

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

CAFE HOLDINGS CORP. *et al.*,¹

Debtors.

Chapter 11

Case No. 18-_____ (___)

(Joint Administration Requested)

**DECLARATION OF ERIC EASTON IN SUPPORT
OF CHAPTER 11 PETITIONS AND CERTAIN FIRST DAY MOTIONS**

I, Eric Easton, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. On the date hereof (the “**Petition Date**”), Cafe Holdings Corp. (“**Holdings**”) and each of its affiliate debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a “**Debtor**” and collectively, the “**Debtors**” or the “**Company**”) filed voluntary petitions under chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of South Carolina (the “**Court**”). The Debtors are operating their businesses as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

2. I submit this declaration (the “**Declaration**”) to provide an overview of the Debtors’ business and operations and these chapter 11 cases, as well as in support of the Debtors’ bankruptcy petitions and their request to obtain certain other “first day” relief (the “**First Day Motions**”) in the pleadings filed concurrently therewith.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Cafe Holdings Corp. (7910); Cafe Enterprises, Inc. (4946); CE Sportz LLC (2009); and CES Gastonia LLC (0863). The location of the Debtors’ corporate headquarters is 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687.

3. I am authorized to submit this Declaration on behalf of the Debtors. This Declaration is being made pursuant to Rule 1007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

4. I am over the age 18 and am authorized to submit this Declaration on the Debtors’ behalf, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

5. I attended Indiana University – Kelley School of Business, where I earned a B.S. in Finance and Accounting and took graduate courses in advanced accounting, real estate finance, and strategy. I have over 20 years of experience in the restaurant industry, having held numerous progressively senior positions in operations, accounting, finance, and strategic planning. Prior to joining the Company, between 2015 and 2017, I served as the CFO of Mitra QSR, an owner of over two hundred restaurant franchises, and was the Vice President of Finance and Accounting of the related Chalak Mitra Group of Companies. Prior to that, between 2009 and 2015, I held various progressively senior financial, operating, and strategic roles at Ignite Restaurant Group; and between 2004 and 2009, I served as a Restaurant Manager and General Manager of Joe’s Crab Shack. As part of my roles and responsibilities, I led or played a significant part in the day-to-day operations of each of the foregoing companies, including in accounting, budgeting, forecasting, liquidity management, strategic planning, and investor relations. From time to time, as required by the business, I led or participated in numerous refinancing and recapitalization efforts and transactions, including mergers and acquisitions as well as a take-public transaction.

6. I joined the Company in March 2017. I currently serve as Chief Financial Officer (the “**CFO**”) for each of the Debtors as well as Secretary and Treasurer for Holdings and Cafe Enterprises, Inc. (“**Enterprises**”).

7. As part of my duties as the CFO, I have been overseeing and advising the Debtors' accounting, operations, reporting, budgets, forecasts, cash flows, and, more recently, overall turnaround and sale efforts. I am therefore familiar with the Debtors' businesses, financial affairs, books and records, as well as the facts and circumstances surrounding the Debtors' chapter 11 filing and restructuring strategy.

8. Except as indicated otherwise, all facts set forth in the Declaration are based on my personal knowledge; discussions with current and former members of the Debtors' senior management, professional advisors, and certain of the Company's shareholders; information and materials that the Debtors' personnel, officers, and advisors have gathered, prepared, verified, and provided to me, in each case under my ultimate supervision, at my direction, and/or for my benefit in preparing this Declaration; or my opinion based upon my past experience and knowledge of the Debtors' operations and financial conditions.

9. Part I of this Declaration provides a general background of the Debtors' business, operations, and capital structure; Part II describes the circumstances giving rise to the commencement of these chapter 11 cases; Part III describes the Debtors' proposed course for these chapter 11 cases; Part IV sets forth certain facts in support of the First Day Motions; and Part V sets forth certain other information required to be disclosed.

PRELIMINARY STATEMENT

10. The Debtors are a privately-owned chain of one of the Southeast's iconic casual dining restaurant brands, "Fatz Cafe" ("**Fatz**"). Serving thousands of patrons a year, Fatz offers elevated fresh and innovative, scratch-made southern fare in 38 locations across five states. In connection with the operation of Fatz, the Company employs nearly 1,700 persons and supports hundreds of vendors and suppliers, ranging in size from large multinational corporations to small

business local to the areas in which Fatz operates. Indeed, the Fatz relationship is critical to supporting and maintaining many of these businesses and institutions, as well as providing employment to its workers.

11. Fatz is currently burdened with over \$30 million of funded debt, most of which was incurred or guaranteed by each of the above-captioned Debtors. This capital structure, which was set up in 2014 and has since grown, is unsustainable in light of Fatz's steady operating decline over the past several years. The decline was caused by a combination of factors, including industry-wide challenges, trade market changes and challenges, underperforming strategic initiatives, and unsatisfactory business performance.

12. Fatz's arduous efforts to improve sales and profits and to fortify its restaurant brand and customer loyalty stems back to 2011. That year, the Company put into place a new executive team, which focused on increasing profitability through new brands and asset conversion strategies. Their efforts culminated in the opening of two new restaurant brands, which have since closed. Unfortunately, these measures failed to reverse Fatz's eroding revenues and margins. In 2014, the Company took additional actions to stabilize sales and margins of the core Fatz brand. To that end, it replaced its management team, refinanced its debt, and restructured certain of its leases. In addition, the Company obtained an additional capital infusion to effectuate a restaurant refresh and remodel strategy. Despite these efforts, Fatz's financial performance continued to decline and the Company was left with outsized operating costs and a liquidity shortage.

13. In 2016, the Company renewed its attempt to stabilize the Fatz brand and return to growth. To guide the Company through this process, the Company once again replaced its management team. The new management team, along with a team of both new and existing experienced personnel, undertook a strategy to improve business operations, including (a)

overhead rationalization, (b) key performance indicator reporting, (c) liquidity management, forecasting, and reporting tools, (d) new food safety and sanitation practices, (e) system-wide communication, training and education tools, and (f) raw material and labor cost rationalization. In addition, the new management team also moved forward with a new brand and business plan, which included (i) adjusting product and promotional strategy, (ii) updating menu strategy and rationalization, (iii) implementing technological enhancements including additional ordering portals and partnerships, (iv) improving restaurant portfolio management, and (v) undertaking contract and advisor rationalization. Despite Fatz's successful and recent cost-cutting initiatives and more streamlined, efficient operating model, Fatz's cash flow profile has remained constrained by previously aged operating liabilities, continued revenue declines, underperforming leases, burdensome contracts, severance obligations, tax obligations, operational pressure related to unprofitable restaurants, and oversized debt service.

14. In sum, the overleveraged capital structure combined with general sector decline have made it increasingly difficult to both invest in necessary capital expenditures and marketing in order to grow the business while also servicing the current debt load and maintaining the necessary working capital to operate the business unencumbered.

15. Facing these issues head on, in early 2017, the Debtors attempted to work with their lenders and equity holders on out-of-court restructuring alternatives, including a possible capital injection to address operating needs. As part of these efforts, the business hired advisors to perform a valuation and operational analysis on the business. While Fatz was able to obtain a modest capital contribution, this was insufficient to stabilize the business and provide adequate working capital in order to complete a turnaround.

16. As a result, in early 2018 the debtors hired restructuring advisors to help evaluate their strategic options. Ultimately, the Company determined to commence a sale process for Fatz, seeking a buyer that could provide the necessary capital to the business to effectuate management's turnaround strategies. Unfortunately, after months of effort and outreach to more than 200 parties, including both potential financial and strategic purchasers, the Company was not able to obtain any bids for the Fatz assets. Moreover, the Company's then first lien lender, Madison Capital Funding LLC ("**Madison**"), informed the Company that it did not wish to offer financing or serve as a stalking horse bidder in a chapter 11 sale process, and ultimately sold its debt position to Shrayne Capital, LLC ("**Shrayne**"). After further diligence, ultimately Shrayne decided it also did not wish to serve as a stalking horse bidder in a chapter 11 sale process and, in turn, sold its position to Atalaya Capital Management, LP and certain of its affiliates (collectively, "**Atalaya**"), who agreed to provide debtor in possession financing and to serve as a stalking horse bidder in a section 363 sale of substantially all of the Company's assets.

17. Considering these circumstances, the Debtors, in consultation with their advisors, elected to commence these chapter 11 cases to effectuate a transaction with Atalaya, or such other party that may emerge through the section 363 sale process, to implement an overall operational and financial restructuring. In furtherance of the restructuring, Atalaya agreed to (i) provide post-petition debtor in possession financing and authorize the Debtors to use cash collateral subject to their pre-petition security interest, and (ii) to serve as a stalking horse bidder in connection with the marketing and sale of substantially all of the Debtors' assets. This proposed transaction, including the financing package, sends a clear message to vendors, customers, and all stakeholders that the Debtors have a clear restructuring path and resources to successfully complete the restructuring.

18. Through an efficient restructuring path, the Debtors aim to maximize the value of their enterprise by deleveraging a substantial amount of debt, rationalizing their operational costs and lease footprint, and obtaining sufficient capital for their go-forward operations. With right-sized operations, a healthy balance sheet, and a well-capitalized business, the reorganized Debtors will be better positioned to achieve sustained profitability and overall long-term success.

I. General Background

A. Summary of Business and Operations

19. As of the Petition Date, the Debtors own and operate one full-service casual dining restaurant brand: Fatz Cafe. Fatz was founded in 1988 with the opening of its first restaurant location in a converted roadside peach shed in Waccamaw, South Carolina. Fatz offers a menu focused on southern inspired fresh-made dishes using authentic, locally-sourced ingredients. It is also known as the “Home of World Famous Chicken Calabash” (where “Calabash” – which gets its name from Calabash, North Carolina – is a method of cooking unique to the Carolinas). Calabash Chicken is marinated in buttermilk for 24 hours and is then hand-breaded and fried until golden brown. Throughout the 30 years since its inception, Fatz had expanded from a single shed to 48 locations spread across five states.

20. Fatz today operates 38 locations spread across five states, 18 of which are located in South Carolina, 10 in North Carolina, five in Georgia, four in Tennessee, and one in Virginia. All of Fatz’s restaurants operate within approximately 250 miles of the Company’s headquarters in Taylors, South Carolina and are strategically located in medium-sized cities, traditional suburbs, and small towns with limited competition.

21. All 38 of the Debtors’ restaurant locations, as well as its corporate headquarters, are leased.

22. As of the Petition Date, the Debtors employ approximately 1,671 employees, 435 of whom are full-time and 1,236 of whom are part-time. Of the total number of workers, approximately 140 are salaried and 1,531 are hourly employees. The majority of the Debtors' employees work at the Debtors' restaurants, while the remainder are based out of the Debtors' corporate headquarters. None of the Debtors' employees are unionized.

23. The Debtors have, in aggregate, approximately \$23 million in total assets net of accumulated depreciation, of which \$14 million consists of intangible assets. The majority of the Debtors' assets are located at their headquarters, a warehouse in Taylors, South Carolina, as well as at each of the Debtors' restaurant locations. None of the Debtors' assets are located outside of the United States. The Debtors' books and records, including old records, are also located at its headquarters as well as in the warehouse in Taylors, South Carolina.

24. As further described below, the Debtors' aggregate liabilities total approximately \$51 million, including approximately \$31 million of secured and unsecured funded indebtedness.

25. The Debtors' consolidated adjusted network-wide EBITDA for the 12 months ended September 2018 and the fiscal year ended 2017 were approximately (\$635,087) and \$1.40 million, respectively.

B. 2008 Sale to Milestone Partners

26. Between its inception in 1988 and 1993, Enterprises was privately owned by its original founder, Jimmy Rogers. In 1993, William Burton purchased approximately 50% of the equity and became the President and Chief Executive Officer of Enterprises, and in 1998 he purchased a controlling interest in Enterprises.

27. In 2008, the business was sold to affiliates of a private investment firm Milestone Partners through a merger. This transaction was structured as a leveraged buyout of Enterprises'

equity (by newly formed Holdings), which was financed with a combination of proceeds from \$35.6 million of new debt facilities and equity contributions in the amount of \$16.8 million from Milestone Partners, \$2 million from GE Capital and Madison, and \$0.1 million from certain minority investors. Upon the closing of the transaction, the controlling interest in Enterprises was transferred to the affiliates of Milestone Partners, and the business was recapitalized.

C. Pre-Petition Capital Structure

i. Corporate Structure and Equity Holders

28. The Debtors in these chapter 11 proceedings consist of four entities, each organized under U.S. law. Holdings, which was incorporated in Delaware in 2008 for purpose of consummating Milestone Partners' leveraged buyout, is the Debtors' ultimate parent. Holdings owns 100% of the equity interest of Enterprises, a South Carolina corporation which owns and operates all of the Fatz restaurant locations. Enterprises owns 100% of the interests in CE Sportz, LLC ("**Sportz**"), a Delaware limited liability company which has no operations and owns 100% of the interests in CES Gastonia, LLC ("**Gastonia**"). Gastonia is a Delaware limited liability company which used to own and operate a restaurant called Tavern 24, which was closed on October 1, 2018. Since Tavern 24 was shut down, Gastonia has no remaining operations.

29. Holdings is a privately-held company whose ownership interests consist of shares of common stock and three series of preferred stock (class A, class B, and class C). On information and belief, approximately 64% of Holdings' common stock (including restricted common stock) is owned by affiliates of Milestone Partners, who also own approximately 70% of class A preferred shares, 84% of the class B preferred shares, and 79% of the class C preferred shares. The balance of Holdings' equity is held by approximately 23 other institutions and individuals.

30. Attached hereto as **Exhibit A** is a chart illustrating the Debtors' corporate structure as well as equity ownership.

ii. Senior Management

31. Set forth below is the list of the Debtors' senior management and information regarding such persons:

- **Jim Mazany – President & Chief Executive Officer:** Jim holds the following positions at the Debtors: (a) Chief Executive Officer, President, and Secretary of Holdings and Enterprises; and (b) President of Sportz and Gastonia. He joined the Company in October 2016. Prior to joining the Company, Jim served as the Principal of Strategic Restaurant Solutions, an advisory and talent retention practice. Prior to that, Jim served as President of Joe's Crab Shack ("**Joe's**") at Ignite Restaurant Group, overseeing a portfolio of 140 publicly traded restaurants with \$450 million in revenue. During his tenure there, Joe's delivered 22 consecutive quarters of same store sales increases, opened more than 30 restaurants and delivered more than 400 basis points in margin improvements. Jim is a 30 year veteran of the restaurant industry, also holding leadership positions with prominent hospitality companies such as Carlson Restaurants Worldwide, the parent company of TGI Fridays and Apple Gold, one of Applebee's largest franchisees where he was Chief Operating Officer. He has held board seats on both the Dine Out for No Kid Hungry and Dine Out for Autism Speaks. Jim attended the Culinary Institute of America and has an executive education from Southern Methodist University's Cox School of Business.
- **Eric Easton – CFO, Treasurer, and Secretary:** Eric holds the following positions at the Debtors: (a) CFO, Treasurer, and Secretary of Holdings and Enterprises; and (b) CFO of Sportz and Gastonia. He joined the Company in March 2017. Eric has more than 20 years of experience in the restaurant industry as part of the operations, accounting, finance and strategic planning. In his most recent role prior to joining the Company, Eric served as the CFO of Mitra QSR, an owner of over two hundred restaurant franchises, and was the Vice President of Finance and Accounting of Chalak Mitra Group of Companies ("**Mitra**"). Along with being the fourth largest KFC franchisee, Mitra has holdings in Hilton and Marriott properties as well as various real estate and restaurant interests. During his time with Mitra, Eric led a finance and accounting team as well as supply chain and information technology teams. In the portfolio of businesses Eric was responsible for, he gained experience working with companies that were purchased out of bankruptcy as well as those that were experiencing liquidity constraints or were in varying states of turnaround efforts. During this time, Eric also negotiated and closed a \$100 million credit facility that resulted in a management buyout of investors, recapitalization and more

than \$40 million in additional capital to position the company for growth. Like Jim Mazany, Eric is also a veteran of Ignite Restaurant Group and Joe's Crab Shack. Eric attended Indiana University – Kelley School of Business, where he received his B.S. and completed certain graduate courses.

- **Tom Clark – Vice President of Operations:** Tom is the Vice President of Operations of Holdings and Enterprises. He joined the Company in 2003 as an operating partner, opening the Evans, Georgia location. In 2007, he was promoted to Director of Operations, and in 2017, he was promoted Vice President. Prior to joining the Company, he was a franchisee of two separate brands including a hamburger franchise Rally's and Papa John's Pizza. He also served in operational positions from restaurant manager to regional manager at Chi Chi's Mexican Restaurant, Champs Food System, and the Oldenburg Brewing Company. Tom's extensive knowledge about the Debtors' organization compliments his entrepreneurial experience as the leader of day-to-day field operations of the Company.
- **Holly Smith – Vice President of Brand Services:** Holly is the Vice President of Brand Services of Enterprises. She joined the Company in November 2016. Holly has more than 10 years of experience in the restaurant industry. She has held roles such as Field Marketing Manager, Brand Services Manager, and Director of Brand Services for Joe's Crab Shack and Macaroni Grill before joining the Strategic Restaurant Solutions Team in October 2015. She has experience developing and delivering brand communication, policies and procedures and brand training materials. Her experience as a project manager led to her success in business development as a founding member of Strategic Restaurant Solutions. In her role at the Company, Holly is responsible for all brand communication, training and human resources. She is currently overseeing the marketing function, including project management. Holly is a graduate of University of Texas at Arlington.
- **Brian Dukes – Vice President of Culinary and Supply Chain Operations:** Brian is the Vice President of Culinary and Supply Chain Operations of Enterprises. He joined the Company in May of 2017. Prior to joining the company, Brian spent a number of years in chef and sous chef roles at fine dining restaurants in Washington, Tennessee, Virginia and South Carolina before becoming Chef then General Manager of the iconic Blue Marlin in Columbia, South Carolina. His most recent role prior to joining the company, was as a business resource chef at Sysco in Columbia, South Carolina, where he was responsible for product development and recipe design for numerous concepts in the Sysco portfolio of clients. In his current role, Brian is responsible for culinary research and development, menu strategy, procurement, supply chain management, and operations at select Fatz restaurants. Brian is a graduate of Johnson and Wales University

in Charleston, South Carolina with chef and culinary training at Alain Ducasse in New York City.

iii. Prepetition Funded Indebtedness

32. As further described below, as of the Petition Date, the Debtors’ capital structure is comprised of outstanding funded-debt obligations in the aggregate principal amount of approximately \$31 million, which consists of the following four separate loan facilities: (a) the secured first-priority loan facility (the “**First Priority Secured Facility**”), (b) the secured second-priority loan facility (the “**Second Priority Secured Facility**”), (c) the mezzanine unsecured loan facility (the “**Mezzanine Facility**”), and (d) that certain unsecured subordinated note (as further defined below, the “**Subordinated Note**”). The amounts outstanding under these facilities as of the Petition Date are summarized below:

Debt Facility	Balance Outstanding (millions)²
First Priority Secured Facility	\$9.7
Second Priority Secured Facility	\$2.0
Mezzanine Facility	\$17.5
Subordinated Note	\$1.9
Total	\$31.1

a. First Priority Secured Facility

33. On or about March 21, 2014, the Company entered into the First Priority Secured Facility comprised of a revolving credit line and term loans, which were provided pursuant to (a) the Credit Agreement by and among Enterprises, as borrower, the other Debtors, as guarantors, and Madison, as sole lender and administrative agent, and (b) various security and loan documents executed and delivered in connection therewith (as each of the foregoing may have been amended from time, collectively, the “**First Lien Credit Documents**”). The proceeds of the First Priority Secured Facility (along with those of the Mezzanine Facility and certain equity investments issued

² Approximate balances (including principal and capitalized interest) as of the Petition Date.

in 2014) were used to refinance the original acquisition loans incurred in connection with the 2008 Milestone Partners leveraged buyout, working capital, and general corporate purposes.

34. On or about September 24, 2018, Madison sold and assigned its rights and obligations under the First Lien Credit Documents pursuant to that certain Assignment Agreement to Shrayne, who subsequently sold and assigned its rights and obligations thereunder to Atalaya. As of November 13, 2018, Atalaya became the agent and lender under the First Priority Secured Facility (the “**First Lien Secured Party**”).

35. The First Priority Secured Facility is secured by a lien on substantially all of the Debtors’ assets and proceeds thereof (the “**Prepetition Collateral**”) and is subject to three separate prepetition intercreditor and subordination agreements: (a) Subordination Agreement, dated May 5, 2017, by and among the Company, Madison, as agent under the First Priority Secured Facility, and Triangle (as defined below), as agent under the Second Priority Secured Facility (as the same may have been amended from time to time, the “**Senior Subordination Agreement**”), pursuant to which the priority of the lien and payment with respect to First Priority Secured Facility is ranked senior to the liens and right of payment with respect to the Second Priority Secured Facility; (b) Subordination Agreement, dated March 21, 2014, by and among the Company, Madison, as agent under the First Priority Secured Facility, and Triangle (as defined below), as agent under the Mezzanine Facility (as the same may have been amended from time to time, the “**First Lien-Mezzanine Subordination Agreement**”), pursuant to which the priority of payment with respect to the First Priority Secured Facility is ranked senior to the right of payment with respect to the Mezzanine Facility; and (c) Subordination and Intercreditor Agreement, dated March 21, 2014, by and among the Company, Madison, as agent under the First Priority Secured Facility, and the Subordinated Noteholder (as defined below) (as the same may have been amended from time to

time, the “**First Lien-Subordinated Note Subordination Agreement**”), pursuant to which the priority of payment with respect to the First Priority Secured Facility is ranked senior to the right of payment with respect to the Subordinated Note.

36. As of the Petition Date, the aggregate outstanding principal balance of the First Priority Secured Facility (including the standby letters of credit and capitalized interest) is approximately \$9.7 million, with approximately \$2.7 million outstanding under the revolver and \$7.0 million of term loans.

b. Second Priority Secured Facility

37. On or about May 5, 2017, the Company entered into a Second Priority Secured Facility pursuant to which it incurred term loans provided pursuant to (a) the Second Lien Credit Agreement by and among Enterprises, as borrower, the other Debtors, as guarantors, and Triangle Mezzanine Fund LLLP (“**Triangle**”), as agent and lender, and the other lenders thereto; and (b) various security and other documents executed and delivered in connection therewith (as each of the foregoing may have been amended from time to time, collectively, the “**Second Lien Credit Documents**”). The initial proceeds of the Second Priority Secured Facility were used to refinance a portion of the existing First Priority Secured Facility, with the subsequent draw thereunder used for working capital requirements.

38. On or about July 31, 2018, Triangle sold and assigned its rights and obligations under the Second Lien Credit Documents to Benefit Street Partners L.L.P. (“**Benefit Street**”), who is now the agent and one of the lenders under the Second Priority Secured Facility.

39. The Second Priority Secured Facility is secured by a lien on the Prepetition Collateral and is subject to a Subordination Agreement, dated May 5, 2017, by and among the Company, Triangle, as agent under the Second Priority Secured Facility, and Triangle, as agent

under the Mezzanine Facility (as the same may have been amended from time to time, the “**Second Lien-Mezzanine Subordination Agreement**”), pursuant to which the priority of payment with respect to the Second Priority Secured Facility is senior to the right of payment with respect to the Mezzanine Facility.

40. As of the Petition Date, the outstanding principal balance (including capitalized interest) under the Second Priority Secured Facility is approximately \$2.0 million.

c. The Mezzanine Facility

41. On or about March 21, 2014, the Company entered into the Mezzanine Facility pursuant to which it incurred term loans provided pursuant to (a) the Senior Subordinated Credit Agreement by and among Enterprises, as borrower, the other Debtors, as guarantors, Triangle, as agent and lender, as well as the other lenders thereto; and (b) other documents executed and delivered in connection therewith (as each of the foregoing may have been amended from time, collectively, the “**Mezzanine Credit Documents**”). The proceeds of the Mezzanine Facility (along with those of the First Priority Secured Facility and certain equity investments issued in 2014) were used to refinance the original acquisition loans incurred in connection with the 2008 Milestone Partners leveraged buyout, working capital, and general corporate purposes.

42. On or about July 31, 2018, Triangle Mezzanine sold and assigned its rights and obligations under the Mezzanine Credit Documents pursuant to Benefit Street, who is now the agent and one of the lenders under the Mezzanine Facility.

43. The Mezzanine Facility is not secured by any assets and is subject to three prepetition intercreditor and subordination agreements: (a) the First Lien-Mezzanine Subordination Agreement, pursuant to which the priority of payment with respect to the Mezzanine Facility is subordinated to the right of payment with respect to the First Priority Secured Facility,

(ii) Second Lien-Mezzanine Subordination Agreement, pursuant to which the priority of payment with respect to the Mezzanine Facility is subordinated to the right of payment with respect to the Second Priority Secured Facility, and (iii) Subordination and Intercreditor Agreement, dated March 21, 2014, by and among the Company, Triangle Mezzanine, as agent under the Mezzanine Facility, and the Subordinated Noteholder (as the same may have been amended from time to time, the “**Mezzanine-Subordinated Note Subordination Agreement**”), pursuant to which the priority of payment with respect to the Mezzanine Facility is senior to the right of payment with respect to the Subordinated Note.

44. As of the Petition Date, the outstanding principal balance (including capitalized interest) under the Mezzanine Facility is approximately \$17.5 million.

d. The Subordinated Unsecured Note

45. On or about March 21, 2014, Enterprises borrowed funds from Old Mill Stream, LLC (“**OMS**” and, in its capacity as subordinated noteholder, the “**Subordinated Noteholder**”) pursuant to the Amended and Restated Subordinated Promissory Note (as amended from time to time, the “**Subordinated Note**”). The proceeds of the Subordinated Note were used to refinance the subordinated note issued by OMS in 2010.

46. The Subordinated Note is neither secured by any assets nor guaranteed by any of the Debtors and is subject to two prepetition intercreditor and subordination agreements: (a) the First-Lien Subordinated Note Subordination Agreement pursuant to which the priority of payment with respect to the Subordinated Note is expressly subordinated to the right of payment with respect to the First Priority Secured Facility, and (b) the Mezzanine-Subordinated Note Subordination Agreement pursuant to which the priority of payment with respect to the

Subordinated Note is expressly subordinated to the right of payment with respect to the Mezzanine Facility.

47. As of the Petition Date, the outstanding principal amount of the Subordinated Note is approximately \$1.9 million.

iv. Other Prepetition Indebtedness

48. In addition to their \$31 million of funded debt liabilities, as of the Petition Date, the Debtors owe approximately \$20 million to trade vendors, current and former landlords, and other general unsecured creditors.

49. One of the Company's key and largest vendors is Sysco Corporation ("**Sysco**"), which (along with its affiliates) provides most of the food and beverages served at the Debtors' restaurants, some of which may be entitled to special rights under the Perishable Agricultural Commodities Act. Prior to the Petition Date, on or about September 21, 2017, an affiliate of Sysco, Sysco Charlotte, LLC, filed a UCC-1 financing statement to perfect security interests it asserts against certain assets of Enterprises. The balance owing to Sysco and its affiliates as of the Petition Date was over \$3.5 million. This is a significant portion of the Debtors' approximately \$7.5 million of trade debt.

II. Events Leading to Filing

a. Operating Challenges

50. The Debtors experienced the same operating and performance struggles affecting many of their industry peers, which have been compounded by company-specific business challenges.

51. Over the past several years, casual dining chains have experienced strong headwinds due to a combination of shifting consumer tastes and preferences, growth in labor and

commodity costs, increased competition, and unfavorable lease terms. Indeed, a number of national and regional restaurant chains – including Real Mex Restaurants, certain Applebee’s franchisees, Ignite Restaurant Group, Macaroni Grill, Garden Fresh, Bertucci’s, and Logan’s – have buckled under these secular pressures and were forced to restructure their balance sheets and operations through a chapter 11 bankruptcy.

52. As described above, like a number of its peers, the Company has been experiencing declining sales and negative trending same-store performance for almost a decade. In an attempt to improve its operations, between 2010 and 2016, the Company’s prior management introduced (now-closed) brands, and attempted to reconfigure, remodel and reorganize the existing Fatz locations and their menu offering. As part of the reconfiguration effort, the Company hired a brand new management team (which was subsequently replaced) and a number of consultants to help them implement these operational changes. These measures, however, did not result in the turnaround of the business or a material increase in revenue. Rather, the outsized capital expenditures invested to implement the redesign strategy and develop new brands only exacerbated the Company’s already substantially constrained liquidity. The Company attempted to address its liquidity shortage by reducing marketing spend and implementing a payables management tactic vis-à-vis its vendors. Unfortunately, these efforts resulted in acceleration of the Company’s sales decline, resulting in further liquidity pressures. After several capital injections, forbearance agreements, and lease restructuring efforts, by mid to late 2016, the Company faced increasingly significant liquidity shortages without reasonable access to additional capital to cover such shortage.

53. In mid-2016 the Board of Directors engaged advisors to review the Debtors’ brand and operational strategies and performance which led to the Debtors’ employment of a new

marketing executive. In late-2016, in an effort to reverse their lagging performance and liquidity issues, the Debtors retained a new CEO, who installed a new management team that developed and initiated a turnaround business plan focused on restoring and enhancing brand and enterprise value. Specifically, this multi-phase strategy included, among other things, redefining the menu, identifying and eliminating key areas of waste, testing new promotional strategies, introducing meal replacement and updated off premise strategies, and introducing new technology surrounding takeout, delivery, and other operational efficiencies.

54. Given its constrained liquidity, the Company could not adequately market these operational improvements and, as a result, could not capture as much additional revenue as expected. Thus, notwithstanding the measures taken to improve performance and reduce operating expenses, the Company's revenue and profitability remained insufficient to support its debt service, working capital, and capital expenditures requirements.

b. Lease Obligations and Rationalization

55. As liquidity tightened, the Company became unable to meet its regular lease obligations. The management team was proactive in reaching out to landlords to renegotiate certain of the lease terms (including the outsized rent obligations), and to obtain temporary abatements and rent reduction. A number of the landlords were cooperative and understanding of the Company's precarious liquidity position and agreed to help execute on the restructuring strategy by negotiating more favorable terms or making accommodations with the Company. These restructurings and abatements provided temporary relief which allowed for resolution of other aged payables. However, certain of the other landlords were resistant and instead chose to implement more stringent and aggressive strategies, including by commencing litigation against the Company. These disputes further constrained the Company's already thin liquidity. Ultimately,

given that the Company would not be able to sufficiently rationalize its footprint and resolve its disputes with the landlords out-of-court, chapter 11 appeared to be the only tool available for the Company to deal with its lease issues.

c. Exploration of Strategic Alternatives

56. Given all the foregoing, to position itself for sustained improvements and growth, the Company determined that it requires a more comprehensive balance sheet restructuring through a chapter 11 proceeding, which will also allow the Company to rationalize its footprint and, where possible, negotiate with landlords for more reasonable terms.

57. As such, in early 2018, the Company's board of directors (the "**Board**") determined to engage a restructuring advisor to help the Company evaluate potential comprehensive changes to improve operational and financial performance. To this end, the Company engaged Loughlin Management Partners & Co., Inc. ("**Loughlin**"), which is a recognized financial advisory firm with extensive expertise in turning around troubled business operations. The Board also determined to engage an investment banker, Duff & Phelps LLC ("**Duff & Phelps**"), to evaluate various strategic restructuring alternatives available to maximize value for the Company and its stakeholders. Duff & Phelps is a recognized investment banking firm with extensive expertise in marketing and selling distressed businesses, including restaurants. Subsequently, the Board also determined to engage Haynes ad Boone, LLP ("**Haynes and Boone**") as restructuring counsel. Haynes and Boone is a recognized law firm with extensive experience and expertise in assisting companies undergoing in and out-of-court restructuring.

58. The Company and its advisors identified a number of underperforming restaurants that would need to be closed in order to reduce or eliminate revenue losses and formulated a go-forward business plan to reorganize around the Debtors' better performing restaurants.

59. Duff & Phelps was tasked with developing a strategic turnaround, including debt restructuring or refinancing and/or sale of equity or assets. Duff & Phelps, working with the Company's management, put together a confidential information memorandum setting forth a potential transaction for the Debtors' assets (the "CIM"). In Spring and Summer 2018, Duff & Phelps contacted 153 financial buyers and 48 strategic buyers to gauge and solicit interest in the Company's assets, provided an overview of the Company, and offered additional information upon execution of a non-disclosure agreements. Of the over two hundred parties that were contacted, 21 executed a non-disclosure agreement and received the CIM. These parties were asked to provide an "indication of interest" ("IOI") containing a proposed structure for the transaction, as well as the value or a range of value to be provided. As of mid-July, however, of the parties who had received a CIM, none had ultimately determined to submit an IOI for a transaction.

60. Additionally, parties that provided written indications of interest were also provided access to an online data room containing due diligence information about the Company's operations and performance, and were invited to engage in informational discussions with Duff & Phelps. As of mid-August, however, none of the parties who participated in the diligence ultimately decided to submit a bid for any transaction.

61. Once the Company and Duff & Phelps determined that there were no third parties interested in pursuing a financing or strategic transaction, and in light of a looming liquidity shortage, the Company and its professionals approached Madison, who was the existing agent and lender under the First Priority Secured Facility at the time, to discuss potential strategic alternatives. Specifically, the Company and Madison discussed, among other things, Madison's willingness to bid on the Company's assets through a chapter 11 and to fund the Company's restructuring efforts by providing debtor in possession financing. After numerous discussions,

Madison indicated that it had no interest in owning the Company's assets or making any new capital contributions to the Company.

62. Beginning in mid-August, Duff & Phelps re-initiated its outreach and marketing efforts. To that end, Duff & Phelps contacted an additional 28 financial buyers and one additional strategic buyer (bringing the total of potential strategic partners contacted to 230 parties). Of these, 14 parties executed a non-disclosure agreement and received a CIM and a number of them submitted IOIs. However, all but two parties ultimately removed themselves from consideration. While the Company was evaluating the remaining IOIs, in early September, Madison informed the Company that they had reached a deal pursuant to which they would sell and assign its rights and obligations under the First Priority Secured Facility to Shrayne. The assignment became effective on September 24, 2018.

63. While Shrayne had initially expressed a desire to work with the Company to serve as a stalking horse bidder for substantially all of the Company's assets, after extensive negotiations and further diligence, on October 31, 2018, Shrayne informed the Company that it would prefer to sell its position as holder of the First Priority Secured Facility to Atalaya. Atalaya expressed an interest in becoming a stalking horse bidder for substantially all of the Company's assets, to fund a debtor-in-possession loan, and to capitalize the go-forward business.

III. Proposed Restructuring Path

64. During the weeks leading up to the Petition Date, the Debtors and Atalaya engaged in arm's-length, good faith, and spirited negotiations over debtor in possession financing and the structure and potential terms of a sale transaction.

65. After evaluating alternatives, the restructuring committee of the Debtors' board of directors, in consultation with their advisors, determined that an efficient section 363 sale of

substantially all of the Company's assets with their incumbent first lien lender serving as the stalking horse bidder combined with an expedited operational restructuring, was the best and most efficient way to maximize a return for the Company and its stakeholders.

a. Sale Transaction

66. Pursuant to a proposed sale transaction, Atalaya will, with the Court's approval, serve as a stalking horse bidder to purchase substantially all of the Debtors' assets and assume certain of the Debtors' liabilities pursuant to section 363 of the Bankruptcy Code, subject to higher and better bids that may be received after a postpetition marketing period. Further details about the transaction will be filed as part of the Debtors' motion to approve bidding procedures and sale, which motion the Debtors anticipate filing reasonably soon after the Petition Date.

b. Proposed DIP Facility

67. Given that the Company had been nearing a liquidity shortfall for weeks prior to the Petition Date, they required access to new capital in order to operate its business while in chapter 11 and effectuate the section 363 sale. Working with its advisors, the Company identified its cash needs over the coming weeks and months and prepared a budget outlining the Debtors' postpetition cash needs. Given its substantial interest in the success of the proposed sale, Atalaya agreed, in conjunction with its stalking horse bid, to provide a superpriority senior secured, priming debtor-in-possession facility and to consent to the Debtors' use of its "cash collateral".

IV. Facts in Support of First Day Motions

68. To minimize the disruptions and the adverse effect caused by their bankruptcy filing with respect to their day-to-day operations and business, the Debtors have filed the First Day Motions requesting various types of relief on an "emergency" basis.

A. Complex Chapter 11 Case Motion

69. Through the *Motion for Order Designating the Debtors' Chapter 11 Cases as Complex Chapter 11 Cases Pursuant to Local Rule 2081-2* (the “**Complex Case Motion**”), the Debtors seek an order designating these chapter 11 cases as “complex chapter 11 cases” in accordance with Rule 2081-2 of the Local Rules for the United State Bankruptcy Court for the District of South Carolina.

70. The Debtors’ 2017 annual revenues were approximately \$90 million. As of the Petition Date, the Debtors’ assets were worth, in aggregate, approximately \$23 million and their liabilities were, in aggregate, approximately \$51 million.

71. The Debtors have more than 500 creditors and parties in interest, excluding their current and former employees, and a claims agent will be required in these chapter 11 cases pursuant to Local Rule 2081-1.

72. The Debtors will require the filing of many first day motions, and the total number of filings in the chapter 11 cases may be voluminous. In order for them to be handled expeditiously and efficiently, they may need to be governed by global notice and hearing procedures.

73. I believe that the relief requested in the Complex Case Motion is in the best interests of the Debtors’ estates, its creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

B. Joint Administration Motion

74. By the *Motion for Order Directing the Joint Administration of the Debtors' Chapter 11 Cases* (the “**Joint Administration Motion**”), the Debtors seek an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 1015(b), directing the joint administration of these chapter 11 cases for procedural purposes only. Specifically, the Debtors

request that the Clerk of the United States Bankruptcy Court for the District of South Carolina (the “Clerk of the Court”) maintain one file and one docket for all of the jointly administered cases under the case number of Cafe Holdings Corp. and that the Clerk of the Court administer the cases under a consolidated caption, as follows:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re: CAFE HOLDINGS CORP., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 18-____ (____) (Jointly Administered)
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¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Cafe Holdings Corp. (7910); Cafe Enterprises, Inc. (4946); CE Sportz LLC (2009); and CES Gastonia LLC (0863). The location of the Debtors’ corporate headquarters is 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687.

75. In addition, the Debtors request that a docket entry, substantially similar to the following, be made on the docket of each Debtor’s chapter 11 case (except that of Cafe Holdings Corp.):

An order has been entered in this case in accordance with Rule 1015(b) directing the joint administration of the chapter 11 cases of Cafe Holdings Corp., Cafe Enterprises, Inc., CE Sportz LLC, and CES Gastonia LLC. **All further pleadings and other papers shall be filed in, and all further docket entries shall be made in, Case No. 18-_____ (_____).**

76. Cafe Enterprises, Inc., CE Sportz LLC, and CES Gastonia LLC are directly or indirectly-owned 100% subsidiaries of Cafe Holdings Corp. and, therefore, all these Debtors are “affiliates” as defined in section 101(2) of the Bankruptcy Code. Given the commercial and corporate relationships among the Debtors, joint administration of these chapter 11 cases will

provide administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings and orders that will arise in these chapter 11 cases will affect each and every Debtor. Thus, the entry of an order directing joint administration of these cases will reduce fees and costs by, for example, obviating the need for duplicative filings and objections. Moreover, joint administration will also simplify supervision of the administrative aspects of these cases by the Office of the United States Trustee for the District of South Carolina and allow all parties in interest to monitor these chapter 11 cases with greater ease and efficiency.

77. Further, joint administration of these chapter 11 cases will not give rise to any conflicts of interest among the Debtors' estates, nor will it prejudice or adversely affect the rights of the Debtors' creditors, because the Debtors seek only administrative, not substantive, consolidation of their estates. Parties in interest will not be harmed by the relief requested, but, instead, will benefit from the cost reductions associated with the joint administration of these cases.

78. I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, its creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

C. Schedules Motion

79. Through the *Debtors' Motion for Entry of an Order, Pursuant to Sections 105(a) and 521 of the Bankruptcy Code and Bankruptcy Rule 1007, for Extension of Time to File Schedules and Statements of Financial Affairs* (the "**Schedules Motion**"), the Debtors seek entry of an order extending the deadline by which the Debtors must file their schedules of assets and

liabilities and statement of financial affairs (collectively, the “**Schedules**”) by fourteen (14) days, through and including December 13, 2018.

80. The Debtors and their professional advisors have spent, and continue to spend, a substantial amount of time, energy, and resources ensuring that the Debtors have a smooth transition into chapter 11, with minimal disruptions to their business operations. As a result, and due to the burdens occasioned by preparing for these chapter 11 cases, the Debtors anticipate that they will be unable to complete their Schedules within fourteen (14) days of the Petition Date.

81. The Debtors submit that the amount of information that the Debtors must compile and the many hours required to complete the Schedules, together with the competing demands on the Debtors’ limited resources, constitute good and sufficient cause for granting the extension of time requested herein. As a result, the Debtors request that the Court grant such an extension, without prejudice to the Debtors’ right to seek any further extensions from the Court. The requested extension will enhance the accuracy of the Debtors’ Schedules and avoid the necessity of substantial subsequent amendments.

82. In view of the amount of work entailed in completing the Schedules, and the competing demands upon the Debtors’ professional advisors to assist in efforts to stabilize the Debtors’ business operations during the initial post-petition period, the Debtors do not believe they will be able to properly and accurately complete the Schedules within the 14-day period following the Petition Date. At present, the Debtors anticipate that they will require a fourteen-day extension of the current deadline to file the Schedules.

83. I believe that the relief requested in the Schedules Motion is in the best interests of the Debtors’ estates, its creditors, and all other parties in interest, and will enable the Debtors to

continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Schedules Motion should be approved.

D. Consolidated List of Creditors Motion

84. In the *Motion for Order Authorizing the Debtors to (I) Prepare a Consolidated List of Creditors in Lieu of a Mailing Matrix, (II) File a Consolidated List of the Thirty Largest Unsecured Creditors, (III) Mail Initial Notices, and (IV) Shorten the Mailing List* (the “**Consolidated List of Creditors Motion**”), the Debtors seek entry of an order authorizing the Debtors to (I) prepare a consolidated list of creditors in lieu of a mailing matrix, (II) file a consolidated list of the 30 largest unsecured creditors, (III) mail initial notices, and (IV) shorten the mailing list.

Consolidated List of Creditors

85. The Debtors seek an order permitting them to maintain a consolidated list of their creditors instead of individual matrices. The Debtors have over 500 creditors (excluding their current and former employees) and operate 38 locations in five states. The Debtors have approximately 1,671 employees.

86. The Debtors, in accordance with Local Rule 2081-1, have filed an application seeking the appointment of Donlin, Recano & Company, Inc. (“**Donlin**”) as claims and noticing agent in the chapter 11 cases. If such application is granted, Donlin will, among other things, (a) assist with the consolidation of the Debtors’ computer records into a creditor database and (b) complete the mailing of notices to the parties in such database. Accordingly, it is in the best interest of the Debtors’ estates to avoid the cost and risks associated with preparing and filing a separate matrix.

87. After consultation with Donlin, the Debtors believe that preparing the consolidated list in the format or formats currently maintained in the ordinary course of business will be sufficient to permit Donlin to promptly notice all applicable parties. Accordingly, it is in the best interest of the Debtors' estates to avoid the costs and risks associated with preparing and filing separate matrices.

Single Consolidated List of the 30 Largest General Unsecured Creditors

88. Pursuant to Rule 1007(d), a debtor shall file "a list containing the name, address and claim of the creditors that hold the largest 20 unsecured claims, excluding insiders...." Fed. R. Bankr. P. 1007(d). However, because some creditors are shared among certain of the Debtors, and the Debtors would therefore have to expend significant resources and effort to reconcile which claims may be asserted against which Debtors, the Debtors request authority to file a single, consolidated list of their 30 largest general unsecured creditors.

Mail Initial Notice to Creditors

89. The Debtors proposed that Donlin will undertake all mailings directed by this Court, the U.S. Trustee or as required by the Bankruptcy Code. Additionally, Donlin will assist the Debtors in preparing creditor lists and mailing initial notices including, but not limited to, (a) a notice of filing of the chapter 11 cases; (b) a notice of a meeting of creditors under section 341 of the Bankruptcy Code; and (c) any correspondence the Debtors may wish to send to creditors and equity security holders as part of the Debtors' communication efforts to keep their creditors and equity security holders informed with respect to the status of the chapter 11 cases. With such assistance, the Debtors will be prepared to file a computer readable consolidated list of creditors and a list of equity security holders upon request and will be capable of undertaking all necessary mailings.

90. With respect to the Debtors' notice of filing of the chapter 11 cases, meeting of creditors, and deadlines (the "**Initial Notice**"), the Debtors request that the Court enter case specific information (*e.g.*, each Debtor's name, case number, tax identification number) on such Initial Notice in each of the Debtors' cases that instructs creditors to send their proofs of claim to the following address:

If Proof of Claim or Interest is sent by mail, send to:

Donlin, Recano & Company, Inc.
Re: Cafe Holdings Corp., et al.
P.O. Box 199043
Blythebourne Station
Brooklyn, NY 11219
Website: www.donlinrecano.com/cafe

If Proof of Claim or Interest is sent by Overnight Courier or Hand Delivery, send to:

Donlin, Recano & Company, Inc.
Re: Cafe Holdings Corp., et al.
6201 15th Avenue
Brooklyn, NY 11219
Website: www.donlinrecano.com/cafe

Shorten the Mailing List

91. The Debtors have hundreds of potential unsecured creditors in these chapter 11 cases. Rather than noticing the entire extensive mailing list on all issues, the Debtors propose to mail all notices to a shortened list in order to reduce costs and excessive, unnecessary mailings to parties not actively involved in the proceedings.

92. The Debtors have more than 500 creditors and approximately 1,671 employees just prior to the Petition Date, as well as other vendors and parties-in-interest. The administrative cost of mailing notices to all of these creditors and parties-in-interest substantially outweighs the need for all creditors to receive notice of all matters in these cases. Moreover, creditors and parties interested in the cases may remain on the mailing matrix by simply requesting, in a notice to be

filed with the Court and served on the parties on the shortened mailing matrix, that they be included on the shortened mailing matrix.

93. The Debtors propose that the following entities be included on the shortened mailing matrix without the necessity of submitting a written request (subject to their ability to request to be removed from such list at a later date): (i) the Office of the United States Trustee for the District of South Carolina; (ii) the Office of the United States Attorney General for the District of South Carolina; (iii) the Internal Revenue Service; (iv) Atalaya Administrative LLC; (v) ACM Fatz VII LLC; (vi) Midtown Madison Management LLC; (vii) Shrayne Capital, LLC; (viii) Benefit Street Partners; (ix) Milestone Partners; (x) Old Mill Stream, LLC; (xi) Triangle Mezzanine Fund LLLP; (xii) Sysco; (xiii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (xiv) all parties who, as of the filing of this motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; (xv) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; (xvi) the Official Committee of Unsecured Creditors, if any, (xvii) counsel to the Official Committee of Unsecured Creditors, if any, and (xvi) any other parties as ordered by the Court for a particular notice or motion.

94. Notwithstanding the relief requested herein, the Debtors are not seeking relief from their obligation to give notice to all creditors and parties in interest of the section 341 meeting of creditors, the time fixed for filing proofs of claim as required by Bankruptcy Rule 2002(a), a proposed use, sale, or lease of property of the estate other than in the ordinary course of business unless the Court orders otherwise, the time fixed for filing objections to and the hearing on the Disclosure Statement and the Plan of Reorganization required by Bankruptcy Rule 2002(b), the

time fixed to accept or reject a proposed modification of a plan, and the dismissal or conversion of the cases to another chapter.

95. If the Court grants the relief requested, the Debtors propose to send, immediately upon its entry, the order granting this Consolidated List of Creditors Motion to all known creditors, employees, vendors and other parties in interest listed on the full mailing matrix along with a form containing provisions that are consistent with Local Rule 2081-2(d) to be completed and returned by interested parties in order to be listed on the shortened mailing list.

96. The Debtors specifically request that the Court waive Local Rule 2018-2(d)'s requirement that notice of the Debtors' request to establish a shortened mailing matrix be filed and served on all parties in the case. However, as set forth in the proposed order, the Debtors propose to serve a copy of any order granting the Debtors' request to establish a shortened mailing matrix on all parties in these chapter 11 cases within three (3) days of the entry of the order.

97. After entry of an order granting the Consolidated List of Creditors Motion, the Debtors propose that service of any notices or motions shall be deemed adequate if the notice or motion in question is served (consistent with such order) upon (a) all parties set forth hereinabove as automatically listed on the shortened mailing list; (b) all parties who have filed a notice to be included on the shortened mailing list with the Court and served such notice on all parties on the shortened mailing list (to be received on or before the day prior to the actual service of the notice or motion in question); (c) all other known parties reasonably calculated to have a direct interest in the notice or motion; and (d) any other parties as ordered by the Court for the notice or motion in question.

98. I believe that the relief requested in the Consolidated List of Creditors Motion is in the best interests of the Debtors' estates, its creditors, and all other parties in interest, and will

enable the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Consolidated List of Creditors Motion should be approved.

E. Cash Management Motion

99. Through the *Debtors' Motion for Entry of an Order (I) Authorizing the (A) Continued Use of their Existing Cash Management System and (B) Use of Existing Bank Accounts and Business Forms; (II) Authorizing Payments of Prepetition Costs and Fees Associated with Customer Credit and Debit Card Transactions; (III) Waiving the Requirements of Section 345(B) of the Bankruptcy Code; and (IV) Granting Certain Related Relief* (the “**Cash Management Motion**”), the Debtors move the Court for entry of an order (I) authorizing the Debtors to (A) continue to maintain their existing cash management system and (B) maintain existing bank accounts and business forms, and in connection with the foregoing, granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of South Carolina to the extent such requirements are inconsistent with the Debtors’ practices in connection with their existing cash management system or any action taken by the Debtors in accordance with the order attached hereto or any other order entered in these chapter 11 cases; (II) authorizing, but not directing, the Debtors, in their sole discretion, to pay or otherwise satisfy all prepetition costs and fees associated with customer credit and debit card transactions; and (III) waiving the requirements of section 345(b) of title 11 of the United States Code with respect to the Debtors’ deposit practices.

The Debtors’ Bank Accounts

100. Prior to the Petition Date and in the ordinary course of business, the Debtors maintained approximately 22 bank accounts (collectively, the “**Bank Accounts**”) which formed the cash management system.

101. The Debtors maintain their primary accounts with the National Bank of South Carolina, a division of Synovus Bank (“**NBSC**”). In addition to various other accounts, the Debtors maintain their primary operating account at NBSC into which most of the Debtors’ cash is concentrated (the “**Concentration Account**”). The Debtors’ remaining bank accounts are maintained at various other banks (together with NBSC, the “**Banks**”). The majority of the remaining accounts are restaurant-specific and all funds from such accounts ultimately flow to the Concentration Account.

102. The Bank Accounts are organized as follows

- (a) The “**Concentration Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 8001). The Concentration Account is the Debtors’ primary operating account into which most of the Debtors’ cash is concentrated.
- (b) The “**Restaurant Level Accounts**” are 16 accounts held at various banks. All but one of these accounts are in the name of Cafe Enterprises, Inc. The other account is held at Fidelity Bank and is in the name of CES Gastonia, LLC (account number ending in 5143). The Restaurant Level Accounts support the Debtors’ restaurants. All funds from the Restaurant Level Accounts are ultimately swept into the Concentration Account.
- (c) The “**Beer/Wine Zero Accounts**” are held at NBSC and are in the name of Cafe Enterprises, Inc. (account numbers ending in 2601 and 8091). The Beer/Wine Zero Accounts are zero balance accounts and are funded from the Concentration Account as electronic debits for alcoholic beverage sales are drawn against it. Each day, funds are automatically swept from the Concentration Account into the account ending in 2601 to support alcoholic beverage sales at all of the Debtors’ restaurants. Each day, funds are automatically swept from the Concentration Account into the account ending in 8091 to support alcoholic beverage sales at Tavern 24.

- (d) The “**Tax Escrow Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 1001). The Tax Escrow Account is not currently in use.
- (e) The “**STORE Capital Rent Payment Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 8117). The STORE Capital Rent Payment Account is used to fund rent payments on account of various restaurant lease agreements to STORE Capital. Funds are manually swept into this account from the Concentration Account to fund these rent payments.
- (f) The “**Payroll Account**” is held at Meta Bank/Money Network and is in the name of Cafe Enterprises, Inc. (account number ending in 0013). The Payroll Account is a funding account and is used to make payroll disbursements.
- (g) The “**Utility Account**” is held at NBSC and is in the name of Cafe Enterprises, Inc. (account number ending in 9508). The Utility Account is not currently in use and was created for the sole purpose of holding the Debtors’ deposits for purposes of providing post-petition adequate assurance to the Debtors’ utility providers.

Flow of Funds within the Cash Management System

103. The Debtors generate revenue principally through restaurant receipts. Approximately 85% of the Debtors' daily customer revenues is in the form of credit card transactions, and on average, the Debtors receive approximately \$200,000 in credit/debit card settlements each business banking day. The credit card payments are settled at each restaurant location seven days per week and are deposited directly into the Concentration Account each business day, net of credit card processing fees. Credit and debit card settlements are deposited into the Concentration Account between one and three business days after they have been settled by each restaurant location. Cash receipts generated at the Debtors' restaurants are deposited approximately three times per week in the Restaurant Level Accounts. These funds are then swept at least three times per week from each of the Restaurant Level Accounts into the Concentration Account.

104. The average weekly sweep from the Restaurant Level Accounts into the Concentration Account was approximately \$230,000 over the last quarter.

105. Receipts transferred into the Concentration Account are used by the Debtors to satisfy their financial obligations, including payroll and benefits program payments, vendor payments, insurance premiums, rent, debt service, and taxes.

Continued Use of Cash Management System

106. The Debtors seek authority to continue to operate the Cash Management System, on a post-petition basis, as described herein. The Cash Management System constitutes ordinary course and essential business practices providing significant benefits to the Debtors, including, among other things, the ability to control corporate funds, ensure the maximum availability of funds and, where necessary, reduce borrowing costs and administrative expenses by facilitating

the movement of funds, and the development of more timely and accurate account balance information. Disrupting their current Cash Management System would impair the Debtors' ability to optimize their business performance at this critical time as they begin the chapter 11 process. Maintenance of the existing Cash Management System will prevent undue disruption to the Debtors' business operations while protecting the Debtors' cash for the benefit of their estates. Requiring the Debtors to change their Cash Management System at this critical time would cause unnecessary disruption to the Debtors and their business affairs. I believe that maintenance of the existing Cash Management System is in the best interests of the Debtors and their estates.

107. The Debtors also request that no Bank that honors a prepetition check or other item drawn on any account that is the subject of this motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored post-petition or otherwise in violation of the Proposed Order (when and if entered). I believe that such flexibility accorded to the Banks is necessary to induce the Banks to continue providing cash management services without additional credit exposure.

Maintenance of the Debtors' Existing Checks and Business Forms

108. I believe that the transition to chapter 11 will be more orderly, with a minimum of harm to operations, if all Bank Accounts are continued following the Petition Date with the same account numbers. By preserving business continuity and avoiding the disruption and delay to the Debtors' collection and disbursement procedures that would necessarily result from closing the Bank Accounts and opening new accounts, all parties in interest will be best served.

109. In addition to mandating the closure of the Debtors' prepetition bank accounts, the U.S. Trustee Guidelines require the immediate printing of new checks with the label "Debtors in Possession." To the extent that it is not pre-printed, the Debtors will indicate their status as debtors in possession by printing "Debtors in Possession" on any of their business forms or in wire transfer instructions.

Prepetition Credit Card Processing Fees

110. As of the Petition Date, the Debtors estimate that approximately \$12,000 is owed in credit card processing fees. Satisfying the credit card processing fees, including any pre-petition obligations on account thereof, meets each element of the *CoServ* court's standard. Not surprisingly, a significant percentage of the Debtors' revenues are generated from credit and debit card sales. The Debtors therefore believe that they can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by having the authority, but not the discretion, of this Court to satisfy any outstanding pre-petition obligations on account of the credit card processing fees.

111. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, its creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

F. Utilities Motion

112. Through the *Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Services, (II) Deeming Utility Providers Adequately Assured of Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Granting Related Relief* (the "**Utilities Motion**"), the Debtors seek entry of an order (I) prohibiting Utility Providers (as defined below)

form altering, refusing, or discontinuing services to the Debtors, (II) deeming the Utility Providers adequately assured of payment, (III) establishing procedures for determining requests from Utility Providers for additional adequate assurance of payment, and (IV) granting related relief.

113. In the normal course of business, the Debtors have relationships with certain utility companies (each, a “**Utility Provider**,” and collectively, the “**Utility Providers**”) for the provision of electricity, natural gas, water, sewer, telephone, internet, television, waste management, and other similar utility services (collectively, the “**Utility Services**”). On average, the Debtors pay approximately \$315,000 per month on account of Utility Services.

114. Because uninterrupted Utility Services are critical to the Debtors’ ongoing operations, the Debtors, by this Motion and pursuant to sections 105(a) and 366 of the Bankruptcy Code, seek to establish an orderly process for providing adequate assurance of payment to the Utility Providers without jeopardizing the Debtors’ business operations.

115. In general, the Debtors have maintained a good payment history with the Utility Providers and have made payments on a regular and timely basis. To the best of the Debtors’ knowledge, there are no material defaults or arrearages with respect to undisputed invoices for prepetition Utility Services as of the Petition Date. The Debtors intend to pay any postpetition obligations to the Utility Providers in a timely fashion and in the ordinary course. The Debtors have budgeted for the payments and believe that cash on hand, cash generated through operations, funds available under the Debtors’ post-petition credit facility, and cash otherwise available to the Debtors will be sufficient to satisfy obligations for Utility Services in the ordinary course on a postpetition basis in a manner consistent with the Debtors’ prepetition practice.

116. As adequate assurance of payment for future services to the Utility Providers, the Debtors propose to deposit approximately \$150,000, in the aggregate, into a segregated, non-

interest-bearing account (the “**Adequate Assurance Deposit**”), within 20 days of the Petition Date. The amount of the Adequate Assurance Deposit equals approximately 50% of the Debtors’ estimated cost of their monthly utility consumption.

117. The Debtors believe they are current on all of their utility payments. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors’ ability to pay for future Utility Services in the ordinary course of business, is sufficient to satisfy the requirements of section 366 of the Bankruptcy Code (the “**Proposed Adequate Assurance**”). Nonetheless, if any Utility Provider believes additional adequate assurance is required, it may request such assurance pursuant to the procedures described below.

118. To address the right of any Utility Provider under section 366(c)(2) of the Bankruptcy Code to seek additional adequate assurance satisfactory to it, the Debtors propose the following procedures (the “**Additional Adequate Assurance Procedures**”):

- a. Within two (2) business days of the date the Interim Order is entered, the Debtors will mail a copy of the Interim Order to the Utility Providers on the Utility Providers List.
- b. If a Utility Provider is not satisfied with the Proposed Adequate Assurance and desires additional assurances of payment, it must serve a request (an “**Additional Assurance Request**”) upon (i) the Debtors: Cafe Holdings Corp., Attn: Eric Easton, 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687; (ii) proposed counsel to the Debtors: Haynes and Boone LLP, Attn: Ian Peck and David Staab, 2323 Victory Ave Suite 700, Dallas Texas 75219; and (iii) McNair Law Firm, P.A., Attn: Michael H. Weaver, P.O. Box 11390, Columbia, South Carolina 29211 (together, the “**Notice Parties**”).
- c. Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits, prepayments, or other security held by the requesting Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of payment; and (v) specify the nature and amount of assurance of payment that would be satisfactory to the Utility Provider.

- d. Upon the Notice Parties' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- e. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court or notice, and may, in connection with any such agreement, in their discretion, (i) provide the Utility Provider with additional adequate assurance of payment in a form satisfactory to the Utility Provider, including, but not limited to, cash deposits, prepayments, and/or other forms of security, without further order of the Court, if the Debtors believe such additional assurance is reasonable, and (ii) withdraw the corresponding funds deposited in the Adequate Assurance Deposit and allocated to the settling Utility Provider.
- f. If the Debtors determine that an Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the applicable Utility Provider within a reasonable period of time, the Debtors shall, upon reasonable notice, calendar the matter (an "**Adequate Assurance Dispute**") for the next regularly scheduled case hearing, unless another hearing date is agreed to by the parties or ordered by the Court, to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code.
- g. Pending resolution of any Additional Assurance Dispute, any such Utility Provider shall be restrained from altering, discontinuing, or refusing service to, or discriminating against, the Debtors on account of unpaid charges for prepetition services, the Debtors' bankruptcy filings or any objections to the Proposed Adequate Assurance, or requiring the Debtors to furnish any additional deposit or other security for the continued provision of services.
- h. Upon closure of any of the Debtors' restaurant locations and the discontinuance of Utility Services associated therewith, or the termination of Utility Services independent thereof, the Debtors may, in their discretion and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each discontinued Utility Service, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider.

119. I believe that the Additional Adequate Assurance Procedures provide a fair, reasonable, and orderly mechanism for the Utility Providers to seek additional adequate assurance, while temporarily maintaining the status quo for the benefit of all stakeholders.

120. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtors' estates, its creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

G. Insurance Motion

121. Through the *Debtors' Motion for Entry of Order (I) Authorizing the Debtors (A) to Continue Insurance Programs and Surety Bond Program Entered Into Prepetition and Satisfy Prepetition Obligations Related Thereto and (B) Renew, Supplement, or Purchase New Insurance Policies, and (II) Granting Related Relief*, (the "**Insurance Motion**"), the Debtors seek entry of an order (a) authorizing, but not directing, the Debtors to continue and, to the extent necessary, renew, supplement, or purchase new liability, property, and other insurance programs as well as the surety bond program, to pay all policy premiums and obligations arising thereunder or in connection therewith, including all such prepetition obligations arising in the ordinary course of business, and to continue the Debtors' insurance premium financing program, and (b) granting related relief.

122. In connection with the operation of their businesses, the Debtors maintain directors' and officers' liability, fiduciary, umbrella, and various other liability, property, and automobile insurance programs (collectively, the "**Insurance Programs**"), through several different insurance carriers (the "**Insurance Carriers**"). All of the Insurance Programs are essential to the protection and continued functioning of the Debtors' business. The following is a summary of the Insurance Programs:

TYPE OF COVERAGE ³	INSURER	POLICY NO.	EXPIRATION DATE	APPROXIMATE ANNUAL GROSS PREMIUM
Workers' Compensation	Zurich	WC 0174347 04	7/1/2019	\$310,765
General Liability	Zurich	CPO 0174345 04	7/1/2019	\$148,225
Property Liability	Zurich	CPO 0174345 04	7/1/2019	\$100,620
Automobile Liability	Zurich	CPO 0174345 04	7/1/2019	\$3,400
Umbrella Liability	Zurich	AUC 0174332 04	7/1/2019	\$64,135
Equipment Breakdown / Boiler and Machinery	The Hartford Steam Boiler Inspection and Insurance Company	FBP 2359141	7/1/2019	\$6,140
Food Borne Illness Liability / Restaurant Recovery	Lloyds of London	U718-860156	7/1/2019	\$17,850
D&O, Employment Practices, Fiduciary, and Crime Liability	Stratford Insurance Company	PDO0000010N	2/28/2019	\$156,685

123. Under the Insurance Programs, the Debtors are required to pay premiums based on fixed rates set by their insurance carriers. The annual premiums for the Insurance Programs amount to approximately \$810,100. As discussed below, the Debtors financed approximately \$582,000 of those premiums pursuant to a premium financing agreement (the “PFA”), a portion of which is still outstanding. The Debtors currently owe PFA approximately \$66,000 for premium finance payments due prior to the Petition Date and estimate that another \$66,000 will come due under the PFA within 21 days after the Petition Date.

124. Continuation of the current Insurance Programs and entry into new Insurance Programs when necessary is essential to the operation of the Debtors’ businesses and is necessary to protect the Debtors from potential liability. Furthermore, in many instances, insurance coverage is required by the regulations, laws, and contracts that govern the Debtors’ commercial activities,

³ Employee benefit programs, including workers’ compensation insurance policies, are addressed in the *Debtors’ Motion for Entry of an Order (A) Authorizing the Debtors to Pay and Honor Certain Prepetition Wages, Benefits and Other Compensation Obligations and (B) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations*, filed contemporaneously herewith.

including the Office of the United States Trustee's requirement that a debtor maintain adequate coverage given the circumstances of its chapter 11 case.

125. It is not always economically advantageous for the Debtors to pay the premiums on some of their insurance policies on a lump-sum basis. Accordingly, the Debtors finance the premiums for their policies pursuant to a PFA with IPFS Corporation ("**IPFS**"). The ability to finance their insurance policies and avoid paying a lump sum premium for such insurance policies in advance, provides significant benefits to the Debtors' liquidity position.

126. The Debtors are required to make installment payments under the PFA for policies obtained prepetition that aggregate to approximately \$66,000 per month. If the Debtors fail to honor any of their obligations under the PFA, IPFS could seek to terminate the financed policies. This would require the Debtors to obtain replacement insurance on an expedited basis and at substantial cost to the Debtors' estates.

127. Pursuant to their surety bond program (the "**Surety Bond Program**"), in the ordinary course of business, the Debtors are required to provide surety bonds to certain third parties, including governmental units and other public agencies, to secure the Debtors' payment or performance of certain obligations in connection with liquor licenses, utility deposits, workers' compensation liabilities, insurance deductibles, and other miscellaneous items (the "**Surety Bonds**"). The Surety Bonds are issued by certain sureties including (i) North American Specialty Insurance Company and (ii) Washington International Insurance Company. The Debtors estimate that as of the Petition Date, the total principal amount on all Surety Bonds is approximately \$64,000. A summary of the Surety Bond Program is included in Exhibit B of the Insurance Motion.

128. Maintaining the Surety Bond Program and satisfying all Surety Bond Obligations, is a sound exercise of business judgment. As noted herein, as a condition to its ongoing operations, the Debtors are required, both legally and contractually, to provide Surety Bonds to secure obligations relating to, among other things, the workers' compensation policy and utilities. A failure to continue the Surety Bond Program and to honor Surety Bond obligations may result in violations of applicable law and breaches under the Debtors' critical contracts, which could be disruptive to the Debtors' operations and impair value for the Debtors' stakeholders. Accordingly, the continuation of the Surety Bond Program and the authority to honor the Surety Bond obligations is essential to preserving the Debtors' business and the value of the Debtors' estates for all parties in interest.

129. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, its creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

H. Tax Motion

130. Through the *Debtors' Motion for Entry of Order (I) Authorizing Payment of Certain Prepetition Taxes and Fees and (II) Authorizing Financial Institutions to Process and Cash Related Checks and Transfers* (the "**Tax Motion**"), the Debtors seek entry of an order (a) authorizing, but not directing, the Debtors, in their sole discretion, to remit and pay (i) sales, use, property, income, net worth, and other similar taxes (collectively, the "**Taxes**") and (ii) fees for licenses, permits, and other similar charges and assessments (collectively, the "**Fees**"), including any penalties and interest thereon, to various federal, state, county, and city taxing and licensing authorities (each, an "**Authority**," and collectively, the "**Authorities**"), (b) authorizing the Debtors' banks and financial institutions (collectively, the "**Banks**") to receive, process, honor,

and pay all checks and electronic payment requests relating to the foregoing, and (c) granting related relief.

Sales and Use Taxes

131. The Debtors incur or collect and remit an assortment of sales, use, and other similar taxes in connection with the operation of their restaurants. In some states where the Debtors operate, the Debtors are required to collect sales taxes from purchasers of their products and services on a per sale basis and then remit sales taxes to the applicable Authority. Additionally, the Debtors may incur and collect use taxes when they purchase taxable products for which no sales tax was charged by their vendors. The sales and use taxes collected or incurred are typically remitted to the Authorities in the month or quarter following the month or quarter in which the related transactions occurred. In general, sales taxes accrue as the Debtors' products are sold and are calculated based upon a statutory percentage of the sale price. The Debtors paid approximately \$6,562,000 in sales taxes in 2017. As of the Petition Date, the Debtors estimate that approximately \$1,038,274 in sales and use taxes has accrued but is unpaid. This figure includes \$322,805 attributable to prior periods, which is currently in arrears; \$534,434 attributable to the most recent measurement period, which will be during the first 21 days of these chapter 11 cases; and the remainder attributable to the current measurement period, which will become due in December 2018. The Debtors believe that approximately \$650,000 of sales and use taxes will accrue from the Petition Date through the remainder of the calendar year 2018.

Property Taxes

132. The Debtors incur personal property taxes in many of the jurisdictions in which they operate. To avoid the imposition of statutory liens on their personal properties, the Debtors typically pay these taxes in the ordinary course on an annual or semi-annual basis, depending on

the jurisdiction. The Debtors estimate that approximately \$1,574,700 in personal property taxes have accrued and are unpaid as of the Petition Date, and believe that no personal property taxes will come due during the first 21 days of these chapter 11 cases.

Income and Net Worth Taxes

133. The Debtors pay income and similar types of taxes to certain state and local Authorities to operate their business in the applicable taxing jurisdictions. The various Authorities assess income and net worth taxes in a variety of ways (minimum tax, tax on income, tax on capital, tax on gross receipts or margin). The Debtors generally make estimated payments for income and net worth taxes on a quarterly basis, with the requirement to remit quarterly estimated taxes in some cases. The Debtors estimate that, as of the Petition Date, approximately \$31,200 of income and net worth taxes have accrued and are unpaid and currently estimate that no income and net worth taxes come due during the first 21 days of these chapter 11 cases.

Business License, Permits, and Other Fees

134. Many Authorities require the payment of Fees for the right to conduct business within their jurisdictions. Those charges may include fees for business licenses, annual reports, permits, liquor licenses, and health and fire inspections. These Fees are computed in a variety of ways, but are generally flat rate fees, which are paid on a monthly, quarterly, or annual basis, depending on the requirements of the particular jurisdiction. The Debtors are frequently required to obtain multiple licenses and permits and pay associated Fees for each location where the Debtors conduct business in a given jurisdiction. The Debtors believe that approximately \$58,043 in Fees that relate (in whole or in part) to prepetition periods may be outstanding, and estimate that

approximately \$66,103 (*i.e.*, \$9,435 in bank fees, \$54,580 in alcohol license fees and \$2,088 in business license fees) will come due during the first 21 days of these chapter 11 cases.

135. I believe that the relief requested in the Tax Motion is in the best interests of the Debtors' estates, its creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

I. Customer Programs Motion

136. Through the *Debtors' Motion Seeking Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business and Granting Related Relief* (the "**Customer Programs Motion**"), the Debtors seek entry of an order (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay, honor or otherwise satisfy prepetition obligations to customers and to otherwise continue prepetition customer practices and programs in the ordinary course of business, (b) authorizing, but not directing, the Debtors, in their sole discretion, to pay, honor or otherwise satisfy prepetition processing costs and fees associated with these practices and programs, (c) authorizing and directing the Debtors' banks and financial institutions to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing, and (d) granting related relief.

137. Prior to the commencement of these chapter 11 cases, in the ordinary course of business, and as is customary in the food and beverage industry, the Debtors instituted and engaged in certain activities to develop and sustain a positive reputation and relationship with their patrons and customers. To that end, the Debtors implemented various customer programs and policies including, without limitation, those described herein (collectively, the "**Customer Programs**")

designed to ensure customer satisfaction, develop and sustain customer relationships and loyalty, improve profitability, and generate goodwill for the Debtors and their products and services.

138. The Debtors distribute gift cards (each a “**Gift Card**”) for use in the Debtors’ restaurant locations. Gift Cards may be purchased at the Debtors’ restaurants, online on the Debtors’ website, or from various other resellers that are authorized to issue Gift Cards. Once purchased, a Gift Card may be used like cash for purchases at the Debtors’ restaurants but may not be redeemed for cash or monetary credit except under limited circumstances where required by applicable state law. A Gift Card may be redeemed at any time and carries no expiration date.

139. Upon purchase, the Gift Cards are “activated” and may then be redeemed at any time. Based on a review of their business records and prior holder activity, the Debtors expect that approximately \$1,866,347 in purchased Gift Cards is outstanding as of the Petition Date.

140. In connection with administering the Gift Cards program, the Debtors use NCR on an exclusive basis, both to produce the actual Gift Cards and to process Gift Cards transactions at the point of sale (along with other ancillary support services). NCR is paid approximately \$50 per month per restaurant location for these goods and services, which includes fees for the cards themselves as well as per swipe transaction fees. NCR also provides other important point-of-sale related services to the Debtors. The Debtors estimate that NCR is owed approximately \$110,906 as of the Petition Date for prepetition services rendered, of which a small portion relates to the Customer Programs.

141. The Debtors maintain a loyalty program called the “Classic Club” for customers of the Debtors’ restaurants. The Classic Club has approximately 19,000 members. Members of this loyalty program are offered a daily discount at the Debtors’ restaurants. The average cost to the Debtors of providing discounts to customers through the Classic Club is approximately \$11,125

per month. The Debtors estimate that the Classic Club program generates sales of approximately \$63,572.00 per month. Accordingly, the Debtors seek authority to continue, in their discretion, to administer and honor the Classic Club in the ordinary course of business.

142. In the ordinary course of business, the Debtors issue customer refunds when necessary to retain customer loyalty and maintain the Debtors' brand reputation (the "**Customer Refunds**"). The Customer Refunds are issued upon request, and the Debtors believe that there is no outstanding amount owed in Customer Refunds as of the Petition Date. On average, the Debtors issue approximately \$50 per month in refunds to customers.

143. The Debtors believe that continuing to honor the Customer Refunds is essential to maintaining their relationships with their customers.

144. I believe that the relief requested in the Customer Programs Motion is in the best interests of the Debtors' estates, its creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

J. PACA/Critical Vendors Motion

145. The Debtors will file a separate declaration in support of the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act and Similar Trust Fund Statutes, (B) of Other Lien Claimants, and (C) of Certain Critical Vendors, and (II) Granting Certain Related Relief.*

K. Wage Motion

146. By the *Motion for Entry of an Order (A) Authorizing the Debtors to Pay and Honor Certain Prepetition Wages, Benefits and Other Compensation Obligations; and (B) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations*

(the “**Wage Motion**”), the Debtors seek entry of an order (a) authorizing the Debtors to pay and honor certain prepetition wages, benefits, and other compensation obligations, (b) authorizing financial institutions to honor and process checks and transfers related to such obligations, and (c) granting related relief.

147. The Debtors have a current workforce of approximately 1,671 employees (the “**Employees**”) in the five states in which they conduct their operations. Approximately 435 of those Employees are employed on a full-time basis, while the remainder of the workforce is employed on a part-time basis. The Debtors’ workforce includes approximately 18 corporate support personnel and multi-unit operators (area and regional managers) who are primarily based in, or report to, the Debtors’ headquarters located in Taylors, South Carolina. The remainder of the Debtors’ workforce includes restaurant managers and other field personnel. Approximately 501 of the Debtors’ Employees are eligible to receive benefits under the Debtors’ various benefits plans described herein. All of the Employees are employed by Debtor Café Enterprises, Inc.

148. The Employees possess the institutional knowledge, experience, and skills necessary to support the Debtors’ business operations during the chapter 11 process and to support a successful reorganization of the Debtors’ business operations. Additionally, the Employees generally rely on their compensation from the Debtors to pay their daily living expenses. The Debtors also incur a number of obligations related to the Employees, such as paid vacation and other time off, federal and state withholding taxes and other withheld amounts, health and welfare benefits, life and accidental death and dismemberment insurance, long-term disability coverage, 401(k) contributions, HSA contributions, expense reimbursements, and other benefits that the Debtors have historically provided in the ordinary course of business. The Debtors’ compensation and benefit programs are referred to herein as the “**Employee Programs**” and the obligations to

the Employees thereunder are referred to herein as the “**Employee Obligations**” and are more fully described below.

Employee Obligations

149. In the ordinary course of business, the Debtors, who process all payroll obligations in-house, issue payroll to all Employees every Friday. The Debtors pay, on average, approximately \$530,000 in gross wages, salary, and employer-paid payroll taxes each weekly pay period. On or about November 13, 2018, the Debtors funded their payroll obligations for the prior week in the amount of \$415,760.49, including payroll taxes in the amount of \$127,678.56. As of the Petition Date, the Debtors have outstanding, unfunded payroll obligations for the time period between November 14, 2018 and the Petition Date.

150. In total, the Debtors estimate that up to approximately \$180,000 in prepetition wages, adjustments to prepetition wages, and salaries owed to Employees (collectively, the “**Unpaid Wages**”).

151. The Debtors, in the ordinary course of business, provide certain eligible Employees with paid time off (the “**PTO**”) in the form of vacation time, sick leave, and paid bereavement leave. According to the Debtors’ policies, the amount of PTO available to eligible Employees and the rate at which such PTO accrues is generally determined by the Employees’ length of employment with the Debtors and ranges from one to 15 days per year. Eligible Employees are not entitled to accrue or carry over any unused PTO. Subject to compliance with applicable state law, eligible Employees are not entitled to cash payment for any unused PTO upon termination. PTO programs are typical and customary in the Debtors’ industry. Failure to continue PTO going-forward would put the Debtors at a competitive disadvantage.

152. Under the laws of various states in which the Debtors operate, the Debtors are required to maintain workers' compensation liability insurance and to provide employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors. The Debtors maintain a workers' compensation policy issued by Zurich (the "**Zurich Policy**"), which provides for statutorily-mandated coverage.

153. Most recently, the Debtors paid approximately \$311,000 for the premium for the Zurich Policy covering July 1, 2018 through July 1, 2019. Over the last 12 months, the costs to the Debtors (inclusive of losses paid, fees, and expense of administration) related to the Zurich Policy have ranged from approximately \$1,000 to \$3,000 per month. Zurich serves as the administrator under the Zurich Policy. The Debtors estimate that they owe approximately \$13,450 on account of workers' compensation claims under the Zurich Policy as of the Petition Date.

154. Failure to maintain workers' compensation insurance in various states in which the Debtors conduct business could result in the institution of administrative or legal proceedings and material fines against the Debtors and their officers and directors.

Employee Benefits

155. The Debtors have established various plans and policies to provide eligible Employees with various medical, dental, prescription drug, vision, life insurance, severance, retirement savings, and other benefits (collectively, the "**Employee Benefits**," and amounts owed under these plans, the "**Employee Benefit Obligations**"), which they intend to continue after the Petition Date in the ordinary course of business, subject to any adjustments or modifications that they determine are necessary, prudent, and in the best interests of their estates. The Debtors seek the authority, but not the direction, to satisfy all outstanding amounts related to Employee Benefit Obligations that arose prior to the Petition Date including, without limitation, any payments for

claims, premiums and fees owed for administrative costs and other amounts required in connection with the Debtors' Employee Benefit Obligations, as such amounts become due in the ordinary course of the Debtors' business.

156. The Debtors maintain a retirement savings plan (the "**401(k) Plan**"), administered by ADP that meets the requirements of Section 401(k) of the Internal Revenue Code of 1986. ADP's fees for its 401(k) Plan services are approximately \$1,000 to \$1,300 per pay period. The Debtors believe that they are current on all amounts owed to ADP as of the Petition Date. By this motion, the Debtors request authority to pay any amounts owed to ADP as of the Petition Date and to continue to pay ADP in the ordinary course of business.

157. Under the Debtors' HSA Plan, the Debtors offer eligible Employees the ability to contribute a portion of their pre-tax compensation to an HSA to pay for qualified medical and dependent care expenses (the "**HSA Program**"). As of the Petition Date, the Debtors estimate owing approximately \$12,000 on account of the HSA Program.

Payroll Garnishments and Deductions

158. The Debtors deduct from their Employees' paychecks certain taxes, such as payroll and social security taxes, required to be withheld by certain federal, state and local taxing authorities (the "**Payroll Deductions**"). The Debtors directly pay the amounts to the appropriate governmental authorities. The Debtors believe such Payroll Deductions are not assets of their estates and seek authority to continue to forward any Payroll Deductions not forwarded as of the Petition Date in the ordinary course of business.

159. Occasionally, the Debtors are presented with garnishment or child support orders requiring the withholding of Employee wages to satisfy such Employee obligations. Additionally, certain Employees have voluntary deductions for items such as whole life, accident, critical illness,

and hospital indemnity insurance programs. Payments of these obligations are made from amounts otherwise payable to the Employees and are not an incremental cost obligation of the Debtors' estates.

160. Finally, the Debtors are subject to certain taxes, fees, and expenses, including federal wage and social security taxes and unemployment taxes and contributions (the "**Employer Taxes and Fees**"). The Employer Taxes and Fees are determined, for the most part, based on the gross wages and salaries that the Debtors pay to their Employees, and are required to be paid on a periodic basis.

161. The Debtors estimate that, as of the Petition Date, the Debtors have withheld approximately \$128,000 in Employer Taxes and Fees to be remitted to the appropriate third-party recipient. Failure to remit Employer Taxes and Fees could result in the institution of administrative or legal proceedings and material fines against the Debtors and their officers and directors.

Reimbursable Business Expenses

162. The Debtors reimburse their employees who incur and pay a variety of approved business-related expenses in the ordinary course of performing their duties ("**Reimbursement Obligations**"). Some Employees initially incur and pay such expenses by using personal credit cards but are subsequently reimbursed by the Debtors after submission and approval of expense reimbursement requests.

163. The Debtors receive and process Reimbursable Obligations on a rolling basis. Consequently, it is difficult for the Debtors to determine the exact amount of Reimbursable Expenses outstanding as of the Petition Date because, among other things, Employees may have expenses that they have yet to submit to the Debtors for reimbursement. The Debtors estimate that they remit approximately \$48,000 per month on account of Reimbursement Obligations. As of

the Petition Date, the Debtors estimate that they owe approximately \$5,000 for submitted but unpaid Reimbursement Obligations.

Corporate Credit Card

164. The Debtors provide a single corporate credit card (the “**Corporate Credit Card**”) issued by National Bank of South Carolina (“**NBSC**”) issued to the Debtor’s controller. (the “**Corporate Credit Card Holder**”). The Corporate Credit Card Holder uses the Corporate Credit Card to pay for regular recurring business expenses, including business travel, regulatory fees, information technology expenses, and necessary payments to vendors (collectively, the “**Credit Card Expenses**”). At the end of each billing cycle, NBSC sends monthly statements directly to the Debtors and the Debtors pay any outstanding balances on the 1st day of each month. On average, the Debtors pay approximately \$20,000 per month to NBSC for amounts incurred on the Corporate Credit Card.

165. As of the Petition Date, the Debtors estimate there is an outstanding balance of approximately \$21,000 on the Corporate Credit Card that is due and owing.

166. I believe that the relief requested in the Wage Motion is in the best interests of the Debtors’ estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their businesses in chapter 11 without disruption.

L. Claims Agent Application

167. Through *Debtors’ Application to Employ and Retain Donlin, Recano & Company, Inc. as Claims and Noticing Agent to the Debtors and Debtors in Possession* (the “**Claims Agent Application**”), the Debtors seek entry of an order authorizing the employment and retention of Donlin, Recano & Company, Inc. (together with its affiliates and subcontractors, “**Donlin**”) to serve as claims and noticing agent to the Debtors. It is my understanding that Donlin has substantial experience in matters of this size and complexity and has acted as the official claims and noticing agent in many large bankruptcy cases. I believe that Donlin is fully equipped to

manage claim issues and provide notice to creditors and other interested parties in this case and, therefore, on behalf of the Debtors, I respectfully submit that the Claims Agent Application should be approved.

168. Several of these First Day Motions request authority to pay certain prepetition claims. I understand that Rule 6003 of the Federal Rules of Bankruptcy Procedure provides, in relevant part, that the Court shall not issue orders on motions to pay prepetition claims within 21 days after the Petition Date, “except to the extent relief is necessary to avoid immediate and irreparable harm.” In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay certain prepetition claims in those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. Other relief will be deferred for consideration at a later hearing.

169. I have reviewed the Debtors’ chapter 11 petitions and First Day Motions, or have otherwise had the contents explained to me, and it is my belief that the relief sought in each of the First Day Motions: (a) is necessary to give the Debtors an opportunity to work towards successful chapter 11 cases that will benefit all of the Debtors’ stakeholders, (b) is necessary to enable the Debtors to operate in chapter 11 with minimum disruption or loss of productivity or value, (c) constitutes a critical element in achieving a successful reorganization of the Debtors, and (d) best serves the interests of the Debtors, their estates, and other parties in interest.

M. Other Information

170. The documents filed in connection with the commencement of the chapter 11 cases contain information regarding the holders of the Debtors’ thirty (30) largest unsecured claims (on a consolidated basis), excluding insiders.

171. As part of this filing, the Debtors have hired the following professionals to assist it with their reorganization efforts:

Haynes and Boone, LLP

Attn: Ian T. Peck, Esq.
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Restructuring Counsel to the Debtors and Debtors in Possession

McNair Law Firm, P.A.

Attn: Michael H. Weaver, Esq.
1221 Main Street, Suite 1800
Columbia, South Carolina 29201
Local Counsel to the Debtors and Debtors in Possession

Loughlin Management Partners + Company

Attn: John Sordillo
20 W 55th Street, 5th Floor
New York, New York 10019
Financial Advisors and CRO to the Debtors and Debtors in Possession

Duff & Phelps LLC

Attn: Vin Batra
55 E 52nd Street, 31st Floor
New York, New York 10055
Investment Banker to the Debtors and Debtors in Possession

Donlin Recano & Company, Inc.

Attn: Nellwyn Voorhies
419 Park Ave. S
New York, New York 10016
Claims and Noticing Agent to the Debtors and Debtors in Possession

Declaration

Pursuant to section 1746 of title 28 of the United States Code, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 15, 2018
Columbia, South Carolina

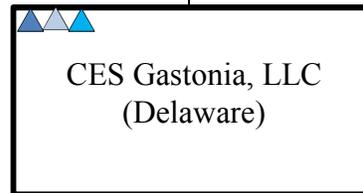
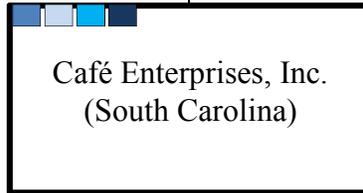
/s/ Eric Easton
Eric Easton
Chief Financial Officer

EXHIBIT A

Organizational Chart

[Please see attached]

	Funds owned by Milestone Partners	Other Outside Investors	Management
Common Shares:	~64%	~4%	~32%
Class A Preferred Shares:	~70%	~5%	~25%
Class B Preferred Shares:	~84%	~5%	~11%
Class C Preferred Shares:	~79%	~21%	



-  Equity Holder
-  Borrower
-  Guarantor

-  Obligor under First Priority Secured Facility
-  Obligor under Second Priority Secured Facility
-  Obligor under Senior Subordinated (Mezzanine) Facility
-  Obligor under Subordinated Promissory Note