

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

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

**MOTION TO ASSUME UNEXPIRED LEASE OF NON-RESIDENTIAL REAL
PROPERTY FOR MEADOWBROOK MALL SHOPPING CENTER LOCATION
AND PAY COMMISSIONS, 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).

1. Eateries, Inc. (“Eateries” or “Debtor”), debtor and debtor-in-possession in the above-captioned case, hereby files this motion (the “Motion”) for entry of an order under to assume the unexpired lease of non-residential real property related to the Garfield’s Restaurant

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

and Pub location in Meadowbrook Mall Shopping Center in the City of Bridgeport, County of Harrison, State of West Virginia, as modified by negotiation by and between Eateries and Meadowbrook Mall Company (“Landlord”) pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 2002, 6006 and 9014, and to pay a commission to Hilco, Inc. (“Hilco”) for its assistance in the negotiations of the modified lease agreement. The renegotiated lease agreement between Eateries and the Landlord has been memorialized in Exhibit “A” hereto which shall hereinafter be referred to as the “Modified Agreement.” The original lease agreement and previous lease amendments are available upon written request to Counsel for the Debtor and such documents shall also be made publicly available on the website maintained by the Debtor at: <http://www.eateriesinc.com>. In 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 Debtor filed its voluntary petition 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 Debtor continues to operate its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured

creditors has not been appointed in this Chapter 11 Case.

5. A description of the Debtor's businesses, the reasons for filing this Chapter 11 Case 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 of William C. Liedtke, III [Dkt. No. 10] (the "First Day Affidavit"). The Debtor hereby adopts and incorporates the First Day Affidavit as if fully set forth herein.

6. Immediately prior to the filing of this bankruptcy, Eateries (directly or through its various subsidiaries, including Zanesville) operated a chain of 15 restaurants located in 9 states, and 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 several 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 locations in operation in 6 states, employing approximately 375 people, at the time of the filing of this case.

8. On June 27, 2017, this Court entered an Order Authorizing the Employment of Hilco Real Estate, LLC including approval payment for such professional services in accordance

with the terms of the commission and fees, inclusive of reimbursement of any expenses incurred, as set forth in the Application and exhibits thereto. *See* Application at Dkt. No. 133; *see also* Order at Dkt. No. 139.

9. Debtor and Landlord entered into a pre-petition lease of non-residential real property (the “Lease”) that is described in detail in the Modification Agreement. In light of the changes in market conditions, with the assistance of Hilco the Debtor and Landlord were able to negotiate modified terms for the Lease sufficient to cause the Lease to be economically advantageous for the Debtor to assume the Lease as modified by the Modification Agreement (the modified Lease shall hereafter be referred to as the “Modified Lease”).

10. Debtor believes that it would be prohibitively expensive, disruptive and cumbersome to locate and secure a new location for their restaurant that is now operating in the premises that is the subject of the Modified Lease and as such, given the favorable terms that have been negotiated in the Modified Lease, the Debtor hereby seeks approval of its assumption of the Modified Lease.

11. On July 13, 2017, the Debtor filed a Motion pursuant to § 363 to sell its primary assets and therein included a request that certain unexpired leases be assumed and assigned to the buyer [Doc. 141] (the “Sale Motion”). The Sale Motion is set for hearing on September 13, 2017. Debtor requests the effective date of the relief requested herein be upon the entry of an order granting the Sale Motion (the “Sale Order”).

REQUEST FOR AN ORDER ALLOWING ASSUMPTION OF THE MODIFIED LEASE

12. In the exercise of its business judgment, Debtor respectfully seek to assume the Modified Lease including a waiver of the cure costs provided for under 11 U.S.C. § 365(a) and

Fed. R. Bankr. P. 6006. *See* Modification Agreement at ¶ 12.

13. The terms of the Modified Lease are sufficient to provide adequate assurances to the Landlord.

14. Debtor is aware that the Secured Creditors with whom the Debtor is negotiating a Stalking Horse sale agreement desire to assume the Modified Lease. Debtor further believes that any other interested bidder would likewise wish to assume the Modified Lease as it would be costly, disruptive, and cumbersome to locate and secure a new location for the restaurant currently operating in the premises of the Modified Lease.

15. This Motion is not intended to encompass each and every executory contract or unexpired lease of the Debtor. There are other unexpired leases and executory contracts not addressed herein and it is not the intention of the Debtor 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.

REQUEST FOR AN ORDER ALLOWING PAYMENT OF COMMISSION TO HILCO

16. The Debtor has an agreement with Hillco to pay commission for their assistance with the renegotiations of several of the unexpired leases related to their various restaurant operations as approved by this Court. *See* Order at Dkt. No. 139. The Lease is one of the agreements with which Hillco has been involved.

17. The terms of compensation to be paid to Hilco are as follows:

(4) Compensation. As compensation for Hilco's Services, subject to approval by the Bankruptcy Court, the Company will pay to Hilco compensation in accordance with the following.

(a) Certain Definitions.

(i) “Restructured Lease” means any Lease for which the Company enters into a written agreement with the applicable landlord that has the effect of modifying the terms of such Lease.

(ii) “Restructured Lease Savings Fee” means, for any Restructured Lease, an amount equal to a base fee of \$2,500, plus the aggregate Restructured Lease Savings multiplied by seven and one-half percent (7.50%); provided, further, that the Restructured Lease Savings Fee shall be capped at \$10,000 for each of the following locations: (x) State College, Pennsylvania, (y) Selinsgrove, Pennsylvania, and (z) Carbondale, Illinois.

(iii) “Restructured Lease Savings” means an amount equal to the net savings created by a Restructured Lease, including (without limitation) the sum of (x) the aggregate reduction of base rent, percentage rent, CAM, real estate taxes, property insurance, and deferred maintenance or maintenance obligations (including clean up) payable under a lease (inclusive of term shortening), and (y) the aggregate amount of any tenant improvement allowance dollars or landlord capital contribution secured plus any past due costs, cure costs or expenses waived, minus any restructuring, termination or similar fees paid by the Company to the counterparty to the leased property, or any other party, in connection with the Restructured Lease. Where term is extended and the rent during such extended period is not specifically fixed or calculable within a leased property, Restructured Lease Savings shall be based on the last year's rent immediately prior to the extended period under a leased property.

(b) Restructuring. For each Lease that becomes a Restructured Lease, Hilco shall earn a fee equal to the Restructured Lease Savings Fee. The amounts payable on account of a Restructured Lease shall be paid in monthly installments, commencing upon the closing of the transaction having the effect of restructuring the Lease and continuing on the first calendar day of each month thereafter, in an amount equal to the lesser of (x) the Restructured Lease Savings Fee which remains due and owing or (y) 100% of the Company's monthly realized Restructured Lease Savings for such Lease until the full amount of the Restructured Lease Savings Fee for such Lease is paid in full; provided, however, that any amounts still payable to Hilco on account of any Restructured Leases shall be immediately due and owing in full upon the expiration of the Term.

(c) Retainer. Omitted.

(d) Free and Clear. All fees payable to Hilco hereunder shall be free and clear of any liens, claims and encumbrances, including the liens of any secured parties.

(5) Commission for Liquor License Sales. Upon the successful close of a sale of a liquor license owned by the Company, Hilco shall earn a commission on such sale payable at closing in a percentage amount equal to ten percent (10%) of the purchase price and/or other consideration paid for such liquor license.

(6) Expenses. All Expenses (defined below) shall be borne by the Company, and Hilco shall be entitled to reimbursement from the Company for all Expenses. "Expenses" means all reasonable, documented (through receipts or invoices) out-of-pocket expenses incurred by Hilco in connection with its performance of its Services hereunder, including, without limitation: reasonable expenses of advertising, marketing, coach travel and transportation, including, the cost of out-of-town travel and postage and courier/overnight express fees and other mutually agreed upon expenses incurred in connection with performing the services required by this Agreement.

18. The Modified Lease provides, amongst other renegotiated benefits, a \$555,738.00 in savings to the Debtor, therefore, in accordance with the terms of the Real Estate Consulting Agreement between Hilco and Eateries, Hilco is entitled to a commission of \$21,258.00² to be paid in monthly installment as provided in the Real Estate Consulting Agreement (the "Commission"). See Real Estate Consulting Agreement at ¶¶ 4, 6 attached as Exhibit 1 to Application to Employ Hilco [Dkt. No. 133].

19. Upon entry of an order granting this Motion, Hilco will have fully earned the Commission.

20. Debtor requests this Court authorize payment of the Commission as a part of the

² The amount of the commission represents a discounted rate than what would have otherwise been calculated based upon the formula in the Commission. Hilco agrees, with respect to this particular Modified Lease, to provide a discounted rate resulting in the agreed upon commission of \$21,258.00.

Order granting this Motion.

WHEREFORE Debtor requests the following relief:

A. That the Court make and enter its Order authorizing and permitting the assumption of the Modified Lease between Debtor and the Landlord in accordance with the terms set forth in the Modified Lease;

B. That the Court authorize payment of the Commission to Hilco as a part of the Order granting this Motion;

C. That the effective date of the relief requested herein be the same date as the entry of the Sale Order; and

D. That the Debtor and its estate have such other and further relief as may be justified in the premises.

CONCLUSION

WHEREFORE, Debtor respectfully requests 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 "B" is a proposed order granting the relief requested herein.

Respectfully submitted,

s/ Mark A. Craige

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and

William H. Hoch, OBA No. 15788
Lysbeth L. George, OBA No. 30562
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will.hoch@crowedunlevy.com
lysbeth.george@crowedunlevy.com

COUNSEL FOR DEBTOR

ACJ/RLM/aes, 05/02/17; 06/20/17

LEASE AMENDMENT NO. 5

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THIS LEASE AMENDMENT NO. 5, made as of this 25th day of July, 2017, by and between MEADOWBROOK MALL COMPANY, an Ohio limited partnership, having offices at 5577 Youngstown-Warren Road, Niles, Ohio 44446 (hereinafter referred to as "Landlord"), and EATERIES, INC., a Delaware corporation, having a permanent business address at 14504 Hertz Quail Springs Parkway, Oklahoma City, OK (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, there is a Lease in effect between the parties hereto dated November 26, 1996, as amended and/or supplemented by a Lease Amendment No. 1 dated September 2, 1997, a Satellite Dish Installment Policy Agreement dated September 8, 2000, an Extension Agreement and Lease Amendment No. 2 dated February 27, 2009, a Lease Amendment No. 3 dated November 19, 2009, and a Lease Amendment No. 4 dated December 16, 2011, for Unit No. 400, Meadowbrook Mall Shopping Center, located in the City of Bridgeport, County of Harrison, and State of West Virginia (hereinafter referred to as the "Lease"); and

WHEREAS, Tenant filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on the April 18, 2017 in the United States Bankruptcy Court for the Western District of Oklahoma (the "Court"), bearing Case Number 17-11444 (the "Bankruptcy").

WHEREAS, the parties hereto are desirous of amending certain sections of said Lease in the manner hereinafter provided.

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) paid by each of the parties hereto to the other, and in further consideration of the mutual covenants and

1 promises herein contained, the sufficiency and receipt of which are hereby acknowledged by
2 each of the parties hereto, it is agreed that said Lease be, and is hereby amended in the following
3 respects:

4 1. This Lease Amendment No. 5 is legally binding as of the date of its mutual
5 execution. Unless specifically stated to the contrary, the amendments, modifications and/or
6 additions set forth herein will become effective as of May 1, 2017 (the "Effective Date").

7 2. From and after the Effective Date, the expiration date of the Lease, as set forth in
8 Lease Amendment No. 4, is hereby reduced by two (2) years and four (4) months, therefor
9 amending the expiration date of the Lease to April 30, 2019.

10 3. From and after the Effective Date, Clause 4 of the Lease entitled "Minimum Rent"
11 is hereby deleted in its entirety and replaced with the following:

12 4. Minimum Rent

13
14 Commencing May 1, 2017 and continuing until the end of the term of
15 the Lease, Tenant hereby covenants and agrees to pay to the Landlord as
16 Minimum Rent for the Demised Premises, the sum of \$35,480.04 per year,
17 in equal monthly installments of \$2,956.67 each, all in advance on the first
18 day of every calendar month during said term.

19
20 4. From and after the Effective Date, the first sentence of the first paragraph (which
21 includes parts [a] and [b]) of Clause 5 of the Lease entitled "Percentage Rent," is hereby deleted
22 in its entirety and replaced with the following sentence:

23 Commencing May 1, 2017 and continuing until the end of the term of
24 the Lease, in addition to the payment of Minimum Rent as hereinabove
25 provided, Tenant shall pay to Landlord during each year of the term hereof
26 as Percentage Rent, a sum equal to Five Percent (5%) of all gross sales
27 (as hereinafter defined) made in, on or from the Demised Premises during
28 each lease year in excess of \$1,650,000.00 (hereinafter referred to as
29 "Breakpoint").
30

1 5. From and after the Effective Date, a new Clause 54A entitled "Extension," is hereby
2 added to the Lease as follows:

3 54A. Extension

4
5 Tenant is granted the option (provided it is not in default of any of the
6 provisions and conditions of this Lease beyond notice and cure periods) to
7 extend this Lease for one (1) additional term of two (2) years, by giving
8 notice of its intention to do so to the Landlord by no later than November
9 30, 2018. Said extension shall be upon all the terms and provisions of this
10 Lease except that:

11
12 (a) Commencing with the first day of said extension period, the Minimum
13 Rent set forth in Clause 4 of this Lease shall be increased to
14 \$45,000.00 per year, payable in equal monthly installments of
15 \$3,750.00 each, all in advance on the first day of every calendar
16 month during said extension period; and

17
18 (b) No further extension shall be included.

19
20 This extension privilege shall be null and void and of no further force or
21 effect in the event the Tenant herein assigns this Lease or sublets the
22 Demised Premises other than by operation of law through the Bankruptcy,
23 notwithstanding the fact the Landlord may have consented to said
24 assignment or subletting.

25
26 6. Tenant agrees that the Landlord's Agreement Regarding Equipment dated
27 December 26, 2002 is hereby deemed null and void and of no further force as of the Effective
28 Date of this Lease Amendment No. 4, due to the passage of time and Tenant's and GE Capital's
29 failure to notify Landlord of the expiration of said agreement.

30 7. Landlord hereby waives and forgives past due rentals and other existing monetary
31 defaults through April 30, 2017 as well as reduces the amount of rent and other charges that
32 Tenant is to pay to Landlord from that as found in the Lease prior to the date of this Lease
33 Amendment No. 5. Accordingly, should Tenant reject the Lease in the Bankruptcy pursuant to
34 11 U.S.C. Section 365, then the damages of Landlord shall be calculated on the basis of the

1 rent and charges due to Landlord for the balance of the term calculated according to the
2 provisions of the Lease prior to this Lease Amendment No. 5, giving no effect to the provisions
3 of this Lease Amendment No. 5 that either waive and forgive past due rentals and other existing
4 monetary defaults through April 30, 2017 or that reduce the amount of rent and other charges
5 otherwise due under the Lease; in such an instance, that portion of this Lease Amendment No.
6 5 shall be null and void as if never executed.

7 8. Tenant may assign this Lease through the Bankruptcy pursuant to a sale under 11
8 U.S.C. Section 363. Tenant acknowledges that nothing contained in this Lease Amendment No.
9 5 may be considered to affect the enforceability under applicable nonbankruptcy law of any
10 provision in the Lease pertaining to radius, location, use, exclusivity, or tenant mix or balance.

11 9. Landlord and Tenant acknowledge that this Lease Amendment No. 5 remains
12 subject to the approval of the Bankruptcy Court identified above. Tenant shall diligently attempt
13 to gain such Bankruptcy Court approval, and assume the Lease, as quickly as practicable. If the
14 document approval and the lease assumption have not been accomplished within sixty (60) days
15 following execution of this Lease Amendment No. 5, Landlord may, in its sole discretion, treat
16 this Lease Amendment No. 5 as null and void.

17 10. In the event Tenant remains in possession of all or any part of the Demised
18 Premises after the expiration of the term of this Lease, Tenant shall be deemed a tenant of the
19 Demised Premises from month to month and shall pay holdover charges as specified in Clause
20 17 of the Lease without regard to the provisions set forth in this Lease Amendment No. 5 or any
21 other previous amendment, if any, that reduced the amount of rent and other charges.11.

22 11. **Court Approval.** The Parties understand the Tenant intends to assume the Lease
23 as modified by this Agreement and that the assumption is subject to approval by the Court

1 pursuant to 11 U.S.C. Section 363. Tenant agrees to file a Motion with the Court seeking such
2 approval within 7 days after the execution of this Agreement by all of the Parties and diligently
3 prosecute the same. Landlord agrees to cooperate with Tenant in seeking the Court's approval.

4 12. **Cure Costs.** Upon execution of this Agreement by all Parties and payment of all
5 obligations due hereunder at the time of the entry of the Assumption Order, then all of the
6 Tenant's obligations pursuant to 11 U.S.C. §365(b)(1)(A), (B) and (C) shall be deemed fully
7 satisfied.

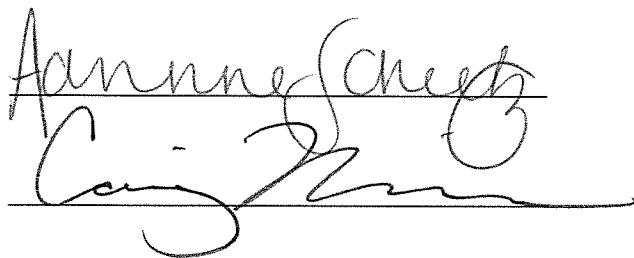
8 All of the terms, covenants and conditions of said Lease, except as are herein specifically
9 modified and amended, shall remain in full force and effect and are hereby adopted and
10 reaffirmed by the parties hereto.

11 This Lease Amendment No. 5 shall inure to the benefit of, and be binding upon, the parties
12 hereto and their respective successors and assigns.

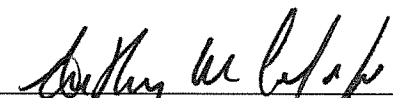
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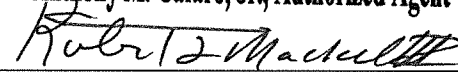
1 IN WITNESS WHEREOF, the parties hereto have caused this Lease Amendment No. 5
2 to be signed upon the day and year first above written.

Signed in the presence of:
(Each as to both signatures)

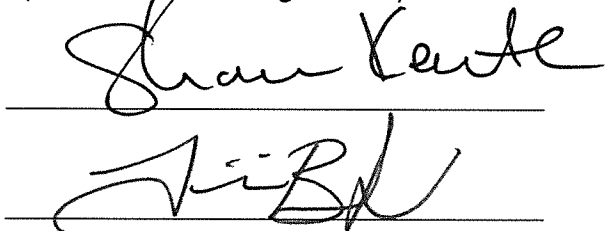


LANDLORD: MEADOWBROOK MALL
COMPANY


By: 
Anthony M. Cafaro, Jr., Authorized Agent

By: 
Robert L. Mackall III
Authorized Agent

Signed in the presence of:
(Each as to both signatures)



TENANT: EATERIES, INC.


By: 
Preston Stockton, President

By: 
William C. Liedtke III, Vice President

1 STATE OF OHIO)
2) SS:
3 COUNTY OF TRUMBULL)
4

5 Personally appeared before me, the undersigned, a Notary Public in and for said County
6 and State, Anthony M. Lafaro, Jr. and Robert L. Makkall, III, known to me to be
7 the Authorized Agents of MEADOWBROOK MALL COMPANY, the partnership which executed
8 the foregoing instrument for and on behalf of said partnership, being thereunto duly authorized;
9 that the same is their free act and deed as such Authorized Agents and the free act and deed of
10 said partnership.

11
12 IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Niles, Ohio,
13 this 26th day of June, 2017.
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19 Notary Public




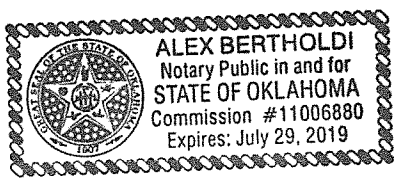
20 **CASSIDY NICHOLSON**
21 Notary Public - State of Ohio
22 Commission Expires April 18, 2021
23

24 STATE OF OKLAHOMA)
25) SS:
26 COUNTY OF OKLAHOMA)
27

28 Personally appeared before me, the undersigned, a Notary Public in and for said County
29 and State, Preston Stockton and William C. Liedtke III, known to me to be the President and
30 Vice President, respectively, of EATERIES, INC., the corporation which executed the foregoing
31 document, who acknowledged that they did sign and seal the foregoing instrument for and on
32 behalf of said corporation, being thereunto duly authorized by its Board of Directors; that the
33 same is their free act and deed as such officers and the free act and deed of said corporation.

34
35 IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at
36 Oklahoma, this 25 day of July, 2017.
37

38
39 
40 Notary Public



**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)
_____)	

**ORDER GRANTING MOTION TO ASSUME UNEXPIRED LEASE OF NON-RESIDENTIAL REAL PROPERTY FOR MEADOWBROOK MALL SHOPPING CENTER LOCATION AND PAY COMMISSIONS
[RELATES TO THE MOTION AT DKT. _____]**

Upon the *Motion to Assume Unexpired Lease of Non-Residential Real Property for the Meadowbrook Mall Shopping Center Location and Pay Commissions* (the “Motion to Assume”) [Dkt. No. _____] filed on August 11, 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. §

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

157(b)(2); and venue being proper pursuant to 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. Debtor is hereby authorized and permitted to assume the Modified Lease between Debtor and the Landlord in accordance with the terms set forth in the Modified Lease;
3. Debtor is further authorized to pay the Commission of \$21,258.00 to be paid to Hilco in monthly installments as provided in the Real Estate Consulting Agreement;
4. The effective date of the relief requested herein shall be the same date as the entry of the Order Granting Motion for An Order (a) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests to the Winning Bidder; and (b) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases of the Debtor; and
5. All findings of fact in this Order are based upon representations of counsel.

IT IS SO ORDERED.

###

Submitted for Entry:

s/ Mark A. Craige

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and

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COUNSEL FOR DEBTOR