

**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)

Ref. Docket Nos. 52, 141, 204, 210

**JOINDER OF KBSIII 500 WEST MADISON, LLC TO LIMITED OBJECTION OF EAGLE GREEN, LP AND TOWSON UE TO DEBTORS' FIRST OMNIBUS MOTION FOR ENTRY OF AN ORDER: (I) AUTHORIZING THE REJECTION OF CERTAIN UNEXPIRED LEASES AND ABANDONMENT OF CERTAIN PERSONAL PROPERTY WITH CERTAIN REJECTIONS AND ABANDONMENTS EFFECTIVE *NUNC PRO TUNC* AS OF THE PETITION DATE; AND (II) GRANTING RELATED RELIEF**

KBSIII 500 West Madison, LLC (the “Landlord”), by counsel, hereby files this joinder (the “Joinder”) to the *Limited Objection of Eagle Green, LP and Towson UE to Debtors' First Omnibus Motion for Entry of an Order: (I) Authorizing Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date; and (II) Granting Related Relief* [D.I. 204] (the “Eagle Green Objection”), and in support of its Joinder, respectfully states as follows:

**I. BACKGROUND**

1. On February 28, 2023 (the “Petition Date”), CBC Restaurant Corp. and its affiliated debtor entities (the “Debtors”) filed their voluntary petitions for relief under Chapter 11 of Title

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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 Cardo, Inc. (1938). The Debtors’ service address is 121 Friends Lane, Suite 301, Newtown, PA 18940.



11 of the United States Code. The Debtors' cases have been consolidated for administrative purposes only.

2. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. To date, no trustee or examiner has been appointed in the Chapter 11 Cases.

3. The Debtors sublease retail space (the "Premises") from the Landlord pursuant to a lease of nonresidential real property (the "Lease"), which is included for rejection in the Motion relative to premises located at 500 W. Madison, #C008, Chicago, IL 60661. The Lease is a lease of "real property in a shopping center" as that term is used in 11 U.S.C. § 365(b)(3).

4. On the Petition Date, the Debtors filed their *First Omnibus Motion for Entry of An Order: (I) Authorizing Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date; and (II) Granting Related Relief* [D.I. 52] (the "Motion"), seeking to reject, among other leases, the Lease *nunc pro tunc* to the date of surrender of the Premises (the "Rejection Date").

5. On March 20, 2023, the Debtors' secured lender, SSCP Restaurant Investors LLC ("SSCP") filed its *Limited Objection of SSCP Restaurant Investors LLC to First Omnibus Motion of the Debtors for Entry of an Order: (I) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (2) Granting Related Relief* [D.I. 163] (the "SSCP Objection"). In the SSCP Objection, SSCP asserts that it is secured by all assets of the Debtors. The SSCP Objection generally takes issue with the financial impact of rejecting the subject leases and the abandonment of the personal property thereon.

6. On March 23, 2023, the Debtors filed their *Debtors' Response to the Limited Objection of SSCP Restaurant Investors LLC to First Omnibus Motion of the Debtors for Entry of an Order: (1) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (2) Granting Related Relief* [D.I. 198].

7. Shortly before the close of business on Friday, March 24, 2023, the Debtor and undersigned counsel received correspondence from Debtors' counsel noticing the Landlord that, notwithstanding the month that has elapsed since the Petition Date, certain personal property and/or equipment lessors (Loomis Armored US, LLC, NuCo2 LLC and Ecolab, Inc.) may still have leased property or equipment on the Premises as to which the Debtors urge the "parties to coordinate between themselves as to how and when the equipment can be removed from the premises" (the "Notice"). A true copy of the Notice is appended as *Exhibit A*.

8. During the evening of March 24, 2023, after at least two of the Debtors' other landlords apparently received correspondence similar to the Notice, Eagle Green, LP and Towson UE LLC (the "Eagle Green Parties"), filed the Eagle Green Objection.

9. The Eagle Green Objection sets forth the Eagle Green Parties' objections and arguments that the SSCP Objection and the Notices seek to retroactively reverse the Debtors' prior unequivocal surrender of the Premises causing affected landlords (who acted in good faith and relied on the Rejection Motion and unequivocal surrender of their premises) to act as involuntary landlords bearing risks and costs associated with maintenance of relevant premises and protection of the personal property remaining in those premises. As set forth in the Eagle Green Objection, for there to be an unequivocal surrender of the Premises and retroactive rejection of the Leases, any property remaining on the Premises must have either been removed before the effective Rejection Dates, or be abandoned free and clear of all liens, claims, interests, and encumbrances

as of the effective Rejection Dates, not some future date. As a result, any order on the Motion should provide that (a) the Landlords may use or dispose of any such abandoned personal property without notice or liability to the Debtors or any third parties, without further notice or order of this Court, and without waiver of any claim that the Landlords may have against the Debtors, and (b) to the extent applicable, the automatic stay be modified to permit the Landlords' use or disposition of any abandoned property remaining, including but not limited to the transfer of title by the applicable Debtors.

10. At least one other similarly-situated landlord subsequently has joined the Eagle Green Objection. *See Joinder of Brinker International, Inc. and its Affiliates to Limited Objection of Eagle Green, LP and Towson UE to Debtors' First Omnibus Motion for Entry of an Order: (I) Authorizing The Rejection Of Certain Unexpired Leases and Abandonment of Certain Personal Property with Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date; and (II) Granting Related Relief (the "Brinker Objection")* [D.I. 210], filed March 27, 2023.

## **II. JOINDER**

11. Landlord hereby joins and incorporates the Eagle Green Objection and the Brinker Objection, as well as joins in any responsive pleading of any other landlords, to the extent not inconsistent with the Eagle Green Objection and the Brinker Objection, and request such other and further relief as is appropriate.

## **III. RESERVATION OF RIGHTS**

12. The Landlord reserves all rights to make such other and further objections as it may hereafter deem necessary and appropriate.

**WHEREFORE**, the Landlord respectfully requests that the Court enter an order consistent with the Eagle Green and Brinker Objections joined herein, and grant such other and further relief as this Court deems just and proper under all of the circumstances.

Dated: March 28, 2023

**O'HAGAN MEYER PLLC**

*/s/ Alan D. Albert*

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# EXHIBIT A



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March 24, 2023

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NuCo2 LLC  
2800 SE Market Place  
Stuart, FL 34997  
800-472-2855

**Re: Notice of Lease Rejection and Vacating Premises  
Corner Bakery Store No. 138 - Citicorp  
Premises: 500 W. Madison, #C008 Chicago, IL 60661  
In re CBC Restaurant Corp., et al., Case No. 23-10245-11  
(Bankr. Del., Petition Date 2/22/2023)**

Please be advised that the real property lease for the premises identified above is being rejected by the Debtors under section 365 of the Bankruptcy Code as set forth in and effective as of the



date set forth in the attached First Omnibus Motion of the Debtors for Entry of an Order: (1) Authorizing the Rejection of Certain Unexpired Leases and Abandonment of Certain Personal Property (With Certain Rejections and Abandonments Effective Nunc Pro Tunc as of the Petition Date); and (3) Granting Related Relief [Dkt. 52] attached hereto.

We understand that certain equipment lessors who are being copied on the letter/email may have equipment on the premises. The purpose of this notice is allowing the parties to coordinate between themselves as to how and when the equipment can be removed from the premises.

Each of you has the other party's contact information as set forth in this communication which should be helpful.

Thank you for your anticipated cooperation.

Respectfully,  
**CULHANE MEADOWS PLLC**  
RICHARD G. GRANT, ESQ.  
Partner

RGG/hl  
Enclosures

