

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA

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

**MOTION TO ASSUME EXECUTORY CONTRACT, BRIEF IN SUPPORT,  
AND NOTICE OF OPPORTUNITY FOR HEARING**

**Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document.** If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Ave., Oklahoma City, OK 73102 no later fourteen (14) days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant's attorney and all others required to be served and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

**The 14-day period for response includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).**

Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession in the above-captioned cases (collectively, “Debtors”), hereby file this

<sup>1</sup> The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case No. 17-11445-SAH.

motion (the “Motion”) for entry of an order under to assume the existing services agreement by and between Debtor and Performance Food Group, Inc. (“PFG”) (the “PFG Agreement”) pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 2002, 6006 and 9014. In support of this Motion, the Debtors rely on the Affidavit of William C. Liedtke, III, Vice-President and Managing Member of Debtors, in Support of Debtors’ Chapter 11 Petitions and First Day Motions (the “First Day Affidavit”).<sup>2</sup> In further support of this Motion, the Debtor respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief sought herein is 11 U.S.C. §§ 105(a) and 365.

### **BACKGROUND AND OVERVIEW**

3. On April 18, 2017 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Oklahoma (the “Bankruptcy Court”).

4. The Debtors continue to operate their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors has not yet been appointed in

---

<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning set forth in the First Day Affidavit.

these Chapter 11 Cases.

5. A description of the Debtors' businesses, the reasons for filing these Chapter 11 Cases and the relief sought from the Bankruptcy Court to allow for a smooth transition into operations under chapter 11 of the Bankruptcy Code is set forth in the First Day Affidavit. The Debtors hereby adopt and incorporate the First Day Affidavit as if fully set forth herein.

6. Eateries (directly or through its various subsidiaries, including Zanesville) operates a chain of 15 restaurants located in 9 states, and previously employed more than 450 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, JCPenney that they have or will close hundreds of these anchor stores. This downturn has had a direct impact on this business of those restaurants located in shopping malls experiencing decreased business.

7. 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, employing approximately 375 people, at the time of the filing of this case.

8. Debtors have carefully analyzed the available suppliers and vendors and have determined the suppliers and vendors that are critical (the "Critical Trade Vendors") and necessary to the continued operation of Debtors' businesses based on the goods and services

supplied and the availability of other sources of supply of similar cost and quality. Debtors have separately asked this Court for permission to allow it to continue to pay its vendors which it has identified as critical to their continued operations by way of separate motion.

9. Of the amounts owed to Critical Trade Vendors, 85% of the total debt is owed to Performance Food Group, Inc. (“PFG”), Debtors’ primary food supplier for all of its restaurants.

10. Debtors engaged in substantial pre-petition negotiations with PFG in an effort to continue its relationship with PFG to induce PFG to continue to provide the food and other supplies critical to the continued operation of the Debtors’ business. One of the terms negotiated was that PFG would be listed as a critical vendor and that its executory contract(s) be assumed early in the bankruptcy case.

11. Debtor submits that the amount owed to PFG is equal to the cure costs due upon assumption of their executory contract.

12. It is my opinion that it would be prohibitively expensive and cumbersome to locate and secure a new contract with a food supplier unfamiliar with Debtors’ restaurants and their food supply needs in sufficient time to continue effective operation of the Debtors’ restaurants.

**I. REQUEST FOR AN ORDER ALLOWING ASSUMPTION OF PROGRESSIVE SERVICES AGREEMENT.**

**A. Relief Requested**

13. In the exercise of its business judgment, Debtors respectfully seek to assume the PFG Agreement and to cure the prepetition default in an amount not to exceed \$350,000.00 as provided under 11 U.S.C. § 365(a) and Fed. R. Bankr. P. 6006.

14. To provide adequate assurances to PFG, the Debtors negotiated an agreement to

grant liens upon its assets that are inferior to the liens proposed to be granted to Spirit Bank (the proposed debtor-in-possession lender) herein but with priority over the liens of Fiesta Holdings, Inc., Fresh Capital, LLC and Practical Investors, LLC (collectively, the “Secured Creditor”) in the event the Secured Creditors are not the ultimate purchaser of the Debtors’ assets and assume the PFG Agreement as a part of the sale of Debtors’ assets. Debtors, as a part of the *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 Administrative Expense Status to Lender, (D) Scheduling a Final Hearing; and (E) Granting Related Relief* have sought authority to grant such liens. Additionally, in the Debtor’s business judgment, the PFG Agreement is an integral component to achieving the highest and best results with respect to the proposed asset sale.

9. Debtors are aware that the Secured Creditors desire to assume the PFG Agreement and assumes that any other interested bidder would likewise wish to assume that agreement where it would be not be cost effective and cumbersome to locate and secure a new contract with a food supplier unfamiliar with Debtors’ restaurants and their food supply needs in sufficient time to continue effective operation of the Debtors’ restaurants.

10. This Motion is not intended to encompass each and every executory contract or unexpired lease of the Debtors. There are other unexpired leases and executory contracts not addressed herein and it is not the intention of the Debtors by omission of any such lease or contract from this Motion to imply the assumption or rejection of such lease or contract by the filing of this Motion.

WHEREFORE Debtors request the following relief:

A. That the Court make and enter its Order authorizing and permitting the assumption of the PFG Agreement between Debtors and PFG with prepetition defaults up to \$350,000.00 to be cured; and

B. That the Debtors and their estates have such other and further relief as may be justified in the premises.

### **NOTICE OF THE MOTION**

15. Notice of this pleading has been provided by e-mail, facsimile, or overnight delivery to: (i) the Office of the United States Trustee; (ii) SpiritBank, care of counsel Kevin Blaney; (iii), Fresh Capital, LLC, Practical Investors, LLC, and Fiesta Holdings, Inc. care of counsel Jared Giddens, Dillon Curran, Justin Pybas (“Secured Lenders”); (iv) Debtors’ landlords listed on Schedule G, and (v) the twenty largest unsecured creditors for each of the Debtors. In light of the expedited nature of the relief requested herein and the irreparable harm to the Debtors that may ensue if the relief requested is not granted, the Debtors submit that no further notice need be given and that the notice provided by the Debtors is sufficient.

16. No prior request for the relief requested herein has been made to this or any other Court.

### **CONCLUSION**

WHEREFORE, Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as this Court deems just and proper.

Attached hereto as Exhibit 1 is a proposed order granting the relief requested herein.

Respectfully submitted,

*s/ Mark A. Craige*

---

Mark A. Craige, OBA No. 1992  
-Of the Firm-  
CROWE & DUNLEVY  
A Professional Corporation  
500 Kennedy Building  
321 South Boston Avenue  
Tulsa, Oklahoma 74103-3313  
Telephone: 918.592.9800  
Facsimile: 918.592.9801  
mark.craige@crowedunlevy.com

and

Lysbeth L. George, OBA No. 30562  
-Of the Firm-  
CROWE & DUNLEVY  
A Professional Corporation  
Braniff Building  
324 North Robinson Avenue, Suite 100  
Oklahoma City, OK 73102-8273  
Telephone: (405) 234-3245  
Facsimile: (405) 272-5203  
lysbeth.george@crowedunlevy.com

PROPOSED COUNSEL FOR DEBTOR

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

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

**ORDER GRANTING MOTION TO ASSUME EXECUTORY CONTRACT, BRIEF IN  
SUPPORT, AND NOTICE OF OPPORTUNITY FOR HEARING**  
[RELATES TO THE MOTION AT DKT. \_\_\_\_]

Upon the *Motion to Assume Executory Contract, Brief in Support, and Notice of Opportunity for Hearing* (the “Motion to Assume”) [Dkt. No. \_\_\_\_] filed on April 18, 2017, and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper pursuant to

\_\_\_\_\_  
<sup>1</sup> The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case Nos. 17-11444 and 17-11445.

28 U.S.C. §§ 1408 and 1409, and it appearing that the relief requested in the Motion to Assume is in the best interests of these estates, and all creditors and parties-in-interest of these estates; and the Debtors having provided adequate and appropriate notice of this Motion under the circumstances; and based upon the representations of Debtors as set forth in the Motion, and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, DETERMINED, ADJUDGED AND DECREED THAT:

1. The Motion to Assume is GRANTED.
2. This Court hereby authorizes and permits the assumption of the PFG Agreement<sup>2</sup> between Debtors and PFG with prepetition defaults up to \$350,000.00 to be cured.
3. All findings of fact in this Order are based upon representations of counsel.

IT IS SO ORDERED.

###

Submitted for Entry:

*s/ Mark A. Craige*

---

Mark A. Craige, OBA No. 1992

-Of the Firm-

CROWE & DUNLEVY

A Professional Corporation

500 Kennedy Building

321 South Boston Avenue

Tulsa, Oklahoma 74103-3313

Telephone: 918.592.9800

Facsimile: 918.592.9801

mark.craige@crowedunlevy.com

---

<sup>2</sup> As defined in the Motion to Assume.

and

Lysbeth L. George, OBA No. 30562

-Of the Firm-

CROWE & DUNLEVY

A Professional Corporation

Braniff Building

324 North Robinson Avenue, Suite 100

Oklahoma City, OK 73102-8273

Telephone: (405) 234-3245

Facsimile: (405) 272-5203

lysbeth.george@crowedunlevy.com

**PROPOSED COUNSEL FOR DEBTOR**