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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In re	Chapter 11
CORNBREAD VENTURES, LP, a Texas limited partnership,	Case No. 2:17-bk-12877 BKM
EIN 47-4482094	<b>MOTION TO EXTEND EXCLUSIVITY PERIODS FOR FILING AND SOLICITING A CHAPTER 11 PLAN OF REORGANIZATION UNDER § 1121(d)</b>
Debtor	

Cornbread Ventures, LP, debtor-in-possession in this Chapter 11 case (the “**Debtor**”), moves this Court for an order under § 1121(d), and Rule 9006(b)<sup>1</sup> extending for 90 days, until May 28, 2018, the exclusive right for the Debtor to file a plan of reorganization, and extending for 60 days thereafter, until July 27, 2018, the exclusive right to gain acceptances of its plan under § 1121(b) and (c)(3). Currently, the Debtor’s exclusive period to file a plan expires on February 27, 2018.

**BACKGROUND**

**Jurisdiction and Venue**

1. On October 30, 2017 (the “**Petition Date**”), the Debtor filed in this Court a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”).

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<sup>1</sup> Unless otherwise indicated, all chapter and “section” or “§” references in this motion are to the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* All “Rule” references are to the Federal Rules of Bankruptcy Procedure.

2. The Debtor operates its business and manages its assets as a debtor-in-possession under Bankruptcy Code §§ 1107 and 1108.

3. This Court has jurisdiction over this Chapter 11 case under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The Debtor is a Texas limited partnership whose principal places of business are in Phoenix, Arizona and Austin, Texas, with the majority of its principal assets located in Maricopa County, Arizona. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

5. The statutory predicates for the relief requested in this motion are §§ 1121(c) and (d), and Rule 9006(b).

#### **Debtor's Postpetition Reorganization Efforts**

6. The Debtor's immediate focus following the Petition Date was rejecting four leases related to unprofitable locations, stabilizing postpetition operations at the Debtor's five restaurant locations, securing authorization to use cash collateral, and securing debtor-in-possession financing. To that end, the Debtor has (a) improved profitability by implementing various cost controls and increasing revenue; (b) negotiated advantageous trade credit terms with its principal food supplier, Sysco; (c) obtained consent from JP Morgan Chase ("**JPMC**") to use cash collateral through April 8, 2018; and (d) procured debtor-in-possession financing in the form of a postpetition line of credit of up to \$500,000.

7. Under terms of the Court's *Order Authorizing and Approving the Debtor's Continued Use of Cash Collateral* (the "**Cash Collateral Order**") [DE 112], the Debtor has paid, and is obligated to continue paying, JPMC monthly interest payments of approximately \$8,500 as adequate protection. In addition, under terms of the Cash Collateral Order, the Debtor has paid, and will continue to pay, \$20,000 per month toward the business credit cards issued by JPMC. Those payments are applied first to any postpetition ordinary course charges incurred by the Debtors, and then if there is

any excess, applied to the prepetition balance on the business credit cards. The Debtor has not missed any required payments under terms of the Cash Collateral Order.

8. The Debtor has for several weeks been engaged with both JPMC and Red Fox Lending (the Debtor's DIP lender) concerning numerous aspects of and alternatives for a plan reorganization to bring about a successful resolution of this Chapter 11 case. Those discussions continue in earnest and involve, among other things, a detailed, ongoing analysis of potential operational changes and debt restructuring strategies. Considerable work remains. A critical part of that work includes a sophisticated analysis of past and future profitability of the Debtor's five restaurant locations and their associated leased premises. Additional time will allow the parties to prepare the requisite financial analyses and other information necessary to evaluate and support terms for a plan without concern for or interference from competing plans.<sup>2</sup>

### **RELIEF REQUESTED**

9. Accordingly, the Debtor seeks a 90-day extension of the exclusive period under § 1121(b) to file its chapter 11 plan of reorganization from the current deadline of February 27, 2018, to May 28, 2018. The Debtor also seeks a corresponding extension of the exclusive period under § 1121(c)(3) to solicit and gain acceptance of its plan by each impaired class under that plan, from the current deadline of April 28, 2018, to July 27, 2018 (the date 60 days after the requested extended § 1121(b) deadline of May 28, 2018).

10. The exclusivity period is intended to provide a debtor with an opportunity to negotiate the settlement of its debts by proposing and soliciting support for its plan

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<sup>2</sup> The Debtor has contemporaneously filed a separate motion to extend the Debtor's deadline for assuming or rejecting unexpired nonresidential real property leases under § 365(d)(4).

of reorganization without interference from competing plans.<sup>3</sup> Thus, the underlying premise of the exclusivity provisions of § 1121 is to promote the debtor's reorganization by providing the debtor with the exclusive right to negotiate a plan with its creditors for a defined period.

11. Bankruptcy Code § 1121(d) authorizes the Court to extend the exclusive periods for cause. The “cause” standard is intended to provide the Court with flexibility to suit various types of reorganization proceedings.<sup>4</sup> Courts have developed a nine-element test to determine whether “cause” exists for the extension of exclusivity under Bankruptcy Code § 1121(d).<sup>5</sup>

12. Specifically, these nine elements are: (i) the size and complexity of the case; (ii) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (iii) the existence of good faith progress towards reorganization; (iv) the fact that the debtor is paying its bills as they become due; (v) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (vi) whether the debtor has made progress in negotiations with its creditors; (vii) the amount of time which has elapsed in the case; (viii) whether the debtor is seeking an extension of exclusivity to pressure creditors to submit to the debtor's reorganization demands; and (ix) whether an unresolved contingency exists.<sup>6</sup> Considering these nine elements, a bankruptcy court must ultimately

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<sup>3</sup> See *In re Geriatrics Nursing Home, Inc.*, 187 B.R. 128, 131 (D. N.J. 1995); see also *In re Hoffinger Industries, Inc.*, 292 B.R. 639, 643 (8th Cir. B.A.P. 2003) (“the legislative history [of § 1121(b)] reveals the intent to facilitate the rehabilitation of debtors in Chapter 11”).

<sup>4</sup> See *In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989) (citing *In re Public Serv. Co. of NH*, 88 B.R. 521, 534 (Bankr. D. N.H. 1988)); see also *In re Amko Plastics, Inc.*, 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996)).

<sup>5</sup> See e.g., *In re Henry Mayo Newhall Memorial Hospital*, 282 B.R. 444 (9th Cir. B.A.P. 2002); *Hoffinger Industries*, 292 B.R. 639; *In re Dow Corning Corp.*, 208 B.R. 661 (Bankr. E.D. Mich. 1997); *In re Express One Ina, Inc.*, 194 B.R. 98 (Bankr. E.D. Tex. 1996).

<sup>6</sup> See *Dow Corning Corp.*, 208 B.R. at 664-65; see also *Henry Mayo*, 282 B.R. at 452; *Hoffinger Industries*, 292 B.R. 643-644; *Express One*, 194 B.R. at 100.

determine whether an extension of exclusivity would “facilitate movement towards a fair and equitable resolution of the case.”<sup>7</sup>

13. Applying these nine elements to this bankruptcy case establishes that cause exists to extend both exclusive periods. While not large, this case involves a certain amount of complexities arising from operating five restaurants across two states with more than 225 employees. Notwithstanding, significant progress has been already made towards reorganization. The Debtor has been actively discussing parameters for a viable plan with JPMC and Red Fox Lending. Those discussions have been productive and remain ongoing. If given further time to develop, there is more than a reasonable prospect that the Debtor will be able to successfully negotiate the bases for a consensual plan with its creditor constituencies. Additional time will give the Debtor, JPMC, and Red Fox Lending the time necessary to prepare and analyze the requisite financial data and other information needed to evaluate potential plan scenarios. Meanwhile, the Debtor has remained current with respect to its postpetition obligations, including the obligations to pay JPMC interest as adequate protection. As such, the balance of the Debtor’s prepetition loans are not growing, and extending the exclusivity periods will not prejudice the estate. Finally, this is the Debtor’s first request for an extension of the exclusivity periods.

### **CONCLUSION**

14. For the reasons stated above, the Debtor respectfully requests that the Court enter orders substantially in the form attached as Exhibit A: (i) extending the 120-day exclusivity period under § 1121(b) for 90 days until May 28, 2018; (ii) extending the 180-day exclusivity period under § 1121(c)(3) for 60 days thereafter, until June 27, 2018; and (iv) granting the Debtor any additional appropriate relief.

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<sup>7</sup> *Henry Mayo*, 282 B.R. at 453.

February 6, 2018

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# Exhibit A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

In re

CORNBREAD VENTURES, LP, a  
Texas limited partnership,

EIN 47-4482094

Debtor

Chapter 11

Case No. 2:17-bk-12877 BKM

**ORDER EXTENDING  
DEBTOR'S EXCLUSIVITY  
PERIODS FOR FILING AND  
SOLICITING A CHAPTER 11  
PLAN**

On the *Motion to Extend Exclusivity Periods for Filing and Soliciting a Chapter 11 Plan of Reorganization Under § 1121(d)* (the “**Motion**”) [DE \_\_] of the above-captioned Debtor, and the entire record of these proceedings, the Court finds that: (a) this Court has jurisdiction in this case under 28 U.S.C. §§ 157 and 1334; (b) this matter is a core proceeding under 28 U.S.C. § 157(b)(2); (c) venue is proper in this district under 28 U.S.C. §§ 1408 and 1409; (d) the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties-in-interest; (e) adequate and proper notice of the Motion has been given and that no other or further notice is necessary; and (f) sufficient cause exists for the granting of the relief requested in the Motion. Therefore,

**IT IS ORDERED:**

1. The Motion is granted.



2. The time period specified under 11 U.S.C. § 1121(c)(2) within which the Debtor has the exclusive right to file a plan of reorganization is extended until May 28, 2018.

3. The time period under 11 U.S.C. § 1121(c)(3) within which the Debtor has the exclusive right to solicit acceptance of such plan of reorganization is extended until July 27, 2018.

4. This Order is without prejudice to any subsequent requests by the Debtor to further extend the exclusivity periods under § 1121.

**SIGNED AND DATED ABOVE**