

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

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245 (KB)

(Jointly Administered)

Re: Docket No. 46

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

I, Mette H. Kurth, counsel to CBC Restaurant Corp. and its debtor affiliates, as debtors and debtors in possession in the above captioned Chapter 11 cases ("Corner Bakery"), hereby certify that:

1. On February 27, 2023, Corner Bakery filed 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. No. 46] (the "Motion").

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.



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2. On March 3, 2023, this Court held a hearing regarding the Motion, during which parties raised certain objections to the form of the proposed Order submitted with the Motion, which objections were overruled by the Court.

3. Attached hereto as **Exhibit 1** is the proposed Order submitted with the Motion (the "Proposed Order"). The Debtors respectfully request that the Court enter the Proposed Order at the Court's earliest convenience.

Dated: March 5, 2023
Wilmington, Delaware

/s/ Mette H. Kurth

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Proposed Counsel to the Debtors and Debtors In Possession

Exhibit 1

Proposed Order

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

In re:

CBC RESTAURANT CORP., et al.,²

Debtors.

Chapter 11

Case No. 23-10245 (KB)

(Jointly Administered)

Re: D.I. No. 46

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

Upon the motion (the "Motion")³ of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for an Interim Order: (i) authorizing Debtors' proposed form of adequate assurance of payment to utility companies, (ii) establishing procedures for resolving objections by utility companies, and (iii) prohibiting utility companies from altering, refusing, or discontinuing service as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court finding that it may enter an interim order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

² 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.

³ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and this Court finding that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

4. The Motion is **GRANTED** on an interim basis as set forth herein.

5. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Companies to the Debtors on and after the Petition Date.

6. The Debtors shall provide an Adequate Assurance Deposit for all Utility Companies identified on **Exhibit C** to the Motion by depositing **\$150,000**, an amount equal to approximately two weeks of total Utility Services (an "**Adequate Assurance Deposit**"), into a segregated bank account designated for the Adequate Assurance Deposit (the "**Adequate Assurance Deposit Account**") within 20 calendar days after the Petition Date.

7. The Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "**Proposed Adequate Assurance**"), constitute sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code.

8. The Utility Companies are prohibited from (a) altering, refusing, or discontinuing Utility Services to, or discriminating against, the Debtors on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid prepetition charges; or (b) requiring additional

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

9. The following Adequate Assurance Procedures are approved:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. The final hearing on the Motion shall be held on **March 28, 2023 at 1:00 p.m.** (ET), and any objections or responses to the Motion shall be in writing, filed with the court, and served on or before **March 21, 2023, at 1:00 (ET).**

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

26. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the Local Rules are satisfied by such.