

**Cafe Enterprises, Inc., et al.**  
**Terms and Conditions of**  
**Proposed Senior Secured, Super-Priority**  
**Debtor-in-Possession Credit Facility**

---

*The terms outlined below in this Terms and Conditions (this “**DIP Term Sheet**”) are the terms and conditions for a senior secured, super-priority debtor-in-possession credit facility (hereinafter referred to as the “**DIP Facility**”) to be made available to the Debtors (as defined below). This DIP Term Sheet, the Interim Order (as defined below), and the Final Order (as defined below) shall collectively constitute the exclusive and definitive documentation and agreement among the parties for the DIP Facility (the “**DIP Financing Documents**”). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Credit Agreement, dated as of March 21, 2014, by and among ACM Fatz VII LLC (as successor in interest to Madison Capital Funding LLC), as lender, and Cafe Enterprises, Inc., as borrower (as such agreement may be modified, amended, or restated from time to time, the “**Pre-Petition Credit Agreement**”):*

---

**Borrowers:**

- (i) Cafe Enterprises, Inc.;
- (ii) CE Sportz LLC;
- (iii) CES Gastonia LLC; and
- (iv) Cafe Holdings Corp.

Each of the borrowers listed above shall be referred to collectively herein as the “**Debtors**” and each individually, a “**Debtor**”.

**Amount and Type of Facility:** The DIP Facility will consist of a consolidated, delayed draw term loan in the aggregate principal amount of three million two hundred thousand dollars (\$3,200,000.00); Provided, however, that until entry of the Final Order, only one million dollars (\$1,000,000.00) of DIP Facility advances will be available to the Debtors.

**Agent:** Atalaya Administrative LLC (the “**DIP Agent**”).

**DIP Lenders:** ACM Fatz VII LLC (the “**DIP Lender**” and collectively, with the DIP Agent, the “**DIP Secured Parties**”).

**Borrowing Availability:** All new advances under the DIP Facility shall be limited by the Budget and the other terms of this DIP Term Sheet. Unless the Debtors shall have obtained the written consent of the DIP Agent for additional, mid-week DIP Facility advances, the Debtors shall not be authorized to receive a DIP Facility advance more frequently than once per calendar week.

**Budget and Variances:** Subject to the Budget Variances (as defined below) (i) the Debtors’ Budget line items for (a) total cash receipts from operations, (b) food vendors, (c) payroll expenses, (d) operating expenses, and (e) marketing expenses (each of the foregoing line items a “**Tested Operating Line Item**” and collectively, the “**Tested Operating Line Items**”), shall each be adhered to,

by line item, on a weekly basis and a cumulative basis for the Budget (as defined below) period then ending as described below, provided, however, that amounts not disbursed in a line item shall be deemed to roll over to subsequent weeks and (ii) the Debtors' disbursements for fees and expenses of third party professionals engaged by or for the benefit of the Debtors or the Committee (if any), including success or transaction fees (collectively, "**Professional Fees**"), which Professional Fees shall be reported in a manner so that Professional Fees for each retained professional are reflected on its own line item<sup>1</sup>, shall be adhered to on a cumulative basis for that portion of the Budget period then ending. Any fees payable to professionals retained by the DIP Secured Parties set forth in the Budget shall not be limited by the amounts set forth in the Budget.

Actual amounts for each Tested Operating Line Item may not vary from the applicable Budget (including any amounts deemed to roll over from a previous week due to not being spent) by (i) for the first four (4) weeks of the Budget period, more than twelve and a half percent (12.5%) per Tested Operating Line Item on a weekly basis or more than ten percent (10.0%) per Tested Operating Line Item on a cumulative basis for that portion of the Budget Period then ending; or (ii) from and after the fifth (5<sup>th</sup>) week of the Budget, more than ten percent (10.0%) per Tested Operating Line Item on a weekly basis or more than seven and a half percent (7.5%) per Tested Operating Line Item on a cumulative basis for that portion of the Budget period then ending; (collectively, the "**Budget Variances**").

Notwithstanding the exclusion of Budget line items (a) insurance payments, (b) rent, and (c) taxes and fees, from the definition of Tested Operating Line Items, the Debtors shall nevertheless use their commercially reasonable best efforts to prevent expenditures for each such line item from exceeding the amounts set forth for in the Budget for each such line item on a weekly and cumulative basis.

Any line items set forth within the Budget for the payment of amounts relating to the MIP are included for illustrative purposes only.

Prior to entry of the Final Order, the DIP Agent and Debtors shall negotiate in good faith regarding the terms of a MIP. In connection with such negotiations, the Debtors shall provide the DIP Agent with all information reasonably requested by the DIP Agent regarding the MIP. No expenditures may be made in respect of the MIP until such MIP has been approved by

---

<sup>1</sup> Provided, however, that the Professional Fees of Haynes and Boone, LLP and McNair Law Firm, P.A. shall be reflected under a single line item titled "Debtors' Bankruptcy Counsel".

both the DIP Agent (in writing) and the Bankruptcy Court.

Upon entry of the Interim Order, the DIP Agent will authorize the Debtors to use proceeds of the DIP Facility for the retention of “D&O” tail coverage of at least three years under the Debtors’ current D&O liability policy or substantially similar coverage from the same or a different provider.

On or before Wednesday of each week, commencing with the first full week following the Petition Date, the Debtors shall deliver to the DIP Agent an Approved Budget Variance Report.

**Fees:**

The Debtors agree to pay the reasonable costs and reasonable and documented expenses of the DIP Secured Parties as set forth in the Section titled “Agent Fees and Expenses” below.

**Termination Date:**

The earliest to occur of: (a) the Maturity Date (as defined below); (b) December 18, 2018, if the Final Order has not been entered on or before that date; (c) acceleration of the obligations under the DIP Facility; (d) the effective date of a confirmed plan of reorganization or liquidation that provides for indefeasible payment in full, in cash of all obligations owing under the DIP Facility and is otherwise acceptable to the DIP Agent in its sole discretion; (e) the date which is the closing date of any sale of all or substantially all of any Debtor’s assets to a party other than the DIP Lender; (f) the entry of an order by the Bankruptcy Court (as defined below) (i) granting relief from the automatic stay permitting foreclosure of any assets of the Debtors with a value in excess of \$100,000 in the aggregate, (ii) granting any motion by the DIP Agent to terminate the use of cash collateral or lift the stay or otherwise exercise remedies against any cash collateral, (iii) appointing a trustee or an examiner with expanded special powers, or (iv) dismissing or converting any of the Chapter 11 Cases (as defined below); (g) the filing or support by the Debtors of a plan of reorganization that (i) does not provide for indefeasible payment in full, in cash of all obligations owing under the DIP Facility and (ii) is not otherwise acceptable to the DIP Agent in its sole discretion; and (h) entry of a Bankruptcy Court order granting liens or claims (other than the Carve Out) that are senior or *pari passu* to the liens securing the DIP Facility. The date on which the earliest of clauses (a) through (h) above occurs and the DIP Agent provides written notice thereof to the Debtors being referred to hereinafter as the “**Termination Date.**” On the Termination Date, the DIP Facility shall be deemed terminated, and the DIP Secured Parties shall have no further obligation to provide financing pursuant to the DIP Facility or DIP Financing Documents.

**Non-Default Interest Rate and Payment Terms:**

Interest on all outstanding advances under the DIP Facility shall accrue from and after the Petition Date at a per annum rate equal to nine percent (9%) per annum (the “**Non-Default Interest**”).

**Rate**”).

Interest with respect to any outstanding obligations under the Pre-Petition Credit Agreement shall, to the extent permitted by applicable bankruptcy law, accrue from and after the Petition Date at the rate of interest set forth in the Pre-Petition Credit Agreement.

**Default Interest Rate:**

Effective immediately upon the occurrence of an Event of Default unless waived in writing by the DIP Agent, interest on the outstanding loans under the DIP Facility shall accrue at a rate that is 2% per annum in excess of the Non-Default Interest Rate.

**Loan Payments:**

Each of the Debtors, jointly and severally, promises and agrees to pay to the DIP Agent and the DIP Lenders all DIP Facility advances, together with interest thereon accruing pursuant to the DIP Financing Documents, in full, in cash, on the Termination Date.

All unpaid principal, interest, fees, costs and expenses in respect of the DIP Facility shall be due and payable in full by the Debtors on the Termination Date, whether at maturity, upon acceleration or otherwise and if such amounts are not paid in full in cash, interest, fees, costs, and expenses in respect of the DIP Facility shall continue to accrue until paid in full.

**Use Of Proceeds:**

Proceeds of the DIP Facility shall be used solely for the following purposes (and to the extent identified in the Budget): (a) to fund, to the extent that usage of cash collateral and available cash are not sufficient to cover such expenses, post-petition operating expenses and working capital needs of the Debtors, including, but not limited to, those activities required to remain in, or return to, compliance with laws in accordance with 28 U.S.C. § 1930; (b) to pay interest, fees and expenses to the DIP Secured Parties in accordance with this DIP Term Sheet (whether or not such amounts are reflected in the Budget); (c) to fund fees and expenses incurred in connection with the 363 Sale (as defined below); (d) to pay permitted pre-petition claim payments and adequate protection payments, if any; (e) to pay Professional Fees provided for in the Budget; and (f) to pay certain other costs and expenses of administration of the Chapter 11 Cases.

Proceeds of the DIP Facility or cash collateral shall not be used (a) to permit any Debtor, or any other party-in-interest or their representatives to challenge or otherwise contest or institute any proceeding to determine (i) the validity, perfection or priority of security interests in favor of the DIP Agent, the Pre-Petition Agent, the Pre-Petition Lenders or the DIP Lenders or (ii) the enforceability of the obligations of any Debtor or any guarantor

under the Pre-Petition Credit Agreement, any other Pre-Petition Loan Documents, or the DIP Facility, (b) to investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim, motion, proceeding or cause of action against the DIP Agent, the Pre-Petition Agent, the Pre-Petition Lenders, or the DIP Lenders and their agents, attorneys, advisors or representatives including, without limitation, any lender liability claims or subordination claims, (c) to investigate, commence, prosecute or defend (or support any other person or entity in investigating, commencing, prosecuting, or defending) any claim or proceeding or cause of action to disallow or challenge the obligations of any Debtor or any guarantor under Pre-Petition Credit Agreement, any other Pre-Petition Loan Documents or the DIP Financing Documents, or (d) to fund acquisitions, capital expenditures, capital leases, or any other similar expenditure other than capital expenditures specifically set forth in the Budget and approved by the DIP Agent, provided that a Committee (if any) and its professionals shall be permitted to investigate the liens of the Pre-Petition Agent and Pre-Petition Lenders in connection with the Pre-Petition Credit Agreement, with such investigation fees not to exceed \$15,000.

**Cash Management  
Collections and Remittances:**

The Debtors shall use a cash management system that is the same as or substantially similar to their pre-petition cash management system. Any material changes from such pre-petition cash management system must be acceptable to the DIP Agent in its reasonable discretion. The Interim Order and Final Order shall provide the DIP Agent and the DIP Lenders with a valid and enforceable lien and security interest on the cash held in the Debtors' bank accounts.

**Super-Priority  
Administrative Claim:**

Amounts owed by Debtors to the DIP Secured Parties pursuant to the DIP Facility (including all accrued interest, fees, costs and expenses) shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code (as defined below), a claim having priority over any or all administrative expenses of the kind specified in, among other sections, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code, subject to payment of the Carve Out (such claim, the "**DIP Superpriority Claim**").

**Collateral Security:**

Subject and subordinate only to: (i) any valid, properly perfected, enforceable, non-avoidable prior liens and security interests existing as of the Petition Date that are senior to the liens and security interests in favor of the Pre-Petition Agent and/or the Pre-Petition Lenders (the "**Permitted Senior Liens**"), and (ii) the Carve Out, the DIP Facility (including accrued interest, fees, costs and expenses) shall be secured by first priority senior and priming liens and security interests (the "**DIP Liens**") in all of the Debtors' property, including, without limitation, all of Debtors' existing and future acquired property and interests of any nature

whatsoever, real and personal, tangible and intangible, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Debtor, excluding only Avoidance Actions, but including, subject to entry of the Final Order, Avoidance Proceeds (collectively, the “**DIP Collateral**”). For the avoidance of doubt, the proceeds received in respect of the DIP Liens shall first be applied in respect of the Carve Out before any such proceeds are applied in respect of the DIP Facility claims.

**Lien Validation and Perfection:**

All liens authorized and granted pursuant to the Interim Order or the Final Order entered by the Bankruptcy Court approving the DIP Facility or with respect to adequate protection shall be deemed effective and perfected as of the Petition Date, and no further filing, notice or act will be required to effect such perfection.

The Debtors shall stipulate in the Interim Order and Final Order that (i) the liens of the Pre-Petition Agent and the other Pre-Petition Lenders securing the Pre-Petition Credit Facility are valid, perfected, encumber all assets of the Debtors, and have first priority, subject to the Carve Out and (ii) the Debtors possess no claims, offsets or any other type cause of action against the Pre-Petition Agent or any of the Pre-Petition Lenders that would impair, in any manner, the liens of the Pre-Petition Agent or any of the Pre-Petition Lenders against the Debtors’ assets or the obligations of the Debtors to the Pre-Petition Agent and Pre-Petition Lenders under the Pre-Petition Credit Facility. The Debtors’ stipulations shall be binding upon all parties in interest in the Chapter 11 Cases, including any Committee that is appointed, unless (i) an adversary proceeding is filed by any party-in-interest (including any Committee appointed in the Chapter 11 Cases) prior to the expiration of forty-five (45) days after the Petition Date (the “**Review Period**”) against the Pre-Petition Agent or the Pre-Petition Lenders (as applicable) challenging the Pre-Petition Agent or the Pre-Petition Lender’s liens (as applicable) or otherwise asserting estate claims against the Pre-Petition Agent or the Pre-Petition Lenders (as applicable), and (ii) a final, non-appealable judgment is entered against the Pre-Petition Agent or the Pre-Petition Lenders (as applicable) in such adversary proceeding. Any party-in-interest that fails to file an adversary proceeding within the Review Period shall be forever barred from asserting any claims against the Pre-Petition Agent or the Pre-Petition Lenders on behalf of any Debtor’s estate, or challenging in any manner the liens and claims of the Pre-Petition Agent or the Pre-Petition Lenders against any of the Debtors.

**Release of Claims**

In consideration of the furnishing of the DIP Facility, each of the Debtors party hereto, subject to the rights of another party to bring a Challenge Action (as such term is defined in the Interim Order or the Final Order approving the DIP Facility) during the Review Period, and upon entry of the Final Order, hereby absolutely releases and forever discharges each of the Pre-Petition Agent and Pre-Petition Lenders and their affiliates, officers, directors, employees, attorneys, and other representatives from any and all claims and causes of action of every kind and nature that any of the Debtors may hold against such released parties related to the Pre-Petition Credit Agreement or the other Pre-Petition Loan Documents, other than claims and causes of action based on the other party's gross negligence, willful misconduct, or fraud.

**506(c) Surcharge/Equities of Case**

Upon entry of the Final Order, each of the Debtors hereby waive any right to surcharge the prepetition collateral securing the Pre-Petition Credit Agreement, Pre-Petition Loan Documents, or DIP Collateral, whether pursuant to Bankruptcy Code sections 506(c) or 105(a) or under any other applicable law.

Upon entry of the Final Order, the DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders shall not be subject to the "equities-of-the case" exception of Bankruptcy Code section 552(b), or to the equitable doctrines of "marshaling" or any similar claim or doctrine with respect to any DIP Collateral or collateral securing the Pre-Petition Credit Agreement or Pre-Petition Loan Documents.

**Adequate Protection –  
First Lien Obligations:**

As adequate protection and in consideration for being primed by the DIP Lenders' claims and liens, the Pre-Petition Agent and Pre-Petition Lenders shall receive, to the extent of diminution in value of the interests of the Pre-Petition Agent and Pre-Petition Lenders in the Debtors' collateral securing the amounts due under the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents following the Petition Date, (a) a claim having priority over any and all expenses of the kind specified in, among other sections of the Bankruptcy Code, Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, and 1114, subject to payment of the Carve Out and subject to the super-priority administrative claims of the DIP Agent and the DIP Lenders under the DIP Facility (such claim, the "**First Lien Adequate Protection Superpriority Claim**"); and (b) valid, binding, enforceable and perfected replacement liens in all DIP Collateral, subject to payment of the Carve Out and the DIP Liens (the "**First Lien Adequate Protection Liens**").

The First Lien Adequate Protection Liens granted herein in favor of the Pre-Petition Agent and Pre-Petition Lenders shall not encumber Avoidance Actions, but, subject to entry of the

Final Order, shall encumber Avoidance Proceeds.

**Adequate Protection –  
Second Lien Obligations:**

As adequate protection and in consideration for being primed by the DIP Lenders' claims and liens, the Second Lien Agent and Second Lien Lenders shall receive, to the extent of diminution in value of the interests of the Second Lien Agent and Second Lien Lenders in the Debtors' collateral (if any) securing the amounts due under the Second Lien Loan Documents following the Petition Date, valid, binding, enforceable and perfected liens in all DIP Collateral, subject to payment of the Carve Out, the DIP Liens, the liens securing the obligations under the Pre-Petition Loan Documents, and the First Lien Adequate Protection Liens (the "**Second Lien Adequate Protection Liens**").

The Second Lien Adequate Protection Liens granted herein in favor of the Second Lien Agent and Second Lien Lenders shall not encumber Avoidance Actions, but, subject to entry of the Final Order, shall encumber Avoidance Proceeds.

**Agent Fees and Expenses:**

The Debtors shall promptly pay or reimburse the DIP Agent when requested for all reasonable and documented costs and expenses of counsel (including, without limitation, local counsel) and financial advisors for the DIP Secured Parties relating to the DIP Facility and the administration and interpretation of, and the enforcement of remedies under, the DIP Facility, regardless of whether such amounts were incurred prior to or after the Petition Date, including but not limited to, due-diligence, duplication or printing costs, consultation, travel, and attendance at court hearings, regardless of whether the DIP Facility is consummated. The DIP Agent shall have the right to charge the DIP Facility for any such fees and costs. Failure to pay such fees and expenses within twelve (12) days of delivery of the applicable fee reimbursement request shall be an Event of Default under the DIP Facility, provided that the DIP Agent shall concurrently provide copies of any fee reimbursement request to the U.S. Trustee and the Committee (if any) and allow such parties ten (10) days to review and object to any fees or expenses requested therein. If any objection is asserted, the Bankruptcy Court shall decide the issue and the Debtors shall not be required to pay any disputed portion of such fees or expenses until the matter is resolved. For the avoidance of doubt, failure to pay such disputed fees or expenses while the Bankruptcy Court resolves such dispute will not be an Event of Default, even if it is determined by the Bankruptcy Court that such payment should have been made.

**Conditions Precedent to Initial  
DIP Facility Advance:**

The closing of the DIP Facility shall be subject to (a) approval of the Budget by the DIP Agent, together with all financial information and projections regarding the Debtors requested by the DIP Agent, all in form and substance satisfactory to the DIP Agent in its sole discretion, (b) entry of an Interim Order approving the DIP Facility, the DIP Liens, and the DIP



Superpriority Claim, and containing such other orders and findings as the DIP Agent may require, including modification of the automatic stay after a specified notice period following the occurrence of an Event of Default (subject to compliance with the Local Rules of the Bankruptcy Court) enabling the DIP Agent to exercise certain rights and remedies against the DIP Collateral, which Interim Order or Final Order, as applicable, shall not have been modified or amended without approval of the DIP Agent, and shall not have been reversed, vacated or stayed pending appeal, in form and substance satisfactory to the DIP Agent in its sole discretion, (c) the DIP Agent's approval of all material motions and orders filed in the Chapter 11 Cases relating to the 363 Sale or requiring the expenditure of cash, (d) continuation of Debtors' present cash management system, and (e) the form and substance of this DIP Term Sheet shall be satisfactory to the DIP Agent in its sole discretion.

**Additional Conditions to Each Borrowing Under the DIP Facility:**

The funding of each DIP Facility advance shall be subject to the following conditions precedent: (a) There shall exist no Event of Default (or event that would constitute an Event of Default with the giving of notice or lapse of time) under any of the DIP Financing Documents, and the representations and warranties therein shall be true and correct in all material respects; (b) There shall have occurred no material adverse change in the Debtors' operations (financial, environmental, or otherwise), performance, or properties (other than as a result of the commencement of the Chapter 11 Cases), since the date of this DIP Term Sheet, that has or could be expected to have a material adverse effect on the rights and remedies of the DIP Agent or on the ability of any Debtor to perform its obligations under the DIP Facility; (c) Compliance with Bankruptcy Rule 4001 and any applicable Local Bankruptcy Rules, the entry of the Interim Order and the Final Order (as applicable), together with any other order requested by the DIP Agent authorizing and approving the DIP Facility in form, substance and amount acceptable to the DIP Agent in its sole discretion; (d) Payment of all fees and expenses owing to the DIP Agent in connection with the DIP Facility; (e) the DIP Agent shall be reasonably satisfied that Debtors are continuing to take action and demonstrating progress toward the Milestones, and (f) The DIP Financing Documents and the Interim and Final Orders shall include such waivers, indemnities, and other provisions as are acceptable to the DIP Agent in its sole discretion.

**Affirmative and Negative Covenants:**

The Debtors shall comply with the following affirmative and negative covenants: (a) compliance with Budget covenants consistent with the section titled "Budget and Variances," (b) the Debtors shall, from and after the Petition Date, satisfy the Milestones; and (c) no Material Adverse Effect shall have occurred.

**Bankruptcy Court Filings:**

As soon as reasonably practicable in advance of filing with the Bankruptcy Court, the Debtors shall furnish to the DIP Agent the drafts of forms of the following (which shall not have been modified or amended upon filing in any material respect without approval of the DIP Agent) (i) the motion seeking approval of the DIP Facility, which motion shall be in form and substance reasonably satisfactory to the DIP Agent in its reasonable discretion, (ii) the motions seeking approval of the Sale Procedure Order and the 363 Sale, and the proposed forms of the orders related thereto, which shall be in form and substance satisfactory to the DIP Agent in its sole discretion, (iii) all other proposed orders and pleadings related to the DIP Facility (other than the Interim Order or Final Order), which orders and pleadings shall be in form and substance satisfactory to the DIP Agent, (iv) any plan of reorganization or liquidation, and/or any disclosure statement related to such plan (which plan or disclosure statement shall comply with the requirements set forth herein), which shall be in form and substance satisfactory to the DIP Agent in its sole discretion, (v) any motion seeking approval of any sale of the Debtors' assets and any proposed form of a related bidding procedures order and sale order (other than those with respect to the bidding procedures and the 363 Sale), and (vi) any other motion filed seeking approval of any matter requiring material expenditures of DIP Collateral (each of which must be in form and substance satisfactory to the DIP Agent in its sole discretion).

**Sale Process:**

The Debtors shall conduct a sale process for the sale of substantially all of the assets of the Debtors in accordance with the Milestones defined below. In order to fulfill their fiduciary duty to maximize value for all stakeholders, the Debtors may, as authorized by the Sale Procedure Order, solicit and receive proposals or offers to sell all or substantially all of their assets or otherwise restructure their business (any such transaction, an "**Alternative Transaction**") from other parties and, as authorized by the Sale Procedure Order, negotiate, provide due diligence, discuss, and/or analyze such Alternative Transactions, and ultimately pursue such Alternative Transactions; *provided, however*, that (i) failure to satisfy the Milestones set forth below or (ii) entry into a definitive agreement regarding an Alternative Transaction (other than in accordance with the sale process set forth in the Sale Procedure Order) shall each constitute Events of Default under this DIP Term Sheet.

Milestones. The Debtors shall be required to comply with the following, (the "**Milestones**"):

(a) On or before November 30, 2018, or such later date to which the DIP Agent consents in writing in its reasonable discretion, the Debtors shall file a motion, in form and substance acceptable to the DIP Agent, requesting entry of the Sale

Procedure Order (as defined below).

(b) On or before December 18, 2018, or such later date to which the DIP Agent consents in writing in its sole discretion, the Bankruptcy Court shall have entered the Sale Procedure Order; and

(c) On or before the date that is sixty (60) days after the Petition Date, the Debtors shall have conducted an auction for the sale of substantially all of their assets (if necessary) and selected the successful bidder for the substantially all of their assets;

(d) On or before the date that is sixty-one (61) days after the Petition Date, or such later date to which the DIP Agent consents in writing in its sole discretion, the Bankruptcy Court shall have entered the Sale Order approving the 363 Sale; and

(e) On or before the date that is sixty-four (64) days after the Petition Date, provided that the Bankruptcy Court has waived the stay imposed by Bankruptcy Rule 6004(h) or such later date to which the DIP Agent consents in writing in its sole discretion, the Sale shall be closed.

Notwithstanding anything to the contrary herein, the Bankruptcy Court may set dates with respect to the Milestones beyond the outer dates specified above to accommodate its own schedule and to the extent the Bankruptcy Court makes such an extension, the Milestones hereunder shall be automatically extended by the same period as the Bankruptcy Court's extension.

The DIP Agent, DIP Lender, Pre-Petition Agent, and Pre-Petition Lenders shall have the right to "credit bid" any secured obligations owed to them in any sale of the Debtors' assets.

**Remedies:**

Following the Termination Date or the occurrence of an Event of Default, unless such Event of Default has been waived by the DIP Agent in writing in its sole discretion, and subject to the DIP Agent's compliance with Rule 4001-4(c) of the Local Rules of the Bankruptcy Court, the DIP Agent shall be entitled to exercise: (i) any remedies with respect to the DIP Facility that would be available to the Pre-Petition Agent as a result of an event of default under the Pre-Petition Credit Agreement, as well as all other remedies set forth in this DIP Term Sheet, the Interim Order, or the Final Order, including, without limitation, the ability to accelerate the entire DIP Facility and the right to terminate the Debtors' use of cash collateral; and (ii) any customary remedies, including, without limitation, the right to realize on all DIP Collateral and the right to exercise any remedy available under applicable law, without the necessity of obtaining any further relief or order from the Bankruptcy Court, except as required by

Rule 4001-4(c) of the Local Rules of the Bankruptcy Court. Consistent with the foregoing sentence, section 362 relief from the stay in favor of the DIP Agent, as provided herein, shall be embodied in any order approving the DIP Facility and the use of cash collateral.

**Events of Default:**

Defaults and Events of Default shall mean the occurrence of any of the following:

- Either Jim Mazany or Eric Easton shall cease to be employed by the Debtors; *provided, however*, that the foregoing shall not constitute a Default or Event of Default if: (i) such employee is terminated for cause, or (ii) within twenty-five (25) days following the Petition Date, no definitive agreement has been reached on the terms and funding of the MIP.
- Any of the Chapter 11 Cases shall be converted to a case under Chapter 7 of the Bankruptcy Code or be dismissed.
- Filing or support of a proposed plan of reorganization by any Debtor that does not provide for the indefeasible payment in full and in cash of Debtors' obligations outstanding under the DIP Facility, unless otherwise agreed in writing by the DIP Agent in its sole discretion.
- Entry of an order confirming (or the filing of any motion or pleading requesting confirmation of) a plan of reorganization that does not require the indefeasible repayment in full, in cash of the DIP Facility as of the effective date of the plan, unless otherwise agreed in writing by the DIP Agent in its sole discretion.
- Appointment of a trustee under Section 1104 of the Bankruptcy Code without the express written consent of the DIP Agent, or the filing of any motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Appointment of an examiner with expanded or enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code without the prior written consent of the DIP Agent, or the filing of a motion or other pleading requesting such relief which the Debtors fail to timely oppose.
- Entry of an order by the Bankruptcy Court amending, supplementing, staying, vacating or otherwise modifying the DIP Facility, the Interim Order or Final Order approving the DIP Facility, without the prior written consent of the DIP Agent or the filing of a motion or other pleading requesting such relief which the Debtors fail to timely

oppose.

- Any attempt by any Debtor to obtain, or if any other party in interest obtains, an order of the Bankruptcy Court or other judgment, and the effect of such order or judgment is to, invalidate, reduce or otherwise impair the claims of the DIP Agent, DIP Lender, Pre-Petition Agent, or Pre-Petition Lenders, or to subject any of the collateral of the DIP Agent or Pre-Petition Agent to a surcharge pursuant to Section 506(c) of the Bankruptcy Code.
- Any Debtor shall request approval of any postpetition financing, other than the DIP Facility, that would not immediately repay all DIP Facility obligations, in full, in cash, on the date of the closing of such postpetition financing.
- Any Debtor shall apply for an order substituting any assets for all or any portion of the DIP Collateral.
- Subject to the Carve Out, entry of an order granting liens or claims that are senior or *pari passu* to the liens granted in favor of the DIP Agent and/or the DIP Lenders under the DIP Financing Documents.
- Any Debtor shall assert that any of the DIP Liens are invalid, or any DIP Liens granted to the DIP Agent or DIP Lender shall be determined to be invalid.
- Any payment on, or application by the Debtors for authority to pay any pre-petition claim owing to terminated employees or lease rejection damages without prior written consent of the DIP Agent or as otherwise set forth in the Budget.
- If at any time prior to the conclusion of the sale process, the sales process is halted without the DIP Agent's consent.
- A final order is entered granting any creditor with a claim in excess of \$100,000 relief from the automatic stay.
- Failure to make all payments under the DIP Facility when due.
- Failure to pay any post-petition material indebtedness.
- Breach of any covenant set forth in any DIP Financing Document.
- Any material representation or warranty by any Debtor is incorrect or misleading in any material respect when made.
- Exclusivity shall have been terminated or any Debtor shall have agreed to any such termination.
- After entry thereof, either of the Sale Procedure Order or the Sale Order shall cease to be in full force and effect, shall

have been reversed, stayed, vacated or subject to stay pending appeal or shall have been modified or amended without the prior written consent of the DIP Agent.

- Any Debtor shall take (or support any other Person in taking) any action in order to restrict or prohibit the DIP Agent, DIP Lender, Pre-Petition Agent, or Pre-Petition Lender from submitting a “credit bid” for any assets of the Debtor.
- Any Debtor commences any Challenge Action (as such term is defined in the interim or final order approving the DIP Facility) against the Pre-Petition Agent or any Pre-Petition Lender.
- The commencement of an action or filing of a motion challenging the rights and remedies of the DIP Agent or the DIP Lenders under the DIP Financing Documents or that is otherwise inconsistent with the DIP Financing Documents.

**Indemnification:**

The Debtors shall, jointly and severally, indemnify and hold the DIP Agent, the DIP Lenders, and their officers, directors, employees and agents (including all of their attorneys and other professionals) (each an “**Indemnified Party**”) harmless from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, all reasonable fees and reasonable, documented expenses disbursements of attorneys and other professionals) to which any Indemnified Party may become liable or which may be incurred by or asserted against any Indemnified Party, in each case in connection with or arising out of or by reason of any investigation, litigation or proceeding arising out of or relating to or in connection with the DIP Facility, the DIP Financing Documents, any obligation, or any act, event or transaction related or attendant thereto or any use or intended use of the proceeds of the DIP Facility, except to the extent the same is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence, fraud, or willful misconduct. The indemnification terms and conditions of the Pre-Petition Credit Agreements are hereby incorporated in this DIP Term Sheet and applied to the DIP Facility.

**Governing Law:**

All documentation in connection with the DIP Facility shall be governed by the laws of the state of New York, subject to applicable federal bankruptcy laws.

**Other Definitions:**

“**363 Sale**” means the sale of all or substantially all of the assets of the Debtors under Section 363 of the Bankruptcy Code.

“**Approved Budget Variance Report**” means a current report, in form and substance satisfactory to the DIP Agent, that: (i) details the actual amount of cash receipts and disbursements for the prior week for each line item included in the Budget (on a weekly and cumulative basis), (ii) compares such actual cash receipts and disbursements (on a line item by line item basis) with the weekly and cumulative budgeted amounts for each such line item set forth in the Budget for such period, and (iii) provides a reasonable explanation for all variances between budgeted and actual amounts. Each Approved Budget Variance Report will be certified as true and correct by the Debtors’ chief financial officer or chief executive officer.

“**Auction**” means an auction held in connection with the 363 Sale and in accordance with the provisions set forth in the Sale Procedure Order.

“**Avoidance Actions**” means any causes of action that could be brought under §§ 544-548 of the Bankruptcy Code or any applicable state fraudulent-transfer statute or similar statute.

“**Avoidance Proceeds**” means the proceeds received from, or property recovered in respect of, Avoidance Actions.

“**Bankruptcy Code**” means Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the District of South Carolina presiding over the Chapter 11 Cases.

“**Budget**” means the budget of the Debtors relative to the operations of the Debtors in the Chapter 11 Cases for any fiscal period, as delivered to the DIP Agent in form and substance satisfactory to the DIP Agent. The Budget may be amended from time to time as may be agreed to by the DIP Agent, in writing, in its sole discretion.

“**Carve Out**” means:

(a) unpaid, postpetition fees and expenses of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) in such amount, with respect to the U.S. Trustee, as agreed to by the U.S. Trustee or as determined by the Court (collectively, the “**Statutory Fees**”);

(b) the unpaid postpetition fees and expenses of the professionals retained by the Debtors and by the Committee (if

any), whose retentions are approved pursuant to final orders of the Court under sections 327, 328, 363 or 1103(a) of the Bankruptcy Code (the “**Chapter 11 Professionals**”), but only to the extent that such fees and expenses are (i) incurred prior to a Termination Event, (ii) within the amounts set forth in the Budget approved by the DIP Agent for such Chapter 11 Professional as of the date of the Termination Event, and (iii) subsequently allowed by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code; and

(c) after the occurrence of a Termination Event: (i) postpetition fees and expenses of the Chapter 11 Professionals incurred in an aggregate amount not to exceed \$40,000, to the extent such fees and expenses are subsequently allowed by the Bankruptcy Court under sections 330, 331, or 363 of the Bankruptcy Code; and (ii) fees and expenses of a chapter 7 trustee in an amount not to exceed \$10,000.

Provided, however, that (a) the Carve Out shall only be available to pay fees and expenses set forth herein to the extent that unencumbered funds are not otherwise available; and (b) in no event shall the Carve-Out for each Chapter 11 Professional exceed the amounts for postpetition fees set forth for such professional in the Budget as of the applicable date of determination.

Provided, further, however, that the Carve Out for Chapter 11 Professional fees shall be first paid from any retainers or any professional expense escrow account established by the Debtor.

The Carve Out shall not include payment for any fees and expenses, if any, of the Chapter 11 Professionals incurred directly or indirectly, in respect of, arising from or relating to:

(i) the initiation, joinder, support, or prosecution of any action contesting the indebtedness owed to the DIP Agent, the DIP Lenders, the Pre-Petition Agent, or the Pre-Petition Lenders, or the validity of any liens granted to the DIP Agent, the DIP Lenders, the Pre-Petition Agent, or the Pre-Petition Lenders;

(ii) preventing, hindering or otherwise delaying (or supporting any other person or entity in preventing, hindering or otherwise delaying), whether directly or indirectly, the exercise by the DIP Agent or the Pre-Petition Agent of any of its rights and remedies under the Interim Order, Final Order, or documents comprising the DIP Facility, DIP Financing Documents, Pre-Petition Credit Agreements, or other Pre-Petition Loan Documents, including, without limitation, any attempt to prevent, hinder or delay (or supporting any other person or entity in preventing, hindering or delaying) the submission of any credit bid by the DIP Agent, DIP Lenders, Pre-Petition



Agent, or Pre-Petition Lenders;

(iii) the commencement, support, or prosecution of any action or proceeding of any claims, causes of action or defenses against the DIP Agent, the DIP Lenders, the Pre-Petition Agent, the Pre-Petition Lenders or any of their respective officers, directors, employees, agents, attorneys, affiliates, successors or assigns, including, without limitation, any attempt to recover or avoid any claim or interest from the DIP Agent, the DIP Lenders, the Pre-Petition Agent, or the Pre-Petition Lenders;

(iv) any request to borrow money other than pursuant to the terms of the Interim Order, the Final Order, or the DIP Financing Documents;

(v) with respect to any Debtor, any of the Debtors' Chapter 11 Professionals, or any of their successors or assigns (including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code) performing or commencing any investigation or litigation (whether threatened or pending) by the Debtors with respect to any matter released or to be released, waived, or to be waived, or specified as not subject to challenge by the Debtors pursuant to the Interim Order or Final Order; or

(vi) for any other purpose for which proceeds of the DIP Facility may not be used pursuant to this DIP Term Sheet.

**“Chapter 11 Cases”** means the voluntary Chapter 11 cases commenced by the Debtors in the Bankruptcy Court.

**“Committee”** means any statutory committee appointed in the Chapter 11 Cases.

**“Final Order”** means a final, non-appealable order of the Bankruptcy Court, that, without limitation, approves the DIP Facility and grants the liens and security interests contained therein, on terms satisfactory to the DIP Agent in its sole discretion.

**“Interim Order”** means an interim order of the Bankruptcy Court authorizing Debtors, among other things, to obtain interim financing and incur post-petition indebtedness on terms satisfactory to the DIP Agent in its sole discretion.

**“Material Adverse Effect”** means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or

condition (financial or otherwise) of the Debtors; (b) a material impairment of the rights and remedies of any of the DIP Agent, DIP Lender, Pre-Petition Agent, or Pre-Petition Lenders under any of the DIP Financing Documents, Pre-Petition Credit Agreement, or other Pre-Petition Loan Documents, (c) a material impairment of the Debtors to perform any of their obligations under the DIP Financing Documents, Pre-Petition Credit Agreement, or other Pre-Petition Loan Documents, or (d) a material adverse effect upon the legality, validity, binding effect, or enforceability against any Debtor of any of the DIP Financing Documents, Pre-Petition Credit Agreement, or other Pre-Petition Loan Documents.

**“Maturity Date”** means the date that is sixty (60) days after the Petition Date, or such later date to which the DIP Agent consents in writing.

**“MIP”** means an incentive plan for the Debtors’ key management and employees.

**“Petition Date”** means the date on which the Chapter 11 Cases for the Debtors were commenced.

**“Pre-Petition Agent”** means ACM Fatz VII LLC, in its role as Agent for the Pre-Petition Lenders under the Pre-Petition Credit Agreement.

**“Pre-Petition Credit Facility”** means the facility furnished by the Pre-Petition Agent and Pre-Petition Lenders pursuant to the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents.

**“Pre-Petition Lenders”** means the lenders party to the Pre-Petition Credit Agreement.

**“Pre-Petition Loan Documents”** means, collectively, the Pre-Petition Credit Agreement, and each other document relating to, and executed in connection with, the credit facility governed by the Pre-Petition Credit Agreement.

**“Sale”** means a sale of all or substantially all of the Debtors’ assets.

**“Sale Order”** means the order entered by the Bankruptcy Court in form and substance satisfactory to the DIP Agent (in its sole discretion) that, among other things, approves the 363 Sale, the results of the Auction (if applicable) and the Winning Bidder’s bid.

**“Sale Procedure Order”** means an order in form and substance satisfactory to the DIP Agent approving the bidding procedures

to be applicable to the 363 Sale.

**“Second Lien Agent”** means Triangle Mezzanine Fund LLLP (or any of its assignees or successors), in its capacity as agent under the Second Lien Credit Agreement.

**“Second Lien Credit Agreement”** means that certain Second Lien Credit Agreement, dated as of May 5, 2017 by and among Cafe Enterprises, Inc., the Second Lien Agent, and the other Second Lien Lenders party thereto, as amended.

**“Second Lien Lenders”** means each of the Lenders under the Second Lien Credit Agreement.

**“Second Lien Loan Documents”** means, collectively, the Second Lien Credit Agreement and each other document relating to, and executed in connection with, the credit facility governed by the Second Lien Credit Agreement.

**“Termination Event”** means the occurrence of the earlier of:

(i) an Event of Default under the DIP Facility; or

(ii) the Debtors’ failure to comply with the terms of the DIP Financing Documents (including, without limitation, their failure to comply with the Budget, subject to any approved variances).

**“Winning Bidder”** means the bidder that agrees (at the Auction if applicable) to purchase all or substantially all of the assets of the Debtors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

**DEBTORS:**

**CAFE HOLDINGS CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**CAFE ENTERPRISES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CE SPORTZ LLC**

BY: CAFE ENTERPRISES, INC.  
ITS: SOLE MEMBER

By: \_\_\_\_\_  
Name:  
Title:

**CES GASTONIA LLC**

BY: CE SPORTZ LLC  
ITS: SOLE MEMBER

BY: CAFE ENTERPRISES, INC.  
ITS: SOLE MEMBER

By: \_\_\_\_\_  
Name:  
Title:

**DIP AGENT:**

**ATALAYA ADMINISTRATIVE LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DIP LENDER:**

**ACM FATZ VII LLC**

By: \_\_\_\_\_  
Name:  
Title:

