

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

CBC RESTAURANT CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-10245 (KBO)

(Jointly Administered)

Re: Docket No. 289

**LIMITED OBJECTION OF LPF GENEVA COMMONS, LLC
TO DEBTORS' MOTION FOR ENTRY OF ORDERS: (I)(A) APPROVING BIDDING
PROCEDURES OF THE 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 OF NOTICE THEREOF; (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
(B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF**

LPF Geneva Commons, LLC ("LPF GC") files this Limited Objection to the *Debtors'* Motion for Entry of Orders: (I)(A) Approving Bidding Procedures of the 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 of Notice Thereof; (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 (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors' service address is 121 Friends Lane, Suite 301, Newtown PA 18940.



Related Relief [Docket No. 289] (the “Sale Motion”) pursuant to 11 U.S.C. §§105, 362, 363, and 365 and would show:

I. Background

1. The Debtors, including CBC Restaurant Corp., filed their Chapter 11 bankruptcy cases on February 22, 2023.

2. On April 7, 2023, Debtors filed the Sale Motion, seeking to sell substantially all of their assets.

3. LPF Geneva Commons, LLC was the landlord under a non-residential real property lease with CBC Restaurant Corp. (“Debtor” or “Tenant”) as follows:

LPF GC and Tenant were parties to the Lease Agreement, dated as of April 5, 2002 (as amended and assigned, the “Lease”), whereby LPF GC leased to Tenant certain premises (as defined in the Lease, the “Premises”), consisting of approximately 3,200 square feet of space in that certain shopping center located in Geneva, Illinois, commonly known as Geneva Commons, for a lease term that expired no later than December 31, 2022.

Debtor has not assumed or rejected the Lease at this point in its jointly-administered Chapter 11 bankruptcy case and LPF GC asserts that Debtor cannot do so as the Lease expired by its own terms prior to Debtor’s bankruptcy filing. Debtor is occupying the Premises on a month-to-month basis as a holdover tenant. The expiration date of the Lease is set out in and results from the *Second Amendment to Lease Agreement*, entered into as of November 10, 2022, by and between LPF GC and CBC Restaurant Corp., a copy of which is attached hereto as Exhibit “A.”

II. Sale Objection

4. It is not clear to LPF GC if Debtors are seeking to sell or transfer any interest, through assumption and assignment or otherwise, in the expired Lease and/or the Premises

pursuant to the Sale Motion to a potential purchaser (a “Purchaser”) pursuant to the Auction process established by the Court.²

5. To the extent Debtors are attempting to sell or otherwise transfer to a potential Purchaser any interest in the expired Lease or a right to occupy the Premises, LPF GC objects to the Sale Motion. The Lease expired by its own terms no later than December 31, 2022. LPF GC did not, and will not, agree to a modification or extension of the now expired Lease. Thus, the Lease is not an “unexpired lease” that can be assumed and assigned under section 365 of the Bankruptcy Code.

6. Likewise, CBC Restaurant Corp. is occupying the Premises only as a holdover tenant on a month-to-month basis and Landlord opposes and objects to any purported transfer of any such month-to-month occupancy rights to a purported Purchaser under the Sale Motion. Such a sale or transfer is not authorized under section 363(b) and (f) of the Bankruptcy Code and Debtors and any Purchaser cannot provide adequate protection to LPF GC under sections 363(e) and (p) of the Bankruptcy Code. As a result, the Court should prohibit any such purported sale or transfer of alleged month-to-month occupancy rights in the Premises to a purported Purchaser. *See* 11 U.S.C. § 363(e).

7. LPF GC is filing this Limited Objection to assert, preserve and protect its rights under applicable bankruptcy and non-bankruptcy law, including its rights under section 362(b)(10) of the Bankruptcy Code to obtain possession of the Premises.

² Even though the Lease expired by its own terms and thus is no longer an “unexpired” Lease of real property, Debtors included the Lease in the *Notice of Possible Assumption and Assignment With Respect to Executory Contracts and Unexpired Leases Of The Debtors* (the “Potential Assignment Notice”) [Docket No. 418-1 at Page 11] with a purported “Cure Amount” of \$27,186.00.

III. Prayer

Wherefore, LPF GC requests that this Court deny the Sale Motion with respect to any purported sale or transfer to a purported Purchaser of the Lease, which has expired by its own terms, or any right to occupy or possess the premises. LPF GC also requests that any Sale Order recognize, reserve and preserve all of LPF GC's bankruptcy and non-bankruptcy rights with respect to the Lease and the Premises, including those under 11 U.S.C. §362 (b)(10). Last, LPF GC requests any other and further relief to which it may be justly entitled.

Dated: May 31, 2023

Respectfully submitted,

MORRIS JAMES LLP

/s/ Eric J. Monzo

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Counsel for LPF Geneva Commons, LLC

EXHIBIT A

Second Amendment to Lease Agreement

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (this "Amendment") is entered into as of November 10, 2022, by and between **LPF GENEVA COMMONS, LLC**, a Delaware limited liability company ("Landlord"), and **CBC RESTAURANT CORP.**, a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord's predecessor in interest and Tenant's predecessor in interest entered into a certain Lease Agreement (the "Original Lease") dated April 5, 2002 for certain premises (the "Premises") consisting of approximately 3,200 square feet in that certain shopping center located in Geneva, Illinois and commonly known as Geneva Commons (the "Shopping Center") for a lease term (the "Term") expiring on September 17, 2012;

WHEREAS, Tenant succeeded to the right, title and interest of tenant under the Original Lease;

WHEREAS, Landlord's predecessor in interest and Tenant entered into that certain First Amendment to Lease (the "First Amendment") dated May 24, 2012, whereby, among other things, the expiration of the Term was extended to September 17, 2017;

WHEREAS, Landlord succeeded to the interest of the landlord under the Original Lease;

WHEREAS, Tenant exercised its option to renew the lease in a letter (the "Option Renewal Letter") dated March 9, 2017, whereby the expiration of the Term was extended to September 17, 2022;

WHEREAS, Landlord and Tenant entered into that certain Agreement for Deferral of Certain Monetary Obligations (the "First Deferral") dated April 1, 2020, whereby, among other things, certain payments of Base Rent were deferred for a period of time more particularly described therein; and

WHEREAS, Landlord and Tenant entered into that certain Second Agreement for Deferral of Certain Monetary Obligations (the "Second Deferral") dated February 3, 2022, whereby, among other things, certain payments of Base Rent were deferred for a period of time more particularly described therein. The Original Lease, as amended by the First Amendment, the Option Renewal Letter, the First Deferral, and the Second Deferral, is hereinafter referred to as the "Lease".

WHEREAS, Landlord and Tenant desire to amend the Lease on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Defined Terms**. Each initially capitalized word or term used as a defined term in this Amendment but not otherwise defined herein shall have the same meaning as is ascribed to such capitalized word or term in the Lease.

2. **Extension of Term**. The expiration date of the Term is extended from September 17, 2022, to December 31, 2022. All of the terms and provisions of the Lease shall apply for that part of the Term occurring after September 17, 2022 (the "Extended Term"), except as is otherwise set forth in this

Amendment. From and after the date hereof, the words “Term” or “Lease Term” as used and defined in the Lease, as amended hereby, shall mean the initial Term, as previously extended and as extended through December 31, 2022, pursuant to this Amendment.

3. **Base Rent.** During the Extended Term, Tenant shall pay Base Rent in the manner required under Section 4(a) of the Original Lease in the following amount for the following period:

PREMISES (3,200 SF)

<u>Period</u>	<u>Annual Base Rent PSF (approx.)</u>	<u>Annual(ized) Base Rent</u>	<u>Monthly Base Rent</u>
9/18/22 – 12/31/22	\$39.93	\$127,776.00	\$10,648.00

4. **Percentage Rent.** During the Extended Term, Tenant shall continue to pay Percentage Rent as required under Section 4(b) of the Original Lease, continuing to use an annual Break Point of \$4,259,200.00.

5. **Taxes.** During the Extended Term, Tenant shall continue to pay, as additional rent, Tenant’s proportionate share of Taxes, as required under Section 10 of the Original Lease.

6. **CAM Charges.** During the Extended Term, Tenant shall continue to pay, as additional rent, Tenant’s proportionate share of CAM Charges, as required under Section 12 of the Original Lease.

7. **Contingency to Effectiveness of Amendment.** Tenant currently owes \$34,193.09 in past due Rent to Landlord under the Lease. This Amendment shall only become effective upon (i) Tenant’s payment in full of the past due Rent in the amount of \$34,193.09 and (ii) the execution and delivery of this Amendment by Landlord and Tenant.

8. **Condition of Premises.** Notwithstanding anything to the contrary set forth in the Lease, no promises of Landlord to alter, remodel, improve, repair, decorate or clean the Premises or the Shopping Center or any part thereof (or to pay for the same) have been made, and no representation respecting the condition of the Premises or the Shopping Center, has been made to Tenant by or on behalf of Landlord, Tenant having agreed to retain possession of the Premises on September 18, 2022 in their “as is” condition.

9. **No Exclusive Use.** Effective as of the date hereof, Section 7(b) of the Original Lease, as amended by Section 6 of the First Deferral, is hereby deleted in its entirety and shall no longer be of any force or effect. Tenant shall no longer have the exclusive rights under Section 7(b) of the Original Lease known as the Tenant Protection, and any and all references thereto in the Lease are hereby deleted.

10. **No Default.** As a material inducement to Landlord’s agreement to enter into this Amendment, Tenant expressly acknowledges that, as of the date set forth next to Tenant signature below, Tenant acknowledges that to the best of Tenant’s knowledge the Lease is in full force and effect and that Landlord is in full compliance with all terms and conditions of the Lease.

11. **Confidentiality.** Tenant and Landlord each hereby agrees to keep the contents and existence of this Amendment strictly confidential and shall not disclose the contents or existence of this Amendment to any person or governmental authority, except to the extent required by law or court order,

or in order to assert its rights under this Amendment or the Lease. Landlord or Tenant, as the case may be, shall be entitled all rights and remedies available at law and in equity, including without limitation, injunctive relief (without the necessity of posting any bond or other security or proving special damages) in the event of a breach by the other party of this provision. Additionally, Tenant and Landlord may disclose confidential information without violating the confidentiality provision contained in this Section, (1) such disclosures to their respective existing or prospective lenders, purchasers and other third persons as may reasonably be necessary in order to conduct its business relating to the Shopping Center in a commercially reasonable manner; (2) privileged communications including communications with counsel, accountants, and advisors; (3) for disclosures as may be required by law or by subpoena or any other similar court order or discovery request in any civil or criminal; and (4) for disclosures as may be reasonably required to enforce the terms of the Lease or any of Tenant's rights and remedies under the Lease.

12. **No Waiver**. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

13. **Submission**. Submission of this Amendment for examination and signature by Tenant does not constitute an offer to modify the Lease or a reservation of or option for modifications to the Lease, and this Amendment is not effective or binding on either party until executed and delivered by both Landlord and Tenant. Tenant hereby disclaims reliance upon any statement or representation of Landlord or any agent of Landlord unless such statement or representation is expressly set forth in this Amendment and executed and delivered by both Landlord and Tenant.

14. **Limitation of Liability**. The liability of Landlord to Tenant under this Amendment will be limited to the interest of Landlord in the Building and surrounding property, and Tenant agrees to look solely to Landlord's interest in the Building and the surrounding property for recovery of any judgment from the Landlord, it being intended that Landlord will not be personally liable for any judgment of deficiency.

15. **Counterparts; PDFs**. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. PDF, digital and other electronic signatures shall constitute originals for purposes of this Amendment.

16. **Authority**. The person executing this Amendment on Tenant's behalf represents and warrants for Landlord's benefit that he or she has the authority to bind Tenant to the terms and conditions of this Amendment.

[Signatures on following page]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment as of the date written first above.


LANDLORD:

LPF GENEVA COMMONS, LLC,
a Delaware limited liability company

By: 
Name: Nicholas Koshiw
Title: Vice President

TENANT:

CBC RESTAURANT CORP., a Delaware
corporation

By: 
Name: Ronak Paroya
Title: CEO
Dated: 11/3/22

CERTIFICATE OF SERVICE

I certify that, on May 31, 2023, a copy of the foregoing was served electronically on all parties registered to receive notice through the Court's CM/ECF notification system and an additional service was completed via electronic mail on the following:

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/s/ Eric J. Monzo

Eric J. Monzo