



Dated: April 26, 2017

The following is ORDERED:

Sarah A Hall
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

_____)	
)	Chapter 11
In re:)	
)	
EATERIES, INC., <i>et al.</i> ¹)	Case No. 17-11444-SAH
)	
Debtors.)	(Jointly Administered)
_____)	

**CORRECTED INTERIM ORDER (A) AUTHORIZING THE DEBTORS TO USE
CASH COLLATERAL, (B) AUTHORIZING THE DEBTORS TO OBTAIN
POST-PETITION FINANCING, (C) GRANTING SECURITY INTERESTS
AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS
TO LENDER, (D) SCHEDULING A FINAL HEARING,
AND (E) GRANTING RELATED RELIEF
[Pertains to the Motion at Dkt. #35]**

Now on this 25th day of April, 2017, the *Amended Motion for Interim and Final Orders*
(A) Authorizing the Debtors to Use Cash Collateral, (B) Authorizing the Debtors to Obtain Post-
Petition Financing, (C) Granting Superpriority Security Interests and Superpriority

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case Nos. 17-11444 and 17-11445.

Administrative Expense Status to Lender, (D) Scheduling a Final Hearing; and (E) Granting Related Relief (the “Amended Motion”) [Dkt. No. 35] filed by Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession (collectively the “Debtors”), seeking, *inter alia*, pursuant to Sections 362(d), 364(c) 503(b), and 507 of Title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Other parties appeared at the hearing as reflected in the record of the hearing. The appearing parties announced an agreement regarding the interim borrowing from the Lender in an amount not to exceed \$200,000.00 for the period April 25th, 2017, through May 12th, 2017, pursuant to the budget attached hereto as Exhibit “A” and incorporated herein (the “*Budget*”). After consideration of the presentations on the record in open Court, the Court finds that the Amended Motion seeks authority for the following:

1. authorizing the Debtors to obtain post-petition loans and other extensions of credit from SpiritBank, an Oklahoma Banking Corporation (“Lender”) in an amount not to exceed \$500,000.00 and annual review provisions on a final basis (the “Loan Commitment”), and including, without limitation, principal, other extensions of credit and financial accommodations, interest, fees, expenses, and other costs of Lender in the Case, in accordance with the terms and conditions set forth herein and in the attached Secured Super-Priority Credit Agreement (the “Loan Agreement”),² the other Loan Documents (as defined in the Loan Agreement), and all other related agreements and documents (collectively, the “Loan Facility”);
2. authorizing the Debtors to execute, deliver, and perform under the Loan Facility and Loan Documents, and all other related agreements and documents creating, evidencing, or securing indebtedness or obligations of the Debtors to Lender on account of the Loan Facility or granting or perfecting liens or security interests by the Debtors in favor of and for the benefit of Lender on account of the Loan Facility, as same now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all of the agreements and documents

² A copy of the Loan Agreement is attached hereto as **Exhibit B**, and incorporated herein by reference.

currently executed or to be executed in connection therewith or related thereto, by and among the Debtors and Lender, the terms of which are referenced and incorporated herein (collectively, the “Loan Facility Documents”);

3. approving the terms and conditions of the Loan Facility and the Loan Facility Documents;
4. authorizing Debtors’ use of Cash Collateral pursuant to the consent of all interested parties;
5. modifying the automatic stay of Bankruptcy Code § 362 (the “Automatic Stay”) to the extent provided in the Interim Financing Order;
6. scheduling a final hearing (the “Final Hearing”) to consider entry of the Final Financing Order.

1. The Debtors and Lender have represented to this Court that they have agreed in good faith to the terms and conditions of this *Interim Order (A) Authorizing the Debtors to Use Cash Collateral, (B) Authorizing the Debtors to Obtain Post-Petition Financing, (C) Granting Superpriority Security Interests and Superpriority Administrative Expense Status to Lender, (D) Scheduling a Final Hearing; and (F) Granting Related Relief* (the “Interim Order”). The terms and conditions of this Interim Order reflect the Debtor’s exercise of prudent business judgment under exigent circumstances and are consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.

2. The Debtors and the Lender have stipulated and agreed as follows, and based upon the pleadings and evidence at the interim hearing before this Court, this Court hereby acknowledges such stipulations, and grants the relief herein, on an interim basis, pursuant to Bankruptcy Rule 4001 to prevent immediate and irreparable harm to the Debtors and the respective estates. Therefore, consistent with Bankruptcy Code §§ 361, 362, 363, 503(b), and 507, this Court hereby finds and Orders:

OPPORTUNITY TO OBJECT

3. Pursuant to Bankruptcy Rule 4001(d)(2), any objection to the entry of a final order on the Motion must be filed on or before 5:00 p.m. Central Time on May 9, 2017 (the “Objection Date”). A final hearing on the Motion shall take place on May 12, 2017, at 9:30a.m., before the Honorable Sarah A. Hall, United States Bankruptcy Judge, at the United States Bankruptcy Court, Western District of Oklahoma, 215 Dean A. McGee Avenue, 9th Floor Courtroom, Oklahoma City, OK 73102 (the “Final Hearing”). Objections shall be in writing and shall be filed with the Clerk of the Bankruptcy Court so that any such objections are received on or before the Objection Date.

STATEMENT OF JURISDICTION AND VENUE

4. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B),(D),(G), (K), (M) and (O).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

NOTICE

6. Sufficient and adequate notice of the Amended Motion and the hearing with respect thereto has been given pursuant to the order entered on April 18, 2017 [Dkt. No. 8], Bankruptcy Rules 2002, 4001, 9006, and 9014 and the Local Rules, and as required by Bankruptcy Code §§ 102, 105, 361, 362, 363, and 364.

FACTUAL AND PROCEDURAL BACKGROUND

7. On April 18, 2017 (the “Petition Date”), Eateries and Zanesville filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy”

Code”), thereby commencing the above-captioned bankruptcy cases (the bankruptcy cases are collectively referred to as the “Case”).

8. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

9. As of the date hereof, an official committee of unsecured creditors (the “Committee”) has not yet been appointed in the Case.

10. A description of the Debtors’ businesses, the reasons for filing the Case, and the relief sought from this Court to allow for a smooth transition into operations under Chapter 11 is set forth in the First Day Affidavit, which was filed on April 18, 2017 [Docket No. 10]. The Debtors hereby incorporate the First Day Affidavit as if fully set forth herein.

11. Eateries (directly or through its various subsidiaries, including GRP of Zanesville LLC) operates a chain of 15 restaurants located in 9 states, and previously employed more than 459 people. These restaurants are located in various shopping malls whose business is directly related to the volume of shoppers visiting the anchor tenants in such malls. The continued increase in online shopping has left brick-and-mortar shopping centers to fight over a smaller group of consumers. As a result, over the last year, certain segments of the retail shopping industry have experienced a significant downturn, resulting in announcements by Macy’s, Sears, and, most recently, J.C. Penney that they have closed or will close hundreds of these anchor stores. This downturn has had a direct impact on the business of those restaurants located in shopping malls experiencing decreased business.

12. As a result of the decreased business, Eateries has been attempting to renegotiate its lease terms with various of its landlords without success. Indeed, the downturn has resulted in the closure of 4 of Eateries’ restaurant locations in advance of the filing of this bankruptcy,

leaving 11 in operation in 6 states, as of the Petition Date are employing 375 people, at the time of the filing of this case.

NECESSITY OF LOAN FACILITY

13. Good, adequate, and sufficient cause has been shown to justify granting the interim relief requested in the Amended Motion. The ability of the Debtors to maximize the value of their assets and obtain confirmation of a plan of debt adjustment depends upon the Debtors' ability to use the Loan Facility.

14. Without the use of the Loan Facility, the Debtors may not have the funds necessary to conduct their businesses in the ordinary course of business, maintain their assets, provide financial information, or pay employee compensation, payroll taxes, overhead, and other expenses necessary to maximize the value of the Debtors' assets by obtaining confirmation of a plan, and thereby continue providing quality restaurant services to the communities they serve. The Debtors are seeking authority to obtain the Loan Facility due to the risk of cash flow interruptions and fluctuations frequently attendant to any debt adjustment case under the Bankruptcy Code. Lender is willing to provide on an interim and final basis the Loan Facility to or for the benefit of the Debtors only in accordance with the terms of the Loan Agreement and this Interim Financing Order. Accordingly, entry into the Loan Facility is necessary to adjusting the Debtors' debts, and the relief hereunder is necessary to allow the Debtors to continue to operate in the ordinary course of business on an interim basis in the Case pending entry of a the Final Financing Order.

15. The Debtors have requested that Lender provide the Loan Facility in order to provide funds on an interim and final basis to be used for the purposes set forth therein, and such

other purposes as permitted by this Interim Financing Order and to which Lender consents in writing.

16. The Debtors have sought to obtain financing from other sources and are unable to obtain credit allowable under Bankruptcy Code § 503(b)(1), or pursuant to Bankruptcy Code §§ 364(a) and (b), on terms more favorable to the Debtors than the terms of the Loan Facility.

17. The terms of the Loan Facility and this Interim Financing Order, including, without limitation, the related fees granted in accordance therewith, are fair, just, and reasonable under the circumstances, are ordinary and appropriate for secured financing to debtors in similar cases, reflect the Debtors' exercise of their prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. Any credit extended under the terms of this Interim Financing Order and the Loan Facility on an interim basis shall be deemed to have been extended in good faith by the Lender, as the term "good faith" is used in Bankruptcy Code § 364(e).

LOAN FACILITY

Authorization to Obtain Credit

18. The Debtors are hereby authorized, on a limited basis, to use Cash Collateral only in strict accordance with the terms and conditions provided in this Interim Order.

19. The Debtors are hereby authorized to obtain interim post-petition loans and other extensions of credit in an amount not to exceed \$200,000 and subject to the Budget on an interim basis pursuant to the terms of this Interim Financing Order and the terms of the Loan Agreement.

20. The Loan Facility Documents and the terms therein, including, without limitation, the fees and indemnification provisions, are approved in their entirety but only on an interim basis. The Debtors are authorized to execute, deliver and perform under the Loan Facility Documents.

Superpriority Liens and Administrative Claims

21. Effective as of the entry of this Order, Lender is entitled to and is hereby granted on an interim basis only first priority claims, liens and security interests, and the protections of good faith credit providers under Bankruptcy Code §§ 364(c)(1), (c)(2), and (c)(3), and 364(e) to secure the Loan Facility, senior to all other liens and security interests, to secure repayment of principal and any other extensions of credit, interest, fees, expenses, and any fees and expenses of Lender in this Case, however incurred, but subject only to prior liens, if any, and the Carve-Out (as defined below).

22. The first priority liens and security interests securing the Loan Facility granted hereby are effective on an interim basis as of the entry of this Order and are valid and automatically perfected first priority liens and security interests, subject only to prior liens, if any, and the Carve-Out, in and upon, and hereby are granted in and attach to, any and all assets and properties of the Debtors, now owned or after acquired, real and personal, and the proceeds and products thereof (collectively, the “Collateral,” including, without limitation, (A) the following presently-owned and after-acquired personal property: (1) accounts, (2) accessions, (3) chattel paper (both tangible and electronic), (4) commercial tort claims, (5) commodity accounts, (6) commodity contracts, (7) deposit accounts, (8) documents, (9) equipment, (10) financial assets, (11) fixtures, (12) general intangibles, (13) goods, (14) intellectual property, (15) instruments, (16) inventory, (17) investment property, (18) letters of credit, (19) letters of credit rights, (20) payment intangibles, (21) permits, (22) farm products, (23) crops, (24) timber, (25) as-extracted collateral, (26) mobile homes, (27) health care insurance receivables, (28) securities (certificated and uncertificated), (29) securities accounts, (30) securities entitlements, (31) software, (32) supporting obligations, (33) collateral records, (34) insurance, (35) causes of action, and (36) money (as each such term may be defined in the Oklahoma Uniform

Commercial Code as of the date hereof), and (B) all presently owned or after acquired real property and improvements thereon and the proceeds of any leases of real property; provided, however, the Collateral shall not include any causes of action under Bankruptcy Code § 544, 547, and 548 or the proceeds therefrom (the “Avoidance Claims”). Notwithstanding the foregoing, the Collateral shall not include the Debtors’ real property leases but shall include all proceeds of such leases.

23. Additionally, on account of the Loan Facility, Lender is hereby granted on an interim basis only, a superpriority administrative claims and all other benefits and protections allowable under Bankruptcy Code §§ 507(b) and 503(b)(1), senior in right to all other administrative claims against the Debtors, except for the Carve-Out.

24. The Debtors may instruct Lender, in writing, or in another manner acceptable to Lender, to stop payment on certain prepetition items that may be presented to Lender for payment. In the event an item is presented, and regardless of whether the Debtors have given a stop payment order, and such item is cleared, Lender will have no liability regarding same and the Debtors’ sole remedy shall be recovery from the transferee.

25. Lender may rely on the representations of the Debtors with respect to whether any check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and Lender shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

Automatic Perfection

26. This Interim Financing Order shall be sufficient and conclusive evidence of the priority, perfection, attachment, and validity of all of Lender’s security interests in and liens on

the Collateral granted and created hereunder, and such security interests and liens shall constitute valid, automatically perfected and unavoidable security interests and liens, with the priorities granted hereunder, effective as of the Petition Date, without the necessity of creating, filing, recording, or serving any financing statements, mortgages, or other documents that might otherwise be required under federal or state law in any jurisdiction or the taking of any other action to validate or perfect the security interests and liens granted to Lender by this Interim Financing Order.

27. To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of Lender's liens and security interests granted and created by this Interim Financing Order or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal law, and the judicial power of the United States Bankruptcy Court.

28. By virtue of the terms of this Interim Financing Order, to the extent that Lender has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the name of the Debtors, such filings shall be deemed to properly perfect its liens and security interests granted under this Interim Financing Order without further action by Lender.

29. If Lender shall, in its sole and absolute discretion, elect for any reason to file any Uniform Commercial Code financing statements, mortgages, deeds of trust, or other recordable documents to further evidence perfection of its interests in property of the Debtors, Lender, or, upon the request of Lender, the Debtors, is authorized and directed to execute or file, or cause to be executed or filed, all such financing statements or other documents, and the filing, recording,

or service (as the case may be) of such financing statements or similar documents shall be deemed to have been made at the time of and on the Petition Date, and the signature(s) of any person(s) designated by the Debtors, whether by letter to Lender or by appearing on any one or more of the agreements or other documents respecting the security interests and liens of Lender granted hereunder, shall bind the Debtors. Lender may, in its sole and absolute discretion, file a certified copy of this Interim Financing Order in any filing or recording office in any county or other jurisdiction in which the Debtors have real or personal property, and, in such event, the subject filing or recording officer is authorized and directed to file or record such documents or a certified copy of this Interim Financing Order.

Use of Cash Collateral

30. This Court finds that the Debtors are without sufficient funds, other than Cash Collateral, to operate for fifteen or more days until the Final Hearing on this Motion can be held. The Debtors' inability to timely pay the costs and expenses set forth herein will result in immediate and irreparable harm to their assets. Because the Debtors' request for interim authorization seeks the use of only that amount of Cash Collateral as is necessary to avoid immediate and irreparable harm to the value of their assets pending the Final Hearing, their request complies with Rules 4001(b)(2) of the Bankruptcy Rules.

31. The Debtors are hereby authorized to continue to use Cash Collateral as set forth in the Budget.

Authorization to Act

32. The Debtors are hereby authorized and directed to perform all acts, take any action, and execute and comply with the terms of such other documents, instruments and agreements, as Lender may reasonably require as evidence of and for the protection of the

Collateral, or that may be otherwise deemed necessary by Lender to effectuate the terms and conditions of this Interim Financing Order and the Loan Facility on an interim basis only.

33. Until all of the Loan Obligations shall have been indefeasibly paid and satisfied in full in accordance with Loan Facility Documents, and without further order of the Court: (a) the Debtors shall use the Loan Facility proceeds strictly in accordance with the terms of the Loan Facility Documents and the other terms of this Interim Financing Order; (b) the Debtors shall not, without prior order from the Court (after notice to Lender), engage in any transaction that is not in the ordinary course of the Debtors' businesses, and (c) the Debtors shall timely comply with all of the covenants set forth in the Loan Facility Documents.

34. Debtors are further authorized to assume the contract with Performance Food Group and to grant the liens and other adequate assurances negotiated to facilitate the assumption and performance.

Prior Liens

35. The Debtors are indebted to Fresh Capital, LLC, Fiesta Holdings, Inc. and Practical Investors, LLC (collectively, the "Secured Creditor") pursuant to certain documents executed and delivered to Secured Creditor by the Debtors, including, without limitation, all notes, security agreements, assignments, pledges, mortgages, deeds of trust, guaranties, forbearance agreements, letters of credit, and other instruments or documents executed in connection therewith or related thereto are referred to herein collectively as the "Pre-Petition Claim Documents."

36. Pursuant to the Pre-Petition Claim Documents and applicable law, Secured Creditor holds a valid, enforceable, and allowable claim against the Debtors, as of the Petition Date, in an aggregate amount of at least \$1,300,000 of unpaid principal, plus any and all accrued and unpaid interest, fees, costs, expenses, charges, and other claims, debts or obligations of the

Debtors to Secured Creditor that have accrued as of the Petition Date under the Pre-Petition Claim Documents and applicable law. The Secured Creditor's claim as described in the preceding sentence together with all post-Petition Date interest, fees, costs, and charges allowed to the Secured Creditor on such claim pursuant to Bankruptcy Code § 506(b) shall collectively be referred to hereunder as the "Pre-Petition Claim".

37. The Secured Creditor Pre-Petition Claim constitutes an allowed, legal, valid, binding, enforceable, and non-avoidable obligation of and claim against the Debtors and Guarantors, and is not subject to any offset, defense, counterclaim, avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or any other applicable law, and the Debtors do not possess and cannot assert any claim, counterclaim, setoff, or defense of any kind, nature, or description which would in any way affect the validity, enforceability, allowance, and non-avoidability of Secured Creditor Pre-Petition Claim.

38. Subject only to prior liens, if any, Secured Creditor Pre-Petition Claim is secured by properly perfected first priority liens and security interests in, *inter alia*, any and all assets and property of the Debtors, now owned or hereafter acquired, real and personal, and the proceeds and products thereof (collectively and as defined in this Interim Financing Order, the "Pre-Petition Collateral"). Secured Creditor reserves all rights to challenge the validity, perfection, enforceability, and priority of prior liens, if any.

39. Additionally, all cash of the Debtors' bankruptcy estates, wherever located, and all cash equivalents, whether in the form of negotiable instruments, documents of title, securities, deposit accounts, investment accounts, or in any other form, that were on the Petition Date in any of the Debtors' possession, custody or control (or persons in privity with any of the Debtors), or in which the Debtors will obtain an interest during the pendency of the Case whether via

advances under the DIP Facility or otherwise, or which represent income, proceeds, products, rents, or profits of any of the Collateral is the cash collateral of Secured Creditor (collectively, the “Cash Collateral”). Secured Creditor has a first priority perfected lien and security interest in the Cash Collateral pursuant to the applicable provisions of the Pre-Petition Claim Documents and Bankruptcy Code §§ 363(a) and 552(b).

40. As of the filing of this Motion, Debtors and Secured Creditor are not aware of any prior liens.

41. Performance Food Group, Inc. is Debtors’ primary and critical trade creditor. Performance Food Group, Inc. provides food and other supplies to Debtors’ restaurants which are critical to maintaining operations. Debtors’ trade payables to Performance Food Group, Inc. have a revolving balance of approximately \$375,000.00. Eateries is giving Performance Food Group, Inc. a consensual, nonpriority lien and security interest on all of Eateries’ assets, with the consent of the Lender and the Secured Creditor. Performance Food Group, Inc. has agreed to subordinate all of Performance Food Group, Inc.’s pre-petition claim and all of its rights in the Pre-Petition Collateral to the claims and liens granted to Lender in the Loan Agreement, this Interim Financing Order and the Final Financing Order. To the extent necessary, Performance Food Group, Inc. also consents to the use of any cash collateral. Performance Food Group, Inc.’s liens and security interests in Debtors’ assets are junior and inferior in priority to the liens and security interests of the Secured Creditor. However, the Secured Creditor and Performance Food Group, Inc. are parties to an intercreditor agreement whereby, under certain circumstances, the proceeds from the sale of the Debtors’ assets which otherwise would be payable to the Secured Creditor shall be paid to Performance Food Group, Inc., despite the priority of the Secured Creditor’s liens and security interests in such assets.

42. The Secured Creditor has agreed to subordinate all of the Secured Creditor Pre-Petition Claim and all of its rights in the Pre-Petition Collateral to the claims and liens granted to Lender in the Loan Agreement, this Interim Financing Order and the Final Financing Order.

43. Therefore, the entry of this Interim Financing Order shall result in the priming and subordination of all claims and liens of the Secured Creditor and Performance Food Group, Inc. to the Lender.

44. The security interests and liens of Lender granted pursuant to the terms of this Interim Financing Order are subject to any other valid, perfected and unavoidable liens and security interests of any other secured creditor in any assets of any of the Debtors existing on the Petition Date that are senior in priority under applicable law to Lender's liens and security interests granted under the Pre-Petition Claim Documents in the Pre-Petition Collateral. There may be certain equipment lessors (collectively the "Equipment Lessors") which purport to have security interest by virtue of the filing of a UCC-1 financing statements (the "Notice Liens") in all equipment, all accounts receivable and all general intangibles (the "General Assets") that Debtors, Secured Creditors, and Lenders allege are beyond the specific equipment, goods and related property that is the subject of such equipment lease(s). However, Debtors, Secured Creditors, and Lenders allege that the contracts between the Debtors and the Equipment Lessors do not grant any liens upon the General Assets and therefore, except possibly for the purchase money security interests in the equipment created by said equipment leases, the Equipment Lessors do not hold any prior liens on any of the General Assets. The Debtors or any other party in interest, including Lender, shall have the right to object to the validity, priority, or extent of any such prior liens, or the allowance of such debts secured thereby, or to institute any actions or adversary proceedings with respect thereto. The post-petition liens granted to Lender pursuant to

this Interim Financing Order shall not at any time be (a) made subject or subordinated to, or made *pari passu* with, any other lien or security interest existing on the Petition Date, or any claim, lien, or security interest created under Bankruptcy Code §§ 363 or 364(d) or otherwise (except with respect to the Notice Liens), or (b) subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors under Bankruptcy Code § 551.

No Additional Liens

45. Until such time as the Loan Obligations shall have been indefeasibly paid and satisfied in full in accordance with the Loan Facility Documents, except as provided herein the Debtors shall not be authorized to obtain credit secured by a lien or security interest in the Pre-Petition Collateral or the Collateral, other than the Loan Facility, without the prior written consent of Lender or order of the Court upon reasonable notice.

No Liability

46. From and after the entry of this Order, no act committed or action taken by Lender under this Interim Financing Order, including, without limitation, the collection of the Pre-Petition Claims, or the Loan Facility, shall be used, construed, or deemed to hold Lender to be in “control” of or participating in the governance, management, or operations of the Debtors for any purpose, without limitation, or to be acting as a “responsible person(s)” or “owner(s) or operator(s)” or a person(s) in “control” with respect to the governance, management, or operation of the Debtors or their businesses (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, Comprehensive Environmental Response, Compensation and Liability Act, or the Bankruptcy Code, each as may be amended from time to time, or any other federal or state statute, at law, in equity, or otherwise) by virtue of the interests, rights, and remedies granted to or conferred upon Lender under the Pre-Petition Claim Documents, the Loan

Facility Documents, or this Interim Financing Order including, without limitation, such rights and remedies as may be exercisable by Lender in connection with this Interim Financing Order.

Automatic Stay

47. The Automatic Stay is hereby vacated and modified to the extent necessary to permit (a) the Debtors and the Lender to commit all acts and take all actions necessary to implement the Loan Facility and this Interim Financing Order, (b) all acts, actions and transfers contemplated herein, including, without limitation, transfers of funds to Lender by the Debtors as provided herein, and (c) consistent with the terms of this Interim Financing Order, Lender at its option to pursue its rights and remedies as to the Collateral in accordance with the Loan Facility Documents and applicable law.

Collateral Insurance

48. The Debtors shall maintain, with financially sound and reputable insurance companies, insurance of the kind covering the Collateral, and in accordance with the Loan Facility Documents (covering such risks in amounts as shall be satisfactory to Lender and shall name Lender as loss payee thereunder).

49. To the extent the Debtors have made or make any deposits for the benefit of utility companies or any other entity such deposits shall be, and hereby are, upon any return of same to the Debtors, subject to the first priority perfected liens and security interests of Lender in respect of the Loan Facility granted by this Interim Financing Order.

Reporting Requirements

50. The Debtors are authorized and directed to provide to Lender all of the documentation and reports required under the Loan Agreement and the other Loan Facility Documents, unless Lender waives or modifies such requirements in writing.

51. Lender and its representatives, agents, consultants, and other professionals shall be permitted, in coordination with Debtors' counsel, to contact and communicate with the Debtors and their financial advisors regarding the operation of the Debtors' businesses or the plan of adjustment in this Case. The Debtors shall be responsive and employ their best efforts to cooperate in the coordination of all such contacts and communications, including, without limitation, by conducting update telephone conferences involving the Debtors, their financial advisors (if any), and Lender, upon request.

52. Subject to federal, state and local laws and regulations governing the operation of food service facilities and the maintaining of business records, Lender and its agents and advisors shall have full access, upon reasonable notice during normal business hours, to the Debtors' business records, business premises, and to the Collateral to enable Lender or its agents and advisors to (a) review, appraise, and evaluate the physical condition of the Collateral, (b) inspect and review the financial records and all other records of the Debtors concerning the operation of the Debtors' businesses, and (c) evaluate the Debtors' overall financial condition and all other records relating to the operations of the Debtors. The Debtors shall fully cooperate with Lender regarding such reviews, evaluations, and inspections, and shall make their employees and professionals available to Lender and its agents and advisors to conduct such reviews, evaluations, and inspections.

Professional Fees in this Case

53. Lender consents, subject to the terms and conditions set forth in this Interim Financing Order, to a carve out from its Collateral (a) all fees required to be paid to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate; (b) for the payment of the reasonable professional fees and

expenses of Case Professionals³ in an amount not to exceed such amounts that are found to be reasonable by this Court pursuant to §503(b)(3), plus (c) an aggregate amount not to exceed \$30,000.00 to be used to pay fees earned and expenses incurred subsequent to the occurrence of an Event of Default (collectively, the “Carve-Out”). Payments from the Carve-Out shall be subject to any terms and conditions of any engagement agreements executed by the Debtors.

54. Case Professionals may give notice to the Debtors of the amount of fees and expenses incurred on a monthly basis, whereupon the all such amounts shall be set aside within 7 days of receipt of such Notice and held by the Debtors in a segregated account (the “Professional Fee Escrow”). The amount paid by the Debtors in any month for the fees and expenses of the Debtors’ and the Committee’s professionals shall only be paid upon allowance or authorization by the Court from funds on deposit in the Professional Fee Escrow

55. So long as no Event of Default shall have occurred and be continuing, the Debtors shall be permitted to pay reasonable compensation and reimbursement of expenses subject to a final determination by the Court pursuant to §503(b)(3) that all such amounts are reasonable. Other than the Carve-Out set forth above, Lender does not consent to any carve out from its Collateral for payment of any fees and expenses of the Case Professionals.

56. Any and all payments of fees and expenses to any Case Professionals or use of Cash Collateral shall constitute diminution in the value of the Collateral for all purposes including all adequate protection and superpriority claims granted under the Bankruptcy Code and this Interim Financing Order.

57. Notwithstanding the foregoing, and irrespective of the Carve-Out, in no event shall the proceeds of any loans, advances, or other funds made available by the Lender to or for

³ “Case Professionals” means any professional hired by the Debtors, the Committee or otherwise who seek to be paid by the Debtors for services rendered in relation to this case.

the benefit of the Debtors be used for the payment or reimbursement of any fees, expenses, costs, or disbursements of any Case Professional or other persons incurred with the purpose of:

(a) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, perfection, priority, or enforceability of the, the Loan Facility, the Loan Facility Documents, this Interim Financing Order, or any liens or security interests granted thereby or with respect thereto, or any other rights or interests of the Lender under the Loan Facility Document, (b) investigating, asserting, prosecuting or the joinder in any claims or causes of action against the Lender or any of its officers, directors, employees, affiliates, agents, attorneys, or equity holders (whether arising under state law, the Bankruptcy Code or any other federal or foreign law); (c) preventing, enjoining, hindering or otherwise delaying the Lender's enforcement of the Loan Facility Documents or this Interim Financing Order or any realization upon any Collateral (unless such enforcement or realization is in direct violation of an explicit provision in any Loan Facility Document or this Interim Financing Order); (d) incurring indebtedness except as permitted by the Loan Facility Documents or this Interim Financing Order; (e) modifying the Lender's rights under any Loan Facility Documents or this Interim Financing Order without Lender's consent; (f) asserting or declaring any liens or security interests granted under the Loan Facility Documents, or this Interim Financing Order to have a priority other than the priority set forth herein or therein; (g) asserting, prosecuting or the joinder in, any action or other proceeding seeking to grant a lien or security interest senior to, or on parity with, the liens and security interests of Lender in the Collateral or any portion thereof without the Lender's consent; (h) asserting or declaring any the Loan Facility Documents, or this Interim Financing Order to be invalid, not binding or unenforceable in any respect; or (i) selling any Collateral except as specifically permitted in the Loan Facility Documents or this Interim Financing Order.

Notwithstanding the foregoing, Loan Facility advances may be used to pay the fees earned and expenses incurred by counsel to the Committee in an amount not to exceed \$10,000.00 for reasonable fees earned and expenses incurred by counsel for the Committee and approved by this Court pursuant to 11 U.S.C. § 503(b); provided however, that the Committee or appropriate party-in -interest may request by motion with notice and opportunity for hearing to modify the foregoing provision of this Interim Order. Nothing herein shall be construed to limit the ability of any other interested parties from investigating any claims against the Debtors.

No Surcharge

58. No costs or expenses of administration which have or may at any time be incurred in this Case shall be charged against Lender, its claims or the Collateral pursuant to Bankruptcy Code § 506(c) without the prior written consent of Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by Lender. Lender shall not be subject in any way whatsoever to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

EVENTS OF DEFAULT/REMEDIES

59. The occurrence of any of the following shall constitute an Event of Default under this Interim Financing Order upon notice to the Debtors by Lender: (a) any default, violation, or breach by the Debtors of any of the terms of this Interim Financing Order; (b) the occurrence of the Expiration Date (as defined below), maturity, termination, expiration, or non-renewal of this Interim Financing Order or the Loan Facility as provided for herein or in any of the Loan Facility Documents; (c) any challenge to the extent, validity, priority, or unavailability of Lender’s liens securing the Loan Facility is commenced by the Debtors or an order is entered sustaining any such challenge commenced by any party other than the Debtors; (d) the occurrence of any

default or event of default under the Loan Agreement or any other Loan Facility Document; or (e) the failure of the Debtors to make any payments to Lender that are required to be paid under this Interim Financing Order (any of the foregoing events of default being referred to in this Interim Financing Order, individually, as an “Event of Default”, or severally, as “Events of Default”).

60. Immediately upon the occurrence of any Event of Default, and at all times thereafter, and without further act or action by Lender, or any further notice, hearing, or order of this Court: (a) Lender may terminate any and all obligations of Lender in connection with the Loan Facility or under this Interim Financing Order and the Loan Facility Documents, and (b) Lender may declare all or any part of the Loan Facility to be immediately accelerated and due and payable for all purposes, rights, and remedies.

61. Furthermore, upon the occurrence of any Event of Default, and after the giving of five (5) business days’ notice by Lender to the Debtors and the Committee, then without further act or action by Lender, or any further notice, hearing or order of this Court, the Automatic Stay shall be immediately modified and Lender shall be and is hereby authorized, in its sole and absolute discretion, to take any and all actions and remedies that Lender may deem appropriate to proceed against, take possession of, protect, and realize upon the Collateral and any other property of the Debtor, including, without limitation, (i) any right or remedy set forth in the Loan Facility Documents, without limitation, or this Interim Financing Order, (ii) any right or remedy that the Lender may deem appropriate to proceed against, take possession of, foreclose upon, sell (in whole or in part), protect, and realize upon the Collateral and any other property of the Debtors upon which the Lender has been or may hereafter be granted liens and security interests to obtain repayment of the Loan Facility, (iii) the commencement of actions for specific

performance and for the foreclosure upon any Collateral, (iv) the sale of the Collateral, or any portion thereof, either as a whole or in part, at private or public auction, and the Lender shall have the right to purchase the Collateral at same by credit bidding all or a part of its debt or otherwise, (v) taking possession of the Collateral, and the exercise, without interference, and, if necessary, as the attorney-in-fact for the Debtors, of any rights of the Debtors in the management, possession, operation, protection or preservation of the Collateral, (vi) the receipt of proceeds from the sale of any Collateral, (vii) the direction of the payment for any purchase of the Collateral directly to the Lender, as applicable, (viii) the right of setoff and recoupment as to any funds of the Debtors held by Lender, (ix) if appropriate, the right to seek and obtain the appointment of a receiver over the Debtors and/or the Collateral, and (x) the right to reproduce, copy, download, or otherwise take possession of any records or data, tangible or electronic, constituting Collateral; provided that the Lender shall not be obligated to take title to any of the Collateral in the pursuit of any of the Lender's rights and remedies and the Debtors shall cooperate with the Lender in conjunction with the exercise of any right and the pursuit of any remedy by Lender, without limitation.

62. Upon or after the occurrence of any Event of Default, Lender may, in its sole and absolute discretion, advance funds to the Debtors, and all such advances (i) shall not constitute a waiver, limitation, or modification of Lender's rights and remedies pursuant to the Loan Facility Documents, this Interim Financing Order, and applicable law and (ii) shall be and hereby are granted all of the protections granted to Lender under this Interim Financing Order in connection with the Loan Facility.

OTHER TERMS

63. The Debtors and the Lender are authorized to implement, in accordance with the terms of the Loan Facility Documents, any modifications or amendments to any Loan Facility

Document which are not material and adverse to the Debtors. Any modifications or amendments of any Loan Facility Document which are material and adverse to the Debtors shall be subject to prior approval by this Court upon motion by the Debtors.

64. Other than prior liens, if any, and the Carve-Out, no priority claims shall be allowed that are or will be prior to or on parity with the superpriority claims or secured claims of Lender arising from the Pre-Petition Claim Documents, the Loan Facility Documents, and this Interim Financing Order.

65. No obligations incurred or payments or other transfers made by or on behalf of the Debtors on account of the Loan Facility shall be avoidable or recoverable from Lender under any section of the Bankruptcy Code, or any other federal, state, or other applicable law.

66. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any of the Collateral, without the prior written consent of Lender.

67. The terms hereunder and under the Loan Facility Documents, the security interests and liens granted to Lender under this Interim Financing Order, and the rights of Lender pursuant to this Interim Financing Order with respect to the Collateral, shall not be altered, modified, extended, impaired, or affected by any plan of debt adjustment of the Debtors without the prior written approval of Lender.

68. The terms and provisions of this Interim Financing Order and any actions taken pursuant hereto shall survive entry of any order that may be entered dismissing this Case. The terms and provisions of this Interim Financing Order, as well as the priorities in payment, liens, and security interests granted pursuant to this Interim Financing Order, and the Loan Facility Documents, shall continue in this or any superseding case under the Bankruptcy Code of the Debtor, and such priorities in payment, liens and security interests shall maintain their priority as

provided by this Interim Financing Order until such time as the Loan Obligations shall have been indefeasibly paid and satisfied in full in accordance with the Loan Facility Documents and Lender shall have no further obligation or financial accommodation to the Debtors.

69. The provisions of this Interim Financing Order shall inure to the benefit of the Debtors and the Lender and they shall be binding upon (a) the Debtors and their successors and assigns, including any trustee or other fiduciary hereafter appointed as legal representative of the Debtors or with respect to property of the Debtors, whether under chapter 11 of the Bankruptcy Code or any confirmed plan and (b) all creditors of the Debtors and other parties in interest.

70. If any or all of the provisions of this Interim Financing Order are hereafter modified, vacated or stayed without the prior written agreement of Lender, such modification, vacation or stay shall not affect (a) the validity of any obligation, indebtedness or liability incurred by the Debtors to Lender before the effective date of such modification, vacation or stay or (b) the validity or enforceability of any security interest, lien, priority, or other protection authorized, granted or created hereby or pursuant to this Interim Financing Order or any of the Loan Facility Documents. Notwithstanding any such modification, vacation or stay, any indebtedness, obligations or liabilities incurred by the Debtors to Lender before the effective date of such modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Financing Order, and Lender shall be entitled to all the liens, rights, remedies, privileges, and benefits granted herein and pursuant to the Loan Facility Documents with respect to all such indebtedness, obligations or liabilities.

71. To the extent the terms and conditions of the Loan Facility Documents are in express conflict (as opposed to being additive, limiting or more specific than this Interim

Financing Order) with the terms and conditions of this Interim Financing Order, the terms and conditions of this Interim Financing Order shall control.

72. No approval, agreement or consent requested of Lender by the Debtors pursuant to the terms of this Interim Financing Order or otherwise shall be inferred from any action, inaction or acquiescence of Lender other than in writing acceptable to Lender that is signed by Lender and expressly shows such approval, agreement or consent, without limitation.

73. Unless expressly and specifically provided otherwise herein, nothing herein shall be deemed or construed to waive, limit, modify, or prejudice the claims, rights, protections, privileges, and defenses of Lender afforded pursuant to the Bankruptcy Code.

74. This Interim Financing Order, and the findings of fact and conclusions of law contained herein, shall be effective upon signature by the Court, and may be relied upon by Lender and the Debtors without the necessity of entry into the docket sheet of this Case. To the extent any findings may constitute conclusions, and vice versa, they are hereby deemed as such.

75. This Court hereby expressly retains jurisdiction over all persons and entities, co-extensive with the powers granted to the United States Bankruptcy Court under the Bankruptcy Code, to enforce the terms of this Interim Financing Order and to adjudicate any and all disputes in connection therewith by motion and without necessity of an adversary proceeding.

76. All headings in this Interim Financing Order are descriptive and for reference only, and do not have separate meaning or change any terms therein.

77. TO AVOID ANY AMBIGUITY OR DOUBT, ANY AND ALL RELIEF GRANTED BY THIS INTERIM FINANCING ORDER IS ONLY BEING GRANTED ON AN INTERIM BASIS AND ALL SUCH RELIEF IS SUBJECT TO REVIEW AT THE FINAL HEARING AND THE FINAL FINANCING ORDER.

NOTICE; EXPIRATION DATE/MATURITY

78. The Debtor's counsel shall serve this Interim Financing Order on all of the following parties: (a) the Office of the United States Trustee; (b) the attorneys for Lender; (c) all creditors known to the Debtors who have or may assert liens against any of the Debtors' assets; (d) the United States Internal Revenue Service; (e) the 20 largest unsecured creditors of the Debtors; (f) all applicable taxing authorities and other state regulatory authorities in each respective state in which the Debtors conduct business; and (g) all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Federal Rules of Bankruptcy Procedure or the Local Rules.

79. Lender's commitment to provide interim credit under the Loan Agreement and this Interim Financing Order shall be effective upon entry of this Interim Financing Order to and including the earlier of: (a) notice of the occurrence of an Event of Default or (b) the date of the Final Hearing unless otherwise extended by agreement of the Debtor and the Lender, at which time all of the Debtors' authority to obtain credit on an interim basis under the Loan Agreement and this Interim Financing Order shall terminate, as shall Lender's obligation to continue funding the Loan Facility, unless extended by written agreement of the parties hereto, a copy of which is filed with this Court by the Debtors (the "Expiration Date").

THIS ORDER IS EFFECTIVE IMMEDIATELY.

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APPROVED FOR ENTRY BY:

/s/ William H. Hoch.

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