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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 14-

In re:

CRUMBS BAKE SHOP, INC., *et al.*,¹

Debtors-in-Possession.

Chapter 11
(Joint Administration Pending)

HEARING DATE AND TIME:
July _____, 2014, at __: __.m.

ORAL ARGUMENT REQUESTED

**APPLICATION IN SUPPORT OF THE DEBTORS' MOTION FOR AN ORDER:
(A) GRANTING INTERIM RELIEF PURSUANT TO 11 U.S.C. § 366(b);
(B) AUTHORIZING THE PAYMENT OF ADEQUATE ASSURANCE FOR POST-
PETITION UTILITY SERVICES; (C) FIXING FINAL HEARING DATE TO
DETERMINE ADEQUATE ASSURANCE; AND (D) GRANTING
OTHER RELATED RELIEF**

TO: Honorable Judge of the
United States Bankruptcy Court

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's tax identification number are: Crumbs Bake Shop, Inc. (5274) ("CBS"); Crumbs Holdings LLC (8045); Crumbs 42nd Street II, LLC (5913); Crumbs Broad Street, LLC (5319); Crumbs Broadway LLC (2653); Crumbs Federal Street, LLC (9870); Crumbs Garment Center LLC (5142); Crumbs Grand Central LLC (5030); Crumbs Greenvale LLC (6562); Crumbs Greenwich, LLC (3097); Crumbs Hoboken, LLC (5808); Crumbs II, LLC (5633); Crumbs Larchmont, LLC (8460); Crumbs Lexington LLC (0286); Crumbs Park Avenue LLC (5273); Crumbs Retail Bake Shops, LLC (f/k/a Crumbs Fulton Street, LLC) (0930); Crumbs Stamford, LLC (8692); Crumbs Third Avenue LLC (6756); Crumbs Times Square LLC (1449); Crumbs Union Square LLC (8629); Crumbs Union Station LLC (6968); Crumbs West Madison, LLC (5017); Crumbs Woodbury LLC (2588).

The Application of Crumbs Bake Shop, Inc., *et al.*, the within debtors and debtors-in-possession (the “**Debtors**”), by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully represents:

I. INTRODUCTION AND JURISDICTION

1. This Application is submitted in support of the Debtors’ motion for an order: (a) granting interim relief pursuant to 11 U.S.C. § 366(b); (b) authorizing the payment of adequate assurance for post-petition utility services; (c) fixing a final hearing date to determine the sufficiency of adequate assurance; and (d) granting other related relief (the “**Motion**”).

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

II. BACKGROUND

4. On July 11, 2014 (the “**Filing Date**”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the Bankruptcy Code. Since the Filing Date, the Debtors have remained in possession of their assets and continued management of their business as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. A detailed description of the Debtors’ business and the facts precipitating the filing of the Debtors’ Chapter 11 proceedings are set forth in the Affidavit of John D. Ireland in support of the Debtors’ various “First Day Motions” (the “**Ireland Affidavit**”). Those facts are incorporated herein by reference.

6. As set forth in the Ireland Affidavit, before ceasing operations on July 7, 2014, the Debtors were one of the largest, most recognizable brand name cupcake specialty retailers in the United States. While cupcakes comprised a majority of their sales, the Debtors also offered other baked goods, including push up pops, cakes, cookies, pastries, scones, croissants, brownies

and muffins as well as hot and cold beverages. The Debtors offered these products through retail stores, an e-commerce division, catering services and a wholesale distribution business.

Additionally, the Debtors licensed the Crumbs brand to third parties such as BJ's Wholesale Club, White Coffee, PKP-Mystic Apparel, Pop!Gourmet Popcorn and Pelican Bay. Before ceasing operations, the Debtors operated 49 stores in New York, New Jersey, Illinois, Washington, D.C., Connecticut, Massachusetts, Delaware, Pennsylvania, Rhode Island, Maryland and Virginia. For the fourth quarter ending December 31, 2013, CBS and its subsidiaries had consolidated assets of \$20 million and liabilities of \$19 million. Given their severe liquidity constraints, limited available cash and to avoid incurring liabilities they could not pay, the Debtors were forced to cease operations on July 7, 2014. The Debtors filed these Chapter 11 cases to pursue a sale of their assets through Section 363, which they believe will maximize value for the benefit of all stakeholders.

III. RELIEF REQUESTED AND BASIS THEREFOR

7. In connection with their business operations, the Debtors receive electric, gas, water, internet, telephone, and other utility services (the "**Utility Services**") from numerous utility providers (the "**Utility Companies**" and each one individually, a "**Utility Company**"). A schedule identifying each of the Utility Companies is attached as Exhibit A.

8. The Debtors believe their estimated average monthly utility payments to the Utility Companies ranges between \$30,000 to \$40,000.² Before the Filing Date, the Debtors paid all undisputed invoices for Utility Services on a timely basis and was substantially current on their utility bills. As of the Filing Date, the only material amounts outstanding are those for services that the Debtors have received, but for which they have not yet been billed.

² The Debtors' estimated monthly usage is for those retail stores that the Debtors intend to maintain.

9. For the Debtors to ensure that the stores and certain of the equipment therein are adequately maintained (and to comply with certain lease obligations), they must continue to receive post-petition services from the Utility Companies. Loss of any Utilities Services or even a temporary interruption thereof would be harmful to the Debtors.

10. Pursuant to Section 366(b) of the Bankruptcy Code, a utility company cannot alter, refuse or discontinue service to a debtor within twenty (20) days after the commencement of a bankruptcy case solely on the basis of the filing of the bankruptcy proceeding. 11 U.S.C. § 366(a) and (b). A utility may, however, discontinue services if a debtor does not provide satisfactory adequate assurance of the performance of its postpetition obligations to the utility within thirty (30) days of the commencement of the case. 11 U.S.C. § 366(c)(2).

11. The term “adequate assurance of payment” is defined as: (a) a cash deposit; (b) a letter of credit; (c) a certificate of deposit; (d) a surety bond; (e) a prepayment of utility consumption; or (f) another form of security that is mutually agreed on between the utility and the debtor or the trustee. 11 U.S.C. § 366(c)(1)(A).

12. To comply with that statutory mandate, the Debtors respectfully submit that the posting of security deposits by the Debtors to the Utility Companies in an amount equal to two (2) weeks of average monthly utility bills as set forth in Exhibit A, except in those circumstances where a Utility Company receives a partial or full prepayment equal to at least the amount of the proposed deposit will, constitute “adequate assurance of payment” under Section 366 of the Bankruptcy Code. See, e.g., In re MEE Apparel LLC and MEE Direct LLC, Case NO. 14-16484 (Bankr. D.N.J. April 4, 2014) (two (2) weeks’ deposit); In re Big M, Inc., Case No. 13-10233 (Bankr. D.N.J. Jan. 8, 2013) (two (2) weeks’ deposit); In re Revel AC, Inc., et al., Case No. 13-16253 (Bankr. D.N.J. March 26, 2013) (two (2) weeks’ deposit), In re Christ Hospital, Case

No. 12-12906 (MS) (Bankr. D.N.J. Feb. 7, 2012) (ten (10) days); Adamar of New Jersey, Inc., et al., Case No. 09-20711 (Bankr. D.N.J. May 8, 2009) (two (2) weeks); TCI 2 Holdings, LLC, et al., Case No. 09-13654 (Bankr. D.N.J. February 17, 2009) (two (2) weeks); In re Tarragon Corporation, et al., Case No. 09-10555 (Bankr. D.N.J. January 14, 2009) (ten (10) days for all but three (3) utilities); Shapes/Arch Holdings, L.L.C., et al., Case No. 08-14631 (Bankr. D.N.J. March 16, 2008) (two (2) weeks). Consistent with the Debtors' past practices, the Debtors will pay all undisputed utility invoices for post-petition services on a timely basis during their Chapter 11 proceedings.

13. Moreover, the Debtors propose a procedure whereby a Utility Company objecting to the adequate assurance payments proposed by Crumbs' and the other Holdings may file objections before the final hearing on the Motion (the "**Final Hearing**"). That procedure is set forth in detail in the accompanying proposed form of Order.

14. Based on the foregoing, the Debtors submit that the assurance of payment by Crumbs' and the other Holdings to the Utility Companies is adequate and conforms with the express provisions and intent of Section 366 of the Bankruptcy Code, is not prejudicial to the rights of any Utility Company to object to the proposed adequate assurance payments at the Final Hearing and is in the best interests of the Debtors and their estates.

IV. NOTICE

15. The Debtors request that the Court schedule the Final Hearing no later than thirty (30) days after the Filing Date, which would allow the Debtors ample time to provide notice of said hearing date to the Utility Companies by regular first-class mail.

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

WHEREFORE, the Debtors respectfully request entry of an Order granting the Motion
and such other relief as the Court deems just and appropriate under the circumstances

COLE, SCHOTZ, MEISEL,
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Proposed Attorneys for Crumbs Bake Shop, Inc., *et al.*,
Debtors-in-Possession

By: /s/ Michael D. Sirota
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David M. Bass, Esq.
Felice R. Yudkin, Esq.

DATED: July 11, 2014