

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

In re

CAFE HOLDINGS CORP., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-05837(hb)

(Jointly Administered)

**THIRD INTERIM ORDER (1) AUTHORIZING THE DEBTORS TO OBTAIN POST-PETITION FINANCING ON AN INTERIM BASIS, GRANTING SENIOR POSTPETITION SECURITY INTERESTS AND ACCORDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO SECTIONS 364(c) AND 364(d) OF THE BANKRUPTCY CODE, (2) AUTHORIZING THE USE OF CASH COLLATERAL, (3) GRANTING ADEQUATE PROTECTION, (4) MODIFYING THE AUTOMATIC STAY, AND (5) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the above-captioned debtors (each a “Debtor” and collectively, the “Debtors”) seeking, among other things:

(1) authority pursuant to sections 363 and 364(c) and (d) to obtain debtor-in-possession secured financing (the “DIP Facility”) pursuant to the following terms and agreements (collectively, the “DIP Financing Documents”): (a) an interim order and any final order entered by the Court with respect to the Motion (the “Final Order”), and (b) the *Cafe Enterprises, Inc., et al. Terms and Conditions of Proposed Senior Secured, Super-Priority Debtor-in-Possession Credit Facility*, attached hereto as Exhibit 1, as amended, modified, and/or supplemented (the “DIP Term Sheet”),<sup>2</sup> by and among the Debtors, as borrowers and debtors-in-possession, Atalaya Administrative LLC, as agent (the “DIP Agent”) for the lenders and other financial institutions party to the DIP Term Sheet or which extend credit thereunder (the “DIP Lenders,” and collectively with the DIP Agent, the “DIP Secured Parties”);

(2) the grant to the DIP Agent, for the benefit of itself and the other DIP Lenders, of superpriority administrative claim status pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code in accordance with the terms of the Interim Orders (defined below);

(3) authorization for the Debtors’ use of cash collateral whenever or wherever acquired, and the proceeds of all collateral pledged to the Pre-Petition ACM Secured Parties (defined below), as contemplated by section 363 of the Bankruptcy Code in accordance with the terms set forth herein;

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Term Sheet.

(4) a grant of adequate protection to the Pre-Petition ACM Secured Parties (as defined below) under and in connection with the Pre-Petition Loan Documents (as defined below) in accordance with the terms set forth herein;

(5) modification of the automatic stay to the extent hereinafter set forth and waiving the fourteen (14) day stay provisions of Federal Rule of Bankruptcy Procedure 4001(a)(3) and 6004(h); and

(6) a final hearing setting for the Motion for entry of an order authorizing the DIP Facility and use of cash collateral on a final basis (the "Final Hearing").

Notice of the Motion, the relief requested therein, and the December 18, 2018 hearing on the Motion (the "December 18 Hearing Notice") having been served by the Debtors on the following parties in accordance with Rule 4001(c) and the *Order Authorizing the Debtors to (I) Prepare a Consolidated List of Creditors in Lieu of a Mailing Matrix, (II) File a Consolidated List of the Thirty Largest Unsecured Creditors, (III) Mail Initial Notice, and (IV) Shorten the Mailing List* [Dkt. 57]:

- (i) the DIP Agent, the DIP Lenders, and the Pre-Petition ACM Secured Parties;
- (ii) Benefit Street Partners, L.L.P.;
- (iii) Old Mill Stream, LLC;
- (iv) the Office of the United States Trustee for the District of South Carolina (the "U.S. Trustee");
- (v) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis;
- (vi) all parties known to the Debtors who hold any liens or security interest in the Debtors' assets who have filed UCC-1 financing statements against the Debtors, or who, to the Debtors' knowledge, have asserted any liens on any of the Debtors' assets;
- (vii) the Internal Revenue Service and all taxing authorities of states in which the Debtors conduct business;
- (viii) the U.S. Attorneys' Office for states in which the Debtors conduct business;
- (ix) all parties who are counterparties to the Debtors' unexpired leases of non-residential real property;
- (x) all parties with an open Accounts Payable balance with the Debtors as of the Petition Date;
- (xi) the Debtors' utility providers;
- (xii) the Debtors' insurance providers;
- (xiii) all parties who are counterparties to any litigation proceedings commenced against the Debtors as of the Petition Date; and
- (ix) all parties who have requested notice in these Chapter 11 cases pursuant to Bankruptcy Rules 2002, 9007, and 9010, as well as certain other parties identified in the certificates of service filed with the Court.

Notice of the January 8, 2019 hearing on the Motion (the “Third Interim Hearing”) having been served in accordance with Rule 4001(c) and the *Order Authorizing the Debtors to (I) Prepare a Consolidated List of Creditors in Lieu of a Mailing Matrix, (II) File a Consolidated List of the Thirty Largest Unsecured Creditors, (III) Mail Initial Notice, and (IV) Shorten the Mailing List* [Dkt. 57] (the “Third Interim Hearing Notice,” and together with the December 18 Hearing Notice, collectively, the “Notices”).

The Court held an interim hearing with respect to the Motion on November 19-20, 2018 (the “Interim Hearing”). At the Interim Hearing, the Court entered the *Interim Order (1) Authorizing the Debtors to Obtain Post-Petition Financing on an Interim Basis, Granting Senior Postpetition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (2) Authorizing the Use of Cash Collateral, (3) Granting Adequate Protection, (4) Modifying the Automatic Stay, and (5) Granting Related Relief* (the “Interim Order”).

The Final Hearing was originally scheduled for December 18, 2018; however, at the December 18, 2018 hearing (the “Second Interim Hearing”), the Debtors sought relief on a further interim basis and requested entry of the *Second Interim Order (1) Authorizing the Debtors to Obtain Post-Petition Financing on an Interim Basis, Granting Senior Postpetition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (2) Authorizing the Use of Cash Collateral, (3) Granting Adequate Protection, (4) Modifying the Automatic Stay, and (5) Granting Related Relief* (the “Second Interim Order”).

The Court re-scheduled the Final Hearing on the Motion for January 8, 2019; however, at the January 8, 2019 hearing (the “Third Interim Hearing”), the Debtors sought relief on a further

interim basis and requested entry of this *Third Interim Order (1) Authorizing the Debtors to Obtain Post-Petition Financing on an Interim Basis, Granting Senior Postpetition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (2) Authorizing the Use of Cash Collateral, (3) Granting Adequate Protection, (4) Modifying the Automatic Stay, and (5) Granting Related Relief* (the “Third Interim Order,” and together with the Interim Order and the Second Interim Order, collectively, the “Interim Orders”).

After the Motion and the proceedings before the Court at the Interim Hearing, the Second Interim Hearing, and the Third Interim Hearing; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, carried to the Final Hearing, or overruled by the Court as reflected on the record established by the Debtors at the Interim Hearing, the Second Interim Hearing, and the Third Interim Hearing;

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. On November 15, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of title 11, United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”);<sup>4</sup>

B. The Debtors have continued in the management and operation of their business pursuant to sections 1107 and 1108, and no trustee or examiner has been appointed;

C. The Debtors served notice of the Motion, the Second Interim Hearing, and the Third Interim Hearing as required under the Federal Rules of Bankruptcy Procedure and local rules of

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<sup>3</sup> To the extent, any findings of fact constitute conclusions of law, they are adopted as such, and vice versa, pursuant to Fed. R. Bankr. P. 7052.

<sup>4</sup> Unless otherwise noted, all statutory references are to the Bankruptcy Code.

this Court as set forth in the Affidavits of Service filed on the docket at Docket Nos. 27, 28, 105, 267, and 274;

D. The Court has core jurisdiction over the Debtors' bankruptcy cases, the Motion, and the parties and property affected by the Interim Orders pursuant to 28 U.S.C. §§ 157(b) and 1334, and venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409;

E. On November 28, 2018, an Official Committee of Unsecured Creditors (the "**Committee**") was appointed in these cases;

**Stipulations**

F. The Debtors have entered into the following stipulations (collectively, the "Stipulations") with the Pre-Petition ACM Secured Parties and the DIP Secured Parties (each as defined hereafter). The following stipulations are not binding on third parties until the Challenge Period expires as set forth in paragraph 27 of this Third Interim Order.

(1) as of the Petition Date, the Debtors were party to each of:

(x) a Credit Agreement dated as of March 21, 2014 (such agreement, as amended and existing immediately prior to the Petition Date, the "Pre-Petition Credit Agreement") with Atalaya Administrative LLC as agent (as successor in interest to Madison Capital Funding LLC) and the other lenders party thereto; and

(y) all other documents, instruments, and agreements executed in connection with the Pre-Petition Credit Agreement (such agreements, collectively with the Pre-Petition Credit Agreement, the "Pre-Petition Loan Documents");<sup>5</sup>

(2) Atalaya Administrative LLC serves as agent (in such capacity, the "Pre-Petition Agent") under each of the Pre-Petition Loan Documents. The other lenders party

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<sup>5</sup> Any party wanting a copy of the Pre-Petition Loan Documents may contact proposed counsel for the Debtors: Haynes and Boone, LLP attn: David Staab (david.staab@haynesboone.com).

to each of the Pre-Petition Loan Documents shall be referred to in this Third Interim Order as the “Pre-Petition Lenders”, and the Pre-Petition Lenders and Pre-Petition Agent shall be collectively referred to herein as the “Pre-Petition ACM Secured Parties”;

(3) As of the Petition Date, the Debtors were indebted to the Pre-Petition ACM Secured Parties, without defense, counterclaim, recoupment or offset of any kind, in the approximate non-contingent liquidated amount of no less than \$10,521,000.00 as of November 14, 2018, plus all other amounts arising in respect of the Pre-Petition Loan Document obligations existing immediately prior to the Petition Date (such obligations, the “Pre-Petition ACM Obligations”);

(4) The Pre-Petition ACM Obligations were secured by valid, enforceable, properly perfected, first priority and unavoidable liens on and security interests (the “Pre-Petition ACM Liens”) encumbering all assets of the Debtors existing immediately prior to the commencement of the Debtors’ bankruptcy proceeding (the “Pre-Petition Collateral”);

(5) the DIP Secured Parties are willing to provide postpetition financing to the Debtor through the DIP Facility and the DIP Financing Documents;

(6) the Pre-Petition ACM Secured Parties consent to the Debtors’ use of the Pre-Petition Collateral and cash collateral (as such term is defined in Bankruptcy Code section 363(a)) only upon the conditions contained in this Third Interim Order and the DIP Financing Documents;

(7) the Debtors possess no claims, offsets, or other rights or causes of action against the Pre-Petition ACM Secured Parties that would in any manner impair, reduce or otherwise modify the Pre-Petition ACM Obligations or the validly perfected Pre-Petition ACM Liens upon the Pre-Petition Collateral;

(8) the Pre-Petition ACM Obligations constitute valid, binding obligations of the Debtors, enforceable in accordance with their terms, and the Debtors and any of their guarantors will not assert any claims, counterclaims, setoffs, or defenses of any kind or nature, which in any way would affect the validity and enforceability of any of the Pre-Petition ACM Obligations and/or the security interests or liens of the Pre-Petition ACM Secured Parties upon the Pre-Petition Collateral, or which would in any way reduce the obligation of the Debtors to pay in full all of the Pre-Petition ACM Obligations;

(9) the Debtors reasonably and in good faith believe that the use of Cash Collateral and the loans, advances, and other financial accommodations to be obtained pursuant to the DIP Facility are sufficient to fund all projected legitimate and allowable expenses of their Chapter 11 cases from the Petition Date during the period to which the Budget (as approved by the DIP Agent) pertains; and

(10) each of the Debtors is a duly organized, validly existing legal entity and has the requisite power and authority to own, lease, and operate its property, including, without limitation, the DIP Collateral. Each of the Debtors has the requisite power and authority to enter into, execute, deliver, and perform its obligations under the DIP Financing Documents and the Interim Orders and to incur the obligations provided for thereon. Except as may be explicitly required in the DIP Financing Documents, no consent or waiver of, filing with, authorization, approval or other action by any shareholder, any federal, state, or other governmental authority or regulatory body or any other Person (other than the DIP Secured Parties), which has not already been obtained or done, is required in connection with the execution, delivery and performance by the Debtors of any of the

documents required as a condition to the validity or enforceability of the DIP Financing Documents, other than entry by this Court of this Third Interim Order;

**Debtors' Need for Use of Cash Collateral and DIP Financing**

G. The Debtors are unable to obtain sufficient levels of unsecured credit allowable under section 503(b)(1) as an administrative expense necessary to maintain and conduct their business;

H. The Debtors are unable to obtain secured credit except under the terms and conditions provided in this Third Interim Order;

I. All cash of the Debtors, wherever located on the Petition Date, represents (i) proceeds of loans or other financial accommodations provided to the Debtors by the Pre-Petition ACM Secured Parties under Pre-Petition Loan Documents; or (ii) proceeds of Pre-Petition Collateral. Such funds (the "Cash Collateral") constitute cash collateral within the meaning of section 363 of the Bankruptcy Code;

J. It is in the best interest of the Debtors' estates that the Debtors be allowed to enter into the DIP Facility in order to obtain postpetition secured financing from the DIP Secured Parties **in the interim amount of \$2,500,000 (\$1,000,000 of which was authorized under the Interim Order, an additional \$500,000 of which was authorized under the Second Interim Order, and an additional \$1,000,000 of which is authorized under this Third Interim Order)**, and use the Pre-Petition Collateral and Cash Collateral subject to and in accordance with the terms of this Third Interim Order and the DIP Financing Documents, and to grant adequate protection to the Pre-Petition ACM Secured Parties on account of the Debtors' Pre-Petition ACM Obligations, on an interim basis under the terms and conditions set forth herein and in the DIP Financing

Documents, as such is necessary to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing;

K. The Debtors believe that the interim extension of credit and interim financial accommodations under the Interim Orders, the DIP Facility and DIP Financing Documents are fair, reasonable, in good faith, negotiated at arm's length, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration and the DIP Secured Parties are entitled to the protections of section 364(e) of the Bankruptcy Code;

L. The Debtors require access to the interim funding available under the DIP Facility and the DIP Financing Documents in order to satisfy administrative expenses associated with the operation of their business as a going concern and other costs relating to the administration of these chapter 11 cases, and in order to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing;

M. The Pre-Petition ACM Secured Parties are unwilling to consent to use of the Pre-Petition Collateral by the Debtors, except under the terms of the DIP Financing Documents and this Third Interim Order assuring that the liens and the various claims, superpriority claims, and other protections granted in the Interim Orders will not be affected by any subsequent reversal or modification of the Interim Orders or any other order, as provided in section 364(e), which is applicable to the postpetition financing arrangement contemplated in the DIP Financing Documents and the use of Cash Collateral contemplated in the Interim Orders; and

N. Good and sufficient cause exists for the issuance of this Third Interim Order, to prevent immediate and irreparable harm to the Debtors' estates.

**The Committee's Objection to the Motion**

O. On December 11, 2018, the Committee filed its Objection to the Motion [Docket no. 205] (the "Objection"). The Debtors, the DIP Secured Parties, and the Committee have reached

an agreement in principle to resolve the Objection. The entry of this Third Interim Order will provide the Debtors, the DIP Secured Parties, and the Committee additional time to continue their efforts to fully resolve the Objection prior to the Final Hearing.

Based upon the foregoing, and after due consideration and good cause appearing therefor;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

**Interim Borrowings**

1. The Motion is granted as set forth herein **on an interim basis**. The Debtors are authorized, pursuant to sections 363 and 364, to enter into the DIP Facility and DIP Financing Documents, to execute such other and additional documents necessary or desired to implement the DIP Facility or DIP Financing Documents, to obtain postpetition secured financing from the DIP Secured Parties, and to use the Pre-Petition Collateral, Cash Collateral, and the proceeds and products thereof, pursuant to the terms and conditions of the DIP Financing Documents and this Third Interim Order to avoid immediate and irreparable harm to the Debtors' estates pending the Final Hearing. The Debtors shall use the interim advances obtained under the DIP Facility and the DIP Collateral (including Cash Collateral) only for the purposes and in the amounts **not to exceed \$2,500,000 on an interim basis** set forth in the DIP Term Sheet attached hereto as Exhibit 1 and Budget attached hereto as Exhibit 2, subject to the terms and conditions set forth in the DIP Financing Documents.

**Budget and Permitted Variances**

2. With respect to the Budget:

(a) the Debtors' actual 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, subject to the Budget Variances described below, provided, however, that amounts not disbursed in a line item shall be deemed to roll over to subsequent weeks;

(b) 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”);

(c) for all Professional Fees within the Budget attributable to professionals of the Debtors or the Committee, the Debtors shall not: (i) allow actual disbursements for each such Professional Fee line item (and for the avoidance of doubt, each professional receiving Professional Fees shall be reflected on its own line item)<sup>6</sup> to be more than the budgeted disbursements for such Professional Fee line item during the cumulative period from the Petition Date to the end of the applicable current weekly Budget period; and (ii) pay any Professional Fees unless authorized by further order of the Court. 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, subject to the rights of parties pursuant to paragraph 5.

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<sup>6</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”.

(d) Any expenditures made by the Debtors on account of the Budget line item titled “Other Food Vendors Cure (PACA)” shall be subject to the terms of the *Final Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act and Similar Trust Fund Statutes, (B) or Other Lien Claimants, and (C) of Certain Critical Vendors and (II) Granting Certain Related Relief* [Dkt. No. 170].

**Restrictions on Use of DIP Proceeds**

3. **During the pendency of this Third Interim Order**, no proceeds of the DIP Facility or Cash Collateral shall be used to (a) permit the Debtors or any other party-in-interest to challenge, contest, or institute any proceeding to determine (i) the validity, perfection, or priority of any security interests in favor of the Pre-Petition ACM Secured Parties or the DIP Secured Parties or (ii) the enforceability of the Debtors’ obligations or the obligations of any guarantor under the Pre-Petition Loan Documents or DIP Financing Documents; (b) 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 Pre-Petition ACM Secured Parties or the DIP Secured Parties or any of their agents, attorneys, advisors or representatives, including, without limitation, claims or causes of action relating to lender liability or subordination claims; (c) 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 the Debtors or any guarantor under the Pre-Petition Loan Documents or the DIP Financing Documents, or (d) fund any acquisitions, capital expenditures, capital leases, or similar expenditures other than those specifically set forth in the Budget; provided, however, that the Committee and its professionals shall be allowed to use proceeds of the DIP Facility or Cash Collateral, in an amount not to exceed

fifteen thousand dollars (\$15,000), to investigate the validity of the Pre-Petition ACM Liens (the “Committee Budget”).

**DIP Superpriority Claim**

4. Pursuant to sections 363 and 364(c) and (d), the DIP Facility funds advanced pursuant to the terms of the Interim Orders (collectively, the “Interim DIP Advances”) shall be allowed administrative expenses of the Debtors’ estates, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors and over all administrative expenses or charges against property arising in the Debtors’ Chapter 11 cases and any superseding Chapter 7 case including, without limitation, those specified in Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114, subject and junior only to the Carve-Out (as hereinafter defined) (such claim, the “DIP Superpriority Claim”).

5. Interest on the Pre-Petition ACM Obligations shall, to the extent permitted under the Bankruptcy Code, accrue from and after the Petition Date at the rate set forth in the Pre-Petition Credit Agreement and be payable along with interest accruing on the Interim DIP Advances, as set forth in the Budget and DIP Term Sheet. The reasonable fees and expenses of the DIP Secured Parties, regardless of whether such amounts were incurred prior to or after the Petition Date, shall be payable (without further notice, motion, or application to, order of, or hearing before, the Court) within sixteen (16) days after delivery to the Debtors, U.S. Trustee, and counsel for the Committee of a summary statement of professional fees and expenses subject to reimbursement by the Debtors; provided, however, that the Debtors, the U.S. Trustee and counsel for the Committee shall have fourteen (14) days following the receipt of such professional fee statement to object to the reasonableness of the fees and expenses included therein. If any objection is asserted, the

parties may request that the Court 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 Court resolves such dispute will not be an Event of Default, even if it is determined by the Court that such payment should have been made.

**DIP Lien**

6. Pursuant to sections 363, 364(c), and 364(d), as security for the Interim DIP Advances and other postpetition costs payable under the DIP Financing Documents, the Debtors are hereby authorized to and are hereby deemed to grant to the DIP Agent a valid, binding and enforceable lien, mortgage and/or security interest (a "Lien", and as so granted to the DIP Agent, the "DIP Lien") in all of the Debtors' presently owned or hereafter acquired property and assets, whether such property and assets were acquired before or after the Petition Date, of any kind or nature, whether real or personal, tangible or intangible, wherever located, and the proceeds and products thereof (collectively, the "DIP Collateral"), excluding (i) any causes of action that could be brought pursuant to sections 544, 545, 547, 548 of the Bankruptcy Code, or any applicable state fraudulent transfer statutes (the "Avoidance Actions"); and (ii) any lease agreements between any of the Debtors and: (A) STORE Master Funding V, LLC or STORE Master Funding I, LLC (any such lease, a "STORE Lease"); or (B) Old Mill Stream, LLC, MRB, LLC, and M&R Investors, LLC (any such lease, an "Old Mill Stream Lease"). **Subject to entry of the Final Order**, the DIP Collateral shall include proceeds of (and property received in respect of) Avoidance Actions ("Avoidance Proceeds").

7. Pursuant to sections 364(c) and (d), the DIP Lien shall be a first priority senior and priming lien on the DIP Collateral, subject and junior only to (a) the Carve-Out and (b) valid, enforceable, properly perfected, and unavoidable prepetition Liens (including any Liens that are

perfected after the Petition Date that are afforded priority due to the express relation back of the perfection of such lien to a date prior to the Petition Date as permitted by Bankruptcy Code section 546(b)) that are senior to the Pre-Petition ACM Liens (“Senior Third Party Liens”). The DIP Lien shall not be subject or subordinate to any Lien which is avoided and which would otherwise be preserved for the benefit of the Debtors’ estates under section 551, and in no event shall any person or entity who pays (or causes to be paid) any of the obligations under the Pre-Petition Loan Documents or DIP Financing Documents be subrogated, in whole or in part, to any rights, remedies, claims, privileges, liens or security interests granted to or in favor of, or conferred upon, the DIP Secured Parties by the terms of the DIP Financing Documents until such time as the obligations under the DIP Financing Documents and the Interim Orders are indefeasibly paid in full, in cash. The DIP Lien shall not be subject or subordinate to Liens arising after the Petition Date, other than Liens granted pursuant to the Interim Orders to the extent set forth therein.

**Cash Collateral**

8. All rents, income, profits, cash in accounts and deposits derived from the Pre-Petition Collateral constitute Cash Collateral. Provided that each of the conditions set forth in this Paragraph are satisfied, the Debtors shall be authorized to use the Cash Collateral only in accordance with the terms of the Budget, this Third Interim Order, and the other DIP Financing Documents. The satisfaction of each of the following conditions shall constitute a condition to the Debtors’ authorization to use any Cash Collateral: (i) no Event of Default (as defined in the DIP Term Sheet) shall exist or be continuing; and (ii) the Termination Date (as defined in the DIP Term Sheet) shall not have occurred. If, on any date, any of such conditions is not satisfied, then the Debtors shall not be authorized to use any Cash Collateral unless and until: (i) such use is consented to by DIP Agent in its sole and absolute discretion; or (ii) such use of Cash Collateral

is authorized by the Court. At the November 19, 2018 hearing on the Motion, the Court orally granted the Debtors authority to use Cash Collateral in an amount not to exceed \$200,000, to which the DIP Secured Parties consented. The Debtors' usage of any such Cash Collateral on November 19, 2018 shall be subject to the terms of this Third Interim Order.

**Adequate Protection**

9. Until the indefeasible payment in full of the Pre-Petition ACM Obligations, the Pre-Petition ACM Secured Parties are entitled to adequate protection of their interests in the Pre-Petition Collateral (including Cash Collateral) solely to the extent of the diminution in value of the Pre-Petition Collateral as a result of (a) the provisions of the Interim Orders granting first priority and/or priming liens on such Pre-Petition Collateral to the DIP Agent for the benefit of the DIP Secured Parties, (b) the Debtors' use of the Pre-Petition Collateral (including Cash Collateral), (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (d) otherwise, pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code. The Pre-Petition Agent, on behalf of and for the benefit of the Pre-Petition ACM Secured Parties, is hereby granted, solely to the extent of diminution in value of the Pre-Petition ACM Liens in the Pre-Petition Collateral from and after the Petition Date the following:

A. a Lien in all DIP Collateral (the "Pre-Petition ACM Adequate Protection Lien") junior only to (i) the Carve-Out and (ii) the DIP Lien; and

B. a postpetition superpriority administrative expense claim (the "Pre-Petition ACM Adequate Protection Claim") against each of the Debtors with recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof under sections 503 and 507 of the Bankruptcy Code against the Debtors' estates to the extent the Pre-Petition ACM Adequate Protection Lien does not adequately protect against the diminution

in value of the Pre-Petition ACM Liens, which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtors or their estates and over all other administrative expenses of any kind, including, without limitation, those specified in sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code, or otherwise and including those resulting from the conversion of the chapter 11 case pursuant to section 1112 of the Bankruptcy Code; subject and junior only to the Carve-Out and the Interim DIP Advances.

10. Until the indefeasible payment in full of the obligations owed to the Second Lien Agent and Second Lien Lenders under the Second Lien Loan Documents (as each such term is defined in the DIP Term Sheet), the Second Lien Agent and Second Lien Lenders are entitled to adequate protection of their interests in the Pre-Petition Collateral (including Cash Collateral), if any, solely to the extent of the diminution in value of the Pre-Petition Collateral, if any, as a result of (a) the provisions of this Third Interim Order granting first priority and/or priming liens on such Pre-Petition Collateral to the DIP Agent for the benefit of the DIP Secured Parties, (b) the Debtors' use of the Pre-Petition Collateral (including Cash Collateral), (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, or (d) otherwise, pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code. The Second Lien Agent, on behalf of and for the benefit of the Second Lien Lenders, is hereby granted, solely to the extent of diminution in value of their interests in the Pre-Petition Collateral from and after the Petition Date the following:

A. a Lien in all DIP Collateral (the "Second Lien Adequate Protection Lien") junior only to (i) the Carve-Out, (ii) the DIP Lien, (iii) the Pre-Petition ACM Liens, and (iv) the Pre-Petition ACM Adequate Protection Liens.

11. Nothing herein shall be deemed to be a waiver by any Pre-Petition ACM Secured Party of its right to request additional or further protection of its interests in any property of the Debtors, to move for relief from the automatic stay (if such relief is required), to seek the appointment of a trustee or examiner or the dismissal of any of the Debtors' bankruptcy cases, or to request any other relief, and nothing herein shall be deemed to be a waiver of the Debtors' rights to object to the same.

**Limited Stay Modification**

12. The automatic stay provisions of section 362 are hereby modified for the limited purpose to permit (a) the Debtors and the DIP Agent to implement and perform the DIP Facility and the DIP Financing Documents, including without limitation the provisions thereof with respect to the collection of Proceeds, and the maintenance and implementation of the Collection Accounts and the Collection Procedures (as such terms are defined below), and (b) the creation and perfection of all Liens granted or permitted by the Interim Orders. The Debtors and the holders of any DIP Lien, Pre-Petition ACM Adequate Protection Lien, or Second Lien Adequate Protection Lien shall not be required to enter into any additional security agreements to create, memorialize, and/or perfect any such liens, or to file UCC financing statements, mortgages, or other instruments with any other filing authority or take any other action to perfect any such Liens, which shall be and are deemed valid, binding, enforceable and automatically perfected by the docket entry of the Interim Order by the Clerk of the Court. If, however, the holder of any DIP Lien, Pre-Petition ACM Adequate Protection Lien, or Second Lien Adequate Protection Lien in its sole and absolute discretion shall elect for any reason to enter into, file, record or serve any such financing statements or other documents with respect to any such Lien, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made

at the time and on the date of the docket entry of the Interim Order by the Clerk of the Court. **Subject to the entry of the Final Order**, the holders of any DIP Lien, Pre-Petition ACM Lien, or Pre-Petition ACM Adequate Protection Lien are hereby relieved of any requirement to file proofs of claim in the Debtors' bankruptcy cases with respect to any such Liens and the claims secured thereby, but any such holder may in its sole and absolute discretion file any such proof of claim.

**Carve-Out**

13. The DIP Liens, DIP Superpriority Claims, Pre-Petition ACM Adequate Protection Liens, Pre-Petition ACM Liens, Liens held by the Second Lien Agent and Second Lien Lenders, and Second Lien Adequate Protection Liens shall be subject to right of payment of the following expenses (the following subparagraphs, collectively, the "Carve-Out," and all amounts payable in connection therewith, the "Carve-Out Amounts"):

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;

B. subject to the limits set forth in this Third Interim Order, unpaid postpetition fees and expenses of professionals of the Debtors and professionals of the Committee, which are retained by an order of the Court pursuant to sections 327, 328, 363 or 1103(a) of the Bankruptcy Code (the "Chapter 11 Professionals"), but only to the extent 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;

C. postpetition fees and expenses of the Chapter 11 Professionals incurred after a Termination Event 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

D. fees and expenses of any Chapter 7 trustee appointed in these cases after a Termination Event in an aggregate amount not to exceed \$10,000, to the extent such fees and expenses are allowed by the Bankruptcy Code and the Bankruptcy Court.

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 Chapter 11 Professional in the Budget as of the applicable date of determination provided, further however, that the Carve Out for Chapter 11 Professional fees shall first be paid from any retainers or any professional expense escrow account established by the Debtors. Any amounts paid from the DIP Collateral or the proceeds thereof, or funded by the DIP Agent or DIP Secured Parties with respect to the Carve-Out prior to the entry of the Final Order shall be Interim DIP Advances. As used in this Third Interim Order, the term “Termination Event” shall mean 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, failure to comply with the Budget, subject to any approved variances). Further, the payment of the fees or costs of any Chapter 11 Professional shall be subject to Court approval, and DIP Agent and the DIP Secured Parties reserve the right to object to any Chapter 11 Professional’s application for payment.

**Professional Fee and Carve-Out Limitations**

14. Neither the payment of any Chapter 11 Professional fees, nor the Carve-Out shall 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:

A. the initiation, joinder, or prosecution of any action contesting the indebtedness owed to DIP Secured Parties or the Pre-Petition ACM Secured Parties, or the validity of any liens granted to any of such parties, provided, however, that the Committee and its professionals shall be allowed to use the Committee Budget to investigate the validity of the Pre-Petition ACM Liens;

B. 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 DIP Agent or Pre-Petition Agent of any of its rights and remedies under the Interim Orders, the Final Order, Pre-Petition Loan Documents, or DIP Financing 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 any of the DIP Secured Parties or Pre-Petition ACM Secured Parties; provided, however, nothing herein shall prevent the Committee from raising any objection to a sale motion or bid procedures motion;

C. the commencement or prosecution of any action or proceeding of any claims, causes of action or defenses against the DIP Secured Parties, Pre-Petition ACM Secured Parties, 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 Secured Parties or Pre-Petition ACM Secured Parties, or any of them;

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

E. **subject to the entry of a Final Order**, with respect to the Debtors, 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 to be released, waived or specified as not subject to challenge by the Debtors pursuant to the Interim Orders or the Final Order (including, without limitation, Paragraphs 24, 25, and 26 herein); or

F. For any other purpose for which proceeds of the DIP Facility may not be used pursuant to the DIP Term Sheet.

**Surcharge**

15. **Subject to the entry of the Final Order**, effective as of the time of commencement of the Debtors' bankruptcy cases on the Petition Date:

A. each of the Debtors waives irrevocably all claims and rights, if any, it or its estate might otherwise assert against the Pre-Petition Collateral or DIP Collateral pursuant to Bankruptcy Code sections 506(c), 105(a) or any other applicable law;

B. except from and pursuant to the terms of the Carve-Out, no entity in the course of the Debtors' bankruptcy cases shall be permitted to recover from the DIP Collateral (whether directly or through the grant of derivative or equitable standing in the

name of the Debtors or any Debtor's estate) any cost or expense of preservation or disposition of the Pre-Petition Collateral or DIP Collateral, including, without limitation, expenses and charges as provided in Bankruptcy Code sections 506(c), 105(a), or any other applicable law;

C. except from and pursuant to the terms of the Carve-Out, no entity shall be permitted to recover from the DIP Collateral or Pre-Petition Collateral, or assert against any DIP Secured Party or any Pre-Petition ACM Secured Party, any claim with respect to any unpaid administrative expense of the Debtors' bankruptcy cases, whether or not the Debtors' payment of such administrative claim was contemplated by or included in the Budget; and

D. the Pre-Petition ACM Secured Parties and the DIP Secured Parties 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 Pre-Petition Collateral.

16. So long as the DIP Facility obligations remain outstanding, unless consented to in writing by the DIP Agent, the Debtors shall not seek entry of any further orders in their Chapter 11 Cases which authorize (a) under section 363 of the Bankruptcy Code, the use of Cash Collateral; (b) the obtaining of credit or the incurring of indebtedness pursuant to sections 364(c) or 364(d) of the Bankruptcy Code that does not repay the DIP Facility in full, in cash, (c) the return of goods pursuant to section 546(h) of the Bankruptcy Code to any creditor of the Debtors or to consent to any creditor taking any setoff against any of such creditor's prepetition indebtedness based upon any such return pursuant to section 553 of the Bankruptcy Code or otherwise, or (d) except with respect to Senior Third Party Liens, any other grant of rights against the Debtors and/or their estates

that is secured by a Lien in the DIP Collateral or is entitled to superpriority administrative status that does not repay the DIP Facility in full, in cash.

**Remedies**

17. **The remedies set forth in this paragraph may be exercised by the DIP Agent only after compliance with Rule 4001-4(c) of the Local Rules of this Court.** Upon the occurrence of: (i) an Event of Default (as such term is defined in the DIP Term Sheet); (ii) the Debtors' failure to comply with the terms of the Interim Orders or the Final Order (including, without limitation, their failure to comply with the Budget, subject to any approved variances); or (iii) the Debtors' failure to comply with any of the Milestones set forth in the DIP Term Sheet, and the giving of written notice thereof by the DIP Agent to counsel to the Debtors, the Committee, and the U.S. Trustee (which notice may be given by any manner of electronic transmission, the automatic stay being deemed lifted for such purpose) (the "Default Notice"), then (i) the DIP Agent shall be fully authorized, in its sole discretion to cease making DIP Facility advances to the Debtors, (ii) the DIP Agent shall be fully authorized, in its sole discretion to terminate the Debtors' use of the DIP Collateral (including without limitation Cash Collateral) pursuant to this Third Interim Order and the Budget, and/or (iii) the DIP Agent shall be fully authorized, in its sole discretion to immediately terminate the DIP Facility and demand repayment of the DIP Facility obligations then outstanding. Additionally, the DIP Agent may issue demand on the Debtors to remit to the DIP Agent, subject to payment of the Carve-Out, any Cash Collateral then in the Debtors' possession for application to the DIP Facility obligations and Pre-Petition ACM Obligations in a manner selected by the DIP Agent in its sole discretion.

18. **The additional remedies set forth in this paragraph may be exercised by the DIP Agent only after compliance with Rule 4001-4(c) of the Local Rules of this Court and upon the expiration of the Remedies Notice Period (defined herein).** Upon the occurrence of

an Event of Default and transmission of a Default Notice or upon the Termination Date, but subject to the DIP Agent's compliance with Rule 4001-4(c) of the Local Rules of the Court:

A. the DIP Agent shall have the right, free of the restrictions of sections 362 or under any other section of the Bankruptcy Code or applicable law or rule (including, without limitation, Bankruptcy Rule 4001(a)), to take immediate reasonable action to protect the DIP Collateral from harm, theft and/or dissipation;

B. with respect to an Event of Default as to which a Default Notice has been given, the Debtors, the Committee, and the U.S. Trustee shall have five (5) business days from the date of the Default Notice (the "Remedy Notice Period") to obtain an order of the Court on notice to the DIP Agent (a) enjoining or restraining the DIP Secured Parties from taking action or exercising rights and remedies (other than any rights and remedies set forth in Paragraph 17 herein, which may be exercised immediately upon the satisfaction of the conditions set forth in such paragraph) based upon the Event of Default specified in the Default Notice; or (b) challenging whether an Event of Default in the Default Notice has occurred or is continuing without cure (a "Restraint on Remedies"). During the Remedy Notice Period, the DIP Agent shall refrain from exercising its rights and remedies (other than those which may be exercised upon the satisfaction of the conditions set forth in Paragraph 17 and below). Immediately upon expiration of the Remedy Notice Period unless a Restraint on Remedies has timely been obtained from the Court, or with respect to and upon the Maturity Date, immediately:

(1) the DIP Agent shall have the right, free of the restrictions of section 362 or under any other section of the Bankruptcy Code or Bankruptcy Rules (including, without limitation, Bankruptcy Rule 4001(a)), to exercise contractual,

legal and equitable rights and remedies as to all or such part of the DIP Collateral as it shall elect, and to apply the Proceeds (as such term is defined below) of the DIP Collateral to the repayment of the DIP Facility obligations and Pre-Petition ACM Obligations; and

(2) the DIP Agent, should it so elect in its sole and absolute discretion as exercised by the filing of an appropriate statement with the Court, shall be deemed to have been granted “peaceful possession” of, and right of access to, all or any portion of the DIP Collateral, by the Debtors.

**Reporting and Collateral Inspection**

19. The Debtors shall provide the DIP Agent with (i) all financial statements, certificates, and reports required pursuant to the DIP Term Sheet in accordance with the timeframes specified therein and (ii) such additional information as the DIP Agent shall reasonably request from the Debtors. The DIP Agent and its representatives shall have reasonable access to the Debtors’ business premises and to the DIP Collateral in order to review and evaluate the physical condition of any of the DIP Collateral and/or to inspect the financial records and other records of the Debtors concerning the operation of the Debtors’ business.

**Proceeds and Disposition**

20. For purposes of this Third Interim Order, (a) “Proceeds” shall mean both (i) proceeds (as defined in the Uniform Commercial Code for the State of New York) and (ii) any and all payments, proceeds or other consideration realized upon the sale, liquidation, realization, collection or other manner of disposition of the DIP Collateral, whether in the ordinary course of the Debtors’ business (including without limitation accounts, receivables, and other proceeds arising from the Debtors’ sales of goods and/or performance of services) or other than in the

ordinary course of the Debtors' business, and (b) "Disposition" shall mean any sale, liquidation, realization, collection or other manner of disposition of DIP Collateral other than in the ordinary course of the Debtors' business, including without limitation any sale authorized pursuant to section 363.

**Cash Management**

21. The Debtors shall maintain in full force and effect the deposit, clearing, dominion, lockbox, and similar accounts maintained by or on behalf of the Debtors pursuant to Pre-Petition Loan Documents for the collection of Proceeds obtained in the ordinary course of the Debtors' business (the "Collection Accounts"), and the cash management systems, treasury management systems, and payment procedures under which such accounts and systems are administered (the "Collection Procedures"). In furtherance of the foregoing, the DIP Agent shall be deemed to have control of all of the Debtors' bank accounts, and any financial institutions in which such accounts of the Debtors are located are hereby authorized to act in accordance with any request of the DIP Agent concerning such accounts, including, without limitation, requests to turnover funds therein without offset or deduction of any kind.

22. The Debtors (and, **subject to the entry of a Final Order**, any successors to the Debtors (including without limitation any successor trustee or trustees), shall assign or direct to the DIP Agent any and all Proceeds realized in any Disposition of any DIP Collateral outside the ordinary course of business, and immediately deliver any and all such Proceeds which come into their possession to the DIP Agent in the form received; provided, however, that the foregoing shall be subject in all respects to (a) payment of the Carve-Out and (b) the priorities of the DIP Lien granted by this Third Interim Order. The foregoing is without prejudice to the rights of (a) the DIP Agent, the Committee, or any other party to object to any proposed Disposition, (b) any third party

with respect to the allocated Proceeds of any Disposition of Collateral encumbered by a Senior Third Party Lien, or (c) the rights of third parties set forth below with respect to a Challenge Action and the remedies that may result from a successful Challenge Action. The DIP Agent and Pre-Petition Agent are hereby authorized to credit-bid all or any of the obligations under the DIP Facility and Pre-Petition Loan Documents at any Disposition of any Pre-Petition Collateral and/or DIP Collateral, including, without limitation, the 363 Sale.

23. All Proceeds retained by the DIP Agent shall be applied to the repayment of the Pre-Petition ACM Obligations and DIP Facility obligations, in a manner selected by the DIP Agent, until such obligations are paid in full; provided, however, that the foregoing shall be subject in all respects to the terms and the priorities of liens under this Third Interim Order. Such applications of Proceeds shall be free and clear of any claim, charge, assessment or other liability.

**Challenge Action**

24. Subject to the right to bring a Challenge Action as set forth in Paragraph 27 below, effective as of the date of entry of the Interim Order:

A. the Stipulations shall be binding upon the Debtors and all other persons, entities, and/or parties in all circumstances;

B. the validity, extent, priority, perfection, enforceability and non-avoidability of the Pre-Petition ACM Secured Parties' validly perfected prepetition claims and liens against the Debtors and the Pre-Petition Collateral shall not be subject to challenge by the Debtors or any other person, entity, or party; and

C. neither the Debtors, nor any other person, entity, or party shall seek to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any

transfer made by or on behalf of the Debtors to or for the benefit of any of the Pre-Petition ACM Secured Parties prior to the Petition Date.

25. In consideration of and as a condition to the DIP Secured Parties making the Interim DIP Advances and providing credit and other financial accommodations to the Debtors pursuant to the terms of the Interim Orders and the DIP Financing Documents, each of the Debtors (each a “Releasor” and collectively, the “Releasors”), subject to Paragraph 27 herein, absolutely releases, forever discharges and acquits each of the Pre-Petition ACM Secured Parties and their respective successors and assigns, affiliates, officers, directors, employees, attorneys and other representatives (the “Releasees”) of and from any and all claims, demands causes of action, damages, choses in action, and all other claims, counterclaims, defenses, setoff rights, and other liabilities whatsoever (the “Prepetition Released Claims”) of every kind, name, nature, and description, whether known or unknown, both at law and equity (including, without limitation, any “lender liability” claims) that any Releasor may now or hereafter own, hold, have or claim against each and every of the Releasees related to the Pre-Petition Credit Agreement or other Pre-Petition Loan Documents (other than claims or causes of action based on the fraud, gross negligence, or willful misconduct of any Releasee) arising at any time prior to the entry of this Third Interim Order; provided, however, that such release shall not be effective with respect to the Debtors until entry of the Final Order, and with respect to the Debtors’ bankruptcy estates, until the expiration of the Challenge Period. In addition, upon the indefeasible payment, in full, in cash, of all DIP Facility obligations owed to the DIP Secured Parties arising under the Interim Orders and the DIP Financing Documents, the DIP Secured Parties shall be released from any and all obligations, actions, duties, responsibilities, and causes of action arising or occurring in connection with or related to the DIP Financing Documents.

26. **Subject to entry of the Final Order**, the Releasors hereby absolutely, unconditionally, and irrevocably covenant and agree with each Releasee that no Releasor will sue (at law, in equity, or in any other proceeding) any Releasee on the basis of any Prepetition Released Claims released and discharged by any Releasor pursuant to this Third Interim Order. If any Releasor violates this covenant, the Debtors agree, jointly and severally, to pay, in addition to such other damages allowed by law as any Releasee may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Releasee as a result of such violation.

27. Notwithstanding any other provisions of this Third Interim Order: (i) any interested party in these cases, other than the Debtors, the Committee, or Professionals of the Debtors or the Committee, shall have until forty-five (45) calendar days after the Petition Date (subject to enlargement at the request of any party and further order of the Court); and (ii) the Committee and its Professionals shall have until February 12, 2019 (subject to enlargement at the request of any party and further order of the Court, or as otherwise extended by written agreement filed with this Court between the Debtors, the DIP Secured Parties, and the Committee) (each such applicable period, the "Challenge Period"), to commence an adversary proceeding against the Pre-Petition ACM Secured Parties (as applicable) for the purpose (collectively, a "Challenge Action") of:

A. challenging the validity, extent, priority, perfection, enforceability and non-avoidability the Pre-Petition ACM Secured Parties' Liens (as applicable) against the Debtors;

B. seeking to avoid or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) any transfer made by or on behalf of the Debtors to or for the benefit of any of the Pre-Petition ACM Secured Parties, or any of their predecessors in interest under the Pre-Petition Loan Documents (as applicable) prior to the Petition Date;

C. seeking damages or equitable relief against any of the Pre-Petition ACM Secured Parties (as applicable) arising from or related to prepetition business and lending relationships of the Pre-Petition ACM Secured Parties or any of their predecessors in interest under the Pre-Petition Loan Documents with the Debtors, including without limitation equitable subordination, recharacterization, lender liability and deepening insolvency claims and causes of action; or

D. challenging any other matter to be waived or released pursuant to this Third Interim Order (including, without limitation, pursuant to Paragraphs 24, 25, and 26).

28. All parties in interest, including without limitation the Committee, that fail to act in accordance with the time periods set forth in the preceding paragraph shall be, and hereby are, barred forever from commencing a Challenge Action and shall be bound by the waivers, Stipulations, and terms set forth in this Third Interim Order (including Paragraphs 24, 25, and 26 of this Third Interim Order). Any Challenge Action filed shall prohibit application of this paragraph only to the extent of the specific matters set forth in such Challenge Action on the date of filing.

29. The respective legal and equitable claims, counterclaims, defenses and/or rights of offset and setoff of the Pre-Petition ACM Secured Parties in response to any such Challenge Action are reserved, and the ability of a party to commence a Challenge Action shall in no event revive, renew or reinstate any applicable statute of limitations which may have expired prior to the date of commencement of such Challenge Action. Despite the commencement of a Challenge Action, the prepetition claims and Liens of the Pre-Petition ACM Secured Parties shall be deemed valid, binding, properly perfected, enforceable, non-avoidable, not subject to disallowance under section 502(d) of the Bankruptcy Code and not subject to subordination under section 510 of the

Bankruptcy Code until such time as a final and non-appealable judgment and order is entered sustaining such Challenge Action in favor of the plaintiffs therein. Notwithstanding anything to the contrary contained in this Third Interim Order, the Court expressly reserves the right to order other appropriate relief against the Pre-Petition ACM Secured Parties in the event there is a timely and successful Challenge Action by any party in interest to the validity, enforceability, extent, perfection or priority of the Pre-Petition ACM Liens or the amount, validity, or enforceability of the Pre-Petition ACM Obligations.

**No Control by DIP Secured Parties**

30. In making decisions to advance any extensions of credit to the Debtors pursuant to the DIP Facility or in taking any other actions reasonably related to the Interim Orders or the DIP Financing Documents (including, without limitation, the exercise of its approval rights with respect to any budget), the DIP Agent and the DIP Secured Parties shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtors or to be acting as a “control person”, “responsible person” or other “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response Compensation and Liability Act, as amended, or any similar Federal or state statute), and the DIP Agent and the DIP Secured Parties’ relationship with the Debtors shall not constitute or be deemed to constitute a joint venture or partnership of any kind between the DIP Secured Parties and the Debtors.

**Binding Nature of Third Interim Order**

31. This Third Interim Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Secured Parties, the Pre-Petition ACM Secured Parties, the Debtors, and, **subject to the entry of the Final Order**, their respective successors and 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. Except as set forth herein with respect to a Challenge Action and the Carve-Out, no rights are created under this Third Interim Order for the benefit of any creditor of the Debtors, any other party in interest in the Debtors' bankruptcy cases, or any other persons or entities, or any direct, indirect or incidental beneficiaries thereof.

**Additional Interim Order Provisions**

32. Any order dismissing the Chapter 11 Cases under section 1112 or otherwise shall be deemed to provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (a) the DIP Secured Parties' liens and security interests in the DIP Collateral shall continue in full force and effect notwithstanding such dismissal until the DIP Facility obligations are indefeasibly paid and satisfied in full, in cash; and (b) this Court shall retain jurisdiction, to the extent permissible under applicable law, notwithstanding such dismissal, for the purposes of enforcing the DIP Superpriority Claim, the DIP Liens, the Pre-Petition ACM Adequate Protection Liens, and the Pre-Petition ACM Adequate Protection Claims.

33. To the extent that any of the provisions of this Third Interim Order shall conflict with any provisions of the Interim Order, Second Interim Order, the DIP Term Sheet, or with any order of the Court authorizing the Debtors to continue the use of prepetition bank accounts, cash management systems, treasury management systems, or business forms, or any similar orders, this Third Interim Order is deemed to control and supersede the conflicting provisions therein.

34. The terms and conditions of this Third Interim Order shall be effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Fed. R. Bankr. P. 6004(h) or otherwise. Furthermore, to the extent applicable, the

notice requirements and/or stays imposed by Fed R. Bankr. P. 4001(a)(3), 6003(b), and 6004(a) are hereby waived for good and sufficient cause.

35. Nothing in this Third Interim Order shall preclude the Court from entering a Final Order containing provisions inconsistent with or contrary to the provisions of the Interim Orders, provided, however, that the DIP Secured Parties and Pre-Petition ACM Secured Parties shall be entitled to the benefits and protections of the Interim Orders, including (a) the adequate protection afforded to the Pre-Petition ACM Secured Parties set forth in the Interim Orders, and (b) the protections afforded pursuant to section 364(e), with respect to all loans, advances, and other financial accommodations made by them pursuant to the Interim Orders. The DIP Lien, the priority afforded the Interim DIP Advances, and the adequate protection afforded to the Pre-Petition ACM Secured Parties, as set forth in this Third Interim Order, shall be binding on the Debtors and any successor trustee or trustees even if this Third Interim Order is reversed or modified on appeal with respect to all loans, advances, and other financial accommodations made by them pursuant to this Third Interim Order. Except as provided herein, no Proceeds, Cash Collateral or Carve-Out may be used by any party in interest seeking to modify any of the rights granted to DIP Agent hereunder or in the DIP Financing Documents.

36. The Debtors and the DIP Agent may implement non-material modifications of the DIP Term Sheet solely with respect to the waiver or modification of an Event of Default without the need for notice or further approval of the Court, provided, however, that copies of such amendments will be provided to the U.S. Trustee and the Committee. After notice and hearing, the Debtors and the DIP Agent may implement material modifications of the DIP Term Sheet as authorized by the Court.

37. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents, and to pay all fees and expenses that may be required or necessary for the Debtors' performance under this Third Interim Order or the DIP Financing Documents, including, without limitation, (a) the execution of the DIP Financing Documents, (b) the payment of the fees and other expenses described herein or in the DIP Financing Documents as such become due, including, without limitation, agent fees, commitment fees, letter of credit fees, and facility fees.

38. Notwithstanding anything to the contrary in this Third Interim Order, with respect to any DIP Collateral located within property subject to a STORE Lease or an Old Mill Stream Lease, the DIP Agent shall not exercise any remedies with respect to such DIP Collateral that are not permitted under the terms of the applicable STORE Lease or Old Mill Stream Lease.

39. Notwithstanding anything to the contrary contained anywhere in the Interim Orders or in the 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 Third Interim 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"). Accordingly, nothing contained in this Third Interim Order shall be construed to require that Freshpoint North Carolina, Inc. or Freshpoint Nashville, Inc. must bring a Challenge Action during the Challenge Period to preserve any such rights. Furthermore, nothing contained in this Third Interim Order shall be construed to waive the rights of Freshpoint North Carolina, Inc. or Freshpoint Nashville, Inc. to object to a credit bid by any party under 11 U.S.C. § 363(k) in connection with a sale of the Debtors' assets absent escrow of sufficient funds to pay in full all

valid, enforceable PACA trust claims asserted against the Debtors, as determined by the Court, all such rights of objection being expressly reserved. The Debtors, DIP Agent, and Pre-Petition ACM Secured Parties each reserve all rights with respect to the alleged PACA rights and claims of Freshpoint North Carolina, Inc. or Freshpoint Nashville, Inc.

40. The Court has considered and determined the matters addressed herein pursuant to its powers under the Bankruptcy Code, including the power to authorize the Debtors to obtain credit on terms and conditions to which the Debtors and DIP Agent have agreed. Thus, each of the terms and conditions constitutes a part of the authorization under sections 364 of the Bankruptcy Code, and is, therefore, subject to the protections contained in section 364(e) of the Bankruptcy Code, regardless of (i) any stay, modification, amendment, vacation, or reversal of this Third Interim Order or the DIP Financing Documents or any term hereunder or thereunder; (ii) the failure to obtain a final order pursuant to Bankruptcy Rule 4001(c)(2), or (iii) the dismissal or conversion of this chapter 11 case.

**Objection Rights Preserved for Final Hearing**

41. Objections to the entry of the Final Order were filed by: (i) the U.S. Trustee; (ii) the Committee; (iii) Old Mill Stream, LLC, MRB, LLC, and M&R Investors, LLC; (iv) STORE Master Funding V, LLC; and (v) FreshPoint North Carolina, Inc. t/a FreshPoint Nashville, a/t/a FreshPoint Charlotte (collectively, the “DIP Order Objecting Parties”). The objections of the DIP Order Objecting Parties are preserved for the Final Hearing to the extent such objections have not been resolved by agreement under the terms of this Third Interim Order.

**Extension of Termination Date of Third Interim Order**

42. The Debtors’ right to use Cash Collateral or proceeds of the DIP Facility under this Third Interim Order may be extended beyond the Termination Date with the prior, written consent of the DIP Agent and without a Court hearing or further order of this Court; provided however,

that no Interim Advances or any further extensions of credit under the DIP Facility may be made following the Termination Date absent further order of this Court.

**Final Hearing**

43. The Final Hearing is scheduled for February 12, 2019 at 9:30 a.m. (ET) before the Honorable Helen E. Burris, United States Bankruptcy Judge at the United States Bankruptcy Court for the District of South Carolina, 201 Magnolia Street, Spartanburg, SC 29306.

44. Any notice required to be provided under this Third Interim Order shall be served on (i) the Debtor's proposed counsel, Haynes and Boone, LLP, attn: Ian T. Peck and J. Frasher Murphy, 2323 Victory Avenue, Suite 700, Dallas, TX 75219 and Burr & Forman LLP, attn: Robin Stanton and Michael Weaver, 1221 Main St., Ste. 1800, Columbia, SC 29201; (ii) the DIP Secured Parties' counsel, Holland & Knight LLP, attn: Brent McIlwain, 200 Crescent Court, Suite 1600, Dallas, TX 75201 and Fox Rothschild, LLP, attn: Kevin McCarrell, 2 W. Washington St., Suite 1100, Greenville SC 29601; (iii) counsel for the Committee, Pachulski Stang Ziehl & Jones LLP, attn: Bradford Sandler, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801 and Nelson Mullins, attn: Keith Poston, 1320 Main Street, 17<sup>th</sup> Floor, Columbia, SC 29201; and (iv) the Office of the U.S. Trustee, 1835 Assembly Street, Suite 953, Columbia, SC 29201.

**AND IT IS SO ORDERED.**

**FILED BY THE COURT  
01/09/2019**



Entered: 01/09/2019

  
US Bankruptcy Judge  
District of South Carolina

**Exhibit 1**

**DIP Term Sheet**

(See Attached)

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

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*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**”):*

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**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 two million five hundred thousand dollars (\$2,500,000.00) 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

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<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) February 12, 2019 if the Final Order has not been entered; (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 (a) any interested party in these cases, other than the Debtors, the Committee, or Professionals of the Debtors or the Committee within forty-five (45) calendar days of the Petition Date (subject to enlargement at the request of any party and further order of the Court); or (b) the Committee and its Professionals on or before February 12, 2019 (subject to enlargement at the request of any party and further order of the Court, or as otherwise extended by written agreement filed with the Court between the Debtors, the DIP Secured Parties, and the Committee) (each such applicable period, 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 January 9, 2019, 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 February 7, 2019, or such later date to which the DIP Agent consents in writing in its sole discretion, 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 February 12, 2019, 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 February 14, 2019, 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:

- 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 one or more interim orders 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 February 14, 2019, 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 Café 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:

**Exhibit 2**

**DIP Budget**

(See Attached)

Cafe Holdings Corp, et al. - 13 week DIP Cashflow Budget

| Projected Week                             | 1              | 2                | 3              | 4                | 5              | 6                | 7               | 8                | 9              | 10             | 11               | 12               | 13               | Total              |
|--|----------------|------------------|----------------|------------------|----------------|------------------|-----------------|------------------|----------------|----------------|------------------|------------------|------------------|--------------------|
| Week Ending                                | 11/18/2018     | 11/25/2018       | 12/2/2018      | 12/9/2018        | 12/16/2018     | 12/23/2018       | 12/30/2018      | 1/6/2019         | 1/13/2019      | 1/20/2019      | 1/27/2019        | 2/3/2019         | 2/10/2019        | 13 Weeks           |
| Beginning Cash Balance                     | 25,000         | 113,943          | 71,696         | 682,131          | (346,962)      | 349,903          | 186,945         | 588,985          | (333,234)      | 232,937        | 281,635          | (107,049)        | (182,110)        | 25,000             |
| <b>Total Cash Receipts from Operations</b> | 113,943        | 1,344,686        | 1,344,286      | 1,254,673        | 1,269,028      | 1,441,235        | 1,460,919       | 1,141,384        | 1,010,492      | 1,051,281      | 1,059,159        | 1,120,850        | 1,062,062        | 14,673,999         |
| Food Vendor                                | -              | (207,013)        | (203,591)      | (319,952)        | (373,779)      | (356,198)        | (332,350)       | (320,729)        | (334,773)      | (303,342)      | (297,303)        | (311,736)        | (302,679)        | (3,663,445)        |
| Payroll Related                            | -              | (417,144)        | (420,844)      | (429,322)        | (417,055)      | (408,657)        | (418,250)       | (387,845)        | (337,986)      | (352,517)      | (340,389)        | (349,176)        | (346,174)        | (4,625,358)        |
| Insurance payments                         | -              | (17,000)         | (17,000)       | (17,000)         | (17,000)       | (17,000)         | (17,000)        | (17,000)         | (17,000)       | (17,000)       | (17,000)         | (17,000)         | (17,000)         | (204,000)          |
| Operating Expenses                         | -              | (114,400)        | (20,720)       | (252,897)        | (91,291)       | (81,715)         | (84,334)        | (231,445)        | (67,796)       | (76,787)       | (83,592)         | (152,448)        | (73,142)         | (1,330,566)        |
| Marketing                                  | -              | (30,000)         | -              | (10,000)         | (20,000)       | (20,000)         | (20,000)        | (20,000)         | (20,000)       | (20,000)       | (20,000)         | (20,000)         | (20,000)         | (220,000)          |
| Rent                                       | -              | -                | -              | (528,115)        | -              | -                | (370,719)       | (45,000)         | -              | -              | (407,924)        | (452,600)        | -                | (1,433,314)        |
| Taxes and Fees                             | -              | (487,434)        | -              | (44,350)         | -              | (370,719)        | -               | (45,000)         | -              | -              | (407,924)        | -                | -                | (1,355,420)        |
| <b>Cash Disbursements from Operations</b>  | -              | (1,272,990)      | (662,155)      | (1,601,635)      | (919,125)      | (1,254,290)      | (871,934)       | (1,474,618)      | (777,555)      | (769,646)      | (1,166,207)      | (1,302,960)      | (758,995)        | (12,837,114)       |
| <b>Operating Net Cash Flow</b>             | <b>113,943</b> | <b>71,696</b>    | <b>682,131</b> | <b>(346,962)</b> | <b>349,903</b> | <b>186,945</b>   | <b>588,985</b>  | <b>(333,234)</b> | <b>232,937</b> | <b>281,635</b> | <b>(107,049)</b> | <b>(182,110)</b> | <b>303,067</b>   | <b>1,847,886</b>   |
| Court Expenses                             | -              | -                | -              | -                | -              | -                | -               | -                | -              | -              | -                | -                | (176,430)        | (176,430)          |
| Debtor Bankruptcy Counsel                  | -              | (137,692)        | (68,846)       | (68,846)         | (68,846)       | (68,846)         | (68,846)        | (68,846)         | (68,846)       | (68,846)       | (68,846)         | (68,846)         | (68,846)         | (895,000)          |
| Debtor CRO                                 | -              | (6,154)          | (3,077)        | (3,077)          | (3,077)        | (3,077)          | (3,077)         | (3,077)          | (3,077)        | (3,077)        | (3,077)          | (3,077)          | (3,077)          | (40,000)           |
| Debtor Investment Bank                     | -              | -                | -              | (25,000)         | -              | -                | -               | (25,000)         | -              | -              | -                | -                | (450,000)        | (500,000)          |
| Noticing Agent                             | -              | (11,538)         | (5,769)        | (5,769)          | (5,769)        | (5,769)          | (5,769)         | (5,769)          | (5,769)        | (5,769)        | (5,769)          | (5,769)          | (5,769)          | (75,000)           |
| DIP Agent Legal                            | -              | (46,154)         | (23,077)       | (23,077)         | (23,077)       | (23,077)         | (23,077)        | (23,077)         | (23,077)       | (23,077)       | (23,077)         | (23,077)         | (23,077)         | (300,000)          |
| GUCC Advisors & Legal                      | -              | (20,000)         | (10,000)       | (10,000)         | (10,000)       | (10,000)         | (10,000)        | (10,000)         | (10,000)       | (10,000)       | (10,000)         | (10,000)         | (10,000)         | (130,000)          |
| <b>CURES AND MISCELLANEOUS</b>             | -              | -                | -              | -                | -              | -                | (500,000)       | -                | -              | -              | -                | -                | -                | (500,000)          |
| 50389 CLAIMS                               | -              | -                | -              | -                | -              | (300,000)        | -               | -                | -              | -              | -                | -                | -                | (300,000)          |
| SALES TAX CURE                             | -              | -                | -              | -                | -              | -                | -               | -                | -              | -              | -                | -                | -                | (325,000)          |
| PROPERTY TAX CURE                          | -              | (325,000)        | -              | -                | -              | -                | -               | -                | -              | -              | -                | -                | -                | (325,000)          |
| OTHER FOOD VENDORS CURE (PACA)             | -              | (150,000)        | -              | -                | -              | -                | -               | -                | -              | -              | (325,000)        | -                | -                | (150,000)          |
| LANDLORDS AND LEASE RECOVERY               | -              | -                | -              | -                | -              | -                | -               | -                | -              | -              | (325,000)        | -                | -                | (325,000)          |
| UTILITY DEPOSITS                           | -              | (170,000)        | -              | -                | -              | -                | -               | -                | -              | -              | -                | -                | -                | (170,000)          |
| CRISIS MANAGEMENT                          | -              | -                | -              | -                | 25,000         | -                | -               | -                | -              | -              | -                | -                | -                | 25,000             |
| STUB RENT                                  | -              | -                | -              | -                | -              | (280,861)        | -               | -                | -              | -              | -                | -                | -                | (280,861)          |
| MIP, KERP AND KEEP PAYMENTS                | -              | -                | -              | -                | -              | -                | -               | -                | -              | -              | -                | -                | (525,000)        | (525,000)          |
| D&O Tail                                   | -              | (866,538)        | (430,769)      | (135,769)        | (85,769)       | (691,630)        | (610,769)       | (135,769)        | (110,769)      | (110,769)      | (435,769)        | (110,769)        | (1,262,199)      | (4,987,291)        |
| <b>Total Bankruptcy Costs</b>              | -              | (866,538)        | (430,769)      | (135,769)        | (85,769)       | (691,630)        | (610,769)       | (135,769)        | (110,769)      | (110,769)      | (435,769)        | (110,769)        | (1,262,199)      | (4,987,291)        |
| <b>Net Cash Flows</b>                      | <b>113,943</b> | <b>(794,843)</b> | <b>251,362</b> | <b>(482,731)</b> | <b>254,133</b> | <b>(504,685)</b> | <b>(21,784)</b> | <b>(469,003)</b> | <b>122,167</b> | <b>170,866</b> | <b>(542,818)</b> | <b>(292,879)</b> | <b>(959,132)</b> | <b>(3,145,405)</b> |
| <b>Beginning Cash Balance</b>              | 25,000         | 138,943          | 344,101        | 595,463          | 112,731        | 376,865          | 372,180         | 350,395          | 881,392        | 1,003,559      | 1,174,425        | 631,607          | 838,728          | 25,000             |
| Change in Cash                             | 113,943        | (794,843)        | 251,362        | (482,731)        | 264,133        | (504,685)        | (21,784)        | (469,003)        | 122,167        | 170,866        | (542,818)        | (292,879)        | (959,132)        | (3,145,405)        |
| DIP Facility Draw                          | -              | 1,000,000        | -              | -                | 500,000        | 500,000          | -               | 1,000,000        | -              | -              | -                | 500,000          | 200,000          | 3,200,000          |
| <b>Ending Cash Balance</b>                 | 138,943        | 344,101          | 595,463        | 112,731          | 376,865        | 372,180          | 350,395         | 881,392          | 1,003,559      | 1,174,425      | 631,607          | 838,728          | 79,596           | 79,596             |

Certificate of Notice Page 62 of 63  
United States Bankruptcy Court  
District of South Carolina

In re:  
Cafe Holdings Corp.  
Debtor

Case No. 18-05837-hb  
Chapter 11

**CERTIFICATE OF NOTICE**

District/off: 0420-7

User: richardso  
Form ID: pdf01

Page 1 of 2  
Total Noticed: 1

Date Rcvd: Jan 09, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jan 11, 2019.

aty +Ian T. Peck, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700,  
Dallas, TX 75219-7673

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.  
NONE. TOTAL: 0

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

**I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Jan 11, 2019

Signature: /s/Joseph Speetjens

**CM/ECF NOTICE OF ELECTRONIC FILING**

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on January 9, 2019 at the address(es) listed below:

- Brandon K. Poston on behalf of Creditor Committee Official Committee of Unsecured Creditors  
keith.poston@nelsonmullins.com,  
Stephanie.arnold@nelsonmullins.com;linnea.hann@nelsonmullins.com;joan.kishline@nelsonmullins.com;  
frank.knowlton@nelsonmullins.com;shane.ramsey@nelsonmullins.com;bsandler@pszjlaw.com
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- Francesca Macchiaverna on behalf of Creditor Geoffrey S. Stutchman and Leehouang T.  
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Page 2 of 2  
Total Noticed: 1

Date Rcvd: Jan 09, 2019

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

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TOTAL: 36