

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:	CASE NO. 19-65910
CAPITAL RESTAURANT GROUP, LLC,	CHAPTER 11
Debtor.	

MOTION FOR AUTHORITY TO USE CASH COLLATERAL

Capital Restaurant Group, LLC, Debtor and Debtor-in-Possession, files this Motion for Authority to Use Cash Collateral (this “**Motion**”), for the entry and approval of an order, pursuant to Sections 105, 361, and 363 of the Bankruptcy Code and Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtor’s use of cash collateral on an emergency basis to continue its operations in accordance with the proposed budget attached hereto as **Exhibit A** (the “**Budget**”) and the Proposed Interim Order (as defined below) attached as **Exhibit B**, respectfully showing the Court as follows:

BACKGROUND

1. On October 4, 2019, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Since the filing, the Debtor has continued in possession of its property and has operated and managed its affairs as a debtor-in-possession pursuant to the provisions of Sections 1107 and 1108 of the Bankruptcy Code. No creditors’ committee has been appointed in this case, and no trustee or examiner has been appointed.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicate for the relief requested herein is §§ 105(a), 361, and 363 of the Bankruptcy Code.

3. The Debtor owns and operates 24 restaurants (the “**Restaurants**”) in the state of South Carolina under franchise agreements with Burger King Corporation (“**BK Corporation**”) and under leases for each location (the “**Business**”). The Business employs approximately 478 people in the greater Orangeburg, Charleston, and Myrtle Beach communities and up to 600 people during its peak season.

4. Formed in Georgia in 2009, the Debtor began operating the Restaurants in 2010 as a franchisee of BK Corporation. Many of the Restaurants had been neglected for years and in need of repairs, upgrades, and improvements. The Debtor and its principal invested and reinvested in the Restaurants in an effort to turn them around and to deal with many issues, including several issues that were not disclosed.

5. Over the past nine years, the Debtor’s principal and employees have poured their blood, sweat, and tears into turning the Restaurants around. The Debtor has succeeded in varying degrees with respect to many of the Restaurants, but unfortunately, several do not generate enough revenue to sustain themselves and are a drain on the Debtor’s cash flow (the “**Underperforming Restaurants**”).

6. On multiple occasions over several years, the Debtor has requested permission to close many of the Underperforming Restaurants. BK Corporation has refused, instead forcing the Debtor to continue operating the Underperforming Restaurants at a loss—while continuing to pay rent, royalties, and advertising fees to BK Corporation—under threat of legal action that would surely follow any closures.¹

7. Meanwhile, the Debtor has had some major challenges in recent years, its Restaurants battered by several hurricanes (most recently just a month ago), which has caused

¹ BK Corporation has already sued the Debtor for breach of contract following a prior restaurant closure under very interesting circumstances. That lawsuit is still pending.

temporary shutdowns and further drained liquidity. Also, the Debtor learned that in the last couple years, BK Corporation reduced advertising in one or more of the markets in which the Debtor operates, causing revenues to decline and causing further deterioration of the Debtor's cash flow. The Debtor and its principal exhausted every alternative to continue to meet its obligations, but did not receive the support it needed.

8. Given its inability to close the Underperforming Restaurants without facing additional litigation with BK Corporation, and with its cash flow and liquidity position continuing to deteriorate, the Debtor was left with no choice but to seek protection under Chapter 11 of the Bankruptcy Code in order to reorganize and save hundreds of jobs.

Pre-Petition Financing

9. The Debtor is party, as borrower, to that certain Master Loan Agreement dated July 8, 2016, as modified (the "**Loan Agreement**"), with First Franchise Capital Corporation ("**FFCC**"), as lender. Pursuant to the Loan Agreement, the Debtor executed a promissory note in favor of FFCC in the principal amount of \$3.8 million. As of the Petition Date, the Debtor believes that the outstanding balance owed to FFCC pursuant to the Loan Agreement is approximately \$2,715,779.79.

10. The Debtor is a party, as borrower, to that certain Purchasing Card Service Agreement dated August 11, 2019 (the "**P-Card Agreement**") with Regions Bank ("**Regions**"), as lender. Pursuant to the P-Card Agreement, the Debtor established and used a line of credit provided by Regions. The Debtor also maintains several depository accounts with Regions. As of the Petition Date, the Debtor believes that the outstanding balance owed to Regions pursuant to the P-Card Agreement is approximately \$475,000.00.

11. Certain revenue from the Business may constitute Cash Collateral as that term is defined in 11 U.S.C. Section 363 (the “**Cash Collateral**”). The Debtor believes that FFCC and Regions (collectively, the “**Lenders**”) may assert an interest in the Cash Collateral.

RELIEF REQUESTED

12. By this Motion, the Debtor seeks interim and final authorization to use Cash Collateral. The Debtor proposes to use Cash Collateral for general operational and administrative expenses as set forth in the Budget. The expenses incurred by the Debtor and for which Cash Collateral will be used will all be incurred in the normal and ordinary course of operating the Business. A proposed *Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection* (the “**Proposed Interim Order**”) is attached hereto as **Exhibit B**.

13. Bankruptcy Code Section 363(c)(2) provides that a debtor-in-possession may not use cash collateral unless an entity that has an interest in such cash collateral consents or the Court approves the use, conditioned on provision of adequate protection. Section 363(o) provides that at a hearing on the use of cash collateral, the entity asserting an interest in the cash collateral has the burden of proof on the issue of the validity, priority, or extent of such interest, and the debtor-in-possession has the burden of proof on the issue of adequate protection. Rule 4001(b)(2) provides that the Court may not hold a final hearing on a motion to use cash collateral earlier than 14 days after service of the motion, but may authorize the use of cash collateral prior to a final hearing as necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

14. The Debtor requests authority to use Cash Collateral for the purpose of avoiding immediate and irreparable harm to the estate. The authority to continue using Cash Collateral should continue until the Court rules on the Debtor’s request following a final hearing.

15. The Debtor recognizes that the Lenders may be entitled to adequate protection of their interests in the Cash Collateral within the meaning of 11 U.S.C. §§ 361 and 363. To the extent that any interest that the Lenders may have in the Cash Collateral is diminished, the Debtor proposes to grant the Lenders replacement liens in post-petition collateral of the same kind, extent, and priority as the liens existing pre-petition (the “**Adequate Protection Liens**”), except that the Adequate Protection Liens will not extend to the proceeds of any avoidance actions received by the Debtor or the estate pursuant to Chapter 5 of the Bankruptcy Code. Hence, the Lenders’ interests in the Debtor’s Cash Collateral, to the extent they have any, are adequately protected.

16. The Debtor further requests that the Court schedule a final hearing on Cash Collateral use, and following such hearing, enter a final order authorizing Cash Collateral use. At that hearing, the Court may consider any additional adequate protection requested by the Lenders or agreed upon by the Debtor.

17. If the Debtor is not allowed to use Cash Collateral, the Business will likely be forced to shut down without an orderly process, which will diminish the value of its assets and cause a forced layoff of hundreds of employees. The Debtor requires the use of Cash Collateral in order to protect and preserve its going concern value.

18. Notwithstanding anything contained herein, the Debtor reserves the right to dispute the Lenders’ secured status and the extent to which their claims may be secured, if at all, and the extent of any adequate protection liens granted in any interim order or final order on this Motion.

BASIS FOR RELIEF

19. Section 363(c)(2) of the Bankruptcy Code authorizes a debtor to use cash collateral if either (a) each entity with an interest in the cash collateral consents, or (b) the Court, after notice and a hearing, authorizes such use. 11 U.S.C. § 363(c)(2).

20. Section 363(e) of the Bankruptcy Code conditions such use on the provision of “adequate protection” of the secured parties’ interests. 11 U.S.C. § 363(e). The Bankruptcy Code does not explicitly define “adequate protection,” but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including “other relief” resulting in the “indubitable equivalent” of the secured creditor’s interest in such property. 11 U.S.C. § 361. What constitutes adequate protection must be evaluated on a case-by-case basis. *In re Swedeland Dev. Group Inc.*, 16 F.3d 552, 564 (3rd Cir. 1994) (citing *In re O’Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)); *In re Martin*, 761 F.2d 472, 476 (8th Cir. 1985).

21. The Bankruptcy Code expressly provides that “granting a replacement lien is a means of adequate protection”. 11 U.S.C. § 361(2). Granting replacement liens provides ample adequate protection of the secured creditor’s interest in cash collateral. *See e.g. In re O’Connor*, 808 F.2d at 1393; *In re Dixie-Shamrock Oil & Gas. Inc.*, 39 B.R. 115, 118 (Bankr. M.D. Tenn. 1984).

22. The Debtor’s requested use of Cash Collateral as set forth in the Budget and the protections proposed to be afforded to the Lenders in the Proposed Interim Order, in light of the circumstances, are reasonable, appropriate, and sufficient to satisfy the legal standard of “adequate protection” and will serve to maintain the value of the Lenders’ collateral. For all of the reasons stated above, approval of the Motion is proper.

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CONCLUSION

WHEREFORE, The Debtor prays that this Court (i) grant it authority to use Cash Collateral, (ii) grant the Adequate Protection Liens to the Lenders, (iii) set the Motion for a final hearing, and (iv) grant such other relief as is just and proper.

Dated: October 4, 2019

ROUNTREE LEITMAN & KLEIN, LLC

/s/ Benjamin R. Keck

Benjamin R. Keck, Ga. Bar No. 943504
William A. Rountree, Ga, Bar No. 616503
Century Plaza I
2987 Clairmont Road, Suite 175
Atlanta, Georgia 30329
(404) 584-1244 Telephone
wroundtree@rlklawfirm.com
bkeck@rlklawfirm.com
Proposed Attorneys for Debtor

Exhibit A

13-Week Budget

Capital Restaurant Group, LLC														
Weekly Cash Flow Budget														
October, 2019 – December, 2019														
	Budget 10/5/2019	Budget 10/12/2019	Budget 10/19/2019	Budget 10/26/2019	Budget 11/2/2019	Budget 11/9/2019	Budget 11/16/2019	Budget 11/23/2019	Budget 11/30/2019	Budget 12/7/2019	Budget 12/14/2019	Budget 12/21/2019	Budget 12/28/2019	Total for 13 Weeks
Week Ending:														
Cash Balance - Beginning of Week	180,000	239,377	367,884	334,067	453,988	329,631	472,729	331,305	330,898	322,396	334,750	216,068	233,896	180,000
Sales	400,000	360,000	330,000	330,000	358,000	350,840	350,840	350,840	350,840	350,840	350,840	350,840	350,840	4,584,720
Sales Tax Collected (Average of 9.8% rate)	39,200	35,280	32,340	32,340	35,084	34,382	34,382	34,382	34,382	34,382	34,382	34,382	34,382	449,303
Rebate Income	-				10,000									10,000
Total Cash Receipts	439,200	395,280	362,340	362,340	403,084	385,222	385,222	385,222	385,222	385,222	385,222	385,222	385,222	5,044,023
Sales Tax								165,004				146,769		311,773
Credit Card Fees	7,000	6,300	5,775	5,775	6,265	6,140	6,140	6,140	6,140	6,140	6,140	6,140	6,140	80,233
Cost of Sales (Food, beverage, paper)	134,000	120,600	107,250	107,250	116,350	114,023	114,023	114,023	114,023	114,023	114,023	114,023	114,023	1,497,634
Salaries & Wages & Payroll Related Expenses	238,823	74,233	205,212	67,465	187,100	62,000	201,300	62,000	187,100	62,000	201,300	62,000	176,300	1,786,832
Restaurant supplies and misc. expenses		9,000	8,250	8,250	8,950	8,771	8,771	8,771	8,771	8,771	8,771	8,771	8,771	104,618
Equipment Rent, Repairs & Maintenance		12,500	12,500	12,500	14,100	12,500	12,500	12,500	12,500	14,100	12,500	12,500	12,500	153,200
Utilities		17,640	16,170	16,170	17,542	17,191	17,191	17,191	17,191	17,191	17,191	17,191	17,191	205,051
Advertising Costs		1,500				1,500	62,457			1,500	60,226			127,183
Royalties							70,264				67,754			138,018
Ordinary Course Professionals			16,000		8,000		12,000		8,000		12,000		8,000	64,000
Bank Charges		5,000					4,000				4,000			13,000
Rent & CAM					127,804					127,804				255,608
Property & Casualty Insurance (not health or worker's comp)					21,339					21,339				42,678
Payments to contractors for fire-damaged store		20,000	20,000	20,000	20,000	20,000	18,000							118,000
Other costs to re-open fire-damaged store			5,000	5,000										10,000
Debtor's legal fees									40,000				40,000	80,000
Total Cash Disbursements	379,823	266,773	396,157	242,410	527,450	242,125	526,646	385,629	393,725	372,868	503,905	367,394	382,925	4,987,829
Increase (Decrease) In Cash For Week	59,377	128,507	(33,817)	119,930	(124,366)	143,097	(141,424)	(407)	(8,503)	12,354	(118,682)	17,828	2,297	56,193
Cash Balance - End of Week	239,377	367,884	334,067	453,988	329,631	472,729	331,305	330,898	322,396	334,750	216,068	233,896	236,193	236,193

Exhibit B

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In Re:	CASE NO. 19-65910
CAPITAL RESTAURANT GROUP, LLC,	CHAPTER 11
Debtor.	

**INTERIM ORDER AUTHORIZING DEBTOR TO USE
CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

This matter came before the Court on October ____, 2019, for hearing (the “**Preliminary Hearing**”) on the Motion of Capital Restaurant Group, LLC. (the “**Debtor**” or “**Debtor in Possession**”) for Authority to Use Cash Collateral (the “**Motion**”). Upon consideration of the Motion, representations of counsel at the Preliminary Hearing, and all other matters of record, the Court hereby finds:

- A. The Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code on October 4, 2019 (the “**Petition Date**”). Pursuant to Sections 1107 and 1108 of the

Bankruptcy Code, the Debtor remains in possession of its assets and has continued the operation and management of the Service in this reorganization case.

- B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2), involving matters under 11 U.S.C. §§ 361 and 363. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.
- C. The Debtor asserts that it owns and operates 24 restaurants in the state of South Carolina under franchise agreements with Burger King Corporation and pursuant to leases for each location (the “**Business**”).
- D. The Debtor asserts that it is party, as borrower, to that certain Master Loan Agreement dated July 8, 2016, as modified (the “**Loan Agreement**”), with First Franchise Capital Corporation (“**FFCC**”), as lender. The Debtor further asserts that, pursuant to the Loan Agreement, the Debtor executed a promissory note in favor of FFCC in the principal amount of \$3.8 million. As of the Petition Date, the Debtor asserts that the outstanding balance owed to FFCC pursuant to the Loan Agreement is approximately \$2,715,779.79.
- E. The Debtor asserts that it is a party, as borrower, to that certain Purchasing Card Service Agreement dated August 11, 2019 (the “**P-Card Agreement**”) with Regions Bank (“**Regions**”), as lender. The Debtor asserts that pursuant to the P-Card Agreement, the Debtor established and used a line of credit provided by Regions. The Debtor also asserts that it maintains several depository accounts with Regions. As of the Petition Date, the Debtor asserts that the outstanding balance owed to Regions pursuant to the P-Card Agreement is approximately \$475,000.00.

- F. The revenue from the Business may constitute Cash Collateral as that term is defined in 11 U.S.C. Section 363 (the “**Cash Collateral**”). The Debtor believes that FFCC and Regions (collectively, the “**Lenders**”) may assert an interest in the Cash Collateral.
- G. The Debtor asserts that it generates substantially all of its revenue from the operation of the Business.
- H. The Debtor asserts that it has provided actual notice of the Motion and the relief requested therein to the Lenders, to each of the Debtor’s Twenty Largest Unsecured Creditors, and the United States Trustee.
- I. The Debtor alleges that an immediate need exists for the Debtor to obtain use of the Cash Collateral to fund critical operations of the Business. A schedule of the Debtor’s revenues and cash requirements for the next 13 weeks is set forth in the budget (the “**Budget**”) attached to the Motion as **Exhibit A**.
- J. The Debtor alleges that in order to continue the Debtor’s operations and to preserve the value of the Debtor’s assets, the Debtor requires the use of the Cash Collateral in accordance with this Order.
- K. Good cause has been shown for the entry of this Order and authorization for Debtor to use cash collateral pending the final hearing on the Cash Collateral Motion pursuant to Bankruptcy Rule 4001(b) (the “**Final Hearing**”). Among other things, entry of this Order will minimize the disruption of the Business, will increase the possibility for a successful reorganization, and is in the best interests of the Debtor, its creditors, and other parties-in-interest.

Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. The Motion is GRANTED on an interim basis. Subject to the terms hereof, this Order is effective immediately.

2. The Debtor is authorized to use Cash Collateral as set forth herein from the date of the entry of this Order through and including the date of the final hearing on the Motion (the “**Interim Period**”). The Interim Period may be extended by further order of the Court.

3. In order to provide adequate protection for the Debtor’s use of the Cash Collateral authorized hereunder, the Lenders and any other secured creditor, to the extent they hold valid liens, security interests, or rights of setoff as of the Petition Date under applicable law, are hereby granted valid and properly-perfected liens (the “**Adequate Protection Liens**”) on all property acquired by the Debtor after the Petition Date that is the same or similar nature, kind, or character as each Lender’s respective pre-petition collateral, to the extent of any diminution in the value of the Cash Collateral, except that no such replacement liens shall attach to the proceeds of any avoidance actions under Chapter 5 of the Bankruptcy Code. The Adequate Protection Liens shall be deemed automatically valid and perfected upon entry of this Order.

4. Nothing herein shall be construed as a finding or conclusion that any of the Lenders or any other party holds a valid security interest, lien, or any interest in any of the Debtor’s assets, and all parties’ rights with respect to such issues are reserved.

5. This Order is entered without prejudice to the rights of either the Lenders or the Debtor to seek a modification of the terms hereof after notice and a hearing, and without prejudice to the right of Debtor to object to any claim.

6. **The Court shall hold a final hearing on the Motion on _____ at __ a.m./p.m. in Courtroom ____, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303.**

The instant Order shall remain valid until such hearing, or any continuation thereof, has been held and a ruling entered.

END OF ORDER

Prepared and presented by:

ROUNTREE LEITMAN & KLEIN, LLC

/s/ Benjamin R. Keck

Benjamin R. Keck, Ga. Bar No. 943504
William A. Rountree, Ga. Bar No. 616503
Century Plaza I
2987 Clairmont Road, Suite 175
Atlanta, Georgia 30329
(404) 584-1244 Telephone
wroundtree@rklawfirm.com
bkeck@rklawfirm.com

Proposed Attorneys for Debtor