

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
IGNITE RESTAURANT GROUP, INC., et al.,¹)	Case No. 17-33550
)	
)	
Debtors.)	(Joint Administration Requested)
)	

**DECLARATION OF JONATHAN TIBUS IN SUPPORT
OF CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Jonathan M. Tibus, declare under penalty as follows:

1. I am a Managing Director at Alvarez & Marsal North America, LLC ("A&M"). I have more than nineteen (19) years of experience in interim management and financial advisory roles and specialize in developing, evaluating, and implementing restructuring and performance improvement plans for under performing companies, largely in the restaurant, retail and hospitality sectors. I have also managed numerous in-court and out-of-court restructuring efforts.

2. I have been acting as Chief Executive Officer ("CEO") of each of the above captioned debtors and debtors in possession (collectively, the "Debtors" or the "Company") since April 4, 2017. Prior to my appointment as CEO, A&M was engaged by the Debtors to provide restructuring advisory services beginning in November 2016. As CEO, I am familiar with the Debtors' businesses, day-to-day operations, and financial affairs. I perform my duties out of the Debtors' headquarters located at 10555 Richmond Avenue, Houston, Texas 77042.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if any), are: Ignite Restaurant Group, Inc. (1359); Ignite Restaurant Group – RSC LLC (1791); Joe's Crab Shack, LLC (4189); Joe's Crab Shack – Redondo Beach, Inc. (5107); BHTT Entertainment, LLC (9818); Ignite Restaurants – New Jersey, LLC (5907); Joe's Crab Shack – Maryland, LLC (5297); Joe's Crab Shack – Anne Arundel MD, LLC (9318); Brick House Development, LLC (2944); JCS Monmouth Mall – NJ, LLC (3509); JCS Development LLC (4235). The Debtors' service address is: 10555 Richmond Avenue, Houston, Texas 77042.

3. On the date hereof (the “Petition Date”), the Debtors each commenced a case (the “Chapter 11 Cases”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Court”). The Debtors are operating their businesses and managing their properties as debtors in possession under Bankruptcy Code Sections 1107(a) and 1108. To date, no creditors’ committee has been appointed in the Chapter 11 Cases by the Office of the United States Trustee for the Southern District of Texas (the “United States Trustee”). No trustee or examiner has been appointed in the Chapter 11 Cases.

4. To minimize the adverse effects of filing for chapter 11 on their business and their internal operations, the Debtors have filed motions and pleadings seeking various types of “first day” relief (collectively the “First Day Pleadings”).² The First Day Pleadings seek relief intended to allow the Debtors to perform and meet those obligations necessary to fulfill their duties as debtors in possession.

5. I submit this declaration (the “Declaration”) to provide an overview of the Debtors, their businesses, and the Chapter 11 Cases, as well as to support the Debtors’ chapter 11 petitions and certain of the First Day Pleadings. I have reviewed the Debtors’ chapter 11 petitions and First Day Pleadings, or have otherwise had the contents explained to me, and it is my belief that the relief sought in each First Day Pleading: (a) is necessary to enable the Debtors to operate in chapter 11 with minimum disruption or loss of productivity or value, (b) constitutes a critical element in achieving a successful reorganization of the Debtors, and (c) best serves the Debtors’ estates and their creditors’ interests. The facts set forth in each First Day Pleading are incorporated herein by reference.

² Unless otherwise defined here, capitalized terms used herein shall have the meanings ascribed to them in the relevant First Day Pleadings.

6. Except as indicated otherwise, I have personal knowledge of the matters set forth herein and all facts set forth herein are based on my personal knowledge, discussions with current and former members of the Debtors' senior management and professional advisors, my review of relevant documents, or my opinion based upon my experience and knowledge of the Debtors' operations and financial conditions. In making this Declaration, I have relied in part on information and materials that the Debtors' personnel and advisors have gathered, prepared, verified, and provided to me, in each case under my ultimate supervision, at my direction, and/or for my benefit in preparing this declaration. I am authorized to submit this Declaration on the Debtors' behalf, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

7. The Declaration is divided into two parts. Part I provides background information about the Debtors, their business operations, their corporate and capital structures, their restructuring efforts, and the events leading up to the filing of the Chapter 11 Cases. Part II sets forth the relevant facts in support of each of the First Day Pleadings.

PART I

BACKGROUND

A. The Debtors' and Their Business Operations

8. The Debtors operate two well-known restaurant brands, Joe's Crab Shack ("Joe's") and Brick House Tavern + Tap ("Brick House") that offer a variety of high-quality food and beverages in a distinctive, casual, high-energy atmosphere. As of the Petition Date, the Debtors' currently operate 137 restaurants and have three international franchise locations. The Debtors employ approximately 8,400 employees, consisting of approximately 2,400 full-time hourly employees, 5,500 part-time hourly employees and 500 full-time salaried employees.

9. While the restaurant concepts each have distinct identities and independent field operations, the Debtors maintain a shared services platform that handles many of the administrative functions for both Joe's and Brick House. The operations department is currently headed by a chief operating officer who handles both brands. Reporting to the chief operating officer are department heads for operations, marketing, culinary, and recruiting, training and operations support. This provides a scalable infrastructure that allows the Debtors to efficiently adapt as their businesses change and increase profitability.

10. The Debtors' current store base consists of 112 Joe's locations (plus three franchises) and 25 Brick House locations. The Debtors' locations are spread across 32 states, with large numbers of locations in Texas, Florida and California. The three franchises are located in Dubai, U.A.E.

11. In 2013, the Debtors expanded their restaurant portfolio by acquiring Romano's Macaroni Grill ("Macaroni Grill"). The Debtors completed the acquisition of Macaroni Grill on April 9, 2013. In 2015, the Debtors sold Macaroni Grill.

i. Joe's Crab Shack

12. Founded in Houston, Texas in 1991, Joe's has established itself as America's crab house. Joe's is a come-as-you-are, family restaurant that offers guests an environment that is laid-back, comfortable, fun, and energetic. Most locations offer an outdoor patio for guests to enjoy eating and drinking and a children's playground as part of the "I'm relaxed" restaurant experience. Joe's also has many locations that are located on waterfront property. Interior design elements include a nautical, vacation theme to invoke memories of beach vacations and a genuine crab shack experience. Table tops are decorated with art to prompt dinner conversations, while picnic tables across the patio and interior help guests feel the relaxed

tropical vacation experience. Joe's restaurants are largely free-standing and average 8,000 square feet with over 200 seats. Most Joe's bars are separated from the dining area to provide for a distinct place to grab a drink while waiting for a table. Many of Joe's locations also include a small gift shop where guests can purchase souvenirs to commemorate their dining experience. Joe's current restaurant prototype, introduced in 2010, contemporizes many key brand elements, while maintaining the authentic crab shack appeal.

ii. Brick House

13. Brick House was developed in 2008. Brick House is a trend-forward "next generation bar & grill" set in an inviting, comfortable and modern venue that provides a distinctive guest experience. Brick House's interior decor includes custom lighting, dark mahogany woods, open sight lines, HD TVs, and an inviting fireplace. The interior design of Brick House consists of diverse seating and gathering areas where guests can pick multiple ways to enjoy their experience. In addition to a traditional dining room and bar area, Brick House also offers large communal tables and a selection of leather recliners positioned in front of large HD TVs, where guests receive their own TV tray for dining. Each restaurant has a state-of-the-art entertainment package and provides guests with a clear line of sight to HD TVs from every seat, making Brick House restaurants an ideal gathering place for sports enthusiasts. Outdoor seating is also available on the patio or around an open fire pit at nearly all locations. Both food and beverages are served by personable and engaging service staff. The typical Brick House restaurant is approximately 8,500 square feet and averages approximately 250 seats, which includes both traditional tables and unique seating options.

14. Brick House’s menu is chef-inspired and handcrafted and includes an extensive, 80+ beer list as well as a specialty cocktail list. In 2011 Brick House was listed as the #1 “up and comer” full service varied-menu restaurant by Technomic, Inc.

B. Pre-Petition Capital Structure of the Debtors

i. Corporate Structure.

15. The parent entity, Ignite Restaurant Group, Inc. (“IRG”), is a Delaware corporation that is majority owned (66.26%) by J.H. Whitney VI, L.P., an affiliate of J.H. Whitney & Co. IRG was originally incorporated in Delaware in 2002 as “Joe’s Crab Shack-Delaware, Inc.” In 2009, IRG changed its name to its current name. In May 2012, IRG completed its IPO and began trading on the NASDAQ Global Select Market under the symbol “IRG”. In April 2017, the stock was delisted.

16. IRG owns directly or indirectly 100% of the equity interests of the following affiliate debtors: Ignite Restaurant Group – RSC LLC, a Delaware limited liability company; Joe’s Crab Shack, LLC, a Texas limited liability company; Joe’s Crab Shack – Redondo Beach, Inc., a California corporation; BHTT Entertainment, LLC, a Texas limited liability company; Ignite Restaurants – New Jersey, LLC, a Delaware limited liability company; JCS Development, LLC, a Delaware limited liability company; and Brick House Development, LLC, a Delaware limited liability company.

17. The equity ownership of the remaining Debtors is as follows.³

(a) Joe’s Crab Shack – Anne Arundel MD, LLC. Joe’s Crab Shack – Redondo Beach, Inc., a wholly-owned subsidiary of IRG, owns 100% of the Class A

³ The non-voting Class B membership units and other equity interests owned by certain non-debtors are held by those individuals and entities in order to comply with regulatory requirements associated with the Debtors’ liquor licenses.

membership units of Joe's Crab Shack – Anne Arundel MD, LLC, a Maryland limited liability company. Jonathan Tibus owns 33.4% of the Class B membership units and Brad Leist and Kimberly Castle each own 33.3% of the Class B membership units of Joe's Crab Shack – Anne Arundel MD, LLC.

(b) JCS Monmouth Mall – NJ, LLC. The outstanding equity of JCS Monmouth Mall – NJ, LLC, a Delaware limited liability company, is 99% owned by Joe's Crab Shack and 1% owned by VNO MM License LLC.

(c) Joe's Crab Shack - Maryland, LLC. Joe's Crab Shack, LLC, a wholly-owned subsidiary of IRG, owns 100% of the Class A membership units of Joe's Crab Shack – Maryland, LLC, a Maryland limited liability company. Jonathan Tibus owns 33.4% of the Class B membership units of Joe's Crab Shack – Maryland, LLC, and Brad Leist and Steven Metzger each own 33.3% of the Class B membership units of Joe's Crab Shack – Maryland, LLC.

18. The Debtors operate their businesses from a common headquarters in Houston, Texas. The corporate organizational structure of the Debtors is depicted on the chart annexed hereto as Exhibit A.

ii. Prepetition Secured Debt.

19. On August 13, 2014, IRG, as borrower, certain lenders (the "Pre-Petition Lenders"), Credit Suisse AG, as administrative agent, Credit Suisse Securities (USA) LLC and KeyBank Capital Markets, Inc., as joint lead arrangers and joint book runners, and KeyBank National Association, as syndication agent entered into that certain Credit and Security Agreement, pursuant to which, the Prepetition Lenders agreed to make (a) available a \$30,000,000 revolving credit facility, and (b) a \$165,000,000 term loan (the "Pre-Petition Credit

Agreement”). Both the revolving credit facility and the term loan mature on February 13, 2019. As closing, IRG repaid the balance of its previous secured credit facility using the proceeds from the term loan.

20. The Pre-Petition Credit Agreement is guaranteed by certain of IRG’s subsidiaries and secured by substantially all present and future assets of the borrower and guarantors and liens on the capital stock or other equity interests of IRG’s direct and indirect subsidiaries.

C. Events Leading to Filing

21. The Debtors have continued to experience declining financial performance and declines in comparable restaurant sales and income from operations at Joe’s and Brick House. The Debtors have closed underperforming restaurants and implemented cost reduction measures to help mitigate the effect of these declines and improve their financial position and liquidity. In late 2016, the Debtors engaged advisory firms A&M and PiperJaffray & Co. (“PJC”), to assist the Debtors in evaluating various strategic alternatives available to the Debtors. The Debtors commenced a process to pursue the sale of the business. The Debtors determined that a sale of the Company’s assets would result in the best recovery for all of their stakeholders.

22. Despite their efforts to improve performance, the Debtors have been unable to comply with their obligations under the Pre-Petition Credit Agreement. In April 2017 the Debtors defaulted on those obligations. The Debtors and the Pre-Petition Lenders entered into a Forbearance Agreement on March 31, 2017, which terminated on June 6, 2017.

23. The Debtors originally commenced the process of evaluating financing and sale options in September 2016 with the hiring of PJC as their exclusive investment banker. Under the terms of its agreement and to assist the Debtors in determining the best strategic alternative available to them, PJC explored debt refinance, structured equity, minority capital and full sale

transactions. At the Debtors' direction, PJC contacted numerous parties from September 2016 to January 2017 to determine their interest in the acquisition of, or investment in, the Debtors. Specifically, PJC contacted 83 strategic and financial potential bidders, and 105 potential lenders or providers of capital. Of these contacted parties, 37 potential bidders and 83 potential lenders or providers of capital ultimately negotiated confidentiality agreements and were provided a confidential information memorandum. Interested parties were asked to participate in an initial discussion with PJC to hear about the opportunity and ask questions about the Debtors' assets. Parties that demonstrated sufficient interest in a possible transaction were then given access to further initial due diligence information and invited to conduct calls with management. Through this process, seven potential bidders and two potential lenders or providers of capital provided verbal or written indications of interest.

24. However, amid continued declining same store sales trends, the degradation of restaurant-level margins, and broader concerns that surfaced in media and analysts reports regarding the casual dining and restaurant sector as a whole, these trends created an extremely challenging backdrop for investors. Certain parties who submitted proposals to invest in or acquire the Debtors withdrew these proposals. The remaining offers were not viewed as viable, or capable of being closed. Concluding that all alternatives had been exhausted, the Debtors pursued a path to secure a stalking horse bid for the sale of substantially all of their assets.

25. At the Debtors' direction, PJC approached interested parties to secure a stalking horse bidder for the sale of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code. While all previous indications of interest received since the Fall of 2016 were considered, PJC particularly reached out to parties who had expressed substantial interest in acquiring the Debtors through a bankruptcy proceeding in the previously conducted marketing process, as well as

additional parties with expertise in acquiring distressed assets. In total, during this most recent phase of the sale process, PJC contacted 44 strategic and financial potential bidders to serve as a potential stalking horse bidder, of which 33 ultimately negotiated confidentiality agreements and were provided a confidential information memorandum. Six potential bidders submitted indications of interest to acquire the Debtors, and three of those potential bidders continued their diligence process and submitted markups of an asset purchase agreement to acquire the Debtors. Of these parties, KRG Acquisitions Co, LLC (the “Stalking Horse Purchaser”), an affiliate of Kelly Investment Group, emerged as the highest and best bid, based on the business judgment of the Debtors and its advisors, after considering all other options and following an extensive effort to negotiate favorable terms.

26. On June 5, 2017 the Debtors entered into that certain Asset Purchase Agreement with the Stalking Horse Purchaser, a true and correct copy of which (excluding Schedules) is attached to the Motion to Approve Bidding Procedures filed contemporaneously herewith, the “Agreement”).⁴ The Agreement contemplates the sale of the Purchased Assets to the Stalking Horse Purchaser (subject to higher or better bids) and contains the following material terms:

- Purchase Price – In addition to the assumption of the Assumed Liabilities, \$50,000,000 by wire transfer of immediately available funds to a bank account as shall be designated in writing no later than one (1) day prior to the closing date, which amount shall be (i) reduced by (w) the amount of the Good Faith Deposit delivered to Sellers as a credit against the Purchase Price in accordance with Section 2.8(b) of the Agreement, (x) the Transfer Tax Estimate for Purchased Locations, (y) the Property Tax Estimate for Purchased Locations and (z) 50% of the Gift Card Sales and (ii) increased by (x) the Prepaid Rent for Purchased Locations, (y) the Deposits for Purchased Locations, and (z) the Store Cash Amount;
- Purchased Assets – The “Purchased Assets” include certain of the Debtors’ assets including, but not limited to, all rights of Sellers under the executory

⁴ The following description of the Agreement is qualified in its entirety by the provisions of the Agreement. In the event there is any conflict between the description of the Agreement contained herein and the provisions of the Agreement, the provisions of the Agreement shall govern and control.

contracts and unexpired leases specified in the Agreement (collectively, the “Assigned Contracts”) subject to Sections 7.5(d) of the Agreement, certain cash and cash equivalents, certain inventory and tangible personal property, certain permits, all intellectual property rights, and data and records;

- Assumed Liabilities – all liabilities and obligations related to or arising in connection with the business or the Purchased Assets from and after closing, all liabilities and obligations related to the Assigned Contracts, all liabilities and obligations related to or arising under the Permits included in the Purchased Assets from and after closing, all adequate assurance of future performance costs and expenses associated with the Assigned Contracts, all liabilities and obligations of Sellers arising under outstanding gift cards, and all Transfer Taxes and all Property Taxes that are attributable to the Purchased Assets;
- Cure Costs – Debtors shall have sole responsibility for paying any Cure Costs due in connection with the assumption and assignment of the Assigned Contracts (a) that are Real Property Leases and (b) that are personal property leases (collectively the “Lease Cure Contracts”). Purchaser shall have the sole responsibility for paying Cure Costs due in connection with the assumption and assignment of all other Assigned Contracts.
- Good Faith Deposit – \$2,000,000. Half of the Good Faith Deposit (\$1,000,000) shall be deposited by the Stalking Horse Purchaser with the escrow agent on the execution date of the Agreement, and the remaining amount of the deposit to be deposited by the Stalking Horse Purchaser with the escrow agent following entry of the Bidding Procedures Order by the Court;
- Proposed Breakup Fee Payable to the Stalking Horse Bidder– \$1,500,000, plus Sellers shall direct the escrow agent to return the Good Faith Deposit to the Stalking Horse Bidder.
- Designation Rights – The Agreement gives the Stalking Horse Purchaser the ability, through October 15, 2017, to designate certain contracts, agreements and leases as either Excluded Assets or Purchased Assets (the “Designation Rights Assets”).
- Management Agreement – The Agreement includes the Management Agreement, which provides that the Debtor will manage, control, and operate certain restaurants during (a) with respect to the restaurants that are purchased by the Stalking Horse Purchaser through the Agreement, during the period that the Stalking Horse Purchaser obtains from the relevant state and/or local government regulatory authorities the Liquor License Approvals and/or Permits, as applicable, and (b) with respect to each real property lease that has been designated as a Designation Rights Asset, until such restaurant has either been designated a Purchased Assets or Excluded Asset.
- Outside Termination Date – The Agreement may be terminated if Closing does not occur on or before September 8, 2017.

PART II

FIRST DAY PLEADINGS

27. The Debtors expect to file, and respectfully request that this Court approve, the First Day Pleadings. I have reviewed each of the First Day Pleadings (including the exhibits and schedules attached thereto) and, to the best of my knowledge, believe that the facts set forth therein are true and correct. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enable to Debtors to make the transition to, and operate in, chapter 11 with minimum interruption or disruption to their businesses or loss of productivity or value, and (b) constitutes a critical element in maximizing value during the Chapter 11 Cases. Such representation is based upon information and belief, through my review of various materials and other information, and my experience and knowledge of the Debtors' operations and financial condition. If called upon to testify, I could and would, based on the foregoing, testify competently to the facts set forth in each of the First Day Pleadings.

A. Procedural Motions

Debtors' Emergency Motion for Entry of an Order Directing Joint Administration of Related Chapter 11 Cases (the "Joint Administration Motion")

28. The Debtors request the entry of an order directing their bankruptcy cases be jointly administered for procedural purposes only under the caption of the case filed by Ignite Restaurant Group, Inc.

29. The Debtors believe that it would be more efficient for these cases to be jointly administered. The Debtors anticipate significant activity during these cases and believe that most hearings and contested matters will apply to all of the Debtors' cases equally. Consequently, joint administration of these cases will promote the economical and efficient

administration of the Debtors' estates, unencumbered by the procedural problems otherwise attendant to the administration of separate, albeit related, cases.

Notice of Designation of Complex Chapter 11 Cases

30. The Debtors request the entry of an order designating the Chapter 11 Cases as complex cases. The Debtors believe these cases qualify as complex chapter 11 cases because (a) the Debtors have total debt of more than \$10 million; (b) there are more than 50 parties in interest in the cases; (c) equity interests in one of the Debtors are publically traded; and (d) there is significant need for simplification of noticing and hearing procedures to reduce delays and expenses in the cases.

Debtors' Emergency Motion for Entry of an Order (i) Authorizing the Debtors to file a Consolidated List of Creditors and a Consolidated List of the 30 Largest Unsecured Creditors and to Redact Certain Personal Information for Individual Creditors, and (ii) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information (the "Consolidated List of Creditors Motion")

31. The Debtors request authority to file a consolidated list of creditors, in lieu of filing a separate creditor matrix for each Debtor. Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix would be an unnecessarily burdensome task and result in duplicate mailings. Additionally, the Debtors request the authority to redact address information of individual creditors—many of whom are employees—of the Debtors.

32. The Debtors also request authority to file a single consolidated list of their 30 largest unsecured creditors (the "Consolidated Top 30 List"). A large number of creditors may be shared amongst the Debtors. The Consolidated Top 30 List will help alleviate administrative burdens, costs, and the possibility of duplicative service.

33. The Debtors also request authority to establish certain procedures for providing notice to parties of the commencement of the Chapter 11 Cases and of other related information (the “Notice of Commencement”). In particular, the Debtors request authority for their proposed claims and noticing agent to serve the Notice of Commencement on all parties entitled to notice of commencement of the Chapter 11 Cases. This will ensure that the Debtors’ creditors and stakeholders receive prompt notice of the commencement of the Chapter 11 Cases and of the fact that the 341 meeting and other deadlines have not yet been set.

Debtors’ Emergency Motion for an Order (A) to Extend Time to File Schedules and Statements of Financial Affairs and (B) Waiving the Requirements to File a List of and Provide Notices Directly to Equity Security Holders (the “Schedules Extension Motion”)

34. The Debtors seek entry of an order granting the Debtors an additional thirty (30) days to file their schedules of assets and liabilities, schedules of current expenditures, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the “Schedules”). To prepare the Schedules, the Debtors must gather information from books, records, and documents relating to a multitude of transactions. Consequently, collection of the necessary information requires the expenditure of substantial time and effort on the part of the Debtors’ already over-burdened employees. The efforts of the employees during the initial stages of the Chapter 11 Cases will be focused in large part on attending to the Debtors’ businesses and maximizing the value of the Debtors’ estates. For these reasons, the Debtor will likely be unable to complete their Schedules within fourteen (14) days of filing the petitions.

35. The Debtors also request a waiver of the requirement that IRG file a list of and provide notice directly to all equity security holders. IGR is a publically-traded company with over 26 million common shares outstanding and recent average trading volumes of more than 298,806 shares daily. Preparing and submitting such a list with last known addresses for each

such equity security holder and sending notices to all such parties will be expensive and time consuming and will serve little or no beneficial purpose. Moreover, IRG filed with its petition a list of significant holders of its outstanding common stock based on information ascertained from filings with the Securities and Exchange Commission.

Debtors' Emergency Application for Appointment of Garden City Group, LLC as Claims, Noticing, and Solicitation Agent (the "GCG Retention Application")

36. The Debtors seek authority to employ and retain Garden City Group, LLC ("GCG") as claims and noticing agent in the Chapter 11 Cases. I believe that such relief is prudent in light of the thousands of creditors, potential creditors, and parties in interest to whom certain notices will be sent. Accordingly, I believe that the most effective and efficient manner by which to give notice and process claims in the Chapter 11 Cases is to engage GCG, an independent third party with significant experience in this role to act as an agent of the Court.

37. The Debtors and their advisors obtained and reviewed engagement proposals from two other claims and noticing agents to ensure a competitive process. GCG is one of the country's leading chapter 11 administrators, with significant experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases. I understand that GCG has substantial experience providing services, including claims and noticing services, in matters comparable in size and complexity to this matter.

38. I believe that GCG's rates are competitive and reasonable given GCG's services and expertise. Appointing GCG as the Debtors' Claims and Noticing Agent will maximize the efficiency of the distribution of notices and the processing of claims, as well as relieve the Office of the Bankruptcy Court of the administrative burden of processing an overwhelming number of claims.

39. Prior to the Petition Date, the Debtors provided GCG a retainer in the amount of \$25,000, which GCG applied to all prepetition invoices. GCG seeks to have the retainer replenished to the original amount, and thereafter, to hold the retainer under the Retention Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred in rendering services under the Retention Agreement, with any remainder to be held as security for the payment of other approved fees and expenses incurred in rendering other services under the agreement.

40. As part of the overall compensation payable to GCG under the terms of the Retention Agreement, the Debtors have agreed to certain indemnification obligations as specifically enumerated in the Retention Agreement. The Debtors and GCG believe that the indemnification provisions contained in the Retention Agreement are customary and reasonable for GCG and comparable firms providing claims, noticing, solicitation and related administrative services.

Debtors' (I) Emergency Motion for an Order Setting a Bar Date for the Filing of Requests for Payment of Administrative Expense Claims Under Sections 105 and 503(b)(9) and Approving Form, Manner and Sufficiency of Notice of the Bar Date Pursuant to Bankruptcy Rule 9007 (the "503(b)(9) Motion")

41. Debtors seek (I) an interim order substantially in the form attached to the motion as Exhibit A (the "Interim Order"), (a) establishing August 7, 2017 (the "Section 503(b)(9) Bar Date") as the bar date for the filing of requests for payment of administrative expense claims for goods received within twenty days of the Petition Date pursuant to Sections 105 and 503(b)(9) of the Bankruptcy Code (the "Section 503(b)(9) Claims"), (b) approving the form, manner, and sufficiency of notice of the Section 503(b)(9) Bar Date, (c) approving the procedures for submitting Section 503(b)(9) Claims (the "Filing Procedures"), (d) authorizing the Debtors to pay Section 503(b)(9) Claims in the ordinary course of business up to \$2,500,000 on an interim

basis, and (e) scheduling a final hearing (the “Final Hearing”) on the Motion to consider the Debtors’ proposed exclusive and global procedures for resolving all Section 503(b)(9) Claims (the “Reconciliation Procedures”);⁵ and (b) a final order substantially in the form attached to the motion as Exhibit B (the “Final Order”), authorizing the Debtors to establish and implement the Reconciliation Procedures. The Debtors further request that once the orders granting the requested relief are entered, they shall apply to any Section 503(b)(9) Claims or to any requests for resolution of Section 503(b)(9) Claims filed with this Court prior to entry of such order.

42. Section 503(b)(9) Claims. In the ordinary course of business, the Debtors purchase, among other things, a variety of food products, supplies and other goods (the “Goods”) from various vendors (the “Vendors”) for use in their operations. The Debtors estimate that within 20 days prior to the Petition Date, the Debtors received approximately \$8,311,000 of Goods from the Vendors.

43. The Debtors anticipate that the Vendors may file Section 503(b)(9) Claims, seeking administrative expense status for goods received by the Debtors within 20 days prior to the Petition Date.

44. The Debtors believe that there will be some uncertainty among Vendors over which procedures and methods they must undertake to properly assert Section 503(b)(9) Claims, which could result in numerous inquiries, demands on the Debtors’ staff and professionals, as well as the initiation of piecemeal litigation in an effort to preserve the Section 503(b)(9) Claims. To avoid the distraction, delay and expense that may ensue, including by way of piecemeal litigation, and in order to provide a uniform process for asserting Section 503(b)(9) Claims, the

⁵ The Filing Procedures and the Reconciliation Procedures shall be referred to herein collectively as the “Procedures”.

Debtors seek to establish the Section 503(b)(9) Bar Date and the Procedures for treatment of Section 503(b)(9) Claims.

45. The Debtors seek the ability to pay, in their sole discretion, Section 503(b)(9) Claims, which are undisputed in amount by the Debtors, in the ordinary course of business during the period prior to the Final Hearing up to \$2,500,000.

B. Operational Motions

Debtors' Emergency Motion for Entry of an Order (A) Authorizing Payment of Pre-Petition Wages, Payroll Taxes, Certain Employee Benefits, and Related Expenses and (B) Directing Banks to Honor Related Pre-Petition Transfers (the "Employee Wages Motion")

46. The Debtors seek authority to pay the Employee Obligations that become payable during the pendency of these chapter 11 cases and to continue at this time their practices, programs, and policies with respect to their employees, as such practices, programs, and policies were in effect as of the Petition Date. The Debtors request that all banks and other financial institutions be authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts to pay the Employee Obligations, provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors similarly request that they be authorized to pay any cost or penalty incurred by their Employees in the event that a check issued by the Debtors for payment of the Employee Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases. Though the Debtors estimate any such costs or penalties to be *de minimis* in amount, if the Debtors are not authorized to pay such costs or penalties, then their Employees will suffer the exact type of harm that this Motion seeks to prevent and the Debtors will suffer from loss of employee goodwill.

47. As of the Petition Date, the Debtors employ approximately 8,400 people (the “Employees”), of which approximately 90 reside in their corporate office. Of the Employees, approximately 500 are full-time salaried Employees, approximately 2,400 are full-time hourly Employees, and approximately 5,500 are part-time hourly Employees.

48. The Debtors employ four independent contractors (the “Independent Contractors”).

49. As described more fully below, in the ordinary course of business the Debtors have incurred certain pre-petition employee obligations that remain unpaid as of the Petition Date. Even though arising prior to the Petition Date, these obligations (collectively, the “Employee Obligations”) will become due and payable in the ordinary course of the Debtors’ business on and after the Petition Date.⁶ These obligations can generally be categorized as follows: (a) wages, salaries, and other compensation; (b) payroll taxes; (c) vacation and holiday programs; (d) qualified 401(k) plan obligations; (e) health and welfare benefits and (f) miscellaneous other benefits provided to the Employees in the ordinary course of business. These obligations are described as follows:⁷

- *Wages, salaries, and other compensation*

Wages, salaries, and other compensation consist of pre-petition wages and salaries owed to the Debtors’ Employees (the “Payroll Obligations”). Employees located in New York are paid on a weekly basis, while all other Employees are paid on a bi-weekly basis. The average monthly gross Payroll Obligation over the past six months is approximately \$9,400,000. This gross amount includes certain deductions described separately below, such as payroll taxes owed by the Employees and 401(k) contributions. Approximately, 97% of the Payroll Obligations are electronically deposited (either directly into the Employees’ bank accounts or onto reloadable

⁶ No amount proposed to be paid to any individual Employee will exceed \$12,850.

⁷ In addition to the benefits described herein, the Debtors maintain a workers’ compensation plan, which is discussed in the Debtors’ *Motion for Authority to Continue Pre-Existing Insurance Programs, to Maintain Insurance Premium Financing Programs, and to Pay Pre-Petition Premiums and Related Obligations*.

payroll pay cards) and the remaining 3% are paid by check. The Debtors use a third party, InfoSync, to process garnishments from Employee wages. As of the Petition Date, the Debtors estimate that they owe approximately \$1,700,000 in Payroll Obligations.

- *Independent Contractors Compensation.* These obligations consist of amounts owed as compensation to four Independent Contractors. The average monthly gross amount of these obligations is approximately \$40,000. As of the Petition Date, the Debtors estimate that they owe approximately \$36,500 to the Independent Contractors.
- *Payroll taxes.* These obligations consist of federal, state, and local income taxes, Social Security, and Medicare taxes (the “Payroll Taxes”). The Payroll Taxes include the amounts owed by the Employees that the Debtors withhold from the gross amount of the Employees’ wages or salary as well as the amounts separately owed by the Debtors. The Debtors’ average monthly Payroll Taxes over the last six months is approximately \$3,650,000. This includes approximately \$1,250,000 for the employer obligation and approximately \$2,400,000 for the employee component. As of the Petition Date, the Debtors estimate that they owe approximately \$868,100 in pre-petition Payroll Taxes. None of this amount is included in the Payroll Obligations described in the paragraph above.
- *Holiday, vacation and sick programs.* These obligations consist of time off for vacation, illness and company holidays.
 - *Holidays.* The corporate office recognizes ten paid holidays per year. Store management at Joe’s Crab Shack restaurants receive two paid holidays, Thanksgiving and Christmas. Brick House Tavern + Tap managers and hourly Employees do not receive any paid holidays.
 - *Sick.* Salaried Employees receive three sick days per year. These do not carry over to the next calendar year. Salaried Employees are eligible for paid bereavement leave in appropriate circumstance, typically not to exceed three days per year. Hourly Employees are not eligible for sick leave, except in states where it is mandated.
 - *Vacation.* Salaried Employees receive paid vacation based on years of service. Salaried Employees (except those employed in California) receive annual paid vacation as follows: (i) all Employees receive ten days of vacation; (ii) after five years of employment, the Employee receives 15 days of vacation; (iii) after ten years of employment, the Employee receives 20 days of vacation; and (iv) after 15 years of employment, the Employee receives 25 days of vacation. After their first 90 days of service, these salaried Employees also receive three personal days per year, except for corporate Employees who receive two personal days per year. Salaried Employees employed in California receive annual paid vacation as follows: (i)

all Employees receive 13 days of vacation; (ii) after five years of employment, the Employee receives 18 days of vacation; (iii) after 10 years of employment, the Employee receives 23 days of vacation; and (iv) after 15 years of employment, the Employee receives 28 days of vacation. These Employees do not receive personal days. Hourly Employees do not receive vacation time.

Each pay period salaried Employees accrue a portion of their vacation time as set forth above. Vacation time does not carry over to the next calendar year, except for in the case of salaried Employees who are employed in California and Nebraska. In those states, Employees accrue vacation time up to 1.5 times the amount earned per year. At the time of separation, Employees are paid for any earned and unused vacation hours. Any manager with 20 years of service is eligible to take a one month fully paid sabbatical once every five years.

The Debtors desire to continue to honor their obligations for holidays, sick days and vacation on a going forward basis. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued vacation time equals approximately \$650,000. This amount is not included in the total Payroll Obligations described above.

- *Qualified 401(k) plan obligations.* The Debtors maintain a 401(k) plan, under which eligible salaried Employees may defer a portion of their salary on a pre-tax basis, post-tax basis, or a combination. After completing one month of employment, Employees 21 years of age or older can contribute up to 90% of their annual pay (up to the maximum deferral amount). Under the plan, the Debtors match 25% of each participating Employee's contributions; however, the Debtors' matching contribution is limited to 2% of the participating Employee's salary. Contributions are deducted from the Employees' bi-weekly pay. The average monthly amount of Employee contributions and matching contributions over the last six months is approximately \$51,000 and \$8,600 respectively. Because the Debtors' payroll is paid in arrears, as of the Petition Date, the Debtors estimate that they owe approximately \$4,200 in matching 401(k) contributions, which is not included in the estimated total Payroll Obligations above.
- *Expense Reimbursement and Other Benefits.* The Debtors reimburse eligible Employees who incur business expenses in the ordinary course of performing their duties on behalf of the Debtors. These reimbursement obligations include such things as travel expenses, meals and entertainment, relocation expenses, and office supply reimbursements. The average monthly amount of these reimbursement obligations is approximately \$75,000. As of the Petition Date, the Debtors estimate that they owe approximately \$18,000 in expense reimbursements. This amount is not included in the total Payroll Obligations above. The Debtors also provide a communications allowance (up to \$2,000 annually) for certain Employees.
- *Flexible Spending Accounts.* The Debtors offer salaried Employees and corporate full-time hourly Employees the option of contributing a portion of their pre-tax wages into tax-exempt flexible spending accounts. A third party vendor maintains the

flexible spending accounts. The Debtors request the authority to maintain the flexible spending account program in the ordinary course of business regardless of whether the qualified expenses were incurred before or after the Petition Date. The monthly cost to the Debtors for this program is \$4.65 per eligible Employee. As of the Petition Date, the Debtors estimate that they owe approximately \$700 on account of flexible spending accounts. Additionally, the Debtors are holding \$19,000 of employee flexible spending account contributions. The Debtors request authority to remit these employee contributions collected before the Petition Date. Additional “pass through” programs are discussed below.

- *Health and welfare benefits.* The Debtors provide several health and welfare benefit plans for their Employees, including insurance plans relating to medical, health, prescription, dental, disability, and life insurance (collectively, the “Employee Benefits”). The Debtors’ estimated average monthly costs in the aggregate on account of the Employee Benefits for 2017 is \$237,500. By way of comparison, the average monthly costs of the plans was \$233,351 in 2016 and \$217,130 in 2015.
 - *Medical Plans.* The Debtors maintain and provide three medical care plans for their Employees. The Debtors fund the plans, and the plans are administered by Blue Cross Blue Shield. Full time hourly Employees may enroll in the plan offered to them (the “Hourly Plan”) after 12 consecutive months of full time work. Salaried Employees and corporate hourly Employees are eligible to enroll in a PPO plan (the “PPO”) or an HRA plan (the “HRA” and together with the Hourly Plan and the PPO, the “Medical Plans”) on their date of hire. The Hourly Plan provides coverage at 100% for in-network preventive care services. For most other services, the Employee pays the full costs of the service until the deductible and out-of-pocket maximum is met (\$6,350 for an individual/\$12,700 for a family for in-network services). After the deductible is met, the plan pays 100% of in-network covered medical expenses for the remainder of the year. The PPO has annual deductibles of \$2,000 for an individual/\$4,000 for family for in-network services and \$4,000 for an individual/\$8,000 for family for out-of-network services. The HRA has higher deductible (\$2,500 individual/\$5,000 family for in network services and \$5,000/\$10,000 for out-of-network services) but offers a company-paid HRA fund. These plans include prescription drug programs.
 - The costs include health insurance for current and former Employees. There are 10 former employees covered under COBRA (covered 18 months from departure). Additionally, the Debtors pay an administrative fee of approximately \$500 per month to cover employees under COBRA.
 - The Debtors receive claims run weekly and pay claims on a weekly basis.

- *Dental and Vision.* Salaried Employees and corporate hourly Employees are given the opportunity to participate in a dental plan (the “Dental Plan”) and a vision plan (the “Vision Plan”) administered by MetLife. Under the Dental Plan, Employees pay yearly deductible of \$50 for an individual or \$150 for a family. Under the Vision Plan, Employees have a \$10 exam copay and a \$25 materials copay.

The Debtors’ average monthly costs in the aggregate on account of the Medical Plans, the Dental Plan, and the Vision Plan over the last six months is approximately \$221,500. As of the Petition Date, the Debtors owe \$58,000 on account of the Medical Plans, the Dental Plan and the Vision Plan.

- *Basic Life Insurance.* The Debtors provide life insurance to salaried Employees at no cost to the Employee. The Debtors’ average monthly premium is approximately \$7,200. As of the Petition Date, the Debtors owe approximately \$1,100. This amount is not included in the total Payroll Obligations above.
- *Accidental Death and Dismemberment Insurance.* The Debtors provide AD&D insurance to salaried Employees at no cost to the Employee. The average monthly cost to the Debtors is approximately \$1,090. As of the Petition Date, the Debtors owe approximately \$180. This amount is not included in the total Payroll Obligations above.
- *Short Term Disability and Maternity Leave.* The Debtors provide salary continuation for salaried Employees beginning after 12 months of consecutive employment who are absent from work because of pregnancy or a non-work-related illness or injury at no cost to the Employee. The average monthly costs to the Debtors for these programs is approximately \$1,130. As of the Petition Date, the Debtors owe approximately \$186. This amount is not included in the total Payroll Obligations above.
- *Long Term Disability.* The Debtors provide salary continuation for salaried Employees beginning after 12 months of consecutive employment who are absence from work for more than 90 days at no cost to the Employee. The average monthly costs to the Debtors for this program is approximately \$8,400. As of the Petition Date, the Debtors owe approximately \$1,400. This amount is not included in the total Payroll Obligations above.
- *Employee Assistance Program.* The Debtors provide an employee assistance program for salaried Employees at no cost to the Employee. The average monthly costs to the Debtors for this program is approximately \$200. As of the Petition Date, the Debtors owe approximately \$200. This amount is not included in the total Payroll Obligations above.

The following are “pass through” programs for which the Debtors make no contributions or payments. The Debtors withhold the necessary amounts from the Employee’s paycheck and remit the amounts to the benefit provider. Accordingly, the Debtors ask for authority to remit amounts collected from the Employees before the Petition Date but not yet remitted to the carrier.

- *Additional Life and AD&D Insurance.* The Debtors permit salaried Employees to purchase supplemental life insurance and AD&D insurance. The Debtors collect funds from the Employees and remit to the insurance company, but do not provide any reimbursement for this program. There is no material cost to the Debtors for this program. As of the Petition Date, the Debtors hold approximately \$2,500 in premiums collected from Employees but not yet remitted to the carrier.
- *Legal Service Plan.* The Debtors permit salaried Employees to purchase a plan that provides low-cost access to legal services through Hyatt Legal Plans, a MetLife company. The Debtors collect funds from the Employees and remit to the insurance company, but do not provide any reimbursement for this program. There is no material cost to the Debtors for this program. As of the Petition Date, the Debtors hold approximately \$600 in premiums collected from Employees but not yet remitted to the carrier.

Debtors’ Emergency Motion to Continue Pre-Petition Insurance and Workers’ Compensation Programs and to Pay Pre-Petition Premiums and Related Obligations (the “Insurance Motion”)

50. The Debtors seek an order (a) authorizing them to maintain their insurance programs, insurance policies, insurance premium financing programs, workers’ compensation program, and any related agreements, as such practices, programs, and policies were in effect as of the Petition Date and to pay, in their sole discretion, pre-petition amounts accrued in connection therewith, (b) authorizing them to pay premium installment payments on two policies with Zurich American, and (c) authorizing applicable banks and other financial institutions to receive, process, and pay any and all checks and other transfers related to such claims.

51. In connection with the operation of their businesses, the Debtors maintain various insurance policies and programs through several different insurance carriers (the “Carriers”). All of the Debtors’ various insurance policies are listed on the Exhibit A to the Insurance Motion,

together with a list of the Carriers, policy period, deductible or self-insured retention and policy limits.

52. The Debtors spend approximately \$2.4 million annually on insurance premiums. Except as noted below with respect to two policies with Zurich American, the Debtors prepay the entire annual premium for each of the Programs on or around the start date of each policy period. The Programs, for the most part, renew in January, May or December. Except as noted below with respect to the two Zurich American policies, the Debtors believe that, as of the Petition Date, there are no outstanding prepetition premiums due on account of the Programs.

53. The Debtors have an agreement with Zurich American to pay the premiums on two of their policies (the workers compensation policy and the auto liability policy) in installments. Thereunder, the Debtors make an initial down payment at the beginning of the policy period and eight monthly installment payments thereafter. Pursuant to this arrangement, the Debtors paid an initial down payment equaling approximately 26% of the policies' premiums on January 1, 2017. The Debtors have also made the first five monthly installment payments. The final three premium installment payments (each in the amount of approximately \$40,000) are scheduled for July 1, 2017, August 1, 2017, and September 1, 2017.

54. The Debtors' Escrow Funds. The Debtors have two workers compensation and general liability escrow funds—one with American Zurich and one with Broadspire (collectively, the "Escrow Agents")—whereby the Escrow Agents hold cash of the Debtors to cover loss billings within the Debtors' deductible prior to the Debtors paying their monthly invoices. The current amount of cash held by the Escrow Agents is approximately \$250,000. American Zurich also holds letters of credit totaling approximately \$4,050,000 to secure the Debtors' deductible obligations.

55. The Insurance Premium Financing Programs. The Debtors are currently parties to two insurance premium financing agreements (the “Premium Financing Agreements”) whereby certain of the Debtors’ insurance policies and programs are financed by Bank Direct Capital Finance (“Bank Direct”). **Exhibit A** to the Insurance Motion indicates which of the insurance policies and programs are included in the Premium Financing Agreements.

56. Pursuant to the terms of each Premium Financing Agreement with Bank Direct, the Debtors make a down payment contemporaneously with the execution of the Premium Financing Agreement and then make nine monthly installments to Bank Direct toward the balance of the financing over the term of the premium financing agreement. For the financed policies, the down payments under the agreements were made on or around December 1, 2016 and January 1, 2017. The Debtors are not seeking authority or direction to pay amounts due under the Premium Financing Agreements by this Motion.

57. Workers’ Compensation Programs and Texas Non-Subscriber. Under state law, the Debtors are required to maintain workers’ compensation policies and programs to provide their employees with coverage for claims arising from or related to their employment with the Debtors. The Debtors maintain a workers’ compensation policy through Zurich American (the “Workers’ Compensation Program”). **Exhibit A** to the Insurance Motion lists the Workers’ Compensation Program’s policy period and policy limit. Under Texas law, the Debtors maintain a non-subscription policy and programs to provide their employees with coverage for claims arising from or related to their employment with the Debtors. The Debtors maintain the non-subscriber policy through Great American (the “Non-subscriber Program”). **Exhibit A** to the Insurance Motion lists the Non-subscriber Program’s policy period and policy limit.

Debtors' Emergency Motion for an Order Authorizing Continued Use of Pre-Petition Bank Accounts, Cash Management System, Forms, and Books and Records (the "Cash Management Motion")

58. The Debtors respectfully request an order (a) authorizing them to continue to maintain their existing Bank Accounts and to continue use of their existing Business Forms; (b) authorizing, but not directing, continued use of the Cash Management system; and (c) granting them a waiver from certain of the United States Trustee's guidelines.

59. The Debtors' Accounts, Forms, Records and Cash Management System. The Debtors use a cash management system (the "Cash Management System") in the ordinary course of business which permits the efficient collection and application of funds. Prior to the commencement of these Chapter 11 Cases, and in the ordinary course of business, the Debtors maintained approximately 150 bank accounts (collectively, the "Bank Accounts"). A list of the Bank Accounts is attached to the Cash Management Motion as Exhibit A.

2. The Debtors' Cash Management System is primarily maintained at Bank of America ("Bank of America"). In addition, in areas of the country where Bank of America branches are not as readily available, the Debtors maintain Bank Accounts with Chase Bank, US Bank, SunTrust Bank, PNC, and Wells Fargo. A chart that illustrates how the Debtors' cash flow system operates is attached to the Cash Management Motion as Exhibit B.

3. A summary of the Debtors' Cash Management System and the Bank Accounts is contained below:

- A. Concentration Account: The Debtors maintain an operating or concentration account (the "Concentration Account") with Bank of America, which funds all of the Debtors' operations. This account is established in the name of Ignite Restaurant Group, Inc.
- B. Collection Accounts: The Debtors maintain the bulk of their collection/depository accounts (the "Collection Accounts") with Bank of America, into which all of the Debtors' receipts are deposited. Certain store-level Collection Accounts are

maintained at Chase Bank, US Bank, SunTrust Bank, PNC and Wells Fargo. The store-level Collection Accounts are swept into three central Collection Accounts (the “Depository Accounts”). On a nightly basis, the funds are swept from the Debtors’ Collection Accounts, including the Depository Accounts, to the Concentration Account.

- C. Disbursements: Disbursements are made out of the Concentration Account at Bank of America into controlled disbursement accounts, ACH disbursement accounts, and accounts established to pay payroll and benefits. Disbursements are generally made by wire, check, ACH, direct debits, or automatic payments issued to pay general accounts payable.

60. The Debtors’ existing Bank Accounts function smoothly and permit the efficient collections and disbursements of cash for the benefit of the Debtors and all parties in interest. The Debtors’ transition into chapter 11 will be significantly less disruptive if the Bank Accounts are maintained following the commencement of the cases with the same account numbers and, where applicable, automated relationship. The Debtors further request authority to deposit funds in and withdraw funds from all such accounts postpetition, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, check, wire, transfers, ACH, electronic funds transfers and other debits and to treat the Bank Accounts for all purposes as debtor-in-possession accounts.

61. Existing Business Forms and Checks. In the ordinary course of business, the Debtors use pre-printed check stock with the relevant Debtor’s name printed thereon. In addition, the Debtors maintain pre-printed correspondence and business forms, including, but not limited to, letterhead, envelopes, promotional materials and other business forms (collectively, along with the Debtors’ checks, the “Business Forms”). To minimize administrative expense and delay, the Debtors request authority to continue to use their Business Forms substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors’ “Debtor-in-Possession” status.

62. Requested Waiver of Certain U.S. Trustee Guidelines. I understand that the Office of the U.S. Trustee for Region 7 (the “U.S. Trustee”) has established guidelines (the “Guidelines”) to supervise the administration of chapter 11 cases and prevent post-petition payments for pre-petition claims. The Guidelines require a chapter 11 debtor to, among other things: (i) close its existing books, records and bank accounts, and open new post-petition books, records and bank accounts (which must bear debtor in possession labels, and must be opened at banks approved by the U.S. Trustee); (ii) establish separate bank accounts for operations, payment of taxes, cash collateral and payroll (to the extent that the debtor had a separate payroll account pre-petition); and (iii) obtain new checks bearing the designation “Debtor in Possession,” along with additional information. Compliance with these requirements would create substantial and unnecessary administrative burdens. Requiring the Debtors to open new bank accounts and alter their cash management system would impose unnecessary expense, confusion, and diversion of scarce time and personnel, and would hinder the efficient use of the Debtors’ resources at the critical first days of these cases. On the other hand, permitting the Debtors to maintain their existing bank accounts and existing cash management system (or to make only such changes as are appropriate in the ordinary course of business) will prevent disruption of the Debtors’ operations and will not prejudice any party in interest.

63. The Debtors have in place sophisticated, computerized record keeping systems and will be able to ensure that all pre-petition and post-petition transactions are properly accounted for and can easily be distinguished. The Debtors will continue to maintain complete and accurate records of all transfers of funds in and out of the Debtors’ bank accounts.

64. Based on the foregoing, the Debtors seek the following specific relief with respect to their books and records, cash management system, and business forms:

- a. a waiver of the requirement that the Debtors' pre-petition bank accounts be closed and new post-petition bank accounts be opened;
- b. approval to maintain and continue to use without change in account style their existing bank accounts;
- c. approval to maintain and continue to use their existing Cash Management System;
- d. approval to use, in their present form, existing checks and other business forms related to the Debtors' bank accounts; *provided, however*, that upon depletion of the Debtors' current supply of such checks and forms, the Debtors will have the debtor in possession nomenclature added to such checks and forms;
- e. approval to use the Debtors' existing books and records with appropriate notations to reflect the filing of the chapter 11 petitions; and
- f. entry of an order authorizing the banks at which the Debtors have bank accounts to maintain and administer the Debtors' bank accounts in accordance with the contracts entered into between the Debtors and such banks before the filing of the Debtors' chapter 11 petitions and otherwise in accordance with past practice, and enjoining such banks from freezing or otherwise impeding the Debtors' bank accounts; *provided, however*, that such banks shall not honor any checks issued on such bank accounts on a date prior to the commencement of these chapter 11 cases and presented for payment to the banks post-petition unless otherwise authorized to do so by order of this Court (such as the authority to pay all pre-petition employee obligations).

Debtors' Emergency Motion for an Order Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations (the "Tax Motion")

65. The Debtors seek authority to pay, in their sole discretion, undisputed pre-petition Taxes and Fees owing to the Taxing Authorities. In addition, the Debtors seek authorization to honor all checks that remain uncashed prior to the Petition Date or that are otherwise returned by a Taxing Authority, as well as those Taxes and Fees subsequently determined upon audit to be owed for periods prior to the Petition Date.

66. In connection with the normal operations of their businesses, the Debtors incur an assortment of sales, franchise, and other tax obligations (collectively, the "Taxes") and various

business license, permit, and other fees (collectively, the “Fees”) to various federal, state, and local taxing and regulatory authorities (collectively, the “Taxing Authorities”) including, but not limited to, those Taxing Authorities listed on Exhibit A attached to the Tax Motion.⁸ These Taxes and Fees include, without limitation, the following:

67. Sales and Use Taxes. The Debtors incur state and local sales and liquor taxes in connection with the sale of various products and services to their customers (the “Sales Taxes”). The Debtors collect and remit or otherwise pay the Sales Taxes as needed to the applicable Taxing Authorities. The Debtors estimate that they owe approximately \$2,703,000 in incurred and unpaid Sales Taxes as of the Petition Date.

68. In addition, in the normal course of their business, the Debtors incur use taxes (the “Use Taxes”) on account of the purchase of various inventory, raw materials, supplies or other goods used in the Debtors’ business. The Use Taxes typically arise pursuant to purchases the Debtors make from out-of-state vendors that do not collect state sales tax that would have been charged on the purchase of such goods if the purchase had occurred within the state where the vendor is located. The Debtors estimate that they owe approximately \$56,000 in accrued and unpaid Use Taxes as of the Petition Date.

69. Franchise Taxes. Certain of the Debtors pay income, franchise, net worth and similar taxes (the “Franchise Taxes”) to various Taxing Authorities to maintain the right to operate their business in the applicable taxing jurisdiction. Franchise Taxes vary by jurisdiction and may be based on a flat fee, net operating income, gross receipts or capital employed. Certain states impose personal liability on officers of entities that fail to pay Franchise Taxes. In

⁸ Inclusion of a Taxing Authority on such Exhibit A does not constitute an acknowledgement by the Debtors that the Debtors owe any obligation to such authority or that such authority will be paid pursuant to any order entered on this Motion.

addition, certain jurisdictions, will refuse to qualify a company to do business in a state or issue certificates of good standing or other documents necessary to do business in such jurisdiction if Franchise Taxes have not been paid. The Debtors estimate that they owe approximately \$50,000 in incurred and unpaid Franchise Taxes as of the Petition Date.

70. Business Licenses, Permits, and Other Fees. Many Taxing Authorities require the payment of Fees for the right to conduct business within their jurisdictions. Those charges may include fees for business licenses, annual reports, permits and health and fire inspections. These Fees are computed in a variety of ways, but are generally flat rate fees of \$15,000 or less, which are paid on a monthly, quarterly or annual basis, depending on the requirements of the particular jurisdiction. The Debtors pay hundreds of these Fees per year to different state and local Taxing Authorities, and are frequently required to obtain licenses and permits for each Debtor entity that conducts business in a given jurisdiction. The Debtors believe that they do not owe any accrued but unpaid Fees as of the Petition Date.

Debtors' Emergency Motion for Interim and Final Orders (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service on Account of Prepetition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, (C) Establishing Procedures for Determining Adequate Assurance of Payment, and (D) Granting Related Relief (the "Utilities Motion")

71. The Debtors respectfully request the entry of an interim and final order (the "Interim Order" and the "Final Order", respectively): (a) prohibiting the Utility Providers from altering, refusing, or discontinuing service on account of prepetition invoices, (b) deeming utilities adequately assured of future performance, and (c) establishing the Determination Procedures for determining adequate assurance of payment. The Debtors also request that the Court schedule a final hearing at its convenience on a date in advance of the expiration of thirty (30) days following the Petition Date.

72. The Utility Providers. Utility services are essential to the Debtors' ability to sustain their operations while these chapter 11 cases are pending. To operate their businesses and manage their properties, the Debtors incur utility expenses for natural gas, electricity, water, sewage, waste management, local and long-distance telecommunications, data, wireless, and other similar services (collectively, the "Utility Services"). These services are provided by approximately 240 utility providers (the "Utility Providers"), with which one or more of the Debtors may have multiple accounts. A non-exhaustive list identifying the Utility Providers is attached to the Utilities Motion as **Exhibit A** (the "Utilities Service List"). The Debtors spend an aggregate amount of approximately \$1.3 million each month on Utility Services from the Utility Providers listed on the Utility Service List.

73. The Debtors pay deposits for certain Utility Services. The Debtors have paid approximately \$198,000 in deposits (the "Deposits") to certain Utility Providers. The Debtors are also required to post surety bonds to certain third parties, often governmental units or other public agencies, to secure the Debtors' payment or performance of certain obligations (the "Bonds"). The obligations secured by these bonds include the Debtors' obligations to pay certain Utility Services. The Debtors have posted approximately 40 Bonds for various utilities, which total approximately \$600,000. The Debtors have received notifications from the bond issuer cancelling certain of the Bonds.

74. To manage the Utility Services at their many locations, the Debtors contract with Summit Energy Services, Inc. ("Summit Energy"), a third-party processor. Summit Energy manages the Debtors' accounts for the majority of the Utility Providers and Services, including electric, water/wastewater, sewer, trash, and gas services. Summit Energy manages approximately 600 utility accounts for the Debtors. Summit Energy's services include providing

an energy data web-based platform and utility bill management, which include paying bills for the Utility Services as an agent for the Debtors and providing accounting information to the Debtors with respect to the Utility Services managed by Summit Energy. Although the Debtors contract directly with the Utility Providers, invoices from the Utility Providers are directed to Summit Energy, which then reconciles the invoices, submits them to the Debtors with a request for funding and a payment date, and then disburses the funds from the Debtors to the Utility Providers. Summit Energy charges the Debtors a monthly fee for such services comprised of a flat fee component and a component based on the volume of accounts processed. The services provided by Summit Energy are integral to the Debtors' operations. The Debtors pay, on average, \$40,000 per year for Summit Energy's services.

75. In general, the Debtors have established satisfactory payment histories with the Utility Providers and have made payments on a regular and timely basis. To the best of the Debtors' knowledge, there are no material defaults or arrearages with respect to undisputed invoices for prepetition Utility Services as of the Petition Date. The Debtors intend to pay any postpetition obligations for the Utility Services as of the in a timely fashion and in the ordinary course.

76. Continued and uninterrupted Utility Services is vital to the Debtors' ability to sustain their operations during these chapter 11 cases. Because of the nature of the Debtors' operations, termination or interruption of the Debtors' utility service would dramatically impair the Debtors' ability to conduct business and would cause considerable inconvenience to the Debtors' customers and employees. If Utility Providers are permitted to terminate or disrupt service to the Debtors, the Debtors' primary revenue source would be threatened.

Debtors' Emergency Motion for Entry of Interim and Final Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims Arising under the Perishable Agricultural Commodities Act and (II) Granting Related Relief (the "PACA Motion")

77. The Debtors respectfully request that the Court enter an order authorizing, but not directing, the Debtors, in their sole discretion, to pay the PACA Claims, subject to a \$750,000 cap. The Debtors further request that the Court enter an order directing all banks to honor the Debtors' prepetition checks or electronic transfers for payment for the foregoing, and prohibiting banks from placing any holds on, or attempting to reverse, any automatic transfers on account of the foregoing.

78. The Debtors believe that a certain portion of the products they have purchased but not yet paid for may qualify as "perishable agricultural commodit[ites]" under PACA. As of the Petition Date, the Debtors estimate that they owe holders of PACA Claims approximately \$500,000, in the aggregate, for goods subject to PACA that were delivered prior to the Petition Date and the Debtors expect to be invoiced for substantially all of that amount within twenty-one (21) days of the Petition Date. It is critical to the Debtors' operations that the Debtors continue to receive goods and services, as applicable, from the PACA Claimants. The Debtors believe that without the authority requested in this Motion, many of the PACA Claimants will cease delivering goods and/or providing services to the Debtors, which could devastate the Debtors' business operations and their efforts in connection with these Chapter 11 Cases.

Debtors' Emergency Motion for an Order Authorizing the Debtors to Maintain and Administer Customer Programs and Honor Certain Pre-petition Obligations Related Thereto (the "Customer Programs Motion")

79. The Debtors respectfully request entry of an order (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay honor, or otherwise satisfy prepetition obligations to customers and to otherwise continue prepetition customer practices and programs

in the ordinary course of business, (b) authorizing, but not directing, the Debtors, in their sole discretion, to pay, honor, or otherwise satisfy prepetition processing costs and fees associated with these practices and programs, and (c) authorizing and directing the Debtors' banks and financial institutions (collectively, the "Banks") to receive, process, honor and pay all checks and electronic payment requests relating to the foregoing.

80. The Debtors' Customer Programs. The customer programs are integral to ensure the smooth functioning of the Debtors' businesses. As owners and operators of casual dining locations, the Debtors have developed and designed various marketing strategies to generate business in the face of sophisticated competition. Among these strategies are certain customer programs, promotions and practices designed to enhance revenues by, among other things, encouraging repeat business and developing new customer relationships. As of the Petition Date, the programs include (collectively, the "Customer Programs"): (i) Gift Cards; and (ii) E-mail Marketing Program.

81. The Debtors believe that they must promptly assure customers of their continued ability to satisfy prepetition and post-petition obligations under the Customer Programs to maintain their valuable customer base, goodwill and a myriad of other important benefits derived therefrom, following the commencement of these Chapter 11 Cases. Any inability of the Debtors to honor these obligations promptly would be disastrous to the survival of the Debtors as a going concern because of the resulting destruction of goodwill and loss of customer patronage.

82. Continued use of the Customer Programs, on the other hand, will enable the Debtors to protect their customer base and revenue growth opportunities. Consequently, the Debtors seek the authority, but not direction, (i) to maintain and administer the Customer

Programs in the ordinary course of business, and (ii) to continue to pay, honor, or otherwise satisfy the processing costs and fees associated with the Customer Programs.

83. The Gift Cards. Gift cards (collectively, the “Gift Cards”) entitle holders to receive the Debtors’ product in exchange for a debit against the Gift Cards. The Joe’s Crab Shack and Brick House Tavern+Tap restaurant concepts each maintain separate gift card stock that is specifically identifiable. Most of the Gift Cards are sold inside the Debtors’ restaurants, although the Debtors use third party vendors, Blackhawk Network and InComm, which sell the Gift Cards in grocery stores and drugstores for a fee (the “Commission Fees”). The Commission Fees are deducted from the gift card sale proceeds. As of June 5, 2017, the outstanding liability on account of the Gift Cards for Joe’s Crab Shack and Brick House was approximately \$4,095,900 and \$378,650, respectively. As of the Petition Date, approximately \$11,000 is owed to Blackhawk Network and \$600 to InComm in Commission Fees. Based on figures from the past 12 months, on average, \$210,000 in Joe’s Crab Shack Gift Cards and \$24,000 in Brick House Gift Cards are redeemed each month. The Debtors anticipate \$890,000 to be redeemed in Gift Cards (\$825,000 in Joe’s Crab Shack Gift Cards and \$65,000 in Brick House Gift Cards) in the summer months (i.e., from the Petition Date to August 31, 2017).

84. The E-mail Marketing Program. The Debtors also rely on marketing promotions via e-mail for the Joe’s Crab Shack restaurant concept (the “E-mail Marketing Program”). The Debtors offer customers who join the e-mail list an opportunity to receive a free appetizer with the purchase of another item (the “Coupon”). No liability is booked on account of a customer signing up for the E-mail Marketing Program and receiving the Coupon.

Debtors' Emergency Motion for Entry of an Interim and Final Order (A) Authorizing the Debtors to use Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (B) Granting Adequate Protection to Pursuant to Sections 361 and 363 of the Bankruptcy Code, and (C) Modifying the Automatic Stay, and (D) Scheduling a Final Hearing Pursuant to Rule 4001(c) of the Federal Rules of Bankruptcy Procedure (the "Cash Collateral Motion")

85. The Debtors, after conducting an interim hearing (the "Interim Hearing") on the motion, seek the entry of an order (a) authorizing the Debtors to use cash collateral, (b) granting adequate protection, and (c) scheduling a final hearing (the "Final Hearing").

86. As outlined above, on August 13, 2014, IRG, certain lenders (the "Lenders"), Credit Suisse AG, Cayman Islands Branch (f/k/a Credit Suisse AG), as administrative agent (the "Agent"), Credit Suisse Securities (USA) LLC and KeyBank Capital Markets, Inc., as joint lead arrangers and joint book runners, and KeyBank National Association, as syndication agent entered into that certain Credit and Security Agreement (the "Credit Agreement"), pursuant to which, the Lenders agreed to make (a) available a \$30,000,000 revolving credit facility, and (b) a \$165,000,000 term loan (the "Loans"). Both the revolving credit facility and the term loan mature on February 13, 2019. At the closing of the Credit Agreement, Parent repaid the balance of its previous secured credit facility using the proceeds from the term loan.

87. The Credit Agreement is guaranteed by certain of Parent's subsidiaries and secured by substantially all present and future assets and a lien on the capital stock or other equity interests of certain Parent's direct and indirect subsidiaries.

88. The Credit Agreement, the guaranty, and all other loan documents evidence or otherwise relating to the Loans are hereinafter referred to collectively as the "Loan Documents." As of the Petition Date, the outstanding principal balance under the Loan Documents was not less than \$133,250,569.16 (the "Prepetition Indebtedness"). As of the Petition Date, the aggregate face amount of outstanding letters of credit was \$12,050,000.

89. In the aggregate, the Loan Documents provide that the Prepetition Indebtedness is secured by security interests and liens upon substantially all of the assets of the Debtors (the “Prepetition Liens”). The assets of the Debtors that are subject to the liens, security interests, and mortgages of the Agent and the Lenders are hereinafter collectively referred to as the “Prepetition Collateral.”

90. Substantially all of the cash held by or otherwise generated by the Debtors’ businesses as of the Petition Date constitutes “cash collateral,” as such term is defined in section 363(a), and is subject to the interest of the Lenders (the “Cash Collateral”).

91. Without the use of the Cash Collateral, the Debtors do not have sufficient access to working capital to operate their businesses in the ordinary course for a period of time sufficient to sell their assets through a plan of liquidation. More specifically, the Debtors’ ability to continue their operations and administer these bankruptcy cases is dependent on their ability to use the Cash Collateral.

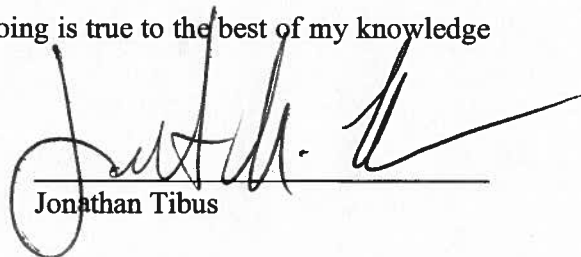
92. Any disruption of the Debtors’ operations would be devastating at this critical juncture. The inability of the Debtors to access the Cash Collateral and to make payments on certain obligations on a timely basis may result in, *inter alia*, (a) the Debtors’ inability to continue the operation of their restaurants, and/or (b) the breakdown of the competitive marketing, auction and sale process designed to maximize the return available to the Debtors’ creditors by and through the sale of substantially all of the Debtors’ assets in these bankruptcy cases. If either of these events were to occur, the impact on the Debtors’ estates would be catastrophic and would result in material harm to all of the Debtors’ creditors and other constituents. Additionally, thousands of employees of the Debtors would immediately lose their

jobs if the Debtors were forced to cease operations due to insufficient liquidity and lack of access to the Cash Collateral.

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Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge
and belief.

Dated: June 6, 2017
Houston, Texas



Jonathan Tibus