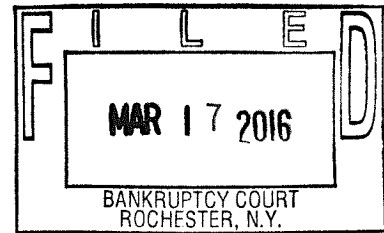


UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK



In re:

Flour City Bagels, LLC,

Debtor.

Bankruptcy Case No. 2:16-bk-20213-PRW

Chapter 11

**THIRD INTERIM ORDER (A) AUTHORIZING THE USE OF CASH COLLATERAL,
(B) GRANTING ADEQUATE PROTECTION, AND (C) SETTING A FINAL HEARING**

Upon the motion filed March 2, 2016 [Docket No. 6] (the "Motion")¹ of Flour City Bagels, LLC (the "Debtor") as a debtor and debtor-in-possession, pursuant to sections 105(a), 361, 362(a) and 363(c) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014, and LBR 4001-2 for entry of an interim order (the "Order" or "Interim Order"):

(a) Authorizing the Debtor to:

(i) use "cash collateral" as such term is defined in section 363 of the Bankruptcy Code (the "Cash Collateral") in which the Lenders have a perfected first and second priority lien interest; and

(ii) grant, pursuant to sections 361 and 363 of the Bankruptcy Code, adequate protection for the use of Cash Collateral, in favor of the Lenders, subject to the Carve-Out; and

(b) Vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order; and

¹ Capitalized terms not otherwise described herein shall have the meaning ascribed to such terms in the Motion, or in the responses filed thereto.
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(c) Scheduling a final hearing (the "Final Hearing") to consider entry of an order (the "Final Order") granting the relief requested in the Motion on a final basis and approve the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the exhibits attached thereto, and any evidence submitted at the hearing on this Interim Order (the "Interim Hearing"); and upon consideration of the First Day Declaration; and due and proper notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and upon agreement as set forth herein by and between the Debtor and the Lenders in accordance with LBR 4001-2; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors and all parties in interest and is essential for the continued operation of the Debtor's business through the date of the Final Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES that:

A. Petition Date. On March 2, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief with this Court under Chapter 11 of the Bankruptcy Code (the "Chapter 11 Case" or the "Case"). The Debtor continues to be in possession of its property, and operating and managing its business, as debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. This Court has core jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue

for the Case and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. The Motion was considered on an expedited basis at the request of the Debtor and Lenders, and such consideration was appropriate in the circumstances of this case. Notice of the Interim Hearing has been provided by the Debtor to certain parties in interest, including: (i) the Office of the United States Trustee, (ii) the Internal Revenue Service, (iii) the Debtor's twenty (20) largest unsecured creditors, (iv) all secured creditors, and (v) counsel to the Lenders. Under the circumstances, such notice of the Interim Hearing and the relief requested in the Motion constitutes due and sufficient notice and complies with sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(c).

D. An initial hearing on the Motion was held on March 3, 2016, at which time the Court entered an Interim Order (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection, and (C) Setting a Final Hearing [Docket 35] (the "First Interim Order"). The First Interim Order authorized use of cash collateral through March 10, 2016, and scheduled a continued hearing on the Motion for March 10, 2016. A continued hearing on the Motion was held on March 10, 2016, at which time the Court entered a Second Interim Order (A) Authorizing the Use of Cash Collateral, (B) Granting Adequate Protection, and (C) Setting a Final Hearing [Docket 91] (the "Second Interim Order"). The Second Interim Order authorized use of cash collateral through April 12, 2016, and scheduled a continued hearing on the Motion for March 16, 2016. Subject to its terms, this Third Interim Order extends the use of cash collateral until the Final Hearing.

E. Debtor's Acknowledgements and Agreements. Without prejudice to the rights of parties in interest as set forth in paragraph 6 below, the Debtor admits, stipulates, acknowledges

and agrees that (collectively, paragraphs E(i) through E(vi) hereof shall be referred to herein as the “Debtor’s Stipulations”):

(i) Pre-Petition Loan of United Capital. On February 8, 2013, Debtor executed documents pursuant to which Debtor is obligated to United Capital Business Lending, Inc., n/k/a Bridge Funding Group, Inc. (“United Capital”), for a loan in the original principal amount of \$6,500,000, pursuant to a Loan and Security Agreement and Promissory Note (collectively, the “United Capital Pre-Petition Loan Agreement”);

(ii) Pre-Petition Debt Amount with United Capital. As of the Petition Date, the Debtor was indebted under the United Capital Pre-Petition Loan Agreement (the “Obligations” as defined therein) in the principal amount of \$5,256,147.00, plus accrued and unpaid interest, unpaid fees and attorneys' fees and other charges, amounts and costs owing, accrued, accruing or chargeable in respect of any of the Debtor’s obligations pursuant to the United Capital Pre-Petition Loan Agreement, the “United Capital Pre-Petition Debt”);

(iii) Pre-Petition Loan with Canal. On February 8, 2013, Debtor also executed a series of loan documents with Canal Mezzanine Holdings II LP (“Canal”) pursuant to which Debtor is obligated to Canal for a loan in the original principal amount of \$2,500,000, which was increased in December 2013 to \$3,300,000 (collectively, the “Pre-Petition Subordinated Loan Agreement”). The Debtor’s obligations owed to Canal are subordinate to the Debtor’s obligations to United Capital;

(iv) Pre-Petition Debt Amount with Canal. As of February 29, 2016, the Debtor was indebted under the Pre-Petition Subordinated Loan Agreement in the amount of \$4,502,229.18, plus accrued and unpaid interest, unpaid fees and attorney’s fees and other charges, amounts, and costs owing, accrued or changeable in respect of any of the Debtor’s obligations pursuant to

the Pre-Petition Subordinated Loan Agreement (collectively, the “Pre-Petition Subordinated Debt”);

(v) Pre-Petition Liens. The United Capital Pre-Petition Debt and the Pre-Petition Subordinated Debt are referred to collectively as the “Pre-Petition Debt,” and United Capital and Canal are referred to collectively as the “Lenders.” (A) As of the Petition Date, (1) the Pre-Petition Liens (as defined below) are valid, binding, enforceable, and perfected first-priority liens (with Canal’s position being subordinated to United Capital’s position) and are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, (2) the Pre-Petition Debt constitutes legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms thereof (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses or counterclaims to any of the Pre-Petition Debt exist, and no portion of the Pre-Petition Debt is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (3) the Pre-Petition Debt constitutes allowed secured claims; and (B) on the date that this Interim Order is entered, the Debtor has waived, discharged and released each of the Lenders, together with their respective agents, attorneys, officers, directors and employees, of any right the Debtor may have (x) to challenge or object to any of the Pre-Petition Debt, (y) to challenge or object to the security for the Pre-Petition Debt, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to the United Capital Pre-Petition Loan Agreement and/or the Pre-Petition Subordinated Loan Agreement (collectively the “Pre-Petition Loan Agreements”); and

(vi) Pre-Petition Collateral. To secure the Pre-Petition Debt, the Debtor granted, assigned and transferred security interests and liens (collectively referred to herein as the “Pre-Petition Liens”) to each of the Lenders on all personal property assets of the Debtor, including, without limitation, all then-owned or after-acquired right, title, and interest in and to each of the following: (A) as to United Capital, all of the Debtor’s personal property and fixtures, wherever located, and now owned or hereafter acquired, including accounts, chattel paper, inventory, equipment, instruments (including promissory notes, including but not limited to that certain promissory note from Great Northern Pizza Kitchen, LLC to 2 Hot, LLC), investment property, documents, deposit accounts, letter-of-credit rights, general intangibles (including payment intangibles), membership interests in other borrowers, trademarks, including the trademark for Great Northern Pizza Kitchens Registration Number 2571265, service marks, licensing agreements, including a licensing agreement by and between 2 Hot, LLC and Great Northern Pizza Kitchen, Inc., website domain names, promissory notes and supporting obligations and, to the extent not listed above as original collateral, and proceeds and products of the foregoing (the “United Capital Collateral”); and (B) as to Canal, all commercial tort claims, deposit accounts, electronic chattel paper, equipment, fixtures, general intangibles, goods, inventory, letter-of-credit rights, payment intangibles, receivables, software, stock rights, supporting obligations and other collateral [broadly defined as all property of the debtor other than real estate], wherever located, in which Debtor now has or hereafter acquires any right or interest, and the proceeds, insurance proceeds and products thereof, together with all books and records, customer lists, credit files, software, computer files, programs, printouts and other computer materials and records related thereto (the “Canal Collateral”) (collectively, United Capital Collateral and the Canal Collateral, as further defined and explained in the respective

loan documents attached to the Motion, is the “Pre-Petition Collateral”), with priority over all other liens.

F. Findings Regarding the Use of Cash Collateral. The Debtor has an immediate need to use Cash Collateral in order to continue operations and to administer and preserve the value of its estate. The Debtor does not have sufficient available sources of unencumbered working capital to operate its business in the ordinary course of business. The ability of the Debtor to continue its operations requires the use of Cash Collateral, the absence of which would immediately and irreparably harm the Debtor and its estate.

G. Section 506(c) Waiver. In consideration for (a) the Debtor’s use of Cash Collateral in accordance with the Budget, and (b) the Carve-Out, but subject to the entry of a Final Order, the Debtor irrevocably waives and shall not assert and surcharge claim against the Lenders under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the Lenders upon, the Collateral or the Pre-Petition Collateral. The foregoing shall not bind any chapter 7 or chapter 11 trustee with respect to costs or expenses he or she incurs after his or her appointment.

H. Use of Cash Collateral. Cash Collateral shall be used, in each case in a manner consistent with the terms and conditions of this Order, and in accordance with the Budget (as defined below), exclusively for the following purposes: (i) for working capital and operational expenses and other lawful purposes as permitted under the Pre-Petition Loan Agreements and to the extent set forth in the Budget, (ii) payment of costs of administration of the Case, and (iii) payment of such prepetition expenses as contemplated in the Budget or as consented to by the Lenders in their respective discretion and as approved by the Bankruptcy Court.

I. Business Judgment, Good Faith and Arm's Length. (i) The terms and conditions of the use of Cash Collateral described in this Interim Order are the best available under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duty, and are supported by reasonably equivalent value and fair consideration; and (ii) the use of Cash Collateral described in this Interim Order have been negotiated in good faith and at arm's length among the Debtor and the Lenders, and the use of Cash Collateral set forth in this Interim Order shall be deemed to have been made and consented to, as the case may be, in good faith.

J. Willingness to Permit the Use of Cash Collateral. The Lenders have indicated a willingness to permit the use of Cash Collateral by the Debtor subject to (i) the entry of this Interim Order and a Final Order, and (ii) findings by the Court that such use of Cash Collateral is essential to the Debtor's estate, that the terms of the use of Cash Collateral were negotiated in good faith and at arm's length, and that the Lenders' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order will not be affected by any subsequent reversal, modification, vacatur, or amendment of this Interim Order or the Final Order or any other order, as provided in section 363(m) of the Bankruptcy Code (if and to the extent applicable).

K. Adequate Protection. As a result of the use of Cash Collateral authorized herein, the Lenders are entitled to receive adequate protection pursuant to sections 361, 362, and 363 of the Bankruptcy Code for any diminution in the value of its interest in the Debtor's interest in the Pre-Petition Collateral (including the Cash Collateral) resulting from the Debtor's use, sale or lease of the Pre-Petition Collateral (including the Cash Collateral) during the Case. As adequate

protection, the Lenders will receive the Superpriority Claims and Adequate Protection Liens (each as defined below).

L. Entry of Interim Order. For the reasons stated above, the Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2).

NOW, THEREFORE, on the Motion of the Debtor and the record before the Court with respect to the Motion, and with the consent of the Debtor and the Lenders to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. Motion Granted. The Motion is granted to the extent set forth herein.
2. Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this Interim Order, and in accordance with the Budget (as the same may be modified from time to time, the "Budget"), a copy of which is attached hereto as Exhibit A, the Debtor is authorized to use the Cash Collateral of the Lenders during the period commencing immediately after the filing of the Case and terminating upon the earlier to occur of a Termination Event and a Termination Date (the "Cash Collateral Use Period"). The Budget may be updated or amended solely with the Lenders' consent, at the Lenders' respective discretion. In addition, during the period which is seven (7) days after the first to occur of a Termination Event or Termination Date, the Debtor may use Cash Collateral solely to meet payroll obligations and pay expenses essential to the preservation of the Debtor and its estate and as agreed by the Lenders, provided that any such payments are made in a manner consistent with the terms and provisions of the Budget. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtor or its estate outside the ordinary course of business or the Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted under the Budget.

3. Adequate Protection. As adequate protection for the respective interests of the Lenders in the Pre-Petition Collateral (including the Cash Collateral) on account of the Debtor's use of Cash Collateral, to the extent of any diminution in value of the Collateral, the Lenders shall receive adequate protection as follows:

(a) Superpriority Claims. The Lenders shall have an allowed superpriority administrative expense claim pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the "Superpriority Claims"). Subject to proof and allowance of any such claimed administrative expense amount at a future Court hearing and subject to the Carve-Out, the Superpriority Claims shall be an allowed claim against the Debtor and the estate with priority in accordance with section 507(b) of the Bankruptcy Code.

(b) Adequate Protection Liens. Effective as of the Petition Date and perfected without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the Debtor of any Post-Petition Collateral (as defined herein), the following security interests and liens are hereby granted to the Lenders, to the same extent, and with the same validity, perfection, and priority (including the priority between United Capital and Canal), that the respective Lenders' security interests and liens had on the Pre-Petition Collateral immediately before the commencement of the Case (all such liens and security interests, the "Adequate Protection Liens"), in each case subject to the Carve-Out:

(i) Liens on Unencumbered Property. Subject to and with the full reservation of the rights of Bruegger's, including the right to challenge the propriety of granting a lien on the Debtor's real property leases or to seek to have any lien that is granted on such real property leases under this

section 3(b)(i) vacated, to the extent it is determined that such leases are unencumbered by the Pre-Petition Liens (all of which to be determined at a hearing on motion and notice to all affected parties on at least twenty-one days' notice), pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code the Lenders shall have, a valid, binding, continuing, enforceable, fully-perfected, non-avoidable first priority lien, to the fullest extent permissible by applicable law, on all previously unencumbered property, whether now owned or hereafter acquired or existing and wherever located, of Debtor and Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code) of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of or equity or ownership interests in Debtor's direct subsidiaries, money, investment property, and causes of action, in each case that is not subject to (x) valid, perfected, unavoidable, and enforceable liens in

existence on or as of the Petition Date or (y) valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code (collectively, the “Unencumbered Collateral”) other than any claim or cause of action of the Debtor’s estate under chapter 5 of the Bankruptcy Code, including sections 502(d), 510, 544, 545, 547, 548, 549, 550 or 551 of the Bankruptcy Code (collectively, the “Avoidance Actions”); and

(ii) Replacement Liens. Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code the Lenders shall have, a valid, binding, continuing, enforceable, fully-perfected non-avoidable replacement lien on, and security interest in, all property, whether now owned or hereafter acquired or existing and wherever located, of Debtor and Debtor’s “estate” (as created pursuant to section 541(a) of the Bankruptcy Code) of any kind or nature whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment property, letter-of-credit rights, supporting obligations, machinery and equipment, real

property, leases (and proceeds from the disposition thereof), all of the issued and outstanding capital stock of or equity or ownership interests in Debtor's direct subsidiaries, money, investment property, and causes of action, other than the Avoidance Action (the "Replacement Collateral") and, together with the Unencumbered Collateral and the Prepetition Collateral, the "Post-Petition Collateral").

(c) Restrictions on Granting Post-Petition Liens. Except for the Carve-Out, under no circumstance shall the Adequate Protection Liens be (A) subject or subordinate to (I) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or (II) any lien or security interest arising on or after the Petition Date, or (B) subordinated to or made *pari passu* with any other lien, claim or interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

4. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate for the diminution in value of the interest in the Pre-Petition Collateral during the Case or any succeeding case by or against the Debtor under the Bankruptcy Code (a "Successor Case").

5. Post-Petition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the Adequate Protection Liens or to entitle the Lenders to the priorities granted herein. Notwithstanding the foregoing, the Lenders may, in their respective

discretion, file such financing statements, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, notices and other documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Case. The Debtor shall execute and deliver to the Lenders all such financing statements, notices and other documents as either of the Lenders may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the Adequate Protection Liens granted pursuant hereto. The Lenders, in their respective discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order.

6. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

Nothing in this Interim Order shall prejudice whatever rights any official committee(s) or any other party in interest with requisite standing, other than the Debtor, may have to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the security interests and liens of the Lenders in and to the Pre-Petition Collateral, or (ii) the validity, allowability, priority, status or amount of the Pre-Petition Debt; *provided, however*, that, unless any official committee(s) or any other party in interest with requisite standing commences a contested matter or adversary proceeding raising such objection or challenge, including without limitation any claim against either or both of the Lenders in the nature of a setoff, counterclaim or defense to the Pre-Petition Debt (including but not limited to, those under sections 506, 544, 547, 548, 550 and/or 552 of the Bankruptcy Code

or by way of suit against either of the Pre-Petition Lenders), no later than the first to occur of: (x) forty-five (45) days after the appointment of a committee of unsecured creditors by the Office of the United States Trustee, (y) if no such committee is formed by April 8, 2016, then by May 10, 2016, or (z) seven (7) days before any auction of all or a substantial portion of Debtor's assets (the "Challenge Period", and in the event that no objection or challenge is raised during the Challenge Period such date shall be referred to as the "Challenge Period Termination Date"). Upon the Challenge Period Termination Date, any and all such challenges and objections by any party (including, without limitation, any official creditors' committee(s), any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case and any party in interest) shall be deemed to be forever waived and barred, and the Pre-Petition Debt shall be deemed to be allowed in full and, to the extent of the value of the Pre-Petition Collateral on the Petition Date, shall be deemed to be allowed as a fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with this Case and the Debtor's Stipulations shall be binding on all creditors, interest holders and parties in interest.

7. Carve Out. During the Interim Period and subject to the terms and conditions contained in this paragraph 7, the Pre-Petition Liens and Adequate Protection Liens are subordinate only to the following (the "Carve Out"), if and only to the extent that the Debtor's estate has insufficient unencumbered funds to pay Carve Out Expense (as defined below) promptly and in full: (a) the quarterly fees of the United States Trustee pursuant to 28 U.S.C. Section 1930(a)(6); and (b) unpaid reasonable fees and expenses allowed or incurred and subsequently permitted to be paid by an order of the Bankruptcy Court (with the expenses set forth in clause (a), collectively, the "Carve Out Expenses") of the attorneys (Buckley King LPA and Bond Schoeneck & King, PLLC) and the financial advisors employed by the Debtor

pursuant to Sections 327 and 1103 of the Bankruptcy Code or whose employment otherwise is approved by order of the Court (collectively, the "Case Professionals"), up to a maximum amount of \$225,000.00 for work performed from the Petition Date until the entry of an Order after the Final Hearing (solely for the Debtor's attorneys and Debtor's financial advisors) (collectively, the "Carve Out Amount"), provided, however, that Carve Out Expenses actually paid to any Case Professional for work performed during such period shall reduce the Carve Out Amount on a dollar-for-dollar basis. Any amounts advanced or paid by the Lenders to fund or otherwise pay the Carve Out, including allowed professional fees, shall be added to and made a part of the Pre-Petition Obligations, secured by the Collateral, and the Lenders shall be entitled to all of the rights, claims, liens, priorities and protections under this Interim Order, the Bankruptcy Code, or applicable law in connection therewith. No portion of the Carve Out may be used to litigate, object, contest or challenge in any manner or raise any defenses to the debt or collateral position of the Lenders under their respective Pre-Petition Loan Agreements, whether by challenging the validity, extent, amount, perfection, priority or enforceability of the indebtedness under the Pre-Petition Loan Agreements or the validity, perfection or priority of any mortgage, security interest or lien with respect thereto or any other rights or interests or replacement liens with respect thereto or any other rights or interests of the Lenders, or by seeking to subordinate or recharacterize the Pre- Petition Loan Agreements or disallow any claim, security interest, lien, or replacement lien or by asserting any claims or causes of action, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code, against either of the Lenders, or any of its respective officers, directors, agents or employees. In addition, the Carve Out shall not be used in connection with (i) preventing, hindering or delaying the Lenders' enforcement or realization upon the Collateral once a Termination Event has occurred, except to contest that a Termination

Event has occurred, (ii) using or seeking to use Cash Collateral or selling or otherwise disposing of the Collateral without the consent of the Lenders other than in accordance with the Budget, this Interim Order or any Final Order, or (iii) using or seeking to use any insurance proceeds related to the Collateral without the consent of the Lenders. The Lenders shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Case under any chapter of the Bankruptcy Code, and nothing in this Interim Order or otherwise shall be construed to obligate the Lenders in any way to pay compensation to or to reimburse expenses of any professional, or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement.

8. Payment of Compensation. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of the Debtor, any official committee or of any Person or shall affect the right of the Lenders to object to the allowance and payment of such fees and expenses.

9. Section 506(c) Claims. Subject to the entry of a Final Order, no costs or expenses of administration which have been or may be incurred in the Case at any time shall be charged against either of the Lenders, their respective claims, or the Collateral, pursuant to sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, without the prior written consent of the affected Lender(s), and no such consent shall be implied from any other action or inaction, or acquiescence by that Lender. The foregoing shall not bind any chapter 7 or chapter 11 trustee with respect to costs or expenses he or she incurs after his or her appointment.

10. Termination Date. The Debtor's right to use Cash Collateral pursuant to this Order shall automatically terminate (the date of any such termination, the "Termination Date") following the occurrence of any of the events set forth in Paragraph 10(a) through Paragraph

10(i) below (the events set forth in Paragraph 10(a) through Paragraph 10(h) below are collectively referred to herein as the "Termination Events"):

- (a) April 15, 2016;
- (b) the first business day following expiration of a Budget, unless such Budget is extended prior to expiration;
- (c) an order shall be entered reversing, amending, supplementing, staying, vacating, or otherwise modifying this Order without the consent of the Lenders;
- (d) a Debtor shall have filed a motion seeking to create any post-petition claim (or lien) on assets that is senior to the Superpriority Claims or the Adequate Protection Liens or the Prepetition Liens (without the prior written consent of the Lenders) and such motion shall not have been withdrawn after one (1) business day's written notice from the Lenders;
- (e) this Court shall have entered an order dismissing any of the Chapter 11 Case;
- (f) this Court shall have entered an order converting any of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code;
- (g) this Court shall have entered an order appointing a chapter 11 trustee or an examiner with expanded powers in any of the Chapter 11 Case, unless consented to in writing by the Lenders;
- (h) a Debtor engages in any merger, consolidation, disposition, acquisition, investment, dividend, incurrence of indebtedness or other similar transaction outside the ordinary course of business without the prior consent of the Lenders, other than dispositions of the Debtor's assets that are sufficient to pay the allowed secured claims of the Lenders in full; or

(i) a plan of reorganization or a plan of liquidation is confirmed and becomes effective in the Chapter 11 Case.

11. Rights to Seek Termination. Each of the Lenders shall have the right to seek an order terminating the Debtor's right to use Cash Collateral pursuant to this Order following the occurrence of any of the events set forth in Paragraph 11(a) and Paragraph 11(b) below:

(a) The Debtor fails to (i) comply with a material provision of this Order (including the failure to comply with the Budget(s), subject to any permitted variances); or (ii) comply with any other covenant or agreement specified in this Order, where such failure shall have continued unremedied for three (3) business days following receipt of written notice to the Debtor; or

(b) this Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on the Debtor's assets which have an aggregate value in excess of \$10,000 (unless consented to in writing by the Lenders).

12. Remedies upon the Termination Date. Upon the occurrence of the Termination Event, the Debtor's right to use Cash Collateral pursuant to this Order shall immediately terminate (subject to the next to last sentence in section 2 above) and each of the Lenders may seek relief from the automatic stay, on shortened notice as approved by the Court, so that they may exercise any remedies available to them under this Order and applicable non-bankruptcy law, including but not limited to collecting and applying the Collateral and any proceeds thereof in accordance with the terms of this Order and the Pre-Petition Loan Agreements; provided, however, that, nothing in this Order shall in any way prejudice the Debtor's right to seek

authority to use the Cash Collateral without the consent of the Lenders, upon the occurrence of the Termination Date.

13. Reallocation. Nothing herein shall preclude the Court, after notice and a hearing, from determining that the Lenders were undersecured as of the Petition Date and reallocating any post-petition payments that the Debtor or estate may have made to the Lenders.

14. Other Rights and Obligations.

(a) Credit Bid Rights. Each of the Lenders shall have the unqualified right to credit bid up to the full amount of that Lender's claim in any sale of the Pre-Petition Collateral and/or Post-Petition Collateral, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or liquidation under section 1129 of the Bankruptcy Code, (iii) a sale or disposition by a Chapter 7 trustee for the Debtor under section 725 of the Bankruptcy Code. The Debtor, on behalf of itself and its estate, stipulates and agrees that any sale of all or part of the Pre-Petition Collateral and/or the Post-Petition Collateral that does not include an unqualified right to credit bid up to the full amount of the Lenders' allowed secured claim would mean that the Lenders will not receive the indubitable equivalent of their claim.

(b) Expenses. As provided in the Pre-Petition Loan Agreements, if required by Lenders, legal fees incurred by a Lender to enforce its rights under this Interim Order will be paid by the Debtor. The invoices for such fees shall also be served on (a) the United States Trustee, and (b) counsel to any official committee appointed in this Case. Payment of such fees shall not be subject to allowance by the Bankruptcy Court, except that a party with standing may object under section 506(b) of the Bankruptcy Code to the Debtor's or estate's payment of such fees, and subject to notice and a hearing, the Bankruptcy Court may determine and rule on such objection.

(c) Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Lenders, the Debtor and, in each case, their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) whether in the Case, in any Successor Case, or upon dismissal of any such chapter 11 or chapter 7 case.

(d) No Waiver. The failure of the Lenders to seek relief or otherwise exercise its rights and remedies under the Pre-Petition Loan Agreements or this Interim Order, as applicable, shall not constitute a waiver of any of the Lenders' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (i) the rights of the Lenders under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Lenders to (A) request conversion of the Case to a case under Chapter 7, dismissal of the Case, or the appointment of a trustee in the Case, or (B) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans or (ii) any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Lenders.

(e) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

(f) No Marshalling. The Lenders shall not be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to any of the Collateral (or any other collateral securing the obligations owed to Lenders).

(g) Waiver of Claims. The Debtor waives and releases any and all claims known or unknown, against Lenders existing as of the date hereof.

(h) Section 552(b). The Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Lenders with respect to proceeds, product, offspring or profits of any of the Collateral.

(i) Survival of Interim Order. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (A) confirming any plan of reorganization in the Case, (B) converting the Case to one under chapter 7 of the Bankruptcy Code, or (C) dismissing the Case, and the terms and provisions of this Interim Order as well as the protections granted pursuant to this Interim Order shall continue in full force and effect notwithstanding the entry of such order.

(j) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(k) Objections Overruled. All objections to the Motion, to the extent not withdrawn or resolved, are hereby overruled.

(l) No Waivers or Modification of Interim Order. The Debtor irrevocably waives any right to seek any modification or extension of this Interim Order without the prior written consent of the Lenders and no such consent shall be implied by any other action, inaction or acquiescence of the Lenders.

(m) Final Hearing. The Final Hearing, to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on April 12, 2016 at noon (Eastern Time); and any objection to entry of such order shall be in writing, filed with this Court, and served upon the parties noticed with the Motion, in each case so as to be received no later than

April 1, 2016. If no such objection is filed to the Motion in accordance with this provision, this Court may enter the relief requested herein on a final basis without further notice or hearing.

(n) Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Third Interim Order according to its terms.

Dated: March 17, 2016
Rochester, New York



UNITED STATES BANKRUPTCY JUDGE

Hon. Paul R. Warren

EXHIBIT A TO SECOND INTERIM CASH COLLATERAL ORDER

**Flour City Bagel
13-Week BK Cash Flow Forecast
Includes BEI Royalties**

	Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Wk 9	Wk 10	Wk 11	Wk 12	Wk 13	Total
Projected Gross Revenue	410,000	425,000	425,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	450,000	5,780,000
Cash Inflows														5,491,000
Weekly Cash Collections	389,500	413,250	413,250	427,500	427,500	427,500	427,500	427,500	427,500	427,500	427,500	427,500	427,500	5,491,000
Weekly Cash Collections Sales Taxes	31,160	33,060	33,060	34,200	34,200	34,200	34,200	34,200	34,200	34,200	34,200	34,200	34,200	439,280
Other Cash Inflows	420,660	446,310	446,310	481,700	481,700	481,700	481,700	481,700	481,700	481,700	481,700	481,700	481,700	5,930,280
Operating Disbursements														1,899,000
Flour City Payroll & Taxes	148,000	148,000	148,000	145,000	145,000	146,000	146,000	146,000	146,000	146,000	146,000	146,000	146,000	1,899,000
401k - Employee Withholding	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	22,100
Health Insurance	-	28,000	-	-	-	28,000	-	-	-	28,000	-	-	-	84,000
US Foods	68,000	68,000	68,000	68,000	68,000	68,000	68,000	68,000	68,000	68,000	68,000	68,000	68,000	754,000
Franklin	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	182,000
Flour City Produce	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	97,500
Johnson Papers	7,300	7,300	7,300	7,300	7,300	7,300	7,300	7,300	7,300	7,300	7,300	7,300	7,300	94,800
Decadents - Jiles	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	1,700	22,100
Royal Coffee	7,800	7,800	7,800	7,800	7,800	7,800	7,800	7,800	7,800	7,800	7,800	7,800	7,800	101,400
Weight Beverage	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	13,000
ADN	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	130,000
Twin Bakery	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	45,500
COGS (Foodservice/Other)	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	117,000
Repairs and Maintenance	14,000	14,000	14,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	142,400
Gift Card Fees	-	2,000	-	-	-	2,000	-	-	-	2,000	-	-	-	6,000
Credit Card Fees	1,650	-	-	-	1,650	-	-	-	-	1,650	-	-	-	5,490
Corporate Insurance	10,000	-	-	-	-	10,000	-	-	-	10,000	-	-	-	30,000
Workers Comp	18,000	283	693	-	-	18,000	283	693	-	18,000	283	693	-	54,000
Equipment Leases	-	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	15,600
Auto/Truck Expenses	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	15,600
Truck Rental	-	-	12,500	-	-	-	12,500	-	-	-	12,500	-	-	37,500
Professional Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	24,000
Employment Agency Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	359,775
Rents (including CAM)	115,000	85,000	-	-	-	75,000	-	-	-	40,000	-	-	-	675,000
Security - Boyle	500	500	500	500	500	500	500	500	500	500	500	500	500	6,500
Disposal	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	50,000
Royalty Fee (BEI)	-	27,675	29,363	29,363	30,375	30,375	30,375	30,375	30,375	30,375	30,375	30,375	30,375	399,775
BEI - Other	-	-	-	-	-	-	-	-	-	-	-	-	-	20,000
Sales Taxes	-	-	105,000	-	-	-	-	-	-	110,000	-	-	-	325,000
Supplies	-	-	-	-	-	-	-	-	-	-	-	-	-	35,400
T&E & Petty Cash	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	2,800	36,400
Telephone	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	19,500
Cell Phones	-	-	-	-	-	-	-	-	-	-	-	-	-	214,500
Utilities	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	16,500	214,500
Bank Fees	-	-	-	-	8,500	-	-	-	-	8,500	-	-	-	8,500
Miscellaneous	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	130,000
Total Operating Disbursements	444,650	478,938	461,655	384,363	428,025	496,158	502,068	353,875	424,025	486,158	506,068	339,875	422,375	5,727,610
Operating Cash Generated / (Used) in Operations	(29,990)	(32,648)	(15,245)	97,138	33,675	(34,458)	(40,268)	97,625	37,675	(44,368)	117,825	(122,825)	39,125	203,124
Cumulative Cash Generated / (Used) in Operations	(29,990)	(66,638)	(81,883)	25,455	59,130	24,672	(15,688)	82,129	119,804	85,347	40,979	163,804	203,128	444,871
Non-Operating Disbursements	-	-	-	-	-	140,000	-	-	-	136,000	-	-	-	548,000
Fees & Interest Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	35,000
Professional Fees - Restructuring	-	-	-	-	-	-	-	-	-	-	-	-	-	272,000
Phoenix Management & PCR	-	-	-	-	-	-	-	-	-	-	-	-	-	548,000
Utility Deposits	-	-	-	-	-	-	-	-	-	-	-	-	-	35,000
Other	5,000	5,000	5,000	35,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	68,000
Total Non-Operating Disbursements	5,000	5,000	5,000	35,000	5,000	145,000	5,000	5,000	5,000	141,000	5,000	5,000	5,000	648,000
Cash Generated / (Used)	(29,990)	(37,648)	(20,245)	57,138	28,675	(173,458)	(45,268)	92,625	32,675	(49,368)	112,825	(127,825)	34,125	(444,871)
Cumulative Cash Generated / (Used)	(29,990)	(66,638)	(86,883)	(29,545)	(70)	(180,343)	(225,609)	(132,871)	(100,196)	(275,653)	(162,828)	(207,189)	(144,871)	(444,871)
Cash Balance Begun	56,455	27,505	(10,143)	(30,388)	26,950	55,625	(123,553)	(169,201)	(76,376)	(43,101)	(219,150)	(309,820)	(150,170)	56,455
Cash (Used)/Generated.....	(28,990)	(37,648)	(20,245)	57,138	28,675	(173,458)	(45,268)	92,625	32,675	(49,368)	112,825	(127,825)	34,125	(444,871)
Loan Borrowings/(Repayments)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Cash Balance	27,505	(10,143)	(30,388)	26,950	55,625	(123,553)	(169,201)	(76,376)	(43,101)	(219,150)	(309,820)	(150,170)	(388,376)	

Note: Not included in the above professional fee projection is the success fee due the investment banker upon the sale of the Company. These fees will be paid out the sales proceeds.