

**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. 18-05837 (hb)

Jointly Administered

**ORDER REGARDING BID AND ~~ACUTION~~AUCTION PROCEDURES,
ESTABLISHING DEADLINES AND SCHEDULING SALE HEARING**

Upon consideration of the *Debtors' Expedited Motion, Pursuant to Bankruptcy Code Sections 105(A), 363, And 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts Unexpired Leases; (III) Authorizing the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief* [Docket No. 106] (the "**Motion**")² of the above captioned debtors and debtors in possession (collectively, the "**Debtors**") only as it relates to the procedures for a sale; the Court having reviewed the Motion; the Court having heard the statements of counsel in support of the relief requested therein at the hearing on the Motion (the "**Hearing**"); it appearing that notice of the Motion and the Hearing given by the Debtors was sufficient under the circumstances; and the Court being fully advised in that premises and all objections to the procedures being resolved, overruled, or reserved for future determination; it is hereby

ORDERED THAT:³

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.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.]

³ ~~Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.~~

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. This Court has jurisdiction over the Motion and the transactions contemplated by the Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. The Debtors have articulated good and sufficient reasons for approval of certain procedures and processes to expedite a potential sale. Nothing in this Order should be interpreted as constituting approval of any sale, only procedures are established herein.

D. The Debtors' proposed notice of the Bidding Procedures and Proposed Sale Process, including the Notice of Auction and Sale Hearing (the "**Sale Notice**") is attached hereto as Exhibit 1.

The Debtors' proposed Assumption and Assignment Procedures and notice to counterparties of the Debtors' executory contracts and unexpired leases that may be assumed and assigned is attached hereto as Exhibit 2 (the "**Assumption and Assignment Notice**").

E. The following "Bidding Procedures" are hereby approved and shall be used in connection with the proposed sale of the Purchased Assets:

- (i) Due Diligence. Parties who may be interested in conducting due diligence should contact the Debtors' investment banker, Duff & Phelps, 55 East 52nd Street, 31st Floor, New York, New York 10055, Attention: Vin Batra (vin.batra@duffandphelps.com) and Matthew Gates (matthew.gates@duffandphelps.com) and request a confidentiality agreement (a "**Confidentiality Agreement**"), which shall be substantially similar for each potential bidder. Upon execution of a Confidentiality Agreement, parties will be given access to the Debtors' on-line data room (the "**Due Diligence Data Room**") and may begin conducting due diligence.

- (ii) Initial Overbid. Any third party (other than the Stalking Horse Bidder) that is interested in acquiring the Purchased Assets must submit an “**Initial Overbid**” on or prior to Monday, **February 4, 2019 10:00 a.m. Eastern time** (the “**Bid Deadline**”). Any such Initial Overbid must:
- (a) Contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from the Agreement, including all schedules and exhibits to the Agreement) with, at a minimum, the following requirements: (v) having similar terms and conditions as the Agreement except with higher or better consideration; (w) containing terms and conditions no less favorable to the Debtors’ estates than the terms and conditions in the Agreement (provided that no Initial Overbid shall provide for the payment to the overbidder of any breakup fee, topping fee, expense reimbursement or other similar arrangement); (x) identifying any proposed changes to Section 6.11 of the Agreement regarding the Stalking Horse Bidder’s agreed treatment of the Debtors’ existing privacy policy; (y) provide for a purchase price in an amount equal to or greater than \$4,400,000 (the “**Initial Overbid Amount**”); and (z) not be subject to any (1) financing contingency, (2) contingency relating to the completion of unperformed due diligence, (3) contingency relating to the approval of the overbidder’s board of directors or other internal approvals or consents, or (4) any conditions precedent to the overbidder’s obligation to purchase the Purchased Assets other than those included in the Agreement;
 - (b) Include a cashiers’ or certified check in the amount equal to not less than ten percent (10%) of the proposed purchase price to be held as a deposit (it being understood that the deposit may also be sent by wire transfer of immediately available funds) in a segregated account maintained by the Debtors;
 - (c) To the extent not previously provided to the Debtors, be accompanied by evidence that the overbidder is willing, authorized, capable and qualified financially, legally and otherwise, of unconditionally performing all obligations under the Agreement (or its equivalent) in the event that it submits the Prevailing Bid (as defined below) at the Auction (as defined below);
 - (d) Include a commitment that the overbidder will consummate the purchase of the relevant assets by February 14, 2019;
 - (e) Identify, with particularity, each and every executory contract and unexpired lease the overbidder intends to assume;
 - (f) Be accompanied by evidence satisfactory to the Debtors that the overbidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its bid and the consummation of the transactions contemplated by such bid.

- (g) Remain open and irrevocable until the date that is 60 days after the conclusion of the Auction; and
- (h) Be submitted to (i) Café Enterprises, Inc., 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687, Attention: Jim Mazany (jmazany@cafeent.com) and Eric Easton (eeaston@cafeent.com), (ii) counsel to the Debtors, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Tx 75219 Attention: Ian T. Peck, Esq. (email: ian.peck@haynesboone.com) and J. Frasher Murphy, Esq. (email: frasher.murphy@haynesboone.com); (iii) Duff & Phelps, 55 East 52nd Street, 31st Floor, New York, New York 10055, Attention: Vin Batra (vin.batra@duffandphelps.com) and Matthew Gates (matthew.gates@duffandphelps.com); (iv) Loughlin Management Partners + Co., 20 West 55th St., 5th Floor, New York, New York 10019, Attention: John Sordillo (jsordillo@lmcopartners.com), (v) Office of the U.S. Trustee, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201, (Facsimile: (803) 765-5260); and (vi) counsel for the official committee of unsecured creditors appointed in these cases (the “**Committee**”), Pachulski Stang Ziehl & Jones LLP, Attention Bradford Sandler (email: bsandler@pszjlw.com), 919 North Market Street, 17th Floor, Wilmington, DE 19801, in each case so as to be received not later than the Bid Deadline.

Auction. In the event that the Debtors timely receive a conforming Initial Overbid from a prospective purchaser as described above (a “**Qualified Bidder**”), then the Court will conduct an auction (the “**Auction**”) with respect to the sale of the Purchased Assets. The Court shall hold the Auction for the Purchased Assets on **Thursday, February 7, 2019 at 1:00 p.m. Eastern Time** at the United States Bankruptcy Court for the District of South Carolina, Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306.

- (iii) Notwithstanding any other requirement to the contrary herein, the Stalking Horse Bidder under the Agreement shall automatically be deemed a Qualified Bidder and entitled to participate in the Auction, and any reference herein to the “Stalking Horse Bidder” shall include both the Stalking Horse Bidder and any affiliate of the Stalking Horse Bidder to which its rights under the Agreement may be assigned. In order to participate in the Auction, each Qualified Bidder (other than the Stalking Horse Bidder) shall be required to comply with the requirements of the Bidding Procedures and to submit an Initial Overbid that is timely and that complies in all respects with the Bidding Procedures. At the Auction, Qualified Bidders and the Stalking Horse Bidder (it being understood that the Stalking Horse Bidder shall be deemed to be a Qualified Bidder) may submit successive bids in increments of at least **\$100,000** (or such other amount that the Debtor determines in its reasonable discretion) in value greater than the prior bid for the purchase of the Purchased Assets until there is only one offer that the Debtors determine, subject to Court approval, is the highest or best offer for the Purchased Assets (the “**Prevailing Bid**”). The Sale Hearing will be held on February 12,

~~2018~~2019 at 9:30 a.m. Eastern Time at the Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306. If no conforming Initial Overbid from a Qualified Bidder shall have been received at or prior to the Bid Deadline, the Auction will not be held and the Sale Hearing will proceed with respect to the Agreement. In determining the Prevailing Bid, the Debtors may consider, among other things: (i) the number, type and nature of any changes to the Agreement requested by each bidder; (ii) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Debtors of such modifications or delay; (iii) the total consideration to be received; (iv) the nature of the consideration to be received; (v) the likelihood of the bidder's ability to close a transaction and the timing thereof; and (vi) the net benefit to the Debtors' estates. In the event that the Qualified Bidder who submitted the Prevailing Bid (the "**Prevailing Bidder**") fails to close on the transaction contemplated in the Prevailing Bid, the Debtors shall be permitted to retain the Prevailing Bidder's good faith deposit as liquidated damages.

- (iv) Auction Procedures. The Auction will be conducted in accordance with the following procedures (the "**Auction Procedures**"):
- (a) the Auction will be conducted in open Court;
 - (b) only the Qualified Bidders, including the Stalking Horse Bidder, shall be entitled to bid at the Auction;
 - (c) the Qualified Bidders, including the Stalking Horse Bidder, shall appear in person or through duly-authorized representatives at the Auction;
 - (d) bidding at the Auction shall begin at the Qualified Bid that is, in the Debtors' judgment, the highest or otherwise best bid (the "**Starting Bid**");
 - (e) subsequent bids at the Auction, including any Bids by the Stalking Horse Bidder, shall be made in minimum increments of **\$100,000** of additional value;
 - (f) unless the Court for cause orders otherwise credit bids shall be allowed as provided in 11 U.S.C. § 363(k);
 - (g) each Qualified Bidder will be informed of the terms of the previous bids;
 - (h) the bidding will be on the record in open court and recorded;
 - (i) each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
 - (j) the Auction shall continue until there is only one bid that the Debtors determine, in their reasonable business judgment to be the highest or otherwise best bid. **For the avoidance of doubt, but without limiting the**

provisions of the Agreement, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law;

- (k) the Court may adjourn the Auction one or more times to, among other things: (1) facilitate discussions between the Debtors and Qualified Bidders; (2) allow Qualified Bidders to consider how they wish to proceed; and (3) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount;
- (l) absent irregularities in the conduct of the Auction, and subject to the Debtors' fiduciary obligations, the Bankruptcy Court will not consider bids made after the Auction is closed;
- (m) the Auction shall be governed by such other Auction Procedures as may be announced by the Debtors, after consultation with their advisors, from time to time on the record at the Auction; provided, that any such other Auction Procedures shall not be inconsistent with any order of the Bankruptcy Court, shall not be inconsistent with the provisions of the Agreement with respect to these Bidding Procedures.
- (v) Backup Bid. At the conclusion of the Auction, the Debtors shall identify and certify the bid that constitutes the second highest or best offer for the Purchased Assets (the "**Backup Bid**" and the Qualified Bidder submitting such bid, the "**Backup Bidder**"). The Backup Bidder may be required by the Debtors to close on the Backup Bid no later than 60 days of the conclusion of the Auction and no sooner than 5 Business Days after the date the Backup Bidder receives written notice of the requirement to close on the Backup Bid, which notice shall be given no later than 30 days after the Auction. In the event that the Backup Bidder fails to close on the transaction contemplated in the Backup Bid, Sellers shall be permitted to retain the Backup Bidder's good faith deposit as liquidated damages.
- (vi) Sale Hearing. The Sale Hearing will be conducted before this Court on **Tuesday, February 12, 2019 at 9:30 a.m.** at the Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306, at which time the Debtors intend to present the Prevailing Bid for approval by the Court pursuant to the provisions of sections 105, 363(b), 363(f), 363(m), 363(n) and 365 of the Bankruptcy Code. Entry of this Order does not constitute approval of any sale and Debtors shall meet their burden of proof at the Sale Hearing before any proposed sale will be approved. The Debtors shall be deemed to have accepted a bid only when the bid and the proposed sale have been approved by the Court at the Sale Hearing. Upon the failure to consummate a sale of the Purchased Assets after the Sale Hearing because of the occurrence of a breach or

default under the terms of the Prevailing Bid, the Backup Bid, as determined as soon as practicable after the conclusion of the Auction, and as disclosed at the Sale Hearing, shall be deemed the Prevailing Bid without further order of the Court and the parties shall be authorized to consummate the transactions contemplated by the Backup Bid.

- (vii) Highest or Best Bid. At all times during the sale process through the conclusion of the Auction, the Debtors shall retain full discretion and right to determine, in the exercise of their business judgment and in consultation with the Committee, which bid they believe constitutes the highest or otherwise best offer for the purchase of the Purchased Assets, and which bid should be selected as the Prevailing Bid, if any, for presentation to the Court for approval pursuant to the provisions of section 363(b) of the Bankruptcy Code. Without limiting the generality of the foregoing, the Debtors may, at any time before the conclusion of the Auction and in consultation with the Committee, reject any bid that the Debtors determine is (i) inadequate or insufficient, (ii) contrary to the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors, their estates, their creditors or their other stakeholders. The Debtors may propose rules for the Auction that, in their judgment and in consultation with the Committee, will better promote the goals of the Auction (provided that such rules shall not be inconsistent with the Bidding Procedures Order).
- (viii) Sale Implementation. Following any approval of a Prevailing Bid at the Sale Hearing, the Debtors will be authorized and directed to take all commercially reasonable and necessary steps to complete and implement the transaction(s) contemplated by the Prevailing Bid.
- (ix) Fiduciary Out. Nothing in the Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of a Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law; provided that in the event of any such action, all rights and remedies of any Stalking Horse Bidder in these Bidding Procedures or the Agreement shall be preserved.

1. The Sale Notice is hereby approved as good and sufficient notice of the sale of the Purchased Assets, the Auction and all proceedings related thereto.

2. The Debtors shall serve the Sale Notice upon the persons and in the manner specified in the Motion.

3. The Assignment Notice is hereby approved as good and sufficient notice of the proposed assumption and assignment of the Debtors' executory contracts and unexpired leases.

4. The Debtors shall serve the Assumption and Assignment Notice on all counterparties to the executory contracts and unexpired leases identified in the Assumption and Assignment Notice in the manner specified in the Motion within three business days of entry of this Order.

5. Objections, if any, to the sale of the Purchased Assets, shall be in writing, set forth the name of the objecting party, the basis for the objection and the specific grounds therefor, and be filed with the Bankruptcy Court and served so as to be actually received **by 4:00 p.m. Eastern time, on February 1, 2019**, (the "**Objection Deadline**") by: (i) counsel to the Debtors, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attention: Ian T. Peck (email: ian.peck@haynesboone.com) and J. Frasher Murphy (email: frasher.murphy@haynesboone.com), (ii) Office of the U.S. Trustee, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201, Attention: Elisabetta G. Gasparini (Facsimile: (803) 765-5260), (iii) counsel to the Committee, Pachulski Stang Ziehl & Jones LLP, Attention Bradford Sandler (email: bsandler@pszjlaw.com), 919 North Market Street, 17th Floor, Wilmington, DE 19801, and (iv) counsel to the Stalking Horse Bidder and First Lien Secured Lender, Holland & Knight LLP, 200 Crescent Court, Suite 1600, Dallas, Texas 75201, Attention: Brent McIlwain (email: brent.mcilwain@hklaw.com) (collectively, the "**Objection Notice Parties**"). **Each person or entity who receives notice of the proposed sale of the Purchased Assets and who does not object thereto on or prior to the February 1, 2019, deadline may be deemed by the Court to have consented to the sale.**

6. Objections (“**Cure Objections**”), if any, that relate to any assumption and assignment of any lease or contract, including without limitation any objection to the Debtors’ proposed Cure Amount or the provision of adequate assurance of future performance under any Lease or Contract pursuant to Section 365 of the Bankruptcy Code (“**Adequate Assurance**”), must: (a) be filed by the Objection Deadline and served on the Objection Notice Parties; (b) identify the lease or contract to which the objector is party; (c) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the “**Cure Claim**”) and identify the basis(es) of the alleged Cure Claim under the contract or lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (the “**Assigned Contract Objection Procedures**”).

7. If no Cure Objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) any non-objecting Contract Counterparty may be deemed by the Court to have consented to the possible assumption and assignment of the Transferred Contract to the Stalking Horse Bidder (or any other acquirer of the Purchased Assets); (b) the Cure Amount set forth in the Assumption and Assignment Notice shall be controlling notwithstanding anything to the contrary in any contract or lease or other document and the Contract Counterparty shall be forever barred from asserting any other claim arising prior to the assignment against the Debtors or Prevailing Bidder as to such Contract or Lease if it is a Transferred Contract, and (b) the Prevailing Bidder’s promise to perform under the Contract or Lease shall be deemed Adequate Assurance under the contract or lease. To the extent the Debtors dispute any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such earlier or later date and time as the Debtors and the objector may agree or the Court may

order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of a contract or lease.

8. Notwithstanding the foregoing, to the extent that the Prevailing Bidder at the Auction is not the Stalking Horse Bidder, (i) as soon as practicable after the conclusion of the Auction, Debtors shall file with the Court and serve by facsimile, electronic transmission, overnight delivery service, or first class mail on the Contract Counterparty (and its attorney, if known) to each Transferred Contract a notice: (a) identifying the Prevailing Bidder; (b) stating which contract(s) and/or lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Prevailing Bidder(s)' ability to perform the Debtors' obligations under the applicable Transferred Contract and (ii) the Objection Deadline, **solely as it applies to an assertion of lack of Adequate Assurance by Contract Counterparties**, shall be extended to the date of the Sale Hearing.

9. The Debtors and Purchaser may make the final determination regarding which contracts and leases will be Transferred Contracts at or prior to Closing. The Debtors shall serve a notice regarding the final list of contracts and leases identified as Transferred Contracts promptly after Closing.

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon its entry and the stay provided for in Bankruptcy Rule 6004(h) is hereby waived; (b) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtors are authorized and empowered to, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

12. Notwithstanding anything to the contrary contained anywhere herein or in the Asset Purchase Agreement, Interim DIP Orders, DIP Financing Documents, DIP Term Sheet, Pre-Petition Credit Agreement, Pre-Petition Loan Documents, The Debtors' Stipulations, Second Lien Credit Agreement or Second Lien Loan Documents, this Order shall not be construed to prime, diminish or impair the rights, if any, of FreshPoint North Carolina, Inc. or FreshPoint Nashville, Inc., to the extent such rights are validly preserved under the Perishable Agricultural Commodities Act, 7 U.S.C. 499e(c) ("PACA") and any unpaid claims asserted by them that are entitled to protection under PACA and have been validly preserved thereunder ("Protected PACA Claims"). As a condition precedent to any closing of a sale of substantially all of the Debtors' assets that includes a credit bid under 11 U.S.C. 363(k), (a) sufficient funds must be set aside and reserved to satisfy all unpaid Protected PACA Claims asserted on or before the Sale Hearing or (b) the holders of Protected PACA Claims must otherwise be adequately protected, as determined by the Court in accordance with applicable law. The Debtors, DIP Agent, Stalking Horse Bidder, and Pre-Petition ACM Secured Parties each reserve all rights with respect to the alleged rights and claims of FreshPoint North Carolina, Inc. and FreshPoint Nashville, Inc.

13. ~~12.~~ Counsel for the Debtors is directed to serve this Order in the manner described in the Motion and to file appropriate affidavits or certificates of service.

EXHIBIT 1

Sale Notice

**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. 18-05837 (hb)

(Jointly Administered)

**NOTICE OF PROPOSED SALE OF THE DEBTORS' ASSETS FREE AND
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER
INTERESTS, THE AUCTION, AND THE SALE HEARING**

TO: All Creditors and Parties in Interest

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 30, 2018, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Debtors’ Expedited Motion, Pursuant to Bankruptcy Code Sections 105(A), 363, And 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts Unexpired Leases; (III) Authorizing the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief* [Docket No. 106]. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. On [___], ~~2018~~, 2019, the United States Bankruptcy Court for the District of South Carolina (the “**Bankruptcy Court**”) entered the *Order Regarding Bid and Auction Procedures, Establishing Deadlines and Scheduling Sale Hearing* (the “**Order**”) [Docket No. ___].

3. **Any third party (other than the Stalking Horse Bidder) that is interested in acquiring the Purchased Assets must submit an Initial Overbid conforming to the requirements set forth in the Bidding Procedures set forth in the Order by not later than Monday, February 4, 2019 10:00 a.m. Eastern time (the “**Bid Deadline**”).**

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.

4. Any Initial Overbid must be submitted to (i) Café Enterprises, Inc., 4324 Wade Hampton Blvd., Suite B, Taylors, South Carolina 29687, Attention: Jim Mazany (jmazany@cafeent.com) and Eric Easton (eeaston@cafeent.com), (ii) counsel to the Debtors, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Tx 75219 Attention: Ian T. Peck, Esq. (email: ian.peck@haynesboone.com) and J. Frasher Murphy, Esq. (email: frasher.murphy@haynesboone.com); (iii) Duff & Phelps, 55 East 52nd Street, 31st Floor, New York, New York 10055, Attention: Vin Batra (vin.batra@duffandphelps.com) and Matthew Gates (matthew.gates@duffandphelps.com); (iv) Loughlin Management Partners + Co., 20 West 55th St., 5th Floor, New York, New York 10019, Attention: John Sordillo (jsordillo@lmcopartners.com), (v) Office of the U.S. Trustee, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201, (Facsimile: (803) 765-5260); and (vi) counsel for the official committee of unsecured creditors appointed in these cases, Pachulski Stang Ziehl & Jones LLP, Attention Bradford Sandler (email: bsandler@pszjlaw.com), 919 North Market Street, 17th Floor, Wilmington, DE 19801 in each case so as to be received not later than the Bid Deadline. The Debtors may extend the Bid Deadline without further notice and for one or more bidders but shall not be obligated to do so.

5. In the event that the Debtors receive a timely conforming Initial Bid from a Qualified Bidder by the Bid Deadline, the Court will conduct an auction (the “**Auction**”) with respect to the sale of the Purchased Assets. The Court shall hold the Auction for the Purchased Assets on **Thursday, February 7, 2019 at 1:00 p.m. Eastern Time** at the United States Bankruptcy Court for the District of South Carolina, Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306. All bidding for the Purchased Assets will be concluded at the Auction and there will be no further bidding at the subsequent Bankruptcy Court hearing held to approve the highest or best bid for the Purchased Assets and to consider whether the sale should be approved (the “**Sale Hearing**”).

6. The Sale Hearing will be conducted on **Tuesday, February 12, 2019 at 9:30 a.m. (Eastern Time), in courtroom of the Honorable Helen E. Burris in the United States Bankruptcy Court for the District of South Carolina, Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306** at which time the Debtors intend to present the Prevailing Bid for approval by the Bankruptcy Court pursuant to the provisions of sections 105, 363(b), 363(f), 363(m), 363(n) and 365 of the Bankruptcy Code, and shall request approval of the sale. The Debtors shall be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing and the sale has been approved.

7. At the Sale Hearing the Debtors will seek authorization to consummate the transactions contemplated by either the Prevailing Bid or that certain Asset Purchase Agreement by and between the Debtors and the Stalking Horse Bidder, ~~dated~~ [REDACTED] (the “**Agreement**”). **The Debtors will seek to sell and transfer the Purchased Assets and assume and assign the Transferred Contracts, subject to the terms of the Prevailing Bid, to either the Stalking Horse Bidder or the purchaser under the Prevailing Bid, free and clear of any and all liens, claims, encumbrances, and other interests other than those specifically assumed by the party submitting the Prevailing Bid.**

8. Objections, if any, to the sale of the Purchased Assets, shall be in writing, shall set forth the name of the objecting party, the basis for the objection and the specific grounds therefor, and shall be filed with the Bankruptcy Court and served so as to be actually received **by 4:00 p.m. Eastern time on February 1, 2019, by:** (i) counsel to the Debtors, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attention: Ian T. Peck (email: ian.peck@haynesboone.com) and J. Frasher Murphy (email: frasher.murphy@haynesboone.com), (ii) Office of the U.S. Trustee, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201, Attention: Elisabetta G. Gasparini (Facsimile: (803) 765-5260), (iii) counsel for the official committee of unsecured creditors appointed in these cases, Pachulski Stang Ziehl & Jones LLP, Attention Bradford Sandler (email: bsandler@pszjlaw.com), 919 North Market Street, 17th Floor, Wilmington, DE, and (iv) counsel to the Stalking Horse Bidder and First Lien Secured Lender, Holland & Knight LLP, 200 Crescent Court, Suite 1600, Dallas, Texas 75201, Attention: Brent McIlwain (email: brent.mcilwain@hkllaw.com). **Each person or entity who receives notice of the proposed sale of the Purchased Assets and who does not object thereto on or prior to the February 1, 2019, deadline may be deemed by the Court to have consented to the sale.**

9. This Notice and the Auction are subject to the terms and conditions of the Order and the Bidding Procedures, which shall control in the event of any conflict with this Notice. Copies of the Motion and the Order can be obtained by accessing the Debtors' website (www.donlinrecano.com/cafe) or by contacting the Debtors' claims agent by phone ((212) 771-1128) or by sending a written request to Donlin, Recano & Company, Inc., Re: Cafe Holdings Corp., et al., P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219. Parties interested in receiving more information regarding the sale of the Purchased Assets, subject to any necessary confidentiality agreement, may make a written request to: (i) counsel to the Debtors, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attention: Ian T. Peck, or (ii) Duff & Phelps, 55 East 52nd Street, 31st Floor, New York, New York 10055, Attention: Vin Batra (vin.batra@duffandphelps.com) and Matthew Gates (matthew.gates@duffandphelps.com). A copy of the APA may be obtained by making a request to Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attention: Ian T. Peck.

10. The Debtors have requested that any order that approves the sale be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

TYPE OF SALE: Public Auction

PROPERTY TO BE SOLD: Substantially all of the assets of Cafe Holdings Corp.; Cafe Enterprises, Inc.; CE Sportz LLC; and CES Gastonia LLC

PRICE: Consideration estimated at approximately \$4.2 million in the aggregate, consisting of a non-cash credit bid of prepetition senior indebtedness and/or assumption of postpetition indebtedness. Absent a competing bid that contemplates cash consideration in excess of the amount of the Debtors' secured debt (estimated to exceed \$15.7 million), the sale is not anticipated to result in a cash distribution to creditors.

APPRAISAL VALUE: N/A

BUYER: ACM Fatz VII LLC, first lien pre-petition lender and debtor-in-possession lender to the Debtor

PLACE AND TIME OF SALE: Auction to be held at the United States Bankruptcy Court for the District of South Carolina, Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306., commencing on Thursday, February 7, 2019 at 1:00 p.m. Eastern Time.

SALES AGENT/AUCTIONEER/BROKER: Duff & Phelps, 55 East 52nd Street, 31st Floor, New York, New York 10055, Attention: Vin Batra (vin.batra@duffandphelps.com) and Matthew Gates (matthew.gates@duffandphelps.com).

COMPENSATION TO SALES AGENT/AUCTIONEER/BROKER/ETC.: Duff & Phelps has requested compensation of 4% of sale consideration up to \$10,000,000 and 6% of sale consideration in excess of \$10,000,000, subject to a minimum of \$450,000.

ESTIMATED TRUSTEE'S COMPENSATION: N/A

LIENS/MORTGAGES/SECURITY INTERESTS ENCUMBERING PROPERTY: Various parties assert liens on the Debtors' assets ~~including ACM Fatz VII LLC (asserts first lien security interest) and Benefit Street Partners L.L.P. (asserts second lien security interest).~~ The non-cash bid of approximately \$4.2 million will be insufficient to satisfy the first lien security interest ~~on the Debtors' assets.~~ asserted on the Debtors' assets by Atalaya Administrative LLP as agent for ACM Fatz VII LLC. The following are the known prepetition secured claims asserted against the Debtors' assets (this list excludes tax claims, statutory claims, and possessory lien claims unless the claimant has filed a proof of claim in the Debtors' cases): (A) Atalaya Administrative LLP, as agent, in the principal amount of \$9,698,584.13 secured by a first

priority lien on all of the Debtors' assets, including prepetition and post-petition assets; (B) BSP Agency, LLC, in the principal amount of \$2,000,000 secured by a lien on all of the Debtors' assets, which lien is subordinate to the lien of Atalaya Administrative LLP pursuant to an Intercreditor and subordination agreement; (C) Sysco Columbia, LLC, in the amount of \$2,784,619.66 secured by a lien on the Debtors' goods, inventory, instruments, chattel paper, documents, accounts, accounts receivable, general intangibles, payment intangibles, and proceeds and all support obligations of any of the foregoing; (D) Sysco Charlotte, LLC, in the amount of \$1,152,031.26 secured by a lien on the Debtors' goods, inventory, instruments, chattel paper, documents, accounts, accounts receivable, general intangibles, payment intangibles, and proceeds and all support obligations of any of the foregoing; (E) Refrigeration Heroes of Greenville Co. in the amount of \$1,950.48 secured by a mechanics and materialman's lien; (F) City of Rockingham for taxes in the amount of \$1,102.92; (G) Greene County Trustee for taxes in the amount of \$1,413.00; (H) Spartanburg County Tax Collector for taxes in the amount of \$7,921.25; (I) Guilford County Tax Dept. for taxes in the amount of \$2,782.87; (J) Richmond County Tax Collector for taxes in the amount of \$8,598.61; (K) Ridgeway Plumbing and Services Inc. in the amount of \$1,026.00 secured by a mechanics and materialman's lien; and (L) Greenwood County for taxes in the amount of \$46,012.83.

DEBTOR'S EXEMPTION: N/A

PROCEEDS ESTIMATED TO BE PAID TO ESTATE: Current Bid is a combination of non-cash credit bid and indebtedness assumption ~~only~~. The Current Bid results in the reduction of the Debtors' pre-petition debt and post-petition debt and will permit the Debtors to satisfy budgeted administrative and priority claims.

STAY OF ORDER: Relief from Fed. R. Bankr. P. 6004 requested

Applicant is informed and believes that it would be in the best interest of the estate to sell said property by public auction. Applicant also believes that the funds to be recovered for the estate from the sale of said property justify its sale and the filing of this application.

The Court may consider additional offers at any hearing held on this notice and application for sale. The Court may order at any hearing that the property be sold to another party on equivalent or more favorable terms.

The trustee or debtor in possession, as applicable, may seek appropriate sanctions or other similar relief against any party filing a spurious objection to this notice and application.

WHEREFORE, applicant requests the Court issue an order authorizing sale of said property and such other and further relief as may be proper.

Date: _____

Signature of Applicant

Typed Printed Name

Address/Telephone/Facsimile/E-mail

District Court I.D. Number

EXHIBIT 2

Assumption and Assignment Notice

**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. 18-05837 (hb)

(Jointly Administered)

**NOTICE OF CURE AMOUNTS AND PROPOSED ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES**

**ALL PARTIES RECEIVING THIS NOTICE SHOULD REVIEW EXHIBIT A
CAERFULLY FOR THEIR NAME AND ANY CONTRACTS OR LEASES WITH THE
DEBTORS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 30, 2018, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Debtors’ Expedited Motion, Pursuant to Bankruptcy Code Sections 105(A), 363, And 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of Orders (I) Approving Sale, Bidding, Notice, and Auction Procedures in Connection with the Sale of Substantially All of the Assets of the Debtors; (II) Approving Assumption and Assignment of Certain Executory Contracts Unexpired Leases; (III) Authorizing the Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (IV) Granting Related Relief* (the “**Motion**”) [Docket No. 106]. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. On [___], ~~2018~~, 2019, the United States Bankruptcy Court for the District of South Carolina (the “**Bankruptcy Court**”) entered the *Order Regarding Bid and Auction Procedures, Establishing Deadlines and Scheduling Sale Hearing* (the “**Order**”) [Docket No. ___].

3. A hearing to consider the remaining relief requested in the Motion and the results of the Auction (the “**Sale Hearing**”) will be held **Tuesday, February 12, 2019 at 9:30 a.m. (Eastern Time), in courtroom of the Honorable Helen E. Burris in the United States Bankruptcy Court for the District of South Carolina, Donald S. Russell Federal Building & U.S. Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306.**

4. In connection with any sale of the Purchased Assets authorized at the Sale Hearing, the Debtors will assume and assign to the Stalking Horse Bidder (or another acquirer of

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.

the Purchased Assets) certain of the Debtors' executory contracts and leases (the "**Transferred Contracts**"). **Not all of the agreements listed in Exhibit A will be assumed and assigned by the Debtors.** Debtors and Purchaser may make the final determination regarding which contracts and leases will be assigned at or prior to closing.

5. The Debtors believe that any and all defaults (other than the filing of these chapter 11 cases) and the actual pecuniary losses under the agreements listed on Exhibit A, to the extent they are Transferred Contracts, can be cured by the payment of the Cure Amount listed on Exhibit A. The inclusion of any document on Exhibit A shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code.

6. If any non-debtor party to an agreement listed on Exhibit A objects to the Cure Amount listed on Exhibit A for such agreement or objects to the possible assumption and assignment of such agreement, such party must file an objection (an "**Objection**") with the Bankruptcy Court and serve such Objection so as to be actually received by **4:00 p.m. (Eastern time) on February 1, 2019 (the "Objection Deadline")**, by: (i) counsel to the Debtors, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attention: Ian T. Peck (email: ian.peck@haynesboone.com) and J. Frasher Murphy (email: frasher.murphy@haynesboone.com), (ii) Office of the United States Trustee, 1835 Assembly Street, Suite 953, Columbia, South Carolina 29201, (Facsimile: (803) 765-5260) Attention: Elisabetta G. Gasparini, (iii) counsel for the official committee of unsecured creditors appointed in these cases, Pachulski Stang Ziehl & Jones LLP, Attention Bradford Sandler (email: bsandler@pszjlaw.com), 919 North Market Street, 17th Floor, Wilmington, DE 19801, and (iv) counsel to the Stalking Horse Bidder and First Lien Secured Lender, Holland & Knight LLP, 200 Crescent Court, Suite 1600, Dallas, Texas 75201, Attention: Brent McIlwain (email: brent.mcilwain@hklaw.com). An Objection must identify the lease or contract to which the objector is party; (c) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the "**Cure Claim**") and identify the basis(es) of the alleged Cure Claim under the contract or lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to adequate assurance of future performance, state with specificity what the objecting party believes is required to provide adequate assurance. No Objection is needed if you agree with the assumption and assignment of your agreement.

7. To the extent that the prevailing bidder at the auction is not the Stalking Horse Bidder, (i) as soon as practicable after the conclusion of the auction, Debtors shall file with the Court and serve by facsimile, electronic transmission, overnight delivery service, or first class mail on the non-debtor contract (and its attorney, if known) to each ~~potential~~potential Transferred Contract a notice: (a) identifying the prevailing Bidder; (b) stating which contract(s) and/or lease(s) proposed to be assumed and assigned thereto; and (c) containing a statement as to the prevailing bidder(s)' ability to perform the Debtors' obligations under the applicable Transferred Contract and (ii) the Objection Deadline, **solely as it applies to an assertion of lack of adequate assurance**, shall be extended to the date of the Sale Hearing.

8. **Except as set forth in the Order, unless a non-debtor party to an agreement listed on Exhibit A files and serves a Cure Objection by the Cure Objection Deadline, as a**

result the Court may determine that (a) the non-objecting non-debtor party has consented to the possible assumption and assignment of the agreement to the Stalking Horse Bidder (or any other acquirer of the Purchased Assets); (b) the Cure Amount set forth on Exhibit A is controlling notwithstanding anything to the contrary in any contract or lease or other document and the non-debtor party to the contract or lease shall be forever barred from asserting any other claim arising prior to the assignment against the Debtors or the Stalking Horse Bidder (or another acquirer of the Purchased Assets) as to such Contract or Lease if it is a Transferred Contract, and (b) the Stalking Horse Bidder’s (or another acquirer of the Purchased Assets) promise to perform under the Contract or Lease is deemed Adequate Assurance under the contract or lease.

9. Any hearings with respect to the Cure Objections may be held (a) at the Sale Hearing; or (b) at such other date as the Bankruptcy Court may designate.

10. If a non-debtor party to an agreement listed on Exhibit A agrees with the applicable Cure Cost set forth on Exhibit A and does not otherwise object to the Debtors’ possible assumption and assignment of such agreement, no further action need be taken on the part of that non-debtor party.

11. The Debtors’ decision to sell, assign and/or transfer the Transferred Contracts to the Stalking Horse Bidder (or any other acquirer of the Purchased Assets) is subject to Bankruptcy Court approval and the closing of the transactions contemplated by either the Prevailing Bid or that certain Asset Purchase Agreement by and between the Debtors and the Stalking Horse Bidder, ~~dated November 30, 2018~~ (the “**Agreement**”). Accordingly, absent such closing or further order of the Bankruptcy Court, none of the Transferred Contracts shall be assumed, sold, assigned and/or transferred, and shall in all respects be subject to further administration under the Bankruptcy Code.

12. Copies of the Motion and the Order can be obtained by accessing the Debtors’ website (www.donlinrecano.com/cafe) or by contacting the Debtors’ claims agent by phone ((212) 771-1128) or by sending a written request to Donlin, Recano & Company, Inc., Re: Cafe Holdings Corp., et al., P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219. A copy of the APA may be obtained by making a request to Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attention: Ian T. Peck.

13. The Debtors have requested that any order approving the sale (and the assignment of contracts) be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

Date: _____

Signature of Applicant

Typed Printed Name

Address/Telephone/Facsimile/E-mail

District Court I.D. Number

EXHIBIT A TO ASSUMPTION AND ASSIGNMENT NOTICE

SCHEDULE OF CURE COSTS AND TRANSFERRED CONTRACTS

Document comparison by Workshare Compare on Thursday, January 10, 2019
 12:14:49 PM

Input:	
Document 1 ID	netdocuments://4823-8007-1802/10
Description	Cafe Enterprises - Bid Procedures Order
Document 2 ID	netdocuments://4823-8007-1802/11
Description	Cafe Enterprises - Bid Procedures Order
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	13
Deletions	15
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	28