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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

GREEN CUBE CAFÉ INC., et al., 1 Chapter 11
Lead Case No. 17-23751 (rdd)
Debtors.

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**DEBTOR'S MOTION REQUESTING USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. §363(c)(2) AND BANKRUPTCY RULE 4001,
AND PROVIDING ADEQUATE PROTECTION THEREFORE
PURSUANT TO 11 U.S.C. §§361 AND 362,**

Green Cube Café Inc., et al., the above captioned debtors and debtors-in-possession (the "Debtors"), by their attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, file this motion (the "Motion") for entry of an Order Authorizing Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. §363 and Providing Adequate Protection Therefor Pursuant to 11 U.S.C. §§361 and 362, and represent as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§1408 and 1409.

2. The statutory bases for the relief requested herein are §§ 105(a), 361, 362 and 363

1 The Debtors have filed an application for an order consolidating their cases for administrative purposes only. The Debtors include, Green Cube Café, Inc. Case No. 17-23751 (rdd), Green Cube Café Leasing, LLC Case No. 17-23752 (rdd), Green Cube Café III, LLC Case No. 17-23753 (rdd), Green Cube Café VI, LLC Case No. 17-23754 (rdd), and Green Cube Café Danbury LLC Case No. 17-23755 (rdd).

of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

3. On November 15, 2017, (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and the management of their business affairs as debtors-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed.

4. Four of the Debtors operate mall-based cafés serving healthy “fast food”. The Fifth Debtor, Green Cube Café Leasing, LLC, holds the leases of three of the Debtors in addition to leases of several non-debtor entities in the Green Cube family of companies.

5. The filing of this chapter 11 case was caused by significant cash flow difficulty caused by a drop in net revenues. The Debtors believe their financial issues are related to a downturn in mall traffic. In an effort to try and help fund the Debtors through the difficult time, the Debtors obtained very expensive financing to try to stabilize operations. The Debtor was current in its payments on these burdensome obligations but as a result, began to fall behind to other creditors which are critical to the Debtor’s continued operation such as their Landlords.

6. The Debtors’ desire is to utilize the bankruptcy process in order to restructure and reorganize their affairs. The Debtors believes that with the help of counsel, they will be able to restructure their affairs and propose a plan of reorganization that it is in the best interests of their creditors and affords them the greatest recovery possible.

The Disputed Secured Debt of Green Cube Café Inc.

The Funding Metrics LLC Debt

7. The Debtor believes it may have entered into an agreement with Funding Metrics LLC, although the Debtor is not aware of what date it may have entered into such an agreement.

8. The Debtor is not aware of how much it may have borrowed or how much may remain due.

9. On or about April 18, 2017, a UCC-1 financing statement was filed by Funding Metrics LLC purporting to perfect a lien on all of the Debtor's tangible and intangible assets and the proceeds thereof pursuant to an "ACH Total Receipts Assurances Agreement". A copy of the UCC-1 statement is annexed hereto as **Exhibit A**.

10. The Debtor does not concede that there is an underlying security agreement or that the April 18, 2017, UCC-1 filing was proper and as such, makes no admission with respect thereto.

The Everest Business Funding Debt

11. The Debtor believes it may have entered into an agreement with Everest Business Funding, although the Debtor is not aware of what date it may have entered into such an agreement.

12. The Debtor is not aware of how much it may have borrowed or how much may remain due.

13. No UCC-1 financing statement was filed by Everest Business Funding.

14. The Debtor does not concede that there was any underlying security agreement with Everest Business Funding, that any UCC-1 filing was made, and as such makes no admission with respect thereto.

The Retailing Capital Debt

15. The Debtor believes it may have entered into an agreement with Retailing Capital, although the Debtor is not aware of what date it may have entered into such an agreement.

16. The Debtor is not aware of how much it may have borrowed or how much may remain due.

17. No UCC-1 financing statement was filed by Retailing Capital.

18. The Debtor does not concede that there was any underlying security agreement with Retailing Capital, that any UCC-1 filing was made, and as such makes no admission with respect thereto.

The “Representative” UCC-1 Filings

19. On or about June 13, 2017, a UCC-1 financing statement was filed by “C T Corporation System as Representative” alleging a security interest in “all other assets of such Debtor”.

20. On or about September 19, 2017, a UCC-1 financing statement was filed by “Corporation Service Company, as Representative” alleging a security interest in all of the Debtor’s tangible and intangible assets pursuant to an “ACH Total Receipts Assurances Agreement”. Copies of the UCC-1 statements are annexed as **Exhibit B**.

21. The Debtor does not concede that the Representative UCC-1 filings related to any agreements the Debtor has with any creditors or that the UCC-1 filings were proper, and as such makes no admission with respect thereto.

The Disputed Secured Debt of Green Cube Café III, LLC

The Fund Works Debt

22. The Debtor believes it may have entered into an agreement with Fund Works,

although the Debtor is not aware of what date it may have entered into such an agreement.

23. The Debtor is not aware of how much it may have borrowed or how much may remain due.

24. No UCC-1 financing statement was filed by Fund Works.

25. The Debtor does not concede that there was any underlying security agreement with Everest Business Funding, that any UCC-1 filing was made, and as such makes no admission with respect thereto.

The Merchant Capital Debt

26. The Debtor believes it may have entered into an agreement with Merchant Capital, although the Debtor is not aware of what date it may have entered into such an agreement.

27. The Debtor is not aware of how much it may have borrowed or how much may remain due.

28. No UCC-1 financing statement was filed by Merchant Capital.

29. The Debtors do not concede that there was any underlying security agreement with Everest Business Funding, that any UCC-1 filing was made, and as such makes no admission with respect thereto.

The “Representative” UCC-1 Filings

30. On or about September 19, 2017, a UCC-1 financing statement was filed by “Corporation Service Company, as Representative” alleging a security interest pursuant to an “ACH Total Receipts Assurances Agreement” in all of the Debtor’s tangible and intangible assets. A copy of the UCC-1 statement is annexed as **Exhibit C**.

31. The Debtor does not concede that the Representative UCC-1 filing relates to any

agreements the Debtor has with any creditors or that the UCC-1 filing was proper, and as such makes no admission with respect thereto.

The Disputed Secured Debt of Green Cube Café Danbury, LLC

The On Deck Capital Debt

32. The Debtor believes it may have entered into an agreement with On Deck Capital, although the Debtor is not aware of what date it may have entered into such an agreement.

33. The Debtor is not aware of how much it may have borrowed or how much may remain due.

34. No UCC-1 financing statement was filed by On Deck Capital.

35. The Debtor does not concede that there was any underlying security agreement with Everest Business Funding, that any UCC-1 filing was made, and as such makes no admission with respect thereto.

Relief Requested

36. The Debtors submit this Motion pursuant to Bankruptcy Code §363(c)(2)(B) and 361 and 362 and Bankruptcy Rule 4001(b) with respect to the Debtors' request for authority to use property which may constitute Collateral in which Funding Metrics, Retailing Capital, Everest Business Funding, Fund Works, Merchant Capital, and On Deck Capital (collectively, the "Disputed Secured Creditors") may assert a security interest, substantially in accordance with the terms and conditions set forth in the proposed Order (the "Order") annexed hereto as **Exhibit D**. The Debtor believes that the Disputed Secured Creditors are the only parties that may assert a perfected security interest in the Debtor's property which may constitute cash collateral ("Collateral"), as that term is defined in Section 363(a) of the Bankruptcy Code as set forth below.

37. The proposed Order grants the Debtor the authority to use the Collateral pursuant to Bankruptcy Code §§363 (c)(1) and (2) and Bankruptcy Rule 4001(c) to the extent necessary to continue the operation of its business and to preserve the value of its estate during the course of the Chapter 11 case.

38. Section 363(a) of the Bankruptcy Code states as follows:

"In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of properties subject to a security interest as provided in Section 552(b) of this title, whether existing before or after the commencement of a case under this title."

39. Section 363(c)(1) of the Bankruptcy Code provides as follows:

"(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1304, 1203, or 1204 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing".

40. Section 363(d) of the Bankruptcy Code provides as follows:

"(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(e), or 362(f) of this title".

41. Accordingly, pursuant to § 363(c)(2) of the Bankruptcy Code, the consent of the Disputed Secured Creditors or authority from this Court is required to use Collateral in which they hold perfected security interests.

42. Although the Debtor does not concede that any of the Disputed Secured Creditors hold proper, valid and perfected security interests in the Collateral, which the Debtors are investigating, to the extent that it is determined that such security interests do in fact exist, the

Debtors seek authority from this Court.

Adequate Protection

43. The purpose of adequate protection is to ensure that the secured creditor receives the value for which it bargained pre-bankruptcy. In re Swedeland Development Group, Inc., 16 F.3d 552 (3rd Cir. 1994); In re Dunes Casino Hotel, 69 B.R. 784, 793 (Bankr. D.N.J. 1986), citing In re Coors of the Cumberland, 19 B.R. 313 (Bankr. M.D. Tenn. 1982). See also, In re 495 Central Park Ave. Corp., 136 B.R. 626 (Bankr. S.D.N.Y. 1992). Adequate protection is designed to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization. In re Nice, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“adequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of the collateral”).

44. Because the term “adequate protection” is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. MBank Dallas, N.A. v. O’Connor (In re O’Connor), 808 F.2d 1393 (10th Cir. 1987). In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1086); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Beker Industries Corp., 58 B.R. 725 (Bankr. S.D.N.Y. 1986); see also In re JKJ Chevrolet, Inc., 190 B.R. 542, 545 (Bankr. E.D.Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case).

45. The Order provides that, as adequate protection for the Debtors’ use of the Disputed Secured Creditors’ Collateral and in consideration for the use of the Collateral, the Debtor shall grant the Disputed Secured Creditors replacement liens in all of the Debtors’ pre-petition and post-petition assets and proceeds, including the Collateral and the proceeds of the foregoing, to the extent that the Disputed Secured Creditors had valid security interests in said

pre-petition assets on the Petition Date and in the continuing order of priority that existed as of the Filing Date (the “Replacement Liens”).

46. The Replacement Liens shall be subject and subordinate only to: (a) United States Trustee fees payable under 28 U.S.C. Section 1930 and 31 U.S.C Section 3717; (b) professional fees of duly retained professionals in this Chapter 11 case as may be awarded pursuant to Sections 330 or 331 of the Code or pursuant to any monthly fee order entered in the Debtor’s Chapter 11 case; (c) the fees and expenses of a hypothetical Chapter 7 trustee to the extent of \$10,000; and (d) the recovery of funds or proceeds from the successful prosecution of avoidance actions pursuant to sections 502(d), 544, 545, 547, 548, 549, 550 or 553 (“Avoidance Actions”) of the Bankruptcy Code (collectively, the “Carve-Outs”).

47. The Debtors submit that, in order to preserve the Debtors’ estates and ensure the viability of the Debtors during the Chapter 11 cases, the Disputed Secured Creditors should be granted Replacement Liens with the same nature, extent and validity of their pre-petition liens, subject to investigation by the Debtors, any creditors or committee appointed in the Debtors’ Chapter 11 cases.

The Budget

48. The Debtors propose to use Collateral only for ordinary and necessary operating expenses substantially in accordance with the budget annexed hereto as **Exhibit E** (the “Budget”). The Debtors believe that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course of operating the Debtors’ businesses for the period set forth in the Budget. The Debtors believe the use of Collateral in accordance with the Budget will provide the Debtors with adequate liquidity to pay administrative expenses as they become due and payable during the period covered by the Budget.

Notice

49. This Motion is being served on notice to the Disputed Secured Creditors and all other parties asserting secured claims against the Debtors, as well as the United States Trustee and all other parties entitled to notice pursuant to Bankruptcy Rule 4001(d), including but not limited to the Debtor's twenty (20) largest unsecured creditors.

WHEREFORE, the Debtor respectfully requests entry of the Order, together with such other and further relief as is just and proper under the circumstances.

Dated: White Plains, New York
November 20, 2017

Respectfully submitted,

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By: /s/ Dawn Kirby
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