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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

SLT HOLDCO, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 20-18368 (MBK)

Joint Administration Requested

**DECLARATION OF JASON GOLDBERGER IN SUPPORT OF
DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Jason Goldberger, make this declaration under 28 U.S.C. § 1746:

1. I am the Chief Executive Officer (“**CEO**”) of Sur La Table, Inc. (“**SLT**” or “**Sur La Table**”) and SLT Holdco, Inc. (“**Holdco**”, and with SLT each a “**Debtor**” and together, the “**Debtors**”). As CEO, I am familiar with the Debtors’ day-to-day operations, business and financial affairs, books and records, and the circumstances leading to the commencement of the Debtors’ above-captioned chapter 11 cases (the “**Chapter 11 Cases**”).

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal tax identification number, as applicable, are as follows: SLT Holdco, Inc. (0403) and Sur La Table, Inc. (3409). The Debtors’ corporate headquarters are located at 6100 4th Avenue South, Suite 500, Seattle, Washington 98108.

2. I was appointed CEO of the Debtors on August 8, 2019. I have over 27 years of experience in retail and e-commerce, having served as President and Chief Executive Officer of Blue Nile and Chief Digital Officer and President of Target.com, among other roles in those industries. I have an undergraduate degree from Colby College.

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (11 U.S.C. § 101 *et seq.*, the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of New Jersey (the “**Court**”). The Debtors continue to operate their business and manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. To enable the Debtors to operate effectively and minimize potential adverse effects in the Chapter 11 Cases, the Debtors have requested certain relief in “first day” motions and applications filed with the Court (collectively, the “**First Day Motions**”) concurrently herewith. The First Day Motions, summarized below, seek, among other things, to: (a) ensure the continuation of the Debtors’ cash management system and other business operations without interruption, (b) allow the Debtors to continue using cash collateral and the proceeds of a new debtor-in-possession facility, (c) preserve the Debtors’ valuable relationships with vendors, customers, and other interested parties, (d) permit the Debtors to continue to sell their goods in the ordinary course of business, (e) maintain employee morale and confidence, and (f) implement certain administrative procedures that will promote a seamless transition into chapter 11. This relief is critical to the Debtors’ efforts to maximize value for the benefit of their creditors.

5. This Declaration is submitted in support of the First Day Motions. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal

knowledge, my review of relevant documents, information provided to me by the Debtors' employees or professionals, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and the retail industry. I am authorized to submit this Declaration on the Debtors' behalf. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

6. This Declaration is intended to provide an overview of the Debtors' businesses and their need to commence the Chapter 11 Cases. Sections I and II provide a brief overview of the Debtors' businesses and the Debtors' contemplated course of action. Section III describes the Debtors' pre-petition capital structure. Section IV describes the circumstances that precipitated the commencement of the Chapter 11 Cases and the Debtors' objectives in the Chapter 11 Cases. Section V provides a summary of the First Day Motions and the factual bases for the relief requested therein.

I. PRELIMINARY STATEMENT

7. The Debtors are one of America's most highly regarded retailers of home kitchenware products. Founded at Seattle's iconic Pike Place Market in 1972, Sur La Table grew to 126 retail locations across the country and a significant online retail presence. Pre-COVID, the Debtors were experiencing significant growth in its culinary experience, which provides hands-on cooking classes in 85 of its 126 locations from resident chefs and their assistants in classes conducted in Sur La Table retail establishments that are especially outfitted with commercial-grade kitchens. Sur La Table offers its cooking classes to the general public and for private parties, often used to host private events of corporate gatherings or personal celebrations of friends and family (among other uses).

8. The Debtors' business operations, like those of many of their peers in the retail space, have been negatively impacted by adverse market trends, including the shifting of sales

from traditional brick-and-mortar retailers to online retailers, a marked decline in at-home cooking, and changing consumer preferences. As the Debtors struggled to adapt to these headwinds, the recent economic impact of the COVID-19 pandemic, including the required closure of all of the Debtors' brick and mortar locations to comply with government directives to combat the pandemic, proved to be too much of a strain. Indeed, the Debtors' bankruptcy cases are only the latest in a string of bankruptcy cases that have plagued not only the retail industry, and the American economy in general in the wake of COVID-19.

9. It was against this backdrop that, prior to the Petition Date, the Debtors and their professionals worked diligently to solicit and develop strategic alternatives to maximize the Debtors' value for the benefit of all of their stakeholders. In late 2019, the Debtors retained SOLIC Capital Advisors, LLC ("**SCA**") to provide financial advice to the Debtors and to facilitate discussions with the Debtors' capital structure constituents. At the same time, the Debtors also retained the services of SOLIC Capital LLC (an affiliate of SCA, "**SOLIC Capital**") to conduct a targeted search for potential partners to execute a strategic transaction via with the Debtors.

10. Beginning in late February 2020, SOLIC Capital initiated a process that ultimately resulted in it contacting more than 100 prospective financial and/or strategic partners including specialty retailers, brand portfolio companies, and specialty grocers, to gauge interest in a strategic transaction with the Debtors. Many parties executed non-disclosure agreements and conducted varying levels of diligence, resulting in seven (7) term sheets; three (3) from parties seeking to acquire a portion of the Debtors' stores and all of their e-commerce assets, and four (4) term sheets solely addressing the Debtors' e-commerce assets.

11. As the Debtors search for a strategic partner unfolded, the Debtors worked diligently to maintain their operations in the face of declining liquidity and increasing financing challenges. In early April of 2020, the Debtors retained the services of A&G Real Estate Partners, LLC (“A&G”). Although the Debtors had anticipated that A&G would seek to negotiate rent concessions from the Debtors’ landlords in retail locations where the Debtors’ leases were no longer aligned with the commercial real estate market, after the arrival of COVID-19 and the required shutdown of some and then all of the Debtors’ locations (as described below), A&G shifted priorities and began to: (a) negotiate rent abatements (to help the Debtors manage their liquidity concerns for the months that retail stores were forced to remain closed), (b) interface with landlords who threatened to exercise rights and remedies in response to the Debtors’ inability to pay rents, and (c) negotiate and coordinate store re-openings (once the Debtors were able to resume operations safely and in accordance with health and safety guidelines). In addition to engaging with SOLIC and A&G in their efforts to help manage these business affairs, I have worked tirelessly with the Debtors’ vendors to maintain the Debtors’ access to its domestic and international supply chain of high-quality kitchen products while preserving much needed liquidity, and to maintain the Debtors’ workforce in the face of forced furloughs and necessary reductions in force.

12. As the Debtors recognized that the financial difficulties they faced may render a strategic transaction challenging, I worked with the Debtors’ professionals to prepare for the very real possibility that the best interests of the Debtors’ stakeholders would be served by a controlled liquidation of the Debtors’ assets. To that end, in March of 2020 the Debtors engaged a contractual joint venture of Great American Group, LLC and Tiger Capital Group, LLC to advise and, if necessary, execute a partial or full liquidation of the Debtors’ assets. Indeed, even

in the event that a strategic transaction were to be consummated, the Debtors anticipated that such a transaction may be conditioned on them shrinking their retail footprint by closing a select number of retail stores and liquidating the Debtors' related inventory and other assets.

13. Commencing May 6, 2020, the Debtors began reopening their stores for retail operations, initially opening 12 locations, followed the next week by another 13. As of the Petition Date, the Debtors have reopened all but 7 stores. The Debtors also began in late May to roll out culinary operations on a limited basis.

14. Shortly before the Petition Date, SLT entered into a term sheet (the "**Stalking Horse Term Sheet**") that outlined the terms and conditions pursuant to which an affiliate or designee of one of the Debtors' prepetition secured lenders (such affiliate or designee, the "**Stalking Horse Bidder**") proposed to purchase on a going-concern basis under section 363 of the Bankruptcy Code a material portion of the Debtors' enterprise. Under the Stalking Horse Term Sheet, the Stalking Horse Bidder proposes to purchase existing inventory and other assets of the Debtors, and to assume leases for up to 70 retail stores and gift card and other liabilities of the Debtors (as defined in the Stalking Horse Term Sheet, the "**Sale Transaction**"). As described in the Stalking Horse Term Sheet and the Debtor's motion seeking entry of an order establishing bidding and related procedures to effectuate the Sale Transaction, the Sale Transaction will serve as a stalking horse bid that will be subject to higher or otherwise better offers at auction (to the extent that other qualified bids are submitted in accordance with bidding procedures approved by this Court).

15. In connection with the Stalking Horse Term Sheet, the Stalking Horse Bidder and the Debtors entered into a second term sheet (the "**DIP Loan Term Sheet**") pursuant to which the Stalking Horse Bidder agreed to provide (either directly or through an affiliate) a debtor-in-

possession loan in the maximum amount of up to \$3 million. The financing proposed under the DIP Loan Term Sheet is critical to the Debtor's ability to continue to operate in the ordinary course of business pending the auction and consummation of the Sale Transaction or another transaction that may result from the competitive bidding process proposed by the Debtors.

16. Together, the terms and conditions of the Stalking Horse Term Sheet and the DIP Loan Term Sheet provide the Debtors with a transaction that appears to be in the best interests of the Debtors' estates, subject only to any higher or otherwise better bids that may be presented at the Auction. Consummating the Sale Transaction would preserve up to 70 retail stores, the Debtors' lucrative online business, and the Debtor's cooking classes, as well as nearly 2,000 jobs and myriad value relationships with vendors, landlords, and other stakeholders of the Debtors.

17. The Debtors believe that failure to consummate the Sale Transaction (or a competing transaction that is determined via the auction to constitute a higher or otherwise better offer for the Debtors' property) will result in an immediate liquidation of the Debtor's estates for the benefit of their creditors. In fact, prior to the Petition Date the Debtors commenced liquidating their 51 retail stores that have not been identified as subject to potential assumption in connection with the Sale Transaction.

18. The Debtors commenced these Chapter 11 Cases to consummate a sale of their assets to the Stalking Horse Bidder and thereby maximize the value of their estates for the benefit of their stakeholders. The Debtors determined that filing for Chapter 11 protection, utilizing cash collateral (with the consent of their secured lenders) and seeking approval of the DIP Loan Term Sheet and a sale to the Stalking Horse Bidder (subject to higher and better offers) while pursuing an orderly liquidation of their assets not subject to the proposed Sale Transaction is their best available option. The Debtors believe that the Chapter 11 process

described in this Declaration will lead to the greatest recovery for their creditors, under the circumstances.

II. THE DEBTORS' BUSINESS

A. Corporate Structure

19. Holdco is a privately held company, the equity of which is held among less than 50 different holders. The majority of the shares outstanding of Holdco are held by affiliates of Investcorp S.A. (“**Investcorp**”). Holdco, in turn, directly owns all of the equity interests of SLT.

20. The Board of Directors of Holdco and SLT (the “**Board**”) is currently composed of 8 individuals, three of whom are employed by Investcorp or its affiliates. In early February of 2020, the Board appointed Charles Sweet as its independent director to replace a departing independent director. Prior to his appointment as an independent director, Mr. Sweet had no known connections with either the Debtors, its equity holders, or their respective affiliates.

21. On February 5, 2020, the Board formed a subcommittee (the “**Strategic Planning Committee**”), Chaired by Independent Director Sweet, to work closely with management and advisors to the Debtors to identify and pursue corporate strategic initiatives. From that point forward through the Petition Date, the Strategic Planning Committee met weekly, and sometimes more frequently, in order to remain informed as the Debtors’ business affairs and the status of its efforts to address its financial distress, and in order to be able to respond quickly and appropriately to the needs of the Debtors.

B. The Debtors' Business Operations

22. The Debtors divide their business into three segments: (a) brick and mortar retail sales of kitchenware and related goods, which generated more than \$230 million of revenue in

fiscal year 2018²; (b) e-commerce retail sales of kitchenware and related goods, which generated more than \$80 million of revenue in fiscal year 2018, and (c) cooking classes, the Debtors' fastest growing segment in recent years, which generated more than \$35 million of revenue in fiscal year 2018. As of the Petition Date, the Debtors operate 121 retail stores,³ with their largest concentrations of stores located in California (30), Texas (13), and Florida (10).

23. The Debtors' stores are located in shopping centers, traditional shopping malls, and stand-alone storefronts. The Debtors do not own any real estate. The Debtors' rental expenses total approximately \$45 million per year, which amount includes rental costs for their corporate headquarters in Seattle, Washington, as well as their single warehouse and distribution located in Indiana (discussed below).

24. The Debtors maintain a supply chain comprised of more than 500 vendors that is designed to ensure the uninterrupted flow of new merchandise to their brick-and-mortar locations and to their e-commerce customers. The Debtors' greatest expense is its merchandise, which expense totals approximately \$150 million annually. The Debtors' profitability is highly dependent on maintaining strong relationships and favorable trade terms with their key vendors, including many highly regarded home brands.

25. The Debtors do not manufacture any merchandise, and rely upon their vendors, shippers, and warehousemen to ensure a continuous supply of goods to their customers. The Debtors lease a warehouse and distribution center in Brownsburg, Indiana to process merchandise and warehouse inventory and to support the Debtors' retail stores and their e-

² As with many other commercial entities, the recent impacts of COVID-19 prevented the Debtors from completing the audit of their FY2019 book and records

³ Shortly before the Petition Date, the Debtors vacated 5 stores and surrendered possession of those stores to the applicable landlords.

commerce platform. Due to the impact of COVID-19, the Debtors have recently expanded their drop ship and ship-from-store platforms to help manage their inventory levels and meet robust online demand and customer expectations.

26. Prior to the impact of COVID-19, the Debtors employed nearly 3,000 employees in both in retail operations and cooking class operations. The backbone of the Debtors' operations consisted of approximately 1,452 retail employees, including store associates, and 1,186 employees associated with the Debtors' culinary programs, including approximately 80 resident chefs, and 296 chef instructors. None of the Debtors' employees are members of a labor union.

27. With COVID-19 forcing the closure of their stores, all retail and culinary employees were furloughed. Soon after, the Debtors fully furloughed half of their corporate/support staff and drastically reduced hours and pay for the remainder of the corporate staff. In total, the Debtors partially or fully furloughed approximately 94% of the Debtors' total workforce. As stores have reopened and many retail employees have returned to work, the Debtors have begun to increase hours for some corporate employees and are working to bring additional staff back to work and to full pay with the objective of adequately supporting the business and retaining key talent.

28. As of the Petition Date, the Debtors' balance sheet reflects approximately \$316 million in assets and approximately \$297 million in liabilities.

III. CAPITAL STRUCTURE

A. Pre-Petition Secured Debt

29. As described below in greater detail, the Debtors finance their business operations with two forms of funded, secured debt. First, the Debtors have an asset-based revolving credit facility for which Wells Fargo Bank, National Association serves as agent, on which the Debtors

traditionally owe anywhere from \$50-85 million, depending on the time of year (with the revolver balance growing as the Debtors prepare for the end of year selling season and shrinking shortly thereafter). Second, the Debtors are parties to a term loan credit facility with an outstanding balance as of the Petition Date of approximately \$35 million. Each of the facilities is secured by first lien, priority security interests in and liens upon substantially all of the Debtors' assets, with the relative rights and priorities between such lenders determined by an intercreditor agreement to which those lenders are party.

30. Those loans are more particularly described below.

ABL Revolving Credit Facility

31. The Debtors are parties to that certain the Loan and Security Agreement, dated July 28, 2011 (as amended, restated, supplemented or otherwise modified prior to the Petition Date, the "**Prepetition ABL Loan Agreement**") and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified in accordance with the terms thereof, the "**Prepetition ABL Loan Documents**"), by and among the Debtors, Wells Fargo Bank, National Association as the arranger, collateral agent, and administrative agent for the lenders party thereto (in such capacities, "**Prepetition ABL Agent**"), and the lenders party thereto from time to time (the "**Prepetition ABL Lenders**"), and, together with the Prepetition ABL Agent, collectively, the "**Prepetition ABL Credit Parties**"), pursuant to which the Prepetition ABL Credit Parties made loans, advances and provided other financial accommodations to Debtors.

32. As of the Petition Date, the Debtors were jointly and severally indebted and liable to the Prepetition ABL Credit Parties under the Prepetition ABL Loan Documents in principal amounts not less than (i) \$45,365,271.95, plus (ii) all interest accrued and accruing thereon,

together with all costs, fees, expenses (including attorneys' fees and legal expenses) and all other Obligations (as defined in the Prepetition ABL Loan Agreement) accrued, accruing or chargeable in respect thereof or in addition thereto, (collectively, the "**Prepetition ABL Obligations**").

33. Pursuant to the Prepetition ABL Loan Agreement, each Debtor granted senior liens upon and security interests in substantially all of such Debtors' assets to the Prepetition ABL Agent for the benefit of itself and the other Prepetition ABL Credit Parties as security for the Prepetition ABL Obligations.

Term Loan Credit Facility

34. The Debtors also are parties to that certain Term Loan and Security Agreement dated as of July 28, 2011 (as amended, restated, supplemented or otherwise modified prior to the Petition Date, the "**Prepetition Term Loan Agreement**") and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified in accordance with the terms thereof, the "**Prepetition Term Loan Documents**"), by and among the Debtors, CF SLTD Holdings LLC as the collateral agent, and administrative agent for the lenders party thereto (in such capacities, "**Prepetition Term Agent**"),⁴ and the lenders party thereto from time to time (the "**Prepetition Term Lenders**", together with the Prepetition Term Agent, collectively, the "**Prepetition Term Credit Parties**", and together with the Prepetition ABL Credit Parties, collectively, the "**Prepetition Credit Parties**"), pursuant to which the Prepetition Term Credit

⁴ BlackRock Capital Investment Corporation initially served as a Prepetition Term Agent. However, on June 24, 2020, the Prepetition Term Lenders (as defined below) each assigned their rights under the Term Loan Documents, including all Prepetition Term Obligations (as defined below), to CF SLTD Holdings LLC.

Parties made loans, advances and provided other financial accommodations to Debtors. The Stalking Horse Bidder is an affiliate of the Prepetition Term Agent.

35. As of the Petition Date, the Debtors, were jointly and severally indebted and liable to the Prepetition Term Credit Parties under the Prepetition Term Loan Documents in principal amounts not less than (i) \$35,140,087, plus (ii) all interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys' fees and legal expenses) and all other Obligations (as defined in the Term Loan Agreement) accrued, accruing or chargeable in respect thereof or in addition thereto, (collectively, the "**Prepetition Term Obligations**").

36. Pursuant to the Term Loan Agreement, each Debtor granted senior liens upon and security interests in substantially all of such Debtors' assets (the "**Prepetition Term Collateral**", and together with the Prepetition ABL Collateral, the "**Prepetition Collateral**") to the Prepetition Term Agent for the benefit of itself and the other Prepetition Term Credit Parties as security for the Term Obligations.

The Intercreditor Agreement

37. The Prepetition ABL Agent and Prepetition Term Agent are parties to that certain Intercreditor Agreement dated as of July 28, 2011, as acknowledged by the Debtors (as amended, supplemented or otherwise modified from time to time, the "**Prepetition Intercreditor Agreement**"). The Prepetition Intercreditor Agreement confirms the relative senior priorities of the security interests of Prepetition ABL Agent and the Prepetition Term Agent in the assets and properties of Debtors and provides certain other rights and obligations between Prepetition ABL Agent and other Prepetition ABL Credit Parties, on the one hand, and the Prepetition Term Agent and the other Prepetition Term Credit Parties, on the other hand, relating to the Prepetition Collateral, all as set forth in more detail in the Prepetition Intercreditor Agreement.

The Debtors' Defaults under the Secured Debt Facilities

38. In March of 2020, the Debtors failed to pay interest due under the Term Loan Agreement, following which the Prepetition Term Agent sent a Notice of Default and Reservation of Rights letter to the Debtors. Thereafter, the Prepetition ABL Agent sent a letter to the Debtors, notifying the Debtors of defaults under the ABL Loan Documents, including a cross-default caused by the Prepetition Term Agent's Notice of Default and Reservation of Rights, and as a result of the Debtors' non-payment of rent during April 2020 (as a result of the COVID-19 pandemic and the stores being closed). The Debtors remain in default to each of the Prepetition Credit Parties.

B. General Unsecured Creditors

39. As of the Petition Date, the Debtors believe that unsecured claims against the Debtors are in excess of \$37 million. Unsecured claims against the Debtors include (a) accrued and unpaid trade and other unsecured debt incurred in the ordinary course of the Debtors' business, (b) unpaid amounts owed to the Debtors' vendors, and (c) claims for unpaid rent and other obligations under the Debtors' leases.

C. Preferred Equity Interests

40. On or about June 12, 2019, Holdco issued 15,000 shares of Series A Convertible Preferred Stock (the "**Preferred Equity**"), par value \$0.01, at a price of \$1,000 per share, to Investcorp and certain other then-existing holders of Holdco common stock. One hundred percent of the \$15 million proceeds of this issuance was used to reduce the principal amount then-outstanding of the Prepetition Term Obligations outstanding as of the date of issuance.

IV. THE NEED FOR CHAPTER 11 RELIEF AND THE EVENTS COMPELLING THE COMMENCEMENT OF THE CHAPTER 11 CASES

A. Diminished Operating Performance

41. The Debtors, like many other retail companies, have faced a challenging commercial environment over the past several years. The Debtors' challenges have been exacerbated by declining rates of preparing meals at home and a shift in customer preferences away from physical retail stores and toward online-only stores. Given the Debtors' substantial brick-and-mortar retail presence, their business has been heavily dependent on in-store traffic, which has declined in recent years (notwithstanding the tremendous success and growth of the Debtors' cooking classes). The Debtors' financial condition is weighed down by a store footprint that is disproportionate to market demands, and the substantial capital costs incurred in connection with: (a) installing commercial quality kitchen spaces sufficient to host the Debtors' cooking classes; and (b) upgrading their inventory and related systems to incorporate a comprehensive e-commerce sales strategy. As a result, the Debtors have seen meaningful revenue decline for the past 5 years. Compounding the Debtors' overall distress was significant executive turnover in the past several years; I am the Debtors' third CEO since 2017.

B. The Impact of COVID-19

42. In early 2020, the Debtors determined to run a strategic process to identify the best vehicle to restructure their operations and finances. By mid-March, however, initial responses to the COVID-19 pandemic required the Debtors to close 23 of their retail locations without prospect for reopening. This was followed almost immediately by a determination to suspend all cooking classes, followed shortly by a decision to close all of the Debtors' retail locations as the scope of the pandemic rapidly became known. By mid-April the Debtors had closed their corporate headquarters and either reduced hours or furloughed completely 151 of

their employees at headquarters; leaving only 5 full-time employees to run the operation.

Although the Debtors' e-commerce sales recorded record revenues for the period, online sales were nowhere near sufficient to offset the Debtors' fixed real estate lease expense of approximately \$4 million per month, much less make up margins on sales from the Debtors' 126 retail locations. The economic impact of COVID-19 would necessitate that the Debtors ultimately seek relief under chapter 11. The only real questions that remained were when and whether the Debtors would seek to liquidate or be able to attract on a compressed timeline a strategic partner willing to sustain the business as some sort of going concern.

C. Landlord and Vendor Issues

43. Due to the cessation of retail operations and insufficient liquidity, the Debtors did not pay any portion of rent on most of their stores for the months of April through July. During this time, the Debtors also significantly curtailed payments to the majority of their vendors. As a result, several vendors held deliveries of merchandise and ultimately conditioned delivery on cash or very short-term payment terms. In response, and to support their e-commerce business during the shutdown of their retail stores, the Debtors expanded significantly their drop-ship operations and, where possible, began accessing retail inventory within the existing store inventory for delivery to e-commerce buyers by expanding ship-from-store.

44. Although the Debtors' landlords largely were initially understanding of the Debtors' inability to pay rent, and in some instances being barred from proceeding by local governmental regulation and executive orders preventing landlords from commencing eviction proceedings, as time passed the Debtors' landlords began taking a more aggressive posture. In many instances, the Debtors and their advisors at A&G have been able to negotiate extended rent forbearance and/or repayment terms for the periods of store closures, which agreements prevented landlords from exercising rights and remedies on account of the Debtors' failure to

pay rent. In May, the Debtors opened stores in select locations where openings were permitted and attempted to generate revenue and appease landlords. Notwithstanding those efforts, it eventually became clear that the Debtors would require the protections afforded by the Bankruptcy Code to prevent landlords from pursuing eviction proceedings to judgment and (where allowed) exercising self-help to terminate the Debtors' potentially valuable leases and/or seize the Debtors' inventory to satisfy rents due.

45. As of the Petition Date, the Debtors are facing only a handful of eviction or similar lawsuits resulting from the non-payment of rent; *however*, myriad more threats have persisted from landlords, which the Debtors expect would, without the commencement of these Chapter 11 Cases, result in many more landlords formally pursuing their exercise of rights and remedies.

D. The Debtors' Attempts to Restructure and Pursuit of Strategic Alternatives

46. In June of 2019, Investcorp led a minority of existing equity holders in the Debtors in contributing a total of \$15 million of new Preferred Equity to reduce the Debtors' Prepetition Term Loan Obligations and cure existing defaults under the Prepetition Loan Documents. Shortly after this equity infusion, the Debtors hired me to lead a turnaround, which was to be focused on growing the cooking class segment, closing unprofitable retail locations as able under the terms of their leases, and modernizing and growing the Debtors' e-commerce platform (among other strategic initiatives).

47. Due to the Debtors' continuing lagging retail results and revenue declines to that point in 2019, however, it was immediately obvious upon my appointment as CEO that the Debtors required a long-term solution to their financial distress. As the existing capital structure constituents were too fatigued to provide additional financial accommodations (both from the recent equity infusion and growing discontent from within the retail sector, generally), the

Debtors retained SOLIC Capital to search for a partner willing to consummate a strategic transaction.

48. As set forth above, in the weeks leading to the Petition Date, I have worked determinedly with vendors, landlords, and potential strategic partners in the hopes of sustaining the business so that a strategic transaction can be consummated with the protection of the chapter 11 process. I also worked hand in glove with the Strategic Planning Committee to secure the Stalking Horse Term Sheet and the DIP Loan Term Sheet, and to plan for these Chapter 11 Cases in order to consummate the proposed Sale Transaction.

E. Proposed Course of the Chapter 11 Cases

49. The Debtors believe, in the exercise of their business judgment, that consummation of the Sale Transaction (subject to any higher or otherwise better offers that result from the auction) will provide the best process under the circumstances to maximize value for their stakeholders. The Debtors will utilize cash collateral and proceeds of the loan proposed by the DIP Loan Term Sheet, having obtained consent of their Prepetition Lenders for each. Consensual use of cash collateral and the proceeds of the DIP Loan will provide the Debtors with sufficient liquidity to operate during the chapter 11 process, with revenue from operations and the store closing sales projected to be sufficient to support continued operations and the administrative expenses of the Chapter 11 Cases, as well as reduce the balance owed to the Prepetition Lenders.

V. FIRST DAY MOTIONS

50. To minimize the adverse effects of the commencement of these Chapter 11 Cases in a way that will allow the Debtors' to maximize value of their estates, the Debtors have filed a number of First Day Motions designed to facilitate their transition into Chapter 11.

51. I anticipate that the Court will conduct a hearing soon after the Petition Date at which the Court will hear and consider many of the First Day Motions. Many of the First Day Motions seek authority to pay certain pre-petition claims. I understand that Rule 6003 of the Federal Rules of Bankruptcy Procedure provides, in relevant part, that the Court shall not consider motions to pay pre-petition claims during the first twenty-one days following the filing of a chapter 11 petition, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm.” In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay pre-petition claims to instances where the failure to pay such claims would cause immediate and irreparable harm to themselves and their estates. Other relief will be deferred for consideration at a later hearing.

52. I have reviewed each of the First Day Motions with the Debtors’ counsel and the facts stated therein are true and correct to the best of my knowledge, information, and belief. I believe that the relief sought in each of the First Day Motions is tailored to meet the goals described above, is necessary and critical to the Debtors’ liquidation efforts, and is in the best interests of the Debtors’ estates and creditors. A detailed discussion of the facts supporting, and the relief requested, in each of the First Day Motions is included in the attached **Exhibit A**. I hereby adopt and affirm the factual representations contained in each of the First Day Motions.

VI. CONCLUSION

53. This declaration describes the factors that have precipitated the commencement of the Chapter 11 Cases and demonstrates the critical need for the Debtors to obtain the relief sought in the First Day Motions.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed this 8 day of July, 2020



JASON GOLDBERGER
CHIEF EXECUTIVE OFFICER

EXHIBIT A

EVIDENTIARY SUPPORT FOR FIRST DAY MOTIONS¹

Administrative and Procedural First Day Motions

A. Debtors' Application for Expedited Consideration of First Day Matters

1. The Debtors request entry of an Order granting expedited consideration of their First Day Motions. I believe that the relief requested in this application is essential to avoid any disruption the commencement of these Chapter 11 Cases may have on the Debtors, will facilitate the Debtors' orderly transition into Chapter 11, and will preserve the value of the Debtors' assets. Accordingly, I respectfully submit that the Debtors' request for expedited consideration of the First Day Motions be approved.

B. Debtors' Motion Pursuant to Fed. R. Bankr. P. 1015(b) for Entry of an Order Directing Joint Administration of Related Chapter 11 Cases

2. The Debtors request entry of an order jointly administering these Chapter 11 Cases for procedural purposes only and request that the Court instruct the Clerk of Court to make an entry on each Debtor's docket reflecting the joint administration of these Chapter 11 Cases. Each of the Debtors is "affiliated" with the others as defined by section 101(2) of the Bankruptcy Code. Joint administration of these cases will avoid the unnecessary time and expense of drafting, filing, and serving duplicative motions, applications, orders, and other papers and related notices in each case. Moreover, joint administration will relieve this Court of the burden of entering duplicative orders and maintaining duplicative dockets and files and will ease the burden on the U.S. Trustee in supervising these cases. The Debtors also request authority to file the monthly operating reports on a consolidated basis in the lead Debtor's case. I respectfully

¹ Capitalized terms used but not defined in this Exhibit B have the meanings ascribed to them in the First Day Declaration and their respective First Day Motions.

submit that joint administration will save considerable time and expense for all parties-in-interest and this Court and the relief requested should be granted.

C. Debtors' Application for Designation as Complex Chapter 11 Cases

3. The Debtors request entry of an order designating the Debtors' Chapter 11 Cases as complex cases pursuant to the Court's General Order Governing Procedures for Complex Chapter 11 Cases, dated November 25, 2009. These Chapter 11 Cases qualify as complex chapter 11 cases because (a) the Debtors collectively have total liabilities of approximately \$297 million; (b) the Debtors collectively have total assets of approximately \$316 million; and (c) the Debtors collectively have more than 22,000 potential creditors and parties-in-interest, including employees and vendors. These Chapter 11 Cases would be administered most efficiently as complex chapter 11 cases. I believe that the relief requested in the application will enable the Debtors to continue to operate their businesses in a streamlined fashion and allow the U.S. Trustee and other parties-in-interest to monitor these Chapter 11 Cases with greater ease and efficiency. Accordingly, I respectfully submit that the Debtors' cases should be designated complex cases.

D. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 521(a)(1)(b) and Fed. R. Bankr. P. 1007(c) for Entry of an Order Extending Time to File Their Schedules of Assets and Liabilities and Statements of Financial Affairs

4. The Debtors request entry of an order granting a thirty-day extension of the time to file their Schedules and Statements for a total of forty-four days after the Petition Date without prejudice their right to request additional time. Preparing the Schedules and Statements will require the Debtors' employees and professionals to devote substantial time and effort to analyzing the Debtors' various constituencies on an entity-by-entity basis. Given the size and complexity of their operations, the Debtors anticipate that they will be unable to complete their

Schedules in the fourteen days provided under Bankruptcy Rule 1007(c) and that it would be unnecessarily burdensome to attempt to do so during the first fourteen days of these Chapter 11 Cases. I believe that the extension requested is in the best interests of the Debtors' estates, creditors, and all parties-in-interest, and will enable the Debtors to continue to operate their business in chapter 11 without disruption. Accordingly, I respectfully submit that the Court should grant the Debtors' motion seeking an extension of time in which to file their Schedules and Statements.

E. Debtors' Application Pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 105(a) for Entry of an Order Authorizing the Appointment of Omni Agent Solutions as Claims and Noticing Agent *Pro Tunc* to the Petition Date

5. The Debtors seek entry of an Order appointing Omni Agent Solutions as claims and noticing agent in these Chapter 11 Cases because it has significant experience in both the legal and administrative aspects of large, complex chapter 11 cases and its professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. I believe that Omni Agent Solutions' appointment is the most effective and efficient manner of noticing creditors and parties-in-interest of the filing of and developments in these cases. In addition, Omni Agent Solutions will transmit, receive, docket and maintain proofs of claim filed in connection with these cases. Accordingly, I believe that the appointment of Omni Agent Solutions to act as an agent of this Court is in the best interests of the Debtors' estates, their creditors, and all parties-in-interest and respectfully submit that the Court should grant the Debtors' motion to appoint Omni Agent Solutions.²

² The Debtors intend to file a subsequent application to retain Omni Agent Solutions to perform certain administrative services under section 327 of the Bankruptcy Code.

F. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 521, and Fed. R. Bankr. P. 1007(a) and 2002(a) and (a), for Entry of an Order Authorizing the Debtors to (A) Prepare a List of Creditors in Lieu of a Formatted Mailing Matrix, (B) File a Consolidated List of the Debtors' 20 Largest Unsecured Creditors, (C) Redact Certain Personal Identification Information and (D) Mail Initial Notices

6. The Debtors seek entry of an order authorizing them to file a consolidated list of creditors in lieu of submitting separate mailing matrices for each Debtor, to file a consolidated list of their top 20 creditors, and to mail initial notices. Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be burdensome, result in duplicate mailings, and could increase the risk of errors in translating the Debtors' computerized information into a .txt mailing matrix. Separately, filing a single consolidated list of the Debtors' combined 20 largest unsecured creditors in these Chapter 11 Cases would be more reflective of the unsecured creditor body than filing separate lists for each of the Debtors. Finally, to alleviate the administrative and economic burdens that these Chapter 11 Cases may impose upon the Court and the Clerk's office, the Debtors propose that Omni Agent Solutions undertake all mailings directed by this Court or the U.S. Trustee or required by the Bankruptcy Code or Bankruptcy Rules. Omni Agent Solutions will, among other things, serve the notice of commencement of these Chapter 11 Cases, thus ensuring that all creditors and parties-in-interest receive timely and proper notice of filing of the Debtors' petitions as well as the date, time, and location for the first meeting of creditors pursuant to section 341 of the Bankruptcy Code. In sum, I respectfully submit that the Court should grant the relief requested in this motion in order to alleviate unnecessary administrative burdens during the course of these Chapter 11 Cases.

Operational First Day Pleadings

A. Debtor's Motion for Interim And Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral and Affording Adequate Protection; (III) Granting Liens and Providing Superpriority Administrative Expense Status; (IV) Modifying Automatic Stay; and (V) Granting Related Relief (The "Financing Motion")

7. The primary focus of these Chapter 11 Cases is to facilitate an orderly sale of the Debtors' assets as a going concern (the "**Subject Assets**"). The Debtors have already negotiated an asset the terms of that sale with the Stalking Horse Bidder as a proposed stalking horse purchaser of the Subject Assets (the "**Sale Transaction**"). Given the Debtors' liquidity challenges, among other factors, leading up to the commencement of the Chapter 11 Cases, the Stalking Horse Bid sets an excellent starting point for competitive bidding sale process (the "**Sale Process**"). It provides for, among other things, the continued operation of the Debtors' business as a going concern under new ownership post-closing.

8. To continue operating their business in the ordinary course to preserve the going-concern value of the Debtors' assets and complete the Sale Process, it is critical that the Debtors have access to the DIP Facility during the Chapter 11 Cases. Without DIP Facility, the Debtors would not have sufficient liquidity, whether unencumbered cash on hand or generated from operations, to continue to operate their business or pursue the Sale Process.

9. Accordingly, by the Financing Motion, the Debtors seek approval of, among other things, the DIP Facility, i.e., a single draw, \$3 million loan from the Stalking Horse Bidder. If the Debtors close on the Sale Transaction with the Stalking Horse Bidder, the DIP Facility Obligations will be credited toward the purchase price.

10. The Debtors also seek approval of the continued use of the Prepetition Credit Parties' collateral, including Cash Collateral, to which the Prepetition Credit Parties consent.

Such use of collateral, together with the DIP Facility, will provide the Debtors sufficient liquidity to conduct the Sale Process and otherwise fund the Chapter 11 Cases.

11. Based on the foregoing, I believe the relief requested in the Financing Motion is critical to the preservation of value while the Debtors pursue an orderly liquidation.

B. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 363 for Entry of Interim and Final Orders (I) Approving Cash Management System, (II) Authorizing the Debtors to Continue Using the P-Card Program, and (III) Authorizing the Debtors to Continue Using Existing Bank Accounts and Business Forms (the "Cash Management Motion")

12. In the Cash Management Motion, the Debtors request interim and final authority to (i) continue use their existing cash management system, (ii) continue maintenance of their existing Bank Accounts and Business Forms, (iii) implement changes to their Cash Management System in the ordinary course of business, including, without limitation, opening new or closing existing Bank Accounts, in their business judgment and at their sole discretion.

13. The Debtors further request that the Court authorize and direct Wells Fargo to (a) continue to maintain, service, and administer the Debtors' Bank Accounts, and (b) debit the Bank Accounts in the ordinary course of business on account of (i) wire transfers or checks drawn on the Bank Accounts, provided that any payments drawn, issued, or made prior to the Petition Date shall not be honored absent direction of the Debtors and a separate order of the Court authorizing such pre-petition payment, or (ii) undisputed service charges and other fees owed to Wells Fargo for maintenance of the Debtors' Cash Management System, if any.

14. The Debtors use an integrated, centralized Cash Management System to collect, concentrate, and disburse funds generated by their operations. The Cash Management System is tailored to meet the Debtors' operating needs as the operator of 121 retail stores and bustling e-commerce platform. The Cash Management System enables the Debtors to efficiently collect and

disburse cash generated by their businesses, pay their financial obligations, centrally control and monitor corporate funds and available cash, comply with the requirements of their financing agreements, reduce administrative expenses, and efficiently obtain accurate account balances and other financial data. The Debtors' Finance Department oversees the Cash Management System and the Debtors maintain records of all transactions processed through their Cash Management System. Although some of the Cash Management System is automated, Finance Department personnel monitor the Bank Accounts and manage the collection and disbursement of funds.

15. I believe the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all parties-in-interest and will enable the Debtors to continue to operate their business in these Chapter 11 Cases with minimal disruption. Most significantly, maintaining the Cash Management System in its current state is crucial to the Debtors' continued operations, given the significant number of cash transactions processed through the Cash Management System each day. Any disruption to the Cash Management System would significantly hinder the Debtors' day-to-day operations and impede the successful administration of their estates. In light of the foregoing, and for the reasons set forth in the Cash Management Motion, I respectfully submit that the Cash Management Motion should be granted. Absent the relief requested in the Cash Management Motion, the Debtors and their estate would suffer immediate and irreparable harm.

C. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363(b), 507(a), and 541 for Entry of an Order Authorizing, But Not Directing, the Debtors to Pay Certain Pre-Petition Taxes and Fees (the "Tax Motion")

16. In the Tax Motion, the Debtors request entry of interim and final orders authorizing, but not directing, the payment of Sales and Use Taxes, in the ordinary course of

business and without regard to whether such obligations accrued or arose before or after the Petition Date.

17. In the ordinary course of business, the Debtors collect, withhold, or incur an assortment of state and local Sales and Use Taxes and remit same to various state and local taxing Authorities when due. The pre-petition Sales and Use Taxes are not property of the Debtors' estates but, rather, are held in trust for the Authorities. The Debtors seek to pay the pre-petition Sales and Use Taxes in order to, among other things, prevent the Authorities from taking actions that might interfere with the Debtors' administration of the Chapter 11 Cases, which may include bringing personal liability actions against the Debtors' directors, officers, and other key employees (whose full-time attention to the Debtors' Chapter 11 Cases is required to avoid business disruptions and maximize recoveries to the Debtors' creditors) or assessing penalties and/or significant interest on past-due taxes. In addition, non-payment of the Sales and Use Taxes may give rise to priority claims pursuant to section 507(a)(8) of the Bankruptcy Code. Accordingly, the Debtors submit that the proposed relief is in the best interest of their estates.

18. Although the Debtors believe they are current with respect to their payment of Sales and Use Taxes, the Debtors estimate that, as of the Petition Date, they have collected or incurred approximately \$1,450,000 in pre-petition Sales and Use Taxes that have not yet been remitted to the appropriate Authorities. The Debtors estimate that approximately \$1,300,000 in pre-petition Sales and Use Taxes will become due and payable within twenty-one (21) days following the Petition Date.

19. The Debtors must continue to pay the Sales and Use Taxes to continue their business and avoid costly distractions during the Chapter 11 Cases. The failure to pay the Sales and Use Taxes could adversely affect the Debtors' business operations. In addition, certain

Authorities may take precipitous action against the Debtors' officers and directors for unpaid Sales and Use Taxes, which undoubtedly would distract those key individuals from their duties. For the reasons set forth herein and in the Tax Motion, I respectfully submit that the relief requested in the Tax Motion is in the best interest of the Debtors' estates and creditors. Absent the relief requested in the Tax Motion, the Debtors and their estates could suffer immediate and irreparable harm.

D. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363, and 507(a) for Interim and Final Authority to (I) Pay Certain Pre-Petition Wages and Reimbursable Employee Expenses, (II) Pay and Honor Employee Medical and Other Benefits, and (III) Continue Employee Benefits Programs, and for Related Relief (the "Wages Motion")

20. In the Wages Motion, the Debtors seek entry of interim and final orders authorizing, but not directing, them to pay certain pre-petition claims and obligations, continue programs and maintain funding, in the exercise of their discretion, relating to, among other things: (i) Unpaid Compensation, Deductions, Payroll Maintenance Fees, and Payroll Taxes; (ii) Reimbursable Expenses; (iii) Employee Benefit Programs; and (v) the 401(k) Savings Plan. wages and reimbursable employee expenses, (ii) pay and honor employee medical and other benefits, and (iii) continue employee benefit programs and other related relief.

21. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize and direct financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing to the extent the Debtors have sufficient funds standing to their credit with such bank, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and provide that all such financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to the Wages

Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

22. The Debtors employ approximately 2,758 Employees, including approximately 643 full-time Salaried Employees and 2,115 Hourly Employees. In addition, the Debtors sometimes utilize temporary or contract employees as well as seasonal employees. As of the Petition Date, the Debtors are utilizing 1 temporary employee. All the Employees are employed through debtor Sur La Table, Inc.

23. The Debtors' Employees are the lifeblood of their business; their value cannot be overstated. The Employees perform critical functions, including sales, customer service, information technology, purchasing, administrative, accounting, finance, and management-related tasks. Their skills and experience, as well as their relationships with customers and vendors and knowledge of the Debtors' infrastructure, are essential to the Debtors' ongoing operations and ability to effectively operate their businesses during these Chapter 11 Cases.

24. The relief requested in the Wages Motion is necessary for the Debtors to be able to maintain morale, continue to service the needs of their customers, and preserve creditor confidence in their continued operations. Absent the relief sought in the Wages Motion, the Debtors' Employees may seek alternative opportunities, perhaps with the Debtors' competitors. The loss of valuable Employees would deplete the Debtors' workforce, thereby hindering the Debtors' ability to meet their customer obligations and, likely, diminishing stakeholder confidence in the Debtors' ability to successfully preserve going-concern value. Moreover, I believe the Debtors' failure to satisfy Employee Obligations would jeopardize Employee morale and loyalty at a time when Employee support is most critical to the Debtors' businesses, particularly during the current store optimization and restructuring period. Increased instability

in the Debtors' workforce will undermine the Debtors' ability to operate effectively to complete the Sale Process.

25. The majority of the Debtors' Employees rely exclusively on their compensation and benefits to satisfy their daily living expenses. These Employees would be exposed to significant financial difficulties and other distractions if the Debtors are not permitted to honor their obligations for unpaid compensation, benefits, and reimbursable expenses. Furthermore, if the Court does not authorize the Debtors to honor their various obligations under the insurance programs, the Employees may not receive health coverage and, thus, may become obligated to pay certain health care claims in the absence of insurance coverage. The loss of health insurance would result in considerable anxiety for Employees (and likely lead to attrition) at a time when the Debtors need such Employees to perform their jobs at peak efficiency. Additionally, as noted above, Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at a critical juncture.

26. Accordingly, for the reasons set forth herein and in the Wages Motion, I respectfully submit that the relief requested in the Wages Motion is necessary and critical to the Debtors' ability to preserve value for the benefit of the Debtors' estates, their creditors, and all parties-in-interest, and will enable the Debtors to continue to operate their businesses in these Chapter 11 Cases with minimal disruption, thereby maximizing the value for the estates. Absent the relief sought in the Wages Motion, the Debtors and their estates would suffer immediate and irreparable harm.

E. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 503(b) for Interim and final Authority to (I) Maintain, Renew, and Continue Their Insurance Policies and Programs and (II) Honor All Insurance Obligations (the "Insurance Motion")

27. In the Insurance Motion, the Debtors seek entry of an order authorizing, but not directing, them to (i) continue to maintain, renew, and continue their Insurance Policies and Programs and honor their Insurance Obligations in the ordinary course of business during the administration of these Chapter 11 Cases and (ii) pay any pre-petition Insurance Obligations, including, without limitation, amounts owed to the Insurance Brokers.

28. The Debtors' Insurance Policies and Programs are essential to the preservation of value of the Debtors' businesses, leasehold estates, and assets. I understand that, in many instances, the insurance coverage provided by the Insurance Policies and Programs, including the Workers' Compensation Programs, is required by the various regulations, laws, and contracts that govern the Debtors' commercial activities as well as by the Bankruptcy Code and the U.S. Trustee. Accordingly, failure to honor the Insurance Obligations could have a significant negative impact on the Debtors' operations.

29. The aggregate amount of Insurance Premiums for the 2019 to 2020 renewal cycle of the Insurance Policies was approximately \$2.4 million and typically the Debtors would renew the Insurance Policies and Programs annually for one-year terms. Those policies each were set to expire in June of 2020. Shortly prior to the Petition Date, the Debtors renewed each of their Insurance Policies; however, rather than the annual one-year renewal, the Debtors opted to renew for a three-month period only. Therefore, it is anticipated that additional Insurance Premiums will become due and owing during these Chapter 11 Cases.

30. The Insurance Policies and Programs are essential to preserving the value of the Debtors' business operations and assets. Accordingly, for the reasons set forth herein and in the

Insurance Motion, I respectfully submit that the relief requested in the Insurance Motion is in the best interests of the Debtors, their estates, and all parties-in-interest and will enable the Debtors to continue to operate their businesses and preserve the value of their estates. Absent the relief requested, the Debtors and their estates would suffer immediate and irreparable harm.

F. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(a) and 366 for Interim and Final Orders (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining Adequate Assurance of Payment for Future Utility Services, and (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Service the ("Utility Motion")

31. Pursuant to the Utilities Motion, the Debtors seek entry of interim and final orders (i) approving the Debtors' proposed form of adequate assurance of payment to utility providers, (ii) establishing procedures for determining adequate assurance of payment for future utility services, and (iii) prohibiting utility providers from altering or discontinuing utility service on account of an outstanding prepetition invoice.

32. In the ordinary course of their business, the Debtors receive utility services from various Utility Providers for, among other things, electricity, natural gas, water, and telecommunications services. The Utility Providers include, without limitation, the entities set forth on the Utility Service List, a copy of which is attached as Exhibit A to the Utility Motion. On average, the Debtors spend approximately \$500,000 each month on utility costs. That calculation includes amounts paid to certain of the Debtors' landlords who, in turn, are responsible for paying the relevant utility companies.

33. The Debtors intend to pay post-petition obligations owed to the Utility Providers in a timely manner. The Debtors expect that cash flows from operations will be sufficient to pay post-petition utility obligations in the ordinary course of business. Nevertheless, the Debtors propose to deposit in the Adequate Assurance Account, within twenty (20) days following entry

of an interim order granting the Utility Motion, an Adequate Assurance Deposit for each Utility Provider that the Debtors pay directly (less any amounts already on deposit with any such Utility Provider that have not been applied to outstanding prepetition amounts), based on the Debtors' average usage for the fiscal year ending 2019. As of the Petition Date, the Debtors estimate that the Adequate Assurance Deposit will total approximately \$250,000.

34. Through the Utility Motion, the Debtors seek orders approving their Proposed Adequate Assurance to Utility Providers as adequate within the meaning of section 366 of the Bankruptcy Code and granting them authority to implement, and require Utility Providers to comply with, the Proposed Adequate Assurance Procedures in connection therewith. These procedures will allow Utility Providers to request additional adequate assurance for unpaid utility services if they believe the proposed amount is insufficient.

35. Preserving utility services on an uninterrupted basis is essential to the Debtors' operations. Any interruption in utility services, however brief, would seriously disrupt the Debtors' ability to continue operations and service their customers. This disruption would adversely impact customer relationships and would result in a decline in the Debtors' revenues. Such a result could jeopardize the Debtors' efforts to maximize value for the benefit of their creditors. Therefore, it is critical that utility services continue uninterrupted during these Chapter 11 Cases. I am advised that if the Adequate Assurance Procedures are not approved, the Debtors may be (and I believe likely will be) confronted with and forced to address numerous requests by their Utility Providers at a critical point in their Chapter 11 Cases. Moreover, the Debtors could be blindsided by a Utility Provider unilaterally deciding—on or after the 30th day following the Petition Date—that it is not adequately protected and either making an exorbitant demand for payment to continue service or electing to discontinue service to the Debtors altogether. Such an

outcome could seriously jeopardize the Debtors' operations, asset values, and ability to maximize recoveries to their stakeholders.

36. Accordingly, for the reasons set forth herein and in the Utilities Motion, I respectfully submit that the relief requested in the Utilities Motion is necessary and in the best interests of the Debtors' estates, their creditors, and all parties-in-interest and will enable the Debtors to continue to operate their business and to safeguard the value of their estates.

G. Debtors' Motion Pursuant to 11 U.S.C. §§ 105(A), 363(B), 365 and 507(a) for Interim and Final Authority to (I) Maintain and Administer Pre-Petition Customer Programs, Promotions, and Practices, (II) Pay and Honor Related Pre-Petition Obligations, and (III) Direct the Credit Card Processors to Honor the Debtors' Credit Card Processing Agreements Pending Their Assumption or Rejection (the "Customer Programs Motion")

37. In the Customer Programs Motion, the Debtors request authority, in the ordinary course of business and consistent with past practice, to maintain, administer, pay, and otherwise honor their pre-petition Customer Programs, Promotions, Practices, and Processing Obligations, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors' business judgment. Additionally, pursuant to sections 365 and 105(a) of the Bankruptcy Code, the Debtors request entry of an order directing the Payment Processing Company to honor the Processing Agreements pending assumption or rejection.

(i) The Customer Programs.

38. The Debtors have historically offered various return and exchange policies, gift cards, and other practices and programs. The Customer Programs are standard in the retail industry, provided incentives to existing customers to shop with the Debtors, and attracted new customers to the Debtors' stores and website. The Customer Programs are designed to promote customer satisfaction and inure to the goodwill of the Debtors' businesses and the value of their brand. Maintaining the goodwill of their customers is critical to the Debtors'

ongoing operations in these Chapter 11 Cases, through the completion of the liquidation, and is necessary to maximize the value of the Debtors' businesses for the benefit of the Debtors' estates, creditors, and all parties-in-interest. The Customer Programs include Return and Exchange Policies, a Gift Card Program, a loyalty program referred to as the SLT PERKS Rewards Program, Cooking School Deposits, and various Coupons and other Sales Promotions.

39. The Debtors estimate that, as of the Petition Date, there are approximately \$17.5 million in valid, outstanding obligations under the Gift Card Program and approximately \$255,000 in eligible rewards in the SLT PERKS Rewards Program that can be redeemed during the Chapter 11 Cases. In connection with the Cooking School Deposits, the Debtors require customers to make a deposit (typically approximately \$100) to reserve a class for a future date and time. The customer's final obligation is reduced by the amount of the previously collected Cooking School Deposit. Sales associated with such pre-booked cooking classes comprise a large part of the Debtors' revenue and the classes are an important source of word-of-mouth advertising.

40. I believe that continuing to honor the Customer Programs during the pendency of these Chapter 11 Cases is critical to preserving the value of the Debtors' assets by protecting the Debtors' valuable customer relationship and goodwill, all of which will inure to the benefit of the Debtors' estates, their creditors, and all parties-in-interest. In contrast, if the Debtors were unable to continue the Customer Programs, the Debtors would risk alienating their customers and could jeopardize their ability to maximize value for their estates during the liquidation process. In sum, I believe that the failure to honor the Customer Programs could adversely impact the Debtors'

ability to preserve their customer relationships and would dampen the goodwill of the Debtors while they pursue the Sale Transaction.

(ii) **The Processing Obligations**

41. In addition to cash, checks, Gift Cards, and SLT Perk rewards, the Debtors accept other Credit Card and Mobile Payments. The Debtors rely on their Payment Processing Company to process such payments pursuant to Payment Processing Agreements. It is possible that certain Processing Obligations incurred by the Debtors immediately before the Petition Date may not have been fully netted out against the payments received by the Debtors before the Petition Date. In order to avoid disrupting vital payment processing services, the Debtors (i) seek authority to continue to pay the Processing Obligations, including pre-petition Processing Obligations, in the ordinary course of their business, and (ii) request that the Court authorize the Payment Processing Company to offset the Processing Obligations against amounts remitted to the Debtors, in each case in the ordinary course, whether arising before or after the Petition Date.

42. In order to effectuate a smooth transition into these Chapter 11 Cases, the Debtors must maintain customer loyalty and goodwill through the Customer Programs and must continue to honor their Processing Obligations. The Customer Programs and the Debtors' relationship with the Payment Processing Company are essential to preserving the value of the Debtors' business operations pending a sale of their assets. Accordingly, for the reasons set forth herein and in the Customer Programs Motion, I respectfully submit that the relief requested in the Customer Programs Motion is in the best interests of the Debtors' estates, their creditors, and all parties-in-interest and will enable the Debtors to continue to operate their business and to safeguard the value of their estates. Absent the relief requested in the Customer Programs Motion, the Debtors and their estates would suffer immediate and irreparable harm.

H. Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Trade Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granted Related Relief (the "Trade Vendor and Shipper Motion")

43. In the Trade Vendor and Shipper Motion, the Debtors request entry of interim and final orders authorizing, but not directing, them to pay certain prepetition claims of trade claimants in the ordinary course of business.

44. The Debtors' businesses depend on the uninterrupted flow of Merchandise. The Debtors' engage Third-Party Shippers to transport Merchandise (i) to the Distribution Center, (ii) from the Distribution Center to the Debtors' Stores, and (iii) directly to customers who purchase Merchandise online. If the Debtors fail to pay the Third-Party Shippers for charges incurred in connection with the transportation of the Merchandise, various state laws may permit the Third-Party Shippers to assert statutory liens against any Merchandise in their possession that is the subject of a delinquent charge. If a Third-Party Shipper were to take such an action, it could prevent the Debtors from accessing their Merchandise.

45. The Debtors estimate that, as of the Petition Date, they owe approximately \$18 million in pre-petition Shipping Charges have accrued but have not yet become due and payable. In the Trade Vendor and Shipper Motion, the Debtors request authorization to pay a limited number of outstanding Trade Claims, subject to the limitations of the Interim Order and the Final Order, in an amount of approximately \$770,379.24, of which approximately \$494,660.65 will become due within the Interim Period.

46. Maintaining access to the Merchandise and ensuring its orderly distribution is critical to preserving the value thereof and to maximizing the value of the Debtors' businesses. Accordingly, for the reasons set forth herein and in the Trade Vendor and Shipper Motion, I

respectfully submit that the relief requested in the Trade Vendor and Shipper Motion is in the best interests of the Debtors' estates, their creditors, and all parties-in-interest and will enable the Debtors to continue to operate their business and to safeguard the value of their estates. Absent the relief requested in the Trade Vendor and Shipper Motion, the Debtors and their estates would suffer immediate and irreparable harm.

I. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consultant Agreement, (II) Approving Procedures for Store Closing Sales, and (III) Approving the Implementation of Customary Store Bonus Program and Payments to Non-Insiders Thereunder (the "Store Closing Motion")

47. In the Store Closing Motion, the Debtors seek entry of the Interim and Final Orders: (a) authorizing them to assume the Consultant Agreement; (b) authorizing them to conduct Sales and Store Closings at the Closing Stores in accordance with the Store Closing Procedures, with such Sales to be free and clear of all liens, claims, and encumbrances; (c) approving the proposed Dispute Resolution Procedures described herein to resolve any disputes with governmental units regarding certain applicable non-bankruptcy laws that regulate liquidation and similar-themed sales; and (d) approving the implementation of the Store Bonus Program and authorizing payments thereunder to certain non-insider employees, including, for the avoidance of doubt, any payments that accrued but remain unpaid as of the Petition Date.

48. The Debtors and their advisors seek authority to assume the Consultant Agreement with a joint venture comprised of Great American Group, LLC and Tiger Capital Group, LLC so that they may conduct Store Closing Sales, free and clear of all liens, claims, and encumbrances, at the Stores. A copy of the Consultant Agreement is annexed as Exhibit 1 to the proposed interim order granting the Store Closing Motion and the salient terms thereof are summarized in the Store Closing Motion. I believe the assumption of the Consultant Agreement is in the best interests of the Debtors' estates, their creditors, and all parties-in-interest in light of

the Consultant's knowledge of the Debtors' assets as well as its experience running similar store closing sales. I believe the Consultant will be able to maximize the value of the Store Closure Assets and expeditiously conduct the Store Closing Sales so that the Debtors may assume, assume and assign, or reject their underlying leases as they see fit in the exercise of their business judgment.

49. In connection with the Store Closing Motion, the Debtors also seek approval of streamlined Store Closing Procedures, as set forth in Exhibit 2 to the proposed interim order granting the Store Closing Motion, to sell the Store Closure Assets free and clear of liens, claims, and encumbrances. The Debtors have determined, in the exercise of their business judgment and in consultation with their advisors, and I believe that the Store Closing Procedures will provide the best, most efficient, and most organized means of selling the Store Closure Assets to maximize their value to the estates.

50. In addition, the Debtors seek to implement the Store Bonus Program and make payments thereunder to store-level employees, none of whom are insiders, to ensure successful consummation of the Store Closings. The Debtors and the Consultant worked with SOLIC to construct the Store Bonus Program, which is designed to balance employee expectations based on the Debtors' past practices with standard industry practices in retail chapter 11 cases. The success of the Store Closings depends on store-level employees continuing their ordinary course duties under the supervision of the Consultant and Debtors. Store employees are necessary to, among other things, service customers, administer in-store sales, and manage cash receipts and bank deposits. Replacing such employees would be unfeasible under the contemplated timeframe for the Store Closings. Through the employees' ongoing commitment and performance, the Debtors can maximize estate value through the Sales and Store Closings. The

Store Bonus Program is a necessary component of the Sales and Store Closings and has the support of the Debtors' pre-petition secured lenders and equity holders.

51. Finally, as set forth in the Store Closing Motion, subject to the Bankruptcy Court's approval, the Debtors seek the following relief, which will empower the Debtors and the Consultant to conduct the Store Closing Sales and maximize value for the Debtors' estates, their creditors, and all parties-in-interest:

- (a) to the extent the Store Closing Procedures conflict with the Liquidation Sale Laws, authority to conduct the Store Closings in accordance with the Store Closing Procedures;
- (b) approval of the Dispute Resolution Procedures in order to facilitate the orderly resolution of any disputes between the Debtors and any Governmental Units arising due to the Store Closing Procedures and the alleged applicability of any Liquidation Sale Laws;
- (c) an exemption from any Fast Pay Laws that may apply to employees terminated in connection with the Store Closings;
- (d) a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Sales and Store Closings; and
- (e) an Order providing that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on their behalf shall interfere with or otherwise impede the conduct of the Sales and Store Closings, or institute any action against the Debtors in any court (other than this Court) or before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Sales and Store Closings or the advertising and promotion (including through the posting of signs) of the Sales.

52. The Debtors have determined the Store Closings represent the best alternative to maximize recoveries to the Debtors' estates with respect to the Stores. The Debtors believe that there are meaningful assets at the Stores that the Consultant will be able to monetize quickly and efficiently and quickly through an orderly process. In light of the foregoing, and for the reasons set forth in the Store Closing Motion, I respectfully submit that the Store Closing Motion is in

the best interests of the Debtors' estates, their creditors, and all parties-in-interest and should be granted.

J. Debtors' Motion for Entry of an Order Authorizing and Approving Procedures for Rejection of Executory Contracts and Unexpired Leases ("Lease Rejection Motion")

53. In the Lease Rejection Motion, the Debtors request authority to establish procedures to reject burdensome leases and executory contracts, in their business judgment and without further order of this Court. The Rejection Procedures are set forth in detail in the Lease Rejection Motion.

54. The Debtors believe that the Rejection Procedures will streamline their ability to reject burdensome executory Contracts and unexpired Leases that no longer provide a benefit to the Debtors' estates while also providing parties in interest with adequate notice of the rejection of Contracts and Leases and an opportunity to object to such relief within a reasonable time period. Absent the relief requested herein, filing multiple motions for the rejection of each Contract and Lease would result in substantial costs to, and impose administrative burdens on, the Debtors' estates, in addition to the burden such approach would place on the Court's docket and calendar. As such, the proposed Rejection Procedures are appropriate and necessary to limit the costs and administrative burdens that otherwise would be borne by the Debtors' estates.

55. In light of the foregoing, and for the reasons set forth in the Lease Rejection Motion, I respectfully submit that the Lease Rejection Motion should be granted.

K. Debtors' Motion For Entry of an Orders (I) (A) Authorizing and Approving Bidding Procedures in Connection with the Sale of Certain of the Debtors' Assets; (B) Authorizing and Approving Bid Protections; (C) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (D) Scheduling a Sale Hearing; (E) Approving the Form and Manner of Notice Thereof; and (F) Granting Related Relief; and (II) Authorizing and Approving the Sale of Certain of the Debtors' Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances, (B) Authorizing and Approving the Assumption and

**Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto,
and (C) Granting Related Relief(a) (“Sale Motion”)**

56. The relief sought through the Sale Motion is the culmination of a several months’-long process in which SOLIC has exhausted the marketplace in a search for a potential buyer. As COVID-19 hit, prospects for selling a brick and mortar retail operation with a national, multi-location footprint have diminished. The Debtors are fortunate to have the opportunities afforded by the Sale Transaction; not the least of which would be the continued employment of nearly 2,000 people in these uncertain times.

57. In the Sale Motion, the Debtors seek entry of the Bidding Procedures Order, (a) authorizing and approving the Bidding Procedures, (b) authorizing and approving, if and when payable, the payment of the Bid Protections, (c) approving the Assumption and Assignment Procedures and the Cure Notice, (d) scheduling the Auction and Sale Hearing, (e) approving the Sale Notice, and (f) granting related relief.

58. Second, at the Sale Hearing, the Debtors will seek entry of the Sale Order, (a) authorizing and approving the Sale of the Purchased Assets free and clear of Liens, Claims, and Interests, except as provided by the Stalking Horse Agreement or a Proposed Asset Purchase Agreement, (b) authorizing and approving the assumption and assignment of certain of the Sellers’ Executory Contracts and Unexpired Leases related thereto, and (c) granting related relief.

59. The Debtors believe that the proposed Bidding Procedures are appropriate under sections 105(a) and 363 of the Bankruptcy Code and will ensure that the bidding process is fair and reasonable and will yield the maximum value for the Debtors’ estates, creditors, stakeholders, and other parties in interest. The Bidding Procedures will allow the Debtors to conduct an Auction, if necessary, in a fair, controlled and transparent manner that will encourage

participation by financially capable bidders that demonstrate the financial wherewithal to close a transaction. The Bidding Procedures provide the Debtors with the opportunity to consider all competing offers and to select, in their business judgment, the highest and best offer for the Purchased Assets. The Bidding Procedures further provide potential bidders with sufficient notice and an opportunity to obtain due diligence information necessary to submit a timely and informed competing bid.

60. To aid the bidding process, the Debtors have agreed, subject to Bankruptcy Court approval, to provide the Stalking Horse Bidder with certain Bid Protections, consisting of the Break-Up Fee and the Expense Reimbursement, payable as set forth in the Stalking Horse Term Sheet. The Bid Protections were a condition of the Stalking Horse Bidder for its entry into the Stalking Horse Term Sheet and agreeing to act as the Stalking Horse Bidder.

61. Notably, the Stalking Horse Term Sheet contains no prohibition on the Debtors' soliciting or receiving offers for the Purchased Assets. Accordingly, the Debtors and all parties in interest can be assured that the consideration ultimately received for the Purchased Assets as a result of the Bidding Process will not only be fair and reasonable, but will reflect the maximum price that the market will bear for the Purchased Assets.

62. Without the commitment of the Stalking Horse Bidder, the Debtors will lose the opportunity to test the Stalking Horse Bid for the Purchased Assets in the marketplace and the downside protection afforded by the Stalking Horse Bid. Furthermore, without the benefit of the Stalking Horse Bid, there can be no assurance that the Debtors would receive a bid equal to that offered by the Stalking Horse Bidder for the Purchased Assets. And finally, without the benefit of the Stalking Horse Bid, the Debtors would not have access to the DIP facility and would have been forced, in all likelihood, to implement a full store liquidation program

63. The Debtors reasonably believe that it is necessary to ensure the Stalking Horse Bidder's willingness and desire to proceed with the Stalking Horse Agreement, and therefore, agreed to the Bid Protections. The Stalking Horse Agreement containing the Bid Protections will serve as a minimum bid for the Purchased Assets on which other potential bidders can present higher and better offers, thereby maximizing value for the Debtors' estates and increasing the likelihood that the price ultimately obtained for the Purchased Assets will reflect their true value. Additionally, the Break-Up Fee will be paid only from the sale proceeds actually received by the Debtors from the closing of a higher or better transaction.

64. I believe the relief requested in the Sale Motion is in the best interests of the Debtors' estates, their creditors, and all parties-in-interest. The Debtors have articulated a clear business justification for entering into the proposed Sale and, in light of the foregoing, and for the reasons set forth in the Sale Motion, I respectfully submit that the Sale Motion should be granted. Absent the relief requested in the Sale Motion, the Debtors and their estate would suffer immediate and irreparable harm.