

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

RESTAURANTS ACQUISITION I, LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 15-12406 (KG)

**DEBTOR’S MOTION FOR ENTRY OF ORDER (I) AUTHORIZING,  
BUT NOT DIRECTING, PAYMENT OF CRITICAL VENDOR CLAIMS IN  
THE ORDINARY COURSE OF BUSINESS, AND (II) AUTHORIZING BANKS  
AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS ALL  
RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS,  
AND (III) GRANTING RELATED RELIEF**

Restaurants Acquisition I, LLC (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Chapter 11 Case”), by and through its undersigned counsel, hereby files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), pursuant to sections 105(a), 363(b), and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing, but not directing, the Debtor to pay the Critical Vendor Claims (defined herein) as such claims become due in the ordinary course of business, (ii) authorizing banks and financial institutions to honor and process all related checks and electronic payment requests, and (iii) granting such other and further relief as requested herein or as the Court (defined herein) otherwise deems necessary or appropriate. In support of this Motion, the Debtor submits the *Declaration of W. Craig Barber in Support of Chapter 11 Petition and First Day Pleadings of Restaurants Acquisition I, LLC* (the “First Day”

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<sup>1</sup> The Debtor’s mailing address is 313 East Main Street, Suite 2, Hendersonville, TN and the last four digits of its tax identification number are 8761.

Declaration”), which is being filed contemporaneously herewith and is incorporated herein by reference. In further support of this Motion, the Debtor respectfully states as follows:

### **JURISDICTION**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Rule 9013-1(f) of the Local Rules, the Debtor consents to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are Bankruptcy Code sections 105(a), 363, 507, 1107(a) and 1108, Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

### **BACKGROUND**

4. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its businesses and manage its property as a debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Case.

5. The Debtor operates a chain of full-service restaurants throughout Texas, largely located in the Dallas-Fort Worth and Houston metropolitan area, operating under the trade-names Black-eyed Pea and Dixie House. As of January 1, 2015, the Debtor operated thirty (30) restaurant locations (generally, the “Prepetition Stores”).

6. Since late 2013, the Debtor has experienced a decline in its cash flow performance. At the same time, the Debtor’s occupancy costs outpaced its revenues over the same period, further eroding the Debtor’s profitability. Under these circumstances, and despite the Debtor’s best efforts, the Debtor began to fall behind on its obligations to creditors. The Debtor’s liquidity crisis also caused it to fall behind on its payments to various taxing authorities, including the federal government.

7. In December 2013 and again in April 2015, the Debtor engaged investment bankers to address a recapitalization or sale of the Debtor. The Debtor received no offers as a result of this process. Due to its lack of liquidity and its inability to attract new capital, the Debtor has not be able to maintain all of the Prepetition Stores. As of the Petition Date, the Debtor has ceased operations at and/or closed fifteen (15) of its Prepetition Stores; it continues to operate fourteen (14) Black-eyed Pea restaurants and one (1) Dixie House restaurant.<sup>2</sup>

8. Additional details regarding the Debtor’s business, assets, capital structure, and the circumstances leading to the filing of this Chapter 11 Case are set forth in the First Day Declaration filed contemporaneously herewith and incorporated herein by reference as though set forth in full.

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<sup>2</sup> As of the Petition Date, the Debtor has been locked out of one of these operating Prepetition Stores.

### **The Debtor's Critical Vendors**

9. In the ordinary course of business, the Debtor engages various service providers, goods providers, and other vendors in connection with its operations, the absence of which will threaten the Debtor's ongoing restaurant operations. Without the goods and services provided by certain of these vendors, the Debtor's restaurants and operations as a whole will suffer immediate and irreparable harm.

10. As discussed herein, it is essential that the Debtor be able to maintain its business relationships with, and honor outstanding payment obligations to, certain key vendors and service providers (each a "Critical Vendor", and collectively, the "Critical Vendors") in light of the role that they play in the Debtor's continuation of its business.

11. The Debtor believes that without the relief requested herein, many of these vendors will cease delivering goods and providing services to the Debtor. Any such, disruption will have a devastating effect on the Debtor's operations and its reorganization efforts.

12. In order to prevent this Chapter 11 Case from irreparably harming the Debtor's relationships with its Critical Vendors and interrupting the supply of critical goods and services, the Debtor is seeking authority, but not direction, to pay, in its sole discretion, pre-petition claims owing to the Critical Vendors (each a "Critical Vendor Claim", and collectively, the "Critical Vendor Claims") in order to ensure the continued receipt of goods and services critical to the Debtor's operations and provision of favorable credit terms from the Critical Vendors, many of whom are not subject to written contracts with the Debtor.

13. In assessing strategies to continue doing business with the Critical Vendors, the Debtor has considered the availability of alternative protections for each Critical Vendor, such as prepayment and payment-in-advance or on-delivery. Because many of the Critical Vendors are

the only practical source of such goods and services, such payment alternatives are not available. The Debtor has, therefore, determined that paying the Critical Vendor Claims is the most effective way to ensure that such Critical Vendors will continue to (a) supply goods and services both now and in the future and (b) provide favorable credit terms to the Debtor as it enters into this Chapter 11 Case. Accordingly, the Debtor seeks the Court's authorization, not direction, to pay any such outstanding amounts up to Critical Vendor Cap (defined herein).

14. The Debtor has reviewed its accounts payable and pre-petition vendor lists in order to identify those creditors most essential to its operations during this Chapter 11 Case, *i.e.*, the Critical Vendors. The Debtor identified the Critical Vendors using the following criteria: (a) whether certain quality specifications or other requirements of the Debtor's customers prevent the Debtor from obtaining a vendor's product(s) or service(s) from alternative sources within a reasonable timeframe; (b) whether, if a vendor is not a single source supplier, the Debtor has sufficient product in inventory to continue its operations while a replacement vendor is put in place; and (c) whether a vendor meeting the foregoing criteria is able or likely to refuse to ship product to the Debtor postpetition if its pre-petition balances are not paid. As a result of the foregoing analysis, the Debtor managed to reduce its Critical Vendors to the following categories:

15. A brief summary of the various types of the Critical Vendors is set forth below:

a. Food Suppliers. As of the Petition Date, the Debtor operates fifteen (15) restaurants (with one being subject to lock out). Failure to maintain sufficient food supplies to allow the Debtor to provide its customers with the quality and diverse selection of food will negatively impact the Debtor's reputation and ability to reorganize. Given the limited number of significant food distributors supplying the large quantity of food required by the Debtor's day-to-

day operations, the Debtor does not believe that it is either possible or practical to engage the services of other food distributors. In fact, the Debtor is contractually obligated to obtain at least eighty percent (80%) of its food orders through a single supplier. That same supplier handles distribution for a number of the Debtor's other vendors and suppliers. As of the Petition Date, the Debtor owes approximately \$1,438,943.18<sup>3</sup> to its primary food distributors and requests the Court's authorization, but not direction, to pay such outstanding amount.

b. Marketing. This category includes three vendors. Two of the vendors maintain the menus for the Debtor's restaurant locations and other items containing the restaurants' logo and these vendors hold the artwork related thereto. The third vendor handles the e-mail marketing for the Debtor and hold the Debtor's e-mail marketing lists. Given (i) the critical function the menus and the use of the other items containing the restaurants' logo play in the day to day operations of the Debtor's restaurants, (ii) the importance of e-mail marketing in generating sales for the Debtor's restaurants in the ultra-competitive restaurant industry, and (iii) the vendors hold the artwork and e-mail marketing lists, if these vendors were to cease services the Debtor's ability to operate its restaurants on a day to day basis would be directly impacted. As of the Petition Date, the Debtor owes approximately \$12,030.77 to its marketing vendors and request the Court's authorization, but not direction, to pay such outstanding amount.

c. Linens Suppliers. These vendors provide linen service for the kitchen and front of the house service areas at each of the Debtor's restaurant locations and are critical to the Debtor's day to day operations of its restaurant locations. As of the Petition Date, the Debtor

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<sup>3</sup> The Debtor believes that approximately \$1,425,826.21 of this total amount may be for goods delivered that qualify under the Perishable Agricultural Commodities Act of 1930 ("PACA"), and, thus, are also the subject of the Debtor's *Motion for Entry of an Order (i) Authorizing the Debtor to Pay Certain Pre-Petition Claims Arising Under the Perishable Agricultural Commodities Act; and (ii) Granting Related Relief* filed concurrently herewith. To the extent that certain goods delivered by a food supplier vendor do not qualify for payment under PACA, the amounts owed for such goods would be paid in accordance with this Motion and any order entered thereon.

owes approximately \$11,549.29 to its marketing vendors and request the Court's authorization, but not direction, to pay such outstanding amount.

### **RELIEF REQUESTED**

16. The Debtor respectfully requests entry of an Order, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a), 363(b), 503, and 507 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtor to pay the Critical Vendor Claims, whether arising pre-petition or post-petition, as such claims become due in the ordinary course of business, up to a maximum aggregate amount of \$1,462,523.24 (the "Critical Vendor Cap"), (b) authorizing banks and financial institutions to honor and process all related checks and electronic payment requests, and (c) granting such other and further relief as requested herein or as the Court otherwise deems necessary or appropriate.

17. The Debtor further requests that it be authorized to condition, in its sole discretion, the payment of a Critical Vendor Claim on the agreement of the Critical Vendor to continue supplying goods and services to the Debtor on (a) terms that are as, or more, favorable to the Debtor as the most favorable trade terms, practices, and programs in effect between the Critical Vendor and the Debtor in the six months prior to the Petition Date (collectively, the "Customary Trade Terms") or (b) such other trade terms as are agreed to by the Debtor and the Critical Vendor. The Debtor believes that this relief is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

### **BASIS FOR RELIEF**

#### **A. The Debtor Should be Authorized to Pay Trade Obligations**

16. Appropriate circumstances exist to justify payment of the Critical Vendors in the ordinary course of business, as contemplated by this Motion. The relief requested in this Motion will help minimize any disruption in the Debtor's business operations during the period between

the Petition Date and confirmation of a chapter 11 plan, as well as after the Debtor's emergence from chapter 11, thereby protecting and preserving the value of the Debtor's estate. In order to avoid the potential erosion of value that will, in all likelihood, result from the refusal of certain Critical Vendors to continue doing business with the Debtor, the Debtor believes that it is imperative that it be authorized, but not directed, to pay the Critical Vendors in the ordinary course, whether or not the obligations to such creditors arise before or after the Petition Date.

17. The Court can authorize the proposed payment of the Critical Vendors in the ordinary course of the Debtor's business. As an initial matter, the Court may authorize the Debtor to pay the Critical Vendor Claims arising or relating to the period before the Petition Date pursuant to section 363(b) of the Bankruptcy Code. This section provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). To approve the use of a debtor's assets outside the ordinary course of business pursuant to section 363(b), the Court must find that a sound business reason exists for the use of such assets. *See, e.g., In re Ames Holding Corp.*, 2010 WL 2822030, at \*3, (Bankr. D. Del. Feb. 7, 2010); *In re MPC Computers, LLC*, Case No. 08-12667 (PJW) (Bankr. D. Del. Nov. 10, 2008) [Docket No. 30]; *In re Overseas Shipping Group, Inc.*, Case No. 12-20000 (PJW) (Bankr. D. Del. Dec. 7, 2012) [Docket No. 147]; *Official Comm. of Unsecured Creditors v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)).

18. As discussed above, the Debtor's request to pay the Critical Vendor Claims meets this standard because a failure to pay the Critical Vendor Claims will, in all likelihood, have a material adverse impact on the day-to-day operations of the Debtor's business, as well as the ability of the Debtor to successfully emerge from chapter 11. Recognizing that the payment of



pre-petition claims of certain essential suppliers and vendors is, in fact, critical to a debtor's ability to preserve and maximize creditor recoveries, courts in this district regularly grant relief consistent with that which the Debtor is seeking in this Motion. *See, e.g., In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Sept. 24, 2013) (authorizing payment of critical vendor claims); *In re Overseas Shipping Group, Inc.*, Case No. 12-20000 (PJW) (Bankr. D. Del. Dec. 7, 2012) [Docket No. 147] (authorizing payment of critical and foreign vendors and service providers); *In re MPC Computers, LLC*, Case No. OS- 12667 (PJW) (Bankr. D. Del. Nov. 10, 2008) [Docket No. 30] (authorizing payment of certain critical vendor claims); *In re Southern Air Holdings, Inc.*, Case No. 12-12690 (CSS) (Bankr. D. Del. Oct. 25, 2012) (granting final critical and foreign vendor order); *In re AFA Investment, Inc.*, Case No. 12-11127 (MFW) (Bankr. D. Del. Apr. 2, 2012) (authorizing payment of critical vendor claims).

19. Additionally, the Court may authorize payment of the Critical Vendor Claims based on its equitable powers, under section 105(a) of the Bankruptcy Code or through the "doctrine of necessity" or the "necessity of payment" doctrine, which allow a bankruptcy court to exercise its equitable power, allow payment of critical pre-petition claims not explicitly authorized by the Bankruptcy Code, and further support the relief requested herein. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that in order to justify payment under "doctrine of necessity," such payment must be essential to continued operation of debtor); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in hotel reorganization case, that court was not "helpless" to apply rule to supply creditors of non-railroad debtors where alternative was cessation of operations).

20. Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under

this section, courts may permit payments on account of pre-petition obligations outside the context of a chapter 11 plan when such obligations are essential to the continued operation of a debtor's business. *See, e.g., In re Just For Feet, Inc.*, 242 B.R. 821, 824 (Bankr. D. Del. 1999) (acknowledging that "[c]ertain pre-petition claims . . . may need to be paid to facilitate a successful reorganization" and that "[s]ection 105(a) of the [Bankruptcy] Code provides a statutory basis for the payment of pre-petition claims"); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (explaining that doctrine of necessity is standard in Third Circuit for enabling court to authorize payment of pre-petition claims prior to confirmation of reorganization plan); *In re Boston & Maine Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (stating that court has power to authorize payments of claims for goods and services that are necessary to debtor's continued operation as a going concern); *In re Ionosphere Clubs*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (stating that section 105(a) of Bankruptcy Code permits payment of pre-petition claims where necessary to rehabilitate debtor).

21. Finally, the Court may find that payment of the Critical Vendor Claims is a valid exercise of the Debtor's fiduciary duties. Pursuant to Bankruptcy Code sections 1107(a) and 1108, debtors-in-possession are fiduciaries holding the bankruptcy estate and operating the business for the benefit of creditors and, if the value justifies, the equity owners. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487,497 (Bankr. N.D. Tex. 2002) (noting that "[i]mplicit in the duties of a Chapter 11 trustee or a debtor in possession as set out in Sections 1106 and 704 of the Bankruptcy Code is the duty of such a fiduciary to protect and preserve the estate, including an operating business's going-concern value.").

22. As courts have generally acknowledged that it is appropriate to authorize the payment (or other special treatment) of pre-petition obligations where necessary to protect and

preserve the estate, including an operating business's going-concern value. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (noting that where sound business reasons are demonstrated, including preservation of debtors' business and protection of its ability to reorganize, payment of pre-petition wages, salaries, and business expenses is justified); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this [fiduciary] duty can only be fulfilled by the preplan satisfaction of a pre-petition claim.").

23. The nature of the Debtor's business and extent of its operations make payment on account of the Critical Vendor Claims essential to the preservation of the Debtor's business and value of the Debtor's estate for all creditors and parties-in-interest. The Debtor respectfully submits that it needs to maintain and continue its relationships with various vendors, agents, suppliers, and customers in order for the Debtor to continue to operate its business. Failure to obtain such relief will likely cause immediate and irreparable harm to the Debtor and its estates. In particular, if the Debtor is not able to fulfill the Critical Vendor Claims, the Debtor's business will be threatened by the risk that vendors, agents, suppliers, and customers could terminate their relationships with the Debtor or take other actions that could have a potentially deleterious effect on the Debtor's business as a whole, and the Debtor's ability to reorganize.

**B. Cause Exists To Authorize Debtor's Banks and Financial Institutions To Honor and Process Checks and Electronic Payment Requests**

24. To facilitate implementation of the relief requested in this motion, the Debtor believes it is appropriate for the Court to authorize all applicable banks and financial institutions to receive, process, honor, and pay any and all wire transfer requests, checks drawn, drafts issued, or electronic fund transfers from the Debtor's accounts whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are expressly identified by the Debtor as relating directly to the payments authorized pursuant to

this Motion. Furthermore, the Court should authorize the Debtor to issue new post-petition checks, or effect new electronic fund transfers, on account of the Critical Vendor Claims, and to replace any pre-petition checks or electronic fund transfer requests that may have been dishonored or rejected as a result of the commencement of this Chapter 11 Case, regardless of whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date; provided, however, that (a) funds are available in the Debtor's accounts to cover the checks and fund transfer and (b) all the banks and other financial institutions are authorized to rely on the Debtor's designation of any particular check as approved by the Order.

25. The Debtor believes that it has sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from business operations, and/or debtor-in-possession financing received from a post-petition lender.<sup>4</sup> In addition, pursuant to the Debtor's existing cash management system, the Debtor believes that checks or wire transfer requests can be readily identified as relating to an authorized payment made pursuant to orders entered by the Court. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtor, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Critical Vendor Claims.

26. In light of the foregoing, the Debtor respectfully submits that the relief requested herein is necessary and appropriate, is in the best interests of its estate and creditors, and should

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<sup>4</sup> The Debtor is exploring various debtor-in-possession financing opportunities and expects to file, either contemporaneously with the filing of this Motion or soon thereafter, a motion seeking authority to use cash collateral.

be granted in all respects. Moreover, this relief is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

**RESERVATION OF RIGHTS**

27. To the extent that any contract or agreement in connection with any Critical Vendor Claim is based upon or deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtor does not at this time intend to assume or reject such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute an assumption of such contract or agreement pursuant to section 365 of the Bankruptcy Code. The Debtor is currently in the process of reviewing all of its contracts and agreements and reserve all of its rights with respect thereto. Nothing herein shall acknowledge, grant, or otherwise permit any right of offset or recoupment by a non-debtor with respect to any claim asserted against the Debtor. If the Court grants the relief sought herein, any payments made pursuant to the Court's order are not intended and should not be construed as an admission to the validity of any claim or a waiver of the rights of the Debtor to dispute such claim subsequently.

28. Additionally, except as expressly stated herein, nothing contained herein is intended or should be construed as (a) an agreement or admission by the Debtor as to the validity of any claim against its estate, (b) a waiver or impairment of the Debtor's right to dispute any claim on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to an Order granting the relief requested in this Motion.

**THE DEBTOR SATISFIES BANKRUPTCY RULE 6003**

29. Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding ... a motion to use, sell, lease, or otherwise incur an

obligation regarding property of the estate ... .” Fed. R. Bankr. P. 6003(b). The Debtor submits that, because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

**WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)**

30. To implement the foregoing successfully, the Debtor respectfully requests a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtor’s operations, value, and ability to reorganize. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

**NO PREVIOUS REQUEST**

31. No prior motion for the relief sought herein has been made by the Debtor to this or any other court.

**NOTICE**

32. The Debtor will provide notice of this Motion to: (a) the Office of the U.S. Trustee; (b) the holders of the 20 largest unsecured claims against the Debtor; (c) the United States Attorney’s Office for the District of Delaware; (d) the Internal Revenue Service; (e) Grove Family Investments, L.P and its counsel; (f) CNL Financial Group, Inc. and its counsel; (g) American Express Bank, FSB and its counsel; (h) any known critical vendor claimant; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Debtor will serve

copies of this Motion and any order entered with respect to this Motion as required by Local Rule 9013-1(m). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of Page Left Intentionally Blank]*

WHEREFORE, for the reasons set forth above and in the First Day Declaration, the Debtor respectfully requests that the Court enter the Order substantially in the form annexed as **Exhibit A** hereto, (i) authorizing, but not directing, the Debtor to pay the Critical Vendor Claims as such claims become due in the ordinary course of business, (ii) authorizing banks and financial institutions to honor and process all related checks and electronic payment requests, and (iii) granting such other and further relief as requested herein or as the Court otherwise deems necessary or appropriate.

Respectfully submitted,

Dated: December 2, 2015

DUANE MORRIS LLP

/s/ Sommer L. Ross

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*Proposed Counsel to Debtor and Debtor-in-Possession Restaurants Acquisition I, LLC*



**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

RESTAURANTS ACQUISITION I, LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 15-12406 (KG)

Related to Docket No. \_\_\_\_

**ORDER (I) AUTHORIZING, BUT NOT DIRECTING, PAYMENT OF CRITICAL  
VENDOR CLAIMS IN THE ORDINARY COURSE OF BUSINESS, (II) AUTHORIZING  
BANKS AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS ALL  
RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS,  
AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of Restaurants Acquisition I, LLC (the "Debtor"), debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Chapter 11 Case"), for entry of an order (this "Order") (i) authorizing, but not directing, the Debtor to pay the Critical Vendor Claims, and (ii) authorizing the financial institutions, when requested by the Debtor, to receive, possess, honor and pay all checks presented for payment and electronic payment requests related to the Critical Vendor Claims, all as set forth more fully in the Motion; and upon the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 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 is in the best interests of the Debtor's estate, its creditors, and all other parties-in-interest; and the Debtor having provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and no other or further

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<sup>1</sup> The Debtor's mailing address is 313 East Main Street, Suite 2, Hendersonville, TN and the last four digits of its tax identification number are 8761.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is necessary to prevent immediate and irreparable harm; and upon all of the proceedings had before the Court; after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED:

1. The Motion is granted as set forth herein.
2. The Debtor is authorized, but not required, to pay or honor, in its sole discretion, the Critical Vendor Claims that (a) arose prior to the Petition Date or (b) become due and payable subsequent to the Petition Date; provided, however, that such payments and transfers shall be subject to the Critical Vendor Cap.
3. The Debtor is authorized, but not required, to condition, in its sole discretion, the payment of a Critical Vendor Claim on the agreement of the Critical Vendor to continue supplying goods and services to the Debtor on the Customary Trade Terms or such other trade terms as are agreed to by the Debtor and the Critical Vendor.
4. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor’s rights with respect to such matters are expressly reserved.
5. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the

priority of any claim from a pre-petition claim into an administrative expense claim. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (w) an agreement or admission by the Debtor as to the validity of any claim on any grounds, (x) a waiver or impairment of any of the Debtor's rights to dispute any claim on any grounds, (y) a promise by the Debtor to pay any claim, or (z) an implication or admission by the Debtor that such claim is payable pursuant to this Order. Nothing herein shall acknowledge, grant, or otherwise permit any right of offset or recoupment by a non-debtor with respect to any claim asserted against the Debtor.

6. All applicable banks and other financial institutions are authorized to receive, process, honor, and pay any and all pre-petition wire transfer requests, checks drawn, drafts issued, and electronic funds transfers by the Debtor and related to the payment of Critical Vendor Claims, or any of the Debtor's obligations approved herein, whether prior to or after the Petition Date.

7. The Debtor is authorized to issue new post-petition checks, or effect new electronic fund transfers, on account of the Critical Vendor Claims and to replace any pre-petition checks or electronic fund transfer requests that may have been dishonored or rejected as a result of the commencement of this Chapter 11 Case, regardless of whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date; provided, however, that (a) funds are available in the Debtor's accounts to cover the checks and fund transfer and (b) all the banks and other financial institutions are authorized to rely on the Debtor's designation of any particular check as approved by this Order.

8. The relief granted herein shall be binding upon any chapter 11 trustee appointed in this Chapter 11 Case and upon any chapter 7 trustee appointed in the event of a subsequent conversion of this Chapter 11 Case to a case under chapter 7.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and the requirements of Bankruptcy Rules 6004(a) and 6004(h) are hereby waived.

11. The Debtor is authorized to take all actions necessary to implement the relief granted in this Order in accordance with the terms of the Motion.

12. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

Dated: December \_\_\_, 2015  
Wilmington, Delaware

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Honorable Kevin Gross  
United States Bankruptcy Judge