

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
CBC RESTAURANT CORP., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10245 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Obj. Deadline: May 22, 2023 at 4:00 p.m. ET
	)	Hearing Date: June 1, 2023 at 9:30 a.m. ET
	)	Relating to Docket Nos.: 289 & 418

**OBJECTION OF DS FOUNTAIN VALLEY LP TO (1) NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS AND (2) MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) AUTHORIZING THE DEBTORS TO ENTER INTO STALKING HORSE AGREEMENT; (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER AND NOTICE THERETO; (D) APPROVING THE ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (II) (A) APPROVING THE SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; AND (III) GRANTING RELATED RELIEF; AND JOINDER AND RESERVATIONS OF RIGHTS**

Landlord DS FOUNTAIN VALLEY LP ("Landlord"), by and through its undersigned counsel, hereby objects to the *Notice Of Possible Assumption And Assignment With Respect To Executory Contracts And Unexpired Leases Of The Debtors* [D.I. 418] (the "Cure Notice") and *Motion For Entry Of Orders (I)(A) Approving Bidding Procedures For Sale Of All Or Substantially All Of The Debtors' Assets; (B) Authorizing The Debtors To Enter Into Stalking Horse Agreement; (C) Scheduling An Auction And Approving The Form And Manner And Notice Thereto; (D) Approving The Assumption And Assignment Procedures; And (E) Scheduling A Sale Hearing And Approving The Form And Manner Of Notice Thereof; (II) (A) Approving The Sale*

<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, Ste. 301, Newton PA 18940.



*Of Debtors' Assets Free And Clear Of Liens, Claims, Interests And Encumbrances; And (III) Granting Related Relief* [D.I. 289] (the “Sale Motion”) and in support thereof states as follows:

**I. BACKGROUND**

1. On February 22, 2023 (the “Petition Date”), CBC Restaurant Corp. and their affiliated debtor entities (the “Debtors”) filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. The Debtors’ cases have been jointly 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.<sup>2</sup> No trustee or examiner has been appointed in the Chapter 11 Cases at this time.

3. Landlord is the owner of the Fountain Valley Promenade, a shopping center wherein Debtor CBC Restaurant Corp. (“Tenant”) has leased a premises for the operation of a bakery and café. The premises is located at 18315 Brookhurst Street, Suite 2, Fountain Valley, California.

**II. OBJECTION**

**A. CURE NOTICE**

4. In an abundance of caution, Landlord files this Objection to the Cure Notice. Exhibit A to the Cure Notice does not state an accurate Cure Amount due upon the assumption of the Lease. Based upon Landlord's calculation, the Cure Amount should be \$50,741.10 as described herein.

5. Prior to the payment of May's leasehold obligations, the leasehold balance due was \$37,727.30. Tenant made a payment for May 2023's leasehold obligations and overpaid its obligations by \$797.00. A credit of \$797.00 was applied to Tenant's Receivables Ledger. A true and correct copy of the Tenant's Receivables Ledger is attached hereto as **Exhibit A**.

6. Additionally, Landlord performed the reconciliations of the 2022 Common Area Maintenance, Insurance and Property Taxes reimbursements (the “Reconciliations”). The Reconciliations posted to Tenant's ledger on or about May 19, 2023. Upon receipt of the Cure Notice and in response thereto, Landlord notified Debtor that anticipated Reconciliations will be due on or about June 1, 2023. However, due to the deadlines, the hearing date for the Cure Notice

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<sup>2</sup> Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

and Sale Motion, and the anticipated Close of Escrow, the Reconciliations should not be overlooked as they were accrued in 2022 and are now due and owing.

7. Therefore, Landlord asserts that the Cure Amount should include all obligations due including, but not limited to, the Reconciliations. Here are the obligations (aka Cure Amount) that are and will be due upon assumption and assignment of Landlord's Lease:

1/1/2023	Rent	\$15,980.00
1/1/2023	CAM Reimbursement	\$1,814.00
1/1/2023	Insurance Reimbursement	\$140.00
1/1/2023	Marketing Fund	\$31.65
1/1/2023	Property Tax Reimbursement	\$898.00
2/1/2023	Rent	\$15,980.00
2/1/2023	CAM Reimbursement	\$1,814.00
2/1/2023	Insurance Reimbursement	\$140.00
2/1/2023	Marketing Fund	\$31.65
2/1/2023	Property Tax Reimbursement	\$898.00
5/8/2023	May 2023 Overpayment	-\$797.00
	2022 CAM Reconciliation	\$9,428.70
	2022 Insurance Reconciliation	\$3,061.52
	2022 Property Tax Reconciliation	<u>\$1,320.58</u>
		\$50,741.10

8. Landlord reserves the right to supplement or amend this objection to include additional sums that may become due in the future.

#### **B. SALE MOTION**

9. Landlord objects to any attempt to limit Landlord's right to assert a claim for accrued but unbilled Reconciliations. As explained above, the Reconciliations will be posted and invoiced by Landlord on or about June 1, 2023. Due to the timing of the Cure Notice and Sale Motion, Landlord has notified Tenant of the amounts becoming due during this proceeding. Whether the Reconciliations are paid as part of the Cure Amount, or by the Successful Bidder, said amounts are not waived and are required to be paid upon assumption of Landlord's Lease.

#### **III. JOINDER AND RESERVATION OF RIGHTS**

10. Landlord hereby joins in the objections, joinders and reservations of rights filed by certain other landlords with respect to the Cure Notice and Sale Motion with regard to any limitation of Landlord's right to assert a claim for accrued but unbilled Reconciliations or any other attempt to limit the lease burdens and obligations for any potential Successful Bidder. Landlord

herein reserves the right to supplement this Joinder and make such other and further objections as may be necessary or appropriate. Landlord further reserves any and all rights, claims and objections with respect to the Sale Motion and its Lease including, but not limited to, the right to substantively object prior to or at the final hearing.

WHEREFORE, Landlord respectfully requests that the Court enter an order: (i) sustaining this Objection; (ii) determining that the Cure Amount owed should reflect the balance due of leasehold obligations including the Reconciliations that will become due on the hearing date and prior to the Close of Escrow; (iii) acknowledging that the Reconciliations are not waived; and (iv) granting Landlord such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: May 22, 2023  
Wilmington, Delaware

/s/ Leslie C. Heilman

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*Attorneys for Landlord DS Fountain Valley LP*

# **EXHIBIT A**

Database: GRI		CM Receivables Ledger					Page: 1				
BLDG: 9413		GRI LLC Property Database					Date: 5/19/2023				
		FOUNTAIN VALLEY PROMENADE					Time: 3:13 PM				
Occupancy Status: Current		01/23 Through 05/23									
		Security Deposit Ending Balance includes ALL periods									
Building	Lease	Date	Category	SR	Description	Debit	Credit	Balance	Receipt Desc.	Invoice	Receipt Type

9413-D12368 Corner Bakery #0228 D1 PROPERTY ACCOUNTIN (678) 791-0475 Master Occp Id: HO002188-4

Balance Forward 0.00

9413	D12368	1/1/2023	CAM	CAM Reimbursement	CH	AUTOCHRG @T1/31/2023	1,814.00	1,814.00			
9413	D12368	1/1/2023	INS	Insurance Reimbursement	CH	AUTOCHRG @T1/31/2023	140.00	1,954.00			
9413	D12368	1/1/2023	MKG	Marketing Fund	CH	AUTOCHRG @T1/31/2023	31.65	1,985.65			
9413	D12368	1/1/2023	PTR	Prop. Tax Reimbursement	CH	AUTOCHRG @T1/31/2023	898.00	2,883.65			
9413	D12368	1/1/2023	RTR	Base Rent	CH	AUTOCHRG @T1/31/2023	15,980.00	18,863.65			
9413	D12368	2/1/2023	CAM	CAM Reimbursement	CH	AUTOCHRG @T2/28/2023	1,814.00	20,677.65			
9413	D12368	2/1/2023	INS	Insurance Reimbursement	CH	AUTOCHRG @T2/28/2023	140.00	20,817.65			
9413	D12368	2/1/2023	MKG	Marketing Fund	CH	AUTOCHRG @T2/28/2023	31.65	20,849.30			
9413	D12368	2/1/2023	PTR	Prop. Tax Reimbursement	CH	AUTOCHRG @T2/28/2023	898.00	21,747.30			
9413	D12368	2/1/2023	RTR	Base Rent	CH	AUTOCHRG @T2/28/2023	15,980.00	37,727.30			
9413	D12368	3/1/2023	CAM	CAM Reimbursement	CH	AUTOCHRG @T3/31/2023 @	2,181.20	39,908.50			
9413	D12368	3/1/2023	INS	Insurance Reimbursement	CH	AUTOCHRG @T3/31/2023 @	508.85	40,417.35			
9413	D12368	3/1/2023	MKG	Marketing Fund	CH	AUTOCHRG @T3/31/2023 @	31.65	40,449.00			
9413	D12368	3/1/2023	PTR	Prop. Tax Reimbursement	CH	AUTOCHRG @T3/31/2023 @	958.95	41,407.95			
9413	D12368	3/1/2023	RTR	Base Rent	CH	AUTOCHRG @T3/31/2023	15,980.00	57,387.95			
9413	D12368	3/14/2023	CAM	CAM Reimbursement	CR	Receipt		2,181.20	55,206.75	3263	LOC
9413	D12368	3/14/2023	INS	Insurance Reimbursement	CR	Receipt		508.85	54,697.90	3263	LOC
9413	D12368	3/14/2023	PTR	Prop. Tax Reimbursement	CR	Receipt		193.60	54,504.30	3263	LOC
9413	D12368	3/14/2023	RTR	Base Rent	CR	Receipt		15,980.00	38,524.30	3263	LOC
9413	D12368	4/1/2023	CAM	CAM Reimbursement	CH	AUTOCHRG @T4/30/2023	2,181.20	40,705.50			
9413	D12368	4/1/2023	INS	Insurance Reimbursement	CH	AUTOCHRG @T4/30/2023	508.85	41,214.35			
9413	D12368	4/1/2023	MKG	Marketing Fund	CH	AUTOCHRG @T4/30/2023	31.65	41,246.00			
9413	D12368	4/1/2023	PTR	Prop. Tax Reimbursement	CH	AUTOCHRG @T4/30/2023	958.95	42,204.95			
9413	D12368	4/1/2023	RTR	Base Rent	CH	AUTOCHRG @T4/30/2023	15,980.00	58,184.95			
9413	D12368	4/10/2023	CAM	CAM Reimbursement	CR	Receipt		2,181.20	56,003.75	6013	LOC
9413	D12368	4/10/2023	INS	Insurance Reimbursement	CR	Receipt		508.85	55,494.90	6013	LOC
9413	D12368	4/10/2023	MKG	Marketing Fund	CR	Receipt		31.65	55,463.25	6013	LOC
9413	D12368	4/10/2023	PPR	Prepayment	CR	ppr		797.00	54,666.25	6013	LOC
9413	D12368	4/10/2023	PTR	Prop. Tax Reimbursement	CR	Receipt		958.95	53,707.30	6013	LOC
9413	D12368	4/10/2023	RTR	Base Rent	CR	Receipt		15,980.00	37,727.30	6013	LOC
9413	D12368	5/1/2023	CAM	CAM Reimbursement	CH	AUTOCHRG @T5/31/2023	2,181.20	39,908.50			
9413	D12368	5/1/2023	INS	Insurance Reimbursement	CH	AUTOCHRG @T5/31/2023	508.85	40,417.35			
9413	D12368	5/1/2023	MKG	Marketing Fund	CH	AUTOCHRG @T5/31/2023	31.65	40,449.00			
9413	D12368	5/1/2023	PTR	Prop. Tax Reimbursement	CH	AUTOCHRG @T5/31/2023	958.95	41,407.95			

Database: GRI	CM Receivables Ledger	Page: 2
BLDG: 9413	GRI LLC Property Database	Date: 5/19/2023
Occupancy Status: Current	FOUNTAIN VALLEY PROMENADE	Time: 3:13 PM
	01/23 Through 05/23	
	Security Deposit Ending Balance includes ALL periods	

  

Building	Lease	Date	Category	SR	Description	Debit	Credit	Balance	Receipt Desc.	Invoice	Receipt Type
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9413	D12368	5/1/2023	RTR Base Rent	CH	AUTOCHRG @T5/31/2023	15,980.00		57,387.95			
9413	D12368	5/3/2023	MKG Marketing Fund	CR	CreditApply		31.65	57,356.30	6013		APL
9413	D12368	5/3/2023	PPR Prepayment	PR	CreditApply	797.00		58,153.30	6013		APL
9413	D12368	5/3/2023	PTR Prop. Tax Reimbursement	CR	CreditApply		765.35	57,387.95	6013		APL
9413	D12368	5/8/2023	CAM CAM Reimbursement	CR	Receipt		2,181.20	55,206.75	6125		LOC
9413	D12368	5/8/2023	INS Insurance Reimbursement	CR	Receipt		508.85	54,697.90	6125		LOC
9413	D12368	5/8/2023	MKG Marketing Fund	CR	Receipt		31.65	54,666.25	6125		LOC
9413	D12368	5/8/2023	PPR Prepayment	CR	ppr		797.00	53,869.25	6125		LOC
9413	D12368	5/8/2023	PTR Prop. Tax Reimbursement	CR	Receipt		958.95	52,910.30	6125		LOC
9413	D12368	5/8/2023	RTR Base Rent	CR	Receipt		15,980.00	36,930.30	6125		LOC
9413	D12368	5/19/2023	PYC Prior Year CAM Adj.	CH	2022 YE CAM RECONCILIAT	9,428.70		46,359.00			
9413	D12368	5/19/2023	PYI Prior Year Insurance	CH	2022 YE INS RECONCILIATI	3,061.52		49,420.52			
9413	D12368	5/19/2023	PYT Prior Year Tax	CH	2022 YE TAX RECONCILIATI	1,320.58		50,741.10			

Category	Mo. Rep Charges	Beg Balance	Charges	Cash Receipts	N/C Credits	Refunds	End Balance	Sec Dep Bal
CAM CAM Reimbursement	2,181.20	0.00	10,171.60	6,543.60	0.00	0.00	3,628.00	
INS Insurance Reimbursement	508.85	0.00	1,806.55	1,526.55	0.00	0.00	280.00	
MKG Marketing Fund	31.65	0.00	158.25	94.95	0.00	0.00	63.30	
PPR Prepayment	0.00	0.00	0.00	797.00	0.00	0.00	-797.00	
PTR Prop. Tax Reimbursement	958.95	0.00	4,672.85	2,876.85	0.00	0.00	1,796.00	
PYC Prior Year CAM Adj.	0.00	0.00	9,428.70	0.00	0.00	0.00	9,428.70	
PYI Prior Year Insurance	0.00	0.00	3,061.52	0.00	0.00	0.00	3,061.52	
PYT Prior Year Tax	0.00	0.00	1,320.58	0.00	0.00	0.00	1,320.58	
RTR Base Rent	15,980.00	0.00	79,900.00	47,940.00	0.00	0.00	31,960.00	
<b>Total:</b>	<b>19,660.65</b>	<b>0.00</b>	<b>110,520.05</b>	<b>59,778.95</b>	<b>0.00</b>	<b>0.00</b>	<b>50,741.10</b>	<b>0.00</b>

<b>Totals for 9413:</b>								
Category	Mo. Rep Charges	Beg Balance	Charges	Cash Receipts	N/C Credits	Refunds	End Balance	Sec Dep Bal
CAM CAM Reimbursement	2,181.20	0.00	10,171.60	6,543.60	0.00	0.00	3,628.00	
INS Insurance Reimbursement	508.85	0.00	1,806.55	1,526.55	0.00	0.00	280.00	
MKG Marketing Fund	31.65	0.00	158.25	94.95	0.00	0.00	63.30	
PPR Prepayment	0.00	0.00	0.00	797.00	0.00	0.00	-797.00	
PTR Prop. Tax Reimbursement	958.95	0.00	4,672.85	2,876.85	0.00	0.00	1,796.00	
PYC Prior Year CAM Adj.	0.00	0.00	9,428.70	0.00	0.00	0.00	9,428.70	
PYI Prior Year Insurance	0.00	0.00	3,061.52	0.00	0.00	0.00	3,061.52	
PYT Prior Year Tax	0.00	0.00	1,320.58	0.00	0.00	0.00	1,320.58	
RTR Base Rent	15,980.00	0.00	79,900.00	47,940.00	0.00	0.00	31,960.00	

Database: GRI		CM Receivables Ledger					Page: 3				
BLDG: 9413		GRI LLC Property Database					Date: 5/19/2023				
		FOUNTAIN VALLEY PROMENADE					Time: 3:13 PM				
Occupancy Status: Current		01/23 Through 05/23									
		Security Deposit Ending Balance includes ALL periods									
Building	Lease	Date	Category	SR	Description	Debit	Credit	Balance	Receipt Desc.	Invoice	Receipt Type

<b>BLDG Total:</b>	<b>19,660.65</b>	<b>0.00</b>	<b>110,520.05</b>	<b>59,778.95</b>	<b>0.00</b>	<b>0.00</b>	<b>50,741.10</b>	<b>0.00</b>
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Grand Totals:		Mo. Rep Charges	Beg Balance	Charges	Cash Receipts	N/C Credits	Refunds	End Balance	Sec Dep Bal
Category									
CAM	CAM Reimbursement	2,181.20	0.00	10,171.60	6,543.60	0.00	0.00	3,628.00	
INS	Insurance Reimbursement	508.85	0.00	1,806.55	1,526.55	0.00	0.00	280.00	
MKG	Marketing Fund	31.65	0.00	158.25	94.95	0.00	0.00	63.30	
PPR	Prepayment	0.00	0.00	0.00	797.00	0.00	0.00	-797.00	
PTR	Prop. Tax Reimbursement	958.95	0.00	4,672.85	2,876.85	0.00	0.00	1,796.00	
PYC	Prior Year CAM Adj.	0.00	0.00	9,428.70	0.00	0.00	0.00	9,428.70	
PYI	Prior Year Insurance	0.00	0.00	3,061.52	0.00	0.00	0.00	3,061.52	
PYT	Prior Year Tax	0.00	0.00	1,320.58	0.00	0.00	0.00	1,320.58	
RTR	Base Rent	15,980.00	0.00	79,900.00	47,940.00	0.00	0.00	31,960.00	
<b>Grand Total:</b>		<b>19,660.65</b>	<b>0.00</b>	<b>110,520.05</b>	<b>59,778.95</b>	<b>0.00</b>	<b>0.00</b>	<b>50,741.10</b>	<b>0.00</b>



**CERTIFICATE OF SERVICE**

I, Leslie C. Heilman, hereby certify that, on this 22nd day of May 2023, I caused a true and correct copy of the foregoing *OBJECTION OF DS FOUNTAIN VALLEY LP TO (1) NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS AND (2) MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) AUTHORIZING THE DEBTORS TO ENTER INTO STALKING HORSE AGREEMENT; (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER AND NOTICE THERETO; (D) APPROVING THE ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (II) (A) APPROVING THE SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; AND (III) GRANTING RELATED RELIEF; AND JOINDER AND RESERVATIONS OF RIGHTS* to be served via CM/ECF on all parties who have registered for electronic service in these cases, and upon the parties on the attached service list in the manner indicated.

Dated: May 22 2023  
Wilmington, Delaware

/s/ Leslie C. Heilman  
Leslie C. Heilman (DE No. 4716)  
BALLARD SPAHR LLP

**SERVICE LIST**

***Via Email and First Class Mail***

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