding any Prior Liens) in any of the Collateral which is *pari passu* with or senior to the liens, security interests, or claims of SSCP (including, without limitation, the Adequate Protection Liens), including, without limitation, any surcharge of the Collateral pursuant to Bankruptcy Code section 506(c), unless SSCP agrees in writing that such security interest, lien, encumbrance, or surcharge does not constitute an Event of Default;
- g. Any attempt by any Debtor to vacate or modify the Interim Cash Collateral Orders over the objection of SSCP;
- h. The entry of any order modifying, reversing, revoking, staying, rescinding, vacating, or amending the Interim Cash Collateral Orders without the

consent of SSCP;

- i. The entry of an order pursuant to Bankruptcy Code section 363 approving the sale of any Collateral without the consent of SSCP;
- j. The failure of the Debtors to timely pay any and all Adequate Protection Fees and Expenses authorized or required in the Interim Cash Collateral Orders;
- k. Except for the reasonable and necessary sale of inventory and supplies and the collection of accounts receivable in the ordinary course of the Debtors' businesses and as may be provided for in the Budget and consistent with the terms hereof, the sale, transfer, lease, or disposition of, or the imposition of any encumbrance on, any of the Collateral or the Cash Collateral, without the prior written consent of SSCP;
- l. If the bankruptcy cases of the Debtors (or any of them) are converted to a case under chapter 7 without the consent of SSCP;
- m. If the bankruptcy cases of the Debtors (or any of them) are dismissed without the consent of SSCP; or
- n. If any of the Debtors file any pleading or commence any action against SSCP challenging the validity or enforceability of SSCP's pre-petition liens or claims, or seeking to avoid, disallow, subordinate or recharacterize any claim, lien or interest held by SSCP.

10. **Remedies Upon Default.** The authorization to use Cash Collateral granted herein shall automatically and immediately terminate five (5) business days after the provision of written notice to the Debtors (with a copy of such notice provided to the Fee Review Parties (the "Default Notice Period") of an Event of Default. Upon the occurrence of an Event of Default, the Debtors shall be entitled to either cure the default within the Default Notice Period or to seek an emergency hearing with the Bankruptcy Court within the Default Notice Period ~~to dispute the occurrence of an Event of Default.~~ Upon the occurrence of an uncured Event of Default (and following the expiration of the Default Notice Period), the automatic stay provisions of section 362 of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit

SSCP, as applicable, to exercise all rights and remedies provided in this Order and to take any or all of the following actions, as applicable, without further order of or application to this Court:

- a. the immediate termination of the Debtors' use of SSCP's Cash Collateral; and
- b. seek the entry of an order prohibiting or limiting the Debtors' further use of the SSCP's Cash Collateral;
- c. such further or other relief as provided in the Bankruptcy Code, this Interim Order or applicable non-bankruptcy law.

SSCP may seek on an emergency basis at the Continued Hearing (as defined below), a termination of the automatic stay under section 362(a) of the Bankruptcy Code following the expiration of the Default Notice Period. The rights and remedies of SSCP specified herein are cumulative and not exclusive of any rights or remedies that SSCP may have under the Prepetition Agreements, as applicable, or otherwise. The Debtors shall cooperate fully with SSCP in any permitted exercise of rights and remedies.

11. **Appointment of a Chief Restructuring Officer.** In addition to the right and remedies set forth in the preceding paragraph 10, upon the occurrence of an uncured Event of Default as a result of a material failure to comply with the requirements of Paragraph 7(b) (Information Requests) (and within three (3) business days following the expiration of the Default Notice Period), the Debtors shall appoint an individual with the traditional and customary powers of a Chief Restructuring Officer who is mutually agreeable to the Debtors and SSCP.

12. **Term.** Unless otherwise ordered by the Court or extended by written agreement between the Debtors and SSCP, the Debtors' right to use SSCP's Cash Collateral hereunder shall commence on the date hereof and expire at 5:00 PM ET on March 17, 2023. Notwithstanding such expiration or other termination, or modification hereof, SSCP shall be entitled to the liens,

priorities and other rights provided herein to the extent that the Debtors have used SSCP's Cash Collateral following the date hereof.

13. **No Additional Liens.** Until such time as all amounts contemplated and approved herein as Adequate Protection, including the Adequate Protection Fees and Expenses and administrative-expense claims, shall have been indefeasibly paid and satisfied in full, the Debtors shall not be authorized to obtain credit secured by a lien or security interest in the Collateral without the prior written consent of SSCP or by order of the Court upon reasonable notice.

14. **Continuing Effect of Order.** If an order dismissing any of the cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the Adequate Protection provided herein, including the superpriority claims and the Adequate Protection Liens, shall continue in full force and effect and shall maintain their priorities as provided in this Order until all adequate protection obligations shall have been indefeasibly paid and satisfied in full (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all persons), and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

15. **Modification of Automatic Stay.** The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Second Interim Order, including, without limitation, to: (a) permit the Debtors to grant the adequate protection liens and incur the superpriority claims; (b) permit the Debtors to perform such acts as may be needed to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations under the terms of this Order; and (d)

authorize the Debtors to pay, and the Debtors to retain and apply, any payments made in accordance with the terms of this Second Interim Order.

16. **Impact of Modification of Interim Cash Collateral Orders.** If any or all of the provisions of the Interim Cash Collateral Orders are hereafter purported to be, or are, modified, vacated, or stayed without the prior written consent of SSCP, such modification, vacation, or stay shall not affect (a) the validity of any obligation, indebtedness, or liability incurred by the Debtors to SSCP before the effective date of such modification, vacation, or stay, or (b) the validity or enforceability of any security interest, lien, priority or other protection authorized, granted, or created hereby. Notwithstanding any such modification, vacation, or stay, any indebtedness, obligations, or liabilities incurred by the Debtors to SSCP, before the effective date of such modification, vacation, or stay shall be governed in all respects by the original provisions of the Interim Cash Collateral Orders, and SSCP shall be entitled to all of the liens, rights, remedies, privileges, and benefits granted herein with respect to all such indebtedness, obligations, or liabilities.

17. **Written Approval Required.** No approval, agreement, or consent requested of SSCP by the Debtors pursuant to the terms of the Interim Cash Collateral Orders or otherwise shall be inferred from any action, inaction, or acquiescence of SSCP other than a writing acceptable to SSCP that is signed by SSCP (or its agent or professionals) and expressly shows such approval, agreement, or consent, without limitation.

18. **Reservation of Rights.**

a. Nothing herein shall be deemed or construed to waive, limit, or modify the rights of SSCP to obtain further adequate protection and other statutory protections for the Debtors' use of Cash Collateral, or to seek other relief in these Chapter 11 Cases in accordance with any

provision of the Bankruptcy Code or applicable law. Unless expressly and specifically provided otherwise herein, nothing herein shall be deemed or construed to waive, limit, modify or prejudice the claims, rights, protections, privileges and defenses of SSCP afforded pursuant to the Bankruptcy Code.

b. Nothing in this Order, and none of the actions or payments contemplated by this Order, shall prejudice, compromise, diminish or affect in any respect any rights of the Texas Comptroller to trace and recover any Texas Sales Tax Trust Funds which may be shown to have been in the possession of the Debtor on the Petition Date or collected after the Petition Date. To the extent the Texas Comptroller can show the existence of any Texas Sales Tax Trust Funds in the possession of the Debtor, the payment of funds pursuant to this Order shall not constitute a defense to any rights of the Texas Comptroller to recover its alleged Texas Sales Tax Trust Funds or interest thereon, and any such rights as against the Debtor and the bankruptcy estate shall remain intact notwithstanding payment of funds. The Debtor shall retain all rights to contest recovery of alleged Sales Tax Trust Funds and interest by the Texas Comptroller but may not use this Order or any payment of funds pursuant to this Order as a basis for contesting the Texas Comptroller's proof(s) of claim.

19. **Notice and Hearing, Reservation of Rights to Object.** A further interim hearing (the "Continued Hearing") shall be scheduled or on before March 17, 2023, to consider further relief. Any objections to entry of such order shall be in writing, filed with this Court, and served upon (a) the Debtors, Attn: Jay Pandya at [jaypandya@rohangroup.net](mailto:jaypandya@rohangroup.net); (b) the Debtors' proposed counsel, Mette H. Kurth at [MKurth@cm.law](mailto:MKurth@cm.law) and Lynnette R. Warman at [LWarman@cm.law](mailto:LWarman@cm.law); (c) SSCP, the Debtor's prepetition lender, Ken Schwab ([kschwab@sscpmanagement.com](mailto:kschwab@sscpmanagement.com)); (d) and counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201,

Attn: Holland N. O'Neil ([honeil@foley.com](mailto:honeil@foley.com)), Mark C. Moore ([mmoore@foley.com](mailto:mmoore@foley.com)), and ~~Stephan A. Jones~~ Tim Mohan ([sajones@foley.com](mailto:sajones@foley.com) [tmohan@foley.com](mailto:tmohan@foley.com)) and Ashby & Geddes, P.A, 500 Delaware Avenue, 8<sup>th</sup> Floor, P.O. Box 1150, Wilmington, DE. 19899, Attn: Ricardo Palacio ([RPalacio@ashbygeddes.com](mailto:RPalacio@ashbygeddes.com)); (d) the Office of the United States Trustee for the District of Delaware, Attn: Linda Casey ([Linda.Casey@usdoj.gov](mailto:Linda.Casey@usdoj.gov)); and (e) counsel for any statutory committee appointed in these Chapter 11 Cases, or if no such committee has been appointed, the holders of the 30 largest unsecured claims against the Debtors (the "Notice Parties"); in each case so as to be received no later than **4:00 p.m. (EST) on March 10, 2023**. This Second Interim Order shall be binding upon, and inure to the benefit of SSCP, the Debtors, any official committee(s) that may be appointed and their respective successors and assigns including, without limitation, any trustee appointed in this chapter 11 case or any superseding chapter 7 case.

20. **Notices.** Except as otherwise stated herein, all notices and demands hereunder shall be in writing and shall be deemed given when delivered to the Notice Parties / Full List ; on the earlier of (x) when they are actually delivered to the addressees by hand delivery, facsimile transmission, e-mail or otherwise, or (y) at 11:00 a.m. Dallas time on the Banking Day next following the deposit thereof with any recognized national overnight delivery service properly addressed to the addressees.

21. **Other.** The findings of fact and conclusions of law of this Court pursuant to this Second Interim Order shall be deemed effective upon the entry of this Second Interim Order. To the extent that such findings may constitute conclusions, and vice versa, they hereby are deemed such.

22. To the extent necessary, the Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate

and irreparable harm. To the extent applicable, the requirements of Bankruptcy Rule 6004(a) are waived. Notwithstanding Bankruptcy Rule 6004(h), this Second Interim Order shall be effective and enforceable immediately upon entry hereof.

23. This Second Interim Order is immediately valid and fully effective upon its entry by the Court.

24. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Second Interim Order.

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

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