

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

BURROUGHS ROADHOUSE, LLC,

Debtor.

Case No. 18-30319

Chapter 11

Hon. Daniel S. Opperman

**INTERIM ORDER GRANTING FIRST DAY MOTION FOR
ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING
DEBTOR TO (A) USE CASH COLLATERAL; (B) OBTAIN
POST-PETITION FINANCING; (C) GRANT SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS AND SENIOR
SECURITY INTERESTS, AND OTHER ADEQUATE
PROTECTION UNDER 11 U.S.C. §§ 361, 363, AND 364;
FED.R.BANKR.P. 4001; AND E.D. MICH. LBR 4001-2 AND 9013-1**

Upon *First Day Motion for Entry of an Interim and Final Order Authorizing Debtor to (A) Use Cash Collateral; (B) Obtain Post-Petition Financing; (C) Grant Superpriority Administrative Expense Status and Senior Security Interests, and other Adequate Protection under 11 U.S.C. §§ 361, 363, and 364; Fed. R. Bankr. P. 4001; and E.D. Mich. LBR 4001-2 and 9013-1* (the “Financing Motion”) filed by Burroughs Roadhouse, LLC (the “Debtor”); the Court having scheduled a hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order”) with respect thereto; due and sufficient notice of the Financing Motion and the preliminary hearing thereon (the “Preliminary Hearing”) having been given under the circumstances; the Preliminary Hearing having been held; and upon the entire

record made that the Preliminary Hearing; the Court having reviewed the Financing Motion and the exhibits thereto; and the Court having found good and sufficient cause thereof and being otherwise fully advised in the premises;

THE COURT HEREBY FINDS:

1. On February 9, 2018 (“Petition Date”), the Debtor filed its voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. The Debtor is operating as a debtor and debtor-in-possession under 11 U.S.C. §§ 1107 and 1108, with continued possession of its assets.

3. No official committee of creditors holding unsecured claims or other committee has been appointed under 11 U.S.C. § 1102.

4. This Court has jurisdiction over this Chapter 11 case and the Financing Motion pursuant to 28 U.S.C. § 157(b) and 1334. Consideration of the Financing Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

5. The Debtor requires the use of the Cash Collateral¹ and, to the extent that Cash Collateral is insufficient to fund operations, acquisition and use of the

¹ All capitalized terms not defined in this Order shall have the meanings ascribed to them in the Financing Motion.

DIP Loan being offered by DIP Lender to maintain Debtor's operations and maximize its value.

6. The Debtor is unable to obtain unsecured credit or secured financing on terms more favorable to those provided by the DIP Loan.

7. The relief provided herein is necessary, essential and appropriate for the operation of Debtor's business and the management and preservation of its assets, and is otherwise necessary to avoid immediate and irreparable harm to the Debtor and the estate pending the Final Hearing on the Financing Motion;

8. Debtor provided notice of the initial hearing on the Financing Motion by serving notice in accordance with E.D. Mich. LBR 9013-1, which is appropriate, adequate and proper under the circumstances of this case and in accordance with Fed.R.Bankr.P. 4001(b) and E.D. Mich. LBR 4001-2;

WHEREFORE, THE COURT HEREBY ORDERS:

1. The Financing Motion is GRANTED;
2. The Debtor is authorized to use Cash Collateral and grant adequate protection in accordance with the Budget and terms of the Financing Motion, and such authority continues until further order of the Court;
3. As adequate protection under section 363 and 361 of the Bankruptcy Code for any security interest that Snap, and any other secured creditors ("Secured Creditor") that may assert in the Cash Collateral of the Debtor, to the extent that

the Debtor uses such Cash Collateral and does not replace it, are hereby granted Replacement Liens in all types and descriptions of collateral that were properly secured and perfected under the applicable, valid and enforceable pre-petition loan documents, which are created, acquired, or arise after the Petition Date;

4. As additional adequate protection, the Debtor shall make monthly payments to Snap in the amount of \$266 beginning on February 21, 2018 and continuing on the twenty-first (21st) day of each month thereafter until further order of this Court. Notwithstanding the forgoing, the Debtor preserves all its rights to contest the validity, extent, status, amount, priority and/or enforceability of the claim(s) of Snap, DLR, Inc. or any other Secured Creditor;

5. To the extent that Cash Collateral is unavailable or insufficient to funds operations, the Debtor is also authorized to acquire and use the DIP Loan financing under the terms of the Financing Motion and Budget;

6. DIP Lender's claim arising from issuance of the DIP Loan shall have the highest administrative priority under 11 U.S.C. § 364(c), subordinate only to the administrative claims of the Debtor's professionals. Except with respect to the administrative claims of the Debtor's professionals, the DIP Lender's claim shall have priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, 11 U.S.C. §§ 105, 326, 330,

331, 503(b), 507(a) or (b), 726 or any other provision of the Bankruptcy Code or otherwise (whether incurred in the Chapter 11 case or any successor case);

7. Pursuant to 11 U.S.C. § 364(c)(2) and (3), DIP Lender's claim arising from issuance of the DIP Loan shall be secured by a senior, valid, and perfected lien on all of the Debtor's pre- and post-petition assets in every kind and nature whatsoever that are unencumbered by a prepetition lien;

8. The lien granted to the DIP Lender shall be, and hereby is, deemed duly perfected and recorded under all applicable federal or state or other laws as of the date hereof, and no notice, filing, mortgage recordation, possession, further order, landlord or warehousemen lien waivers or other third-party consents or other act, shall be required to effect such perfection. The DIP Lender may (in its discretion) but shall not be required to, file a copy of this Order together with a copy of the DIP Loan agreement, in any filing or recording office in any county or other jurisdiction in which the Debtor has real or personal property and such filing or recording shall be accepted and shall constitute further evidence of perfection of the DIP Lender's liens and security interests in the Debtor's assets;

9. To the extent of any borrowing, the provisions of this Order and the DIP Loan agreement shall be binding upon and inure to the benefit of the DIP Lender, the Debtor, and their respective successors and assigns (including any

trustee or other estate representative appointed as a representative of the Debtor's estate or of any estate in any successor case);

10. Within seven (7) days before the expiration of the Budget, Debtor shall file a replacement Budget with the Court, which shall then become the Budget;

11. Pending entry of a final order, the Debtor may use Cash Collateral and, to the extent Cash Collateral is unavailable, acquire and use the DIP Loan financing in accordance with the line item amounts set forth in the Budget, with a 10% variance in each line item;

12. The total amount of Cash Collateral and DIP Loan financing needed in order for Debtor to avoid immediate and irreparable harm before the date of the final hearing or the date this Order becomes a final order (in the absence of a timely objection and final hearing) is \$177,182;

13. Debtor's authorized use of Cash Collateral and DIP Loan financing is limited to \$177,182 prior to the entry of a final order authorizing such use or the time this Order becomes a final order, as the case may be;

14. Debtor shall, within twenty-four (24) hours following the entry of this Order, serve copies of the Financing Motion and this Order on the Office of the United States Trustee's Office, the twenty largest unsecured creditors, all identified

secured creditors, the DIP Lender, and all other parties who are required to be served under Rule 4001(d);

15. All parties seeking to object to this Order must file a written objection within fourteen (14) days after the entry of this Order. If an objection is timely filed, the final hearing on this Order will be held before the Honorable Daniel S. Opperman at the United States Bankruptcy Court in the Eastern District of Michigan, Michigan, located **at 111 First Street, Bay City Michigan 48708, on March 8, 2018 2:30 p.m. Please note the location of this hearing.** If no timely objection is filed, then this Order will become a final order without a further hearing, and the Debtor will be authorized to spend for those expenses referenced in the Financing Motion as well as any other expenses necessary for operating the business in the ordinary course going forward;

16. Debtor's authority to use Cash Collateral and, to the extent Cash Collateral is unavailable or insufficient, acquire and use the DIP Loan financing shall continue until otherwise ordered by this Court;

17. If the Chapter 11 bankruptcy case is dismissed or converted, the DIP Lender's rights and remedies under this Order and the DIP Loan agreement shall be and remain in full force and effect as if such Chapter 11 Case had not been dismissed or converted. Furthermore, notwithstanding any such dismissal, conversion, rescission, all of the terms and conditions of this Order and the DIP

Loan agreement, including, without limitation, the liens and the priorities granted hereunder and thereunder shall remain in full force and effect;

18. Except as permitted by this Order, the Debtor shall not, without the DIP Lender's prior consent, seek to modify, vacate or amend this Order or the DIP Loan agreement. If any of the provisions of this Order or the DIP Loan agreement are hereafter modified, vacated or stayed by subsequent order of this or any other Court, such stay, modification or vacation shall not affect the validity of any post-petition indebtedness outstanding immediately prior to the effective time of such stay, modification or vacation, or the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to any such indebtedness;

19. The Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtor to obtain credit on the terms and conditions upon which the Debtor and the DIP Lender have agreed. Thus, each of such term and conditions constitutes a part of the authorization under § 364 of the Bankruptcy Code, and is, therefore, subject to the protections contained in § 364(e) of the Bankruptcy Code;

20. If a final order substantially identical to this Order is not entered or a final order substantially identical to the interim order entered contemporaneously herewith is not entered, all post-petition indebtedness shall be immediately due and

payable, the DIP Loan shall terminate and the DIP Loan agreement shall terminate. The DIP Lender shall be entitled to the benefits of the DIP Loan Agreement for the period prior to such expiration, but on and after the expiration, the parties shall no longer be bound by the DIP Loan Agreement and the Debtor shall be free to seek the use of cash collateral or alternative post-petition financing from the Court;

21. To the extent any provisions in this Order or the DIP Loan agreement conflict with any provisions of the Financing Motion, the DIP Loan agreement and the provisions of this Order shall control;

22. All objections to the entry of this Order have been withdrawn or overruled; and

23. This Order is effective immediately.

Signed on February 15, 2018



/s/ Daniel S. Opperman

**Daniel S. Opperman
United States Bankruptcy Judge**