

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

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

**DEBTOR’S MOTION FOR AUTHORITY TO ENTER INTO
DIP CREDIT AGREEMENT TO FINANCE
INSURANCE PREMIUMS, GRANTING FIRST PRIORITY SECURITY
INTERESTS, PROVIDE ADEQUATE PROTECTION, BRIEF IN SUPPORT,
AND NOTICE OF OPPORTUNITY FOR HEARING**

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 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” or “Debtor”), Debtor and Debtor-in-Possession herein, by and through its Attorneys, makes its Motion for Authority to Enter into a DIP Credit Agreement to

¹ The affiliated Debtors are Eateries, Inc., Case No. 17-11444-SAH, and GRP of Zanesville, LLC, Case No. 17-11445-SAH. Although there are multiple Debtors in this case, this Motion is filed only by Eateries, Inc.

Finance Insurance Premiums and to Provide Adequate Protection, and in support thereof, states as follows:

1. On April 18, 2017 (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of the United States Bankruptcy Code. Debtor filed contemporaneously with Debtor GRP of Zanesville, LLC, a related entity, and their cases are jointly administered pursuant to this Court’s Order dated April 18, 2017.

2. The Debtor has continued to operate its business and manage its financial affairs as Debtor-in-Possession. No Trustee, examiner, or committee of unsecured creditors has been appointed to serve in this reorganization case.

3. A description of the Debtor’s business, the reasons for filing its Chapter 11 cases, and the relief sought from the Bankruptcy Court to allow for a smooth reorganization under chapter 11 of the Bankruptcy Code is set forth in the Affidavit of William C. Liedtke, III, Vice President of Eateries, and Zanesville, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions, sworn to on April 17, 2017 (the "First Day Affidavit") [Dkt. # 10]. The Debtor hereby adopts and incorporates the First Day Affidavit as if fully set forth herein.

4. Contemporaneously with the filing of the Debtor’s Petition, the Debtor filed its Insurance Motion² requesting authority to continue its pre-petition insurance program and the corresponding financial agreement. This Court granted the Debtors’ Insurance Motion on April 25, 2017 [Dkt. # 69].

² Motion for Order: (i) Authorizing Continuance of Pre-Petition Insurance Program; and (ii) Authorizing Payment of any Pre-Petition Payments Premiums and Related Obligations; and (iii) Directing Bank to Honor Checks for Pre-Petition Premiums, filed on April 18, 2017 [Dkt. # 21]; and Debtors’ Amended Motion for Order: (i) Authorizing Continuance of Pre-Petition Insurance Program; and (ii) Authorizing Payment of any Pre-Petition Payments Premiums and Related Obligations; and (iii) Directing Bank to Honor Checks for Pre-Petition Premiums and Notice of Opportunity for Hearing, filed on April 19, 2017 [Dkt. # 32] (collectively, the “Insurance Motion”).

5. In continuing to operate its business in the normal course, the Debtor needs to maintain adequate insurance coverage. Presently, for coverage through October 2018, the Debtor needs to execute new Commercial Premium Finance Agreements (“Premium Finance Agreements”) with FIRST Insurance Funding, a Division of Lake Forest Bank & Trust Company, N.A (“FIRST”) for the financing of the Debtor’s automobile, general liability, umbrella, liquor, workers’ compensation, property, and D&O insurance policies (“the Policies”) upon court approval. True and correct copies of the Premium Finance Agreements are attached hereto as Exhibits A and B.

6. Pursuant to the Premium Finance Agreements, FIRST will provide financing to Debtor for the purchase of the Policies which are essential for the operation of Debtor’s business. Under the Premium Finance Agreements, the total premium amount is \$215,455.00 and the total amount to be financed is \$161,591.25. Under the Premium Finance Agreements, Debtor will pay a down payment to its agent in the amount of \$53,863.75, and Debtor will pay the balance due to FIRST in 9 monthly installments of \$18,345.84 each. The installment payments are due on the 1st day of each month commencing on November 1, 2017, or as soon as an order is entered approving this Motion. As collateral to secure the repayment of the total of payments, any late charges, attorney’s fees and costs (Indebtedness) under the Premium Finance Agreements, Debtor is granting FIRST a security interest in, among other things, the unearned premiums of the Policies. The Premium Finance Agreements provide that the law of the state where the Insured resides, in this case Oklahoma, governs the transaction.

7. Pursuant to the terms of the Premium Finance Agreements, Debtor is appointing FIRST as its attorney-in-fact with the irrevocable power to cancel the policies and collect the unearned premium in the event Debtor is in default of its obligations under the Premium Finance

Agreements.

8. Debtor and FIRST have reached an agreement that the adequate protection appropriate for this situation would be as follows:

- a) Debtor be authorized and directed to timely make all payments due under the Premium Finance Agreements and FIRST be authorized to receive and apply such payments to Indebtedness owed by Debtor to FIRST as provided in the Premium Finance Agreements.
- b) If Debtor does not make any of the payments due under the Premium Finance Agreement as they become due, the automatic stay shall automatically lift to enable FIRST and/or third parties, including insurance companies providing the coverage under the Policies, to take all steps necessary and appropriate to cancel the Policies, collect the collateral and apply such collateral to Indebtedness owed to FIRST by Debtor. In exercising such rights, FIRST and/or third parties shall comply with the notice and other relevant provisions of the Premium Finance Agreements.

BRIEF IN SUPPORT

9. Debtor believes that the terms of the Premium Finance Agreements are commercially fair and reasonable including the granting of a lien on the Policies to FIRST. Debtor is required to maintain adequate insurance coverage and without it, would be forced to cease operations. Debtor has been unable to obtain unsecured credit to fund the Policies.

10. The Debtor has been unable to obtain other sources of cash or credit in the form of unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense pursuant to Bankruptcy Code § 364(a) and therefore seeks credit on a secured basis pursuant to Bankruptcy Code § 364(c)(2) and (3) by granting liens upon assets that are otherwise unencumbered. The Premium Finance Agreements provide for a lien upon the insurance policy and unearned premiums as assets that are not presently in existence and which will only be created as a result of the funding provided by FIRST. Therefore, the liens granted to FIRST pursuant to the Premium Finance Agreements are first priority liens upon assets that are

otherwise unencumbered. The grant of such liens does not otherwise impair any other secured creditor and are therefore appropriate in this case.

11. The relief requested by this Motion is warranted and appropriate under the circumstances. Debtor submits that authorization of the Premium Finance Agreements will ensure that Debtor can continue necessary operations, and will not prejudice the legitimate interests of creditors and other parties in interest, including Debtor's secured creditors.

WHEREFORE, PREMISES CONSIDERED, Debtor respectfully requests that this Court enter an Order authorizing it to enter into the Premium Finance Agreements with FIRST, and the Debtor and FIRST be authorized and directed to take all actions necessary or appropriate to affect said agreement and for such other and granting such other further relief as is just and proper.

Respectfully submitted,

CROWE & DUNLEVY

/s/ Mark A. Craige

Mark A. Craige, OBA No. 1992
500 Kennedy Building
321 South Boston Avenue
Tulsa, Oklahoma 74103-3313
918.592.9800 Telephone Number
918.592.9801 Facsimile Number
mark.craige@crowedunlevy.com

-and-

Lysbeth George, OBA No. 30562
324 North Robinson, Suite 100
Oklahoma City, Oklahoma 73102
405.235.7700 Telephone Number
405.239.6651 Facsimile Number
lysbeth.george@crowedunlevy.com

**COUNSEL FOR DEBTOR-IN-
POSSESSION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of December, 2017, I caused the foregoing document to be transmitted to the Court Clerk for electronic filing and transmittal of a Notice of Electronic Filing to all ECF registrants in this case.

Kevin Blaney, Attorney for Creditor SpiritBank, kblaney@btlawokc.com

Marjorie J. Creasey, U.S. Trustee's Office, marjorie.creasey@usdoj.gov

J. Dillon Curran, Attorney for Fiesta Holdings, Inc., Fresh Capital, LLC,
Practical Investors, LLC, dcurran@cwlaw.com

Jared Dwain Giddens, Attorney for Fiesta Holdings, Inc., Fresh Capital, LLC
Practical Investors, LLC, jgiddens@cwlaw.com

Eric G. Odom, Attorney for Creditor SpiritBank, eric@btlawokc.com

United States Trustee, Ustpregion20.oc.ecf@usdoj.gov

The undersigned further states that on the 5th day of December, 2017, I caused a true and correct copy of the above and foregoing instrument to be mailed by first class U.S. Mail, proper postage prepaid and affixed thereon to all parties listed on the Master Service List [Dkt. # 90] attached as Exhibit "C."

The undersigned further states that on the 5th day of December, 2017, notice of the filing of this document was sent by postcard, via U.S. Mail, postage prepaid and affixed thereon to all parties listed on the Amended Consolidated Matrix [Dkt. # 116], attached hereto as Exhibit "D." The form of the postcard notice is attached as Exhibit "E" hereto.

/s/Mark A. Craige
Mark A. Craige