

Exhibit A

Revised Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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| <p>In re:</p> <p>FRESH ACQUISITIONS, LLC, <i>et al.</i>,¹</p> <p style="text-align: right;">Debtors.</p> | <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> | <p>Chapter 11</p> <p>Case No. 21-30721 (SGJ)</p> <p>(Jointly Administered)</p> <p>Re: Docket No. 165</p> |
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**ORDER (A) APPROVING
BIDDING PROCEDURES AND CERTAIN BID
PROTECTIONS, (B) SCHEDULING BID DEADLINE,
AUCTION DATE, AND SALE HEARING AND APPROVING
FORM AND MANNER OF NOTICE THEREOF, AND (C) APPROVING
CURE PROCEDURES AND THE FORM AND MANNER OF NOTICE THEREOF**

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe’s Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan’s Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors’ principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio, TX, 78248, United States.

Upon the motion (the “Motion”),² filed by the above-captioned debtors and debtors in possession (the “Debtors”), for entry of an order pursuant to 11 U.S.C. §§ 363 and 365 and rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (a) approving the bidding procedures attached hereto as **Appendix 1** (the “Bidding Procedures”), (b) scheduling the bid deadline, auction date, and sale hearing (the “Sale Hearing”) and approving the form and manner of notice thereof, and (c) approving procedures to cure any default pursuant to section 365(b)(1) of the Bankruptcy Code and the form and manner of notice thereof; and the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion and the Bidding Procedures Hearing was sufficient under the circumstances, and that no other or further notice is required; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors and their estates, and good and sufficient cause having been shown, the Court hereby FINDS as follows:

A. The Debtors have articulated good and sufficient reasons for (i) approving the Bidding Procedures, including their designation of the Stalking Horse Bidder, (ii) approving the manner of notice of the Motion, and establishing the Bid Deadline, the Auction, the Sale Hearing, and the assumption and assignment of the Assumed Contracts and proposed cure relating thereto, and (iii) scheduling the Sale Hearing.

B. The Bidding Procedures are reasonable and appropriate and represent the best method for maximizing the realizable value of the Debtors’ assets in part, in total, or as a going concern transaction.

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

IT IS HEREBY ORDERED THAT:

1. The Motion (as it pertains to approval of the matters set forth herein) is granted as set forth herein. Any objections that have not been previously resolved or withdrawn are overruled.

Notice Procedures

2. Within three (3) business days after entry of this Order, the Debtors shall serve copies of this Order, including (i) a copy of the Bidding Procedures attached hereto as **Appendix 1**, and (ii) the notice of Bid Deadline, Auction, and Sale Hearing substantially in the form attached hereto as **Appendix 2** (the “Sale Notice”) (collectively, the “Bid Package”), via electronic notification, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, upon the following (collectively, the “Bid Notice Parties”): (a) all potential buyers previously identified or solicited by the Debtors or B. Riley and any additional parties who have previously expressed an interest to the Debtors or B. Riley in potentially acquiring the Assets; (b) other potentially interested parties identified by the Debtors or their advisors; (c) the U.S. Trustee; (d) counsel to the DIP Lender; (e) counsel to Arizona Bank & Trust; (f) counsel to the Committee; (g) counterparties to the Debtors’ executory contracts and unexpired leases; (h) any parties that have asserted a lien or security interest against or any other interest in, including, without limitation, preferential purchase rights or rights of first refusal on, any of the Debtors’ assets; (i) any taxing authorities related to the Debtors’ assets; and (j) all parties who have requested notice in this case.³

3. On or before June 25, 2021, the Debtors shall file with the Court an initial schedule of executory contracts and unexpired leases that may be assumed and assigned as part of the Proposed Sale (the “Potential Assumed Contracts”). Concurrently therewith, the Debtors shall

³ All such persons shall be served by electronic mail to the extent the Debtors or their professionals have electronic mail addresses for such parties.

serve a cure notice substantially in the form attached hereto as **Appendix 3** (the “Cure Notice”) upon each counterparty to the Potential Assumed Contracts (each, a “Counterparty”). The Cure Notice shall identify the amounts, if any, that the Debtors believe are owed to each Counterparty to a Potential Assumed Contract in order to cure any defaults that may exist under such contract (the “Cure Amount”). Pursuant to the Bidding Procedures Order, the Cure Notice shall also state or contain: (a) the applicable date, time, and place of the Auction and Sale Hearing, and (b) the date and time by which any objection must be filed and served by the Counterparty with respect to (i) the assumption and assignment of the applicable Potential Assumed Contract on the basis of lack of adequate assurance of future performance under section 365(b)(1) (an “Assignment Objection”) or (ii) the Cure Amount (the “Cure Objection”).

4. Prior to the commencement of the Sale Hearing, and no later than July 22, 2021, the Debtors shall file with the Court a proposed form of the Sale Order and a schedule (the “Assumed Contract Schedule”) of executory contracts and unexpired leases elected to be assumed and assigned to the Successful Bidder (the “Assumed Contracts”). At the Sale Hearing, the Debtors shall seek authority to assume and assign the Assumed Contracts to the Successful Bidder effective as of the closing of the Proposed Sale; *provided, however*, that the Successful Bidder may add or remove any Potential Assumed Contracts from the Assumed Contract Schedule at any time up to the closing of the Proposed Sale. The counterparty to any Potential Assumed Contract that is added or removed from the Assumed Contract Schedule shall be notified of such change by (i) written notice via electronic mail to the Counterparty or its counsel, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, and (ii) the Debtors filing a notice on the docket advising that such Potential Assumed Contract has been added or removed, no later than two (2) business days after such determination.

5. Within two (2) business days of the closing of the Proposed Sale, the Debtors shall file a notice on the docket (i) advising of the sale closing date, and (ii) attaching a schedule listing the contracts and leases that were assumed and assigned to the Successful Bidder. For the avoidance of doubt, nothing herein shall be deemed to extend the Debtors' deadline to assume or reject any of its leases pursuant to section 365(d)(4) of the Bankruptcy Code.

6. Any objections to a proposed Cure Amount (a "Cure Objection") set forth in the Cure Notice must be (a) in writing, (b) state the basis for such objection with specificity, (c) conform to the Bankruptcy Rules and Local Rules of the Northern District of Texas, and (d) be filed no later than **4:00 p.m. Central Time on July 9, 2021** (the "Cure Objection Deadline").

7. If, at any time after service of the Cure Notice and before closing of the proposed Sale, the Debtors identify additional Potential Assumed Contracts not included in the initial Cure Notice, the Debtors shall serve a supplemental Cure Notice on the counterparties to the additional Potential Assumed Contracts and such counterparties shall have until the later of (a) **4:00 p.m. Central Time on July 9, 2021**, or (b) ten (10) days from service of the supplemental Cure Notice to file a Cure Objection to the additional Potential Assumed Contract on the Assumed Contract Schedule.

Bidding Procedures and Auction

8. The Bidding Procedures attached hereto as **Appendix 1** and incorporated herein by reference as if fully set forth herein, are hereby approved and shall govern the bidding and Auction proceedings.

9. The Bid Deadline shall be **July 16, 2021 at 4:00 p.m. Central Time**, Qualified Bidders will be notified by **July 19, 2021**, and deposits will be returned to non-Qualified Bidders by **July 23, 2021**.

10. An Auction is scheduled to take place on **July 20, 2021**, commencing at **10:00 a.m. Central Time**, virtually and/or at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201. As soon as practicable following the conclusion of the Auction (if any), and no later than **July 22, 2021**, the Debtors shall file with the Court a notice setting forth the results of the Auction, including the operative asset purchase agreement (the “APA”) to be approved, with the Assumed Contract Schedule and any other necessary exhibits and schedules, to the extent available.

11. The Debtors are authorized, in the exercise of their business judgment, to terminate the bidding process or the Auction at any time if they determine that continuing the bidding process will not maximize value for the Debtors’ estates, with notice of such termination to be filed of record with the Court.

Sale Hearing and Objections to the Proposed Sale

12. The Sale Hearing shall commence on **August __, 2021 at ____m.** Central Time in the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom #1, Dallas, Texas 75242, at which time the Court shall consider the Motion, the Proposed Sale, and confirm the results of the Auction, if any.

13. Sale Objections. Any objection (a “Sale Objection”) to the Proposed Sale and entry of the Sale Order other than those set forth in Paragraphs 14 and 15 below shall be filed with the Court and served on the parties listed in Paragraph 16 below so as to be actually received no later than **4:00 p.m. Central Time on July 9, 2021** (each such deadline being a “Sale Objection Deadline”).

14. Objections to the Auction Process, Successful Bidder and Adequate Assurance. All objections as to the proceedings of the Auction, the identity of the Successful Bidder, Assignment

Objections, and any changes made to the final form of the Successful Bidder's APA and proposed Sale Order (the "Auction Results Objection" and, collectively with the Cure Objection and Sale Objection, the "Objections") shall be served on the parties listed in Paragraph 16 below so as to be actually received no later than **4:00 p.m. Central Time on July 26, 2021** (the "Auction Results Objection Deadline" and, collectively with the Cure Objection Deadline and the Sale Objection Deadline, the "Objection Deadlines").

15. Any and all Objections must be filed with the Bankruptcy Court and served on the following parties so as to be received prior to the applicable Objection Deadlines: (a) proposed counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201 (Attn: Jason S. Brookner (jbrookner@grayreed.com), Aaron M. Kaufman (akaufman@grayreed.com), and Amber M. Carson (acarson@grayreed.com)); (b) the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Meredyth A. Kippes (meredyth.a.kippes@usdoj.gov)); (c) proposed counsel to any official committee; (d) counsel to AB&T, Engelman Berger, PC, 2800 North Central Avenue, Suite 1200, Phoenix, Arizona 85004 (Attn: Patrick A. Clisham (pac@eblawyers.com)); (e) counsel to the DIP Lender, Carrington Coleman, 901 Main Street, Suite 5500, Dallas, Texas 75202 (Attn: J. Michael Sutherland (msutherland@ccsb.com)); and (f) counsel to the Committee, Dickenson Wright, PLLC, 1850 N. Central Avenue, Suites 1400, Phoenix, Arizona 85004 (Attn: Carolyn J. Johnsen (CJJohnsen@dickinson-wright.com) and William L. Novotny (WNovotny@dickinsonwright.com)).

16. The failure to timely file and serve an Objection by the applicable Objection Deadline shall be a bar to the assertion prior to, at the Sale Hearing, or thereafter, of any such objection to the Motion, the Sale, the Debtors' consummation of the Proposed Sale, or the proposed

assumption and assignment of any executory contracts or unexpired leases. Failure to file and serve an Objection by the applicable Objection Deadline shall be deemed to be consent to the Sale for purposes of Bankruptcy Code section 363(f) and a waiver of any preferential purchase rights or other similar rights to acquire any of the Debtors' assets.

17. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties, the DIP Lender and the Successful Bidder (if different from the DIP Lender), from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment made in open court.

Stalking Horse Bidder

18. VitaNova Brands, LLC (together with its successors and assigns, the "Stalking Horse Bidder") is hereby granted "stalking horse" bidder status in connection with the Auction. The Stalking Horse Bidder shall be deemed a Qualifying Bidder, and its Stalking Horse Bid shall be deemed a Qualifying Bid.

Miscellaneous

19. Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

20. The terms of this Order shall control to the extent of any conflict with the Motion or the attached Bidding Procedures. Notwithstanding the foregoing, and except for any deadlines or court hearing dates, the Debtors (with the written consent of the Consultation Parties) may modify the Bidding Procedures if, in their business judgment, such modifications will maximize the value of the Assets for the benefit of creditors and other stakeholders.

21. The Order shall be binding and inure to the benefit of the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

22. All time periods set forth in this Order or the Bidding Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

23. To the extent that this Order is inconsistent with the Motion or Bidding Procedures, the terms of this Order shall control.

24. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

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Aaron M. Kaufman
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**PROPOSED COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION**

Appendix 1 to Bidding Procedures Order

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

| | | |
|---|---|-------------------------|
| In re: | § | |
| | § | Chapter 11 |
| | § | |
| FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹ | § | Case No. 21-30721 (SGJ) |
| | § | |
| Debtors. | § | (Jointly Administered) |
| | § | |

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be used with respect to: (A) a sale of all or a portion of the assets of the above-captioned debtors and debtors in possession (the “Debtors”), (B) a going concern sale (each, a “Proposed Sale”). The Proposed Sale contemplated by these Bidding Procedures is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court (as defined herein) pursuant to either (x) Sections 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) or (y) a confirmed chapter 11 plan of reorganization.

On May 18, 2020, the Debtors filed their *Motion for (I) an Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof; and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof; and (II) an Order Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of Liens, Claims and Interests* [Docket No. 165] (the “Motion”). On May 25, 2021, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof; and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. ___] (the “Bidding Procedures Order”), approving these Bidding Procedures.

The Bidding Procedures set forth herein describe, among other things, the manner in which bidders and bids become “Qualified Bidders” and “Qualified Bids,” respectively, the receipt and negotiation of bids received, the conduct of any Auction (as defined herein), the ultimate selection of the Successful Bidder (as defined herein) and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”).

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe’s Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan’s Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors’ principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Motion.

I. Key Dates

The Debtors and B. Riley (defined below), have already begun the marketing process. Before being provided with any diligence materials, interested parties must sign and return a confidentiality agreement, substantially in the form attached hereto as **Exhibit 1** (a “Confidentiality Agreement”). **Requests for a Confidentiality Agreement should be made to Mark Shapiro and Joseph Pegnia, B. Riley Advisory Services, mshapiro@brileyfin.com and jpegnia@brileyfin.com.** Once an interested party signs and returns a Confidentiality Agreement, it will receive access to an electronic data room. Further diligence information is set forth in Section VIII, below.

The deadlines and target dates are as follows:

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|--|--------------------------------|
| Virtual Data Room (“VDR”) to be open: | May 21, 2021 |
| Deadline to file a notice of Stalking Horse Bidder: | May 21, 2021 |
| Hearing to approve Bidding Procedures | May 25, 2021 at 9:30 am CT |
| Deadline to file initial Cure Notice: | June 25, 2021 |
| Indication of interest deadline: | June 29, 2021 |
| Deadline for objections to Sale, including Cure Amounts: | July 9, 2021, 4:00 p.m. (CT) |
| Deadline to submit bids | July 16, 2021, 4:00 p.m. (CT) |
| Notifications to Qualified Bidders: | July 19, 2021, 10:00 a.m. |
| Auction: | July 20, 2021, 10:00 a.m. (CT) |
| Deadline to file notice of Auction results: | July 22, 2021 |
| Return of Deposit to non-Qualified Bidders: | July 23, 2021 |
| Deadline to object to Auction results: | July 26, 2021, 4:00 p.m. (CT) |
| Hearing to Approve Auction results: | August 2-6, 2021 |

II. Sale of Assets or Going Concern Transaction

The Debtors are entertaining bids for (a) a going concern transaction, (b) a sale of all or substantially all of their assets, and (c) a sale of such smaller portion of the Debtors’ assets as may be subject to a purchase agreement and as may be bid upon at Auction. The Debtors may enter into one Proposed Sale or several Proposed Sales with multiple parties, depending upon the bids received.

In addition, (i) the Successful Bidder(s) in any Proposed Sale shall assume the assumed liabilities as may be set forth in any purchase agreement and (ii) the Debtors shall assume and assign the assumed contracts to such Successful Bidder(s), as may be set forth in any purchase agreement(s) accepted by the Debtors.

III.
“As Is, Where Is”

Any Proposed Sale(s) entered into by the Debtors shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors or their estates, except as expressly set forth in the applicable APA.

IV.
Free of Any and All Claims and Interests

Subject to approval by the Bankruptcy Court, any Proposed Sale(s) entered into by the Debtors shall be free and clear of all liens, claims, interests, and encumbrances (collectively, the “Claims and Interests”), with such Claims and Interests to attach to the net proceeds of the sale(s).

V.
Participation and Bid Requirements

Any person or entity who wishes to participate in the Bidding Process (a “Potential Bidder”) must become a Qualified Bidder as indicated within the Bidding Procedures.

Following execution of a Confidentiality Agreement, the Debtors will afford each Potential Bidder an opportunity to perform due diligence with respect to their businesses and assets. The Debtors have designated B. Riley Advisory Services (“B. Riley”) to coordinate all reasonable requests for additional information from Potential Bidders and due diligence access. After the Bid Deadline, the Debtors and B. Riley are not required to furnish any information of any kind related to the businesses or the Assets to any person that is not a Qualified Bidder. As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver the following documents, in a form and substance acceptable to the Debtors (the “Required Bid Documents”) before the Bid Deadline to the Debtors’ professionals at the addresses listed in Section VII below:²

² As soon as practicable, the Debtors’ professionals shall disseminate the Required Bid Documents to all Consultation Parties (defined below).

- (a) Evidence of the Potential Bidder's financial ability to close a Proposed Sale, in a form and substance acceptable to the Debtors in their sole discretion, in consultation with Arizona Bank & Trust ("AB&T"), any statutory committee appointed in these Cases (the "Committee" and, collectively with AB&T, the "Consultation Parties")³. Such evidence may take the form of, among other things, current audited financial statements, bank statements, evidence of a non-contingent financing commitment, or such other documentation as the Debtors may accept in their discretion, after consultation with the Consultation Parties;
- (b) A letter stating that the Potential Bidder's offer is irrevocable until immediately following the closing of the Sale and setting forth (i) the nature of the Proposed Sale, whether such is a going concern or asset sale, and which includes the proposed consideration and the liabilities (if any) to be assumed, (ii) any assets expected to be excluded from the Sale, and (iii) the structure and financing of the Proposed Sale (including, but not limited to, the sources of financing);
- (c) A binding, executed, and definitive copy of the form Purchase and Sale Agreement included in Debtors' virtual data room (the "APA"), together with all schedules thereto marked to show changes to the Stalking Horse Bidder's APA and schedules that the Potential Bidder proposes (a "Marked APA"), including the purchase price in U.S. dollars for each asset or group of assets subject to the applicable bid;
- (d) A good faith earnest money cash deposit (the "Deposit") in an amount equal to 10% of the total cash consideration of the of the Proposed Sale to be held in an escrow account to be identified and established by the Debtors;
- (e) Evidence of corporate authority to enter into the Proposed Sale;
- (f) The number of restaurants the Potential Bidder operates and all trade names used;
- (g) An executed Confidentiality Agreement; and
- (g) Any additional information reasonably requested by the Debtors.

VI.

Qualified Bidders and Qualified Bids

A Potential Bidder (i) who delivers the documents described in Section V above, (ii) whose financial information and credit-quality support or enhancement demonstrate the financial capability of such Potential Bidder to consummate the Proposed Sale if selected as the Successful Bidder, (iii) who the Debtors determine is likely (based on availability of financing, experience, and other considerations) to be able to consummate the Proposed Sale within the time frame provided by the APA or otherwise applicable in the above-captioned chapter 11 cases (the "Case"), and (iv) whose bid constitutes a "**Qualified Bid**" pursuant to these Bidding Procedures, shall be deemed a "**Qualified Bidder.**" The Debtors will determine whether a Potential Bidder is a Qualified Bidder after such consultation with the Consultation Parties (defined below). By July

³ The Debtors will consult with AB&T as a Consultation Party only to the extent AB&T is not an active bidding party.

19, 2021, the Debtors will notify Potential Bidders if they are Qualified Bidders, and will provide copies of all Qualified Bids to all parties listed in Section VII below. Notwithstanding the requirements of Section VI, the Stalking Horse Bidder is deemed to be a Qualified Bidder.

A bid will be deemed a “Qualified Bid” and considered by the Debtors only if the bid:

- (a) is on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that are substantially similar to, and are not materially more burdensome or conditional to the Debtors than, those contained in the Stalking Horse Bid;
- (b) contains no contingencies of any type, other than Bankruptcy Court approval of the Proposed Sale and any applicable regulatory conditions;
- (c) is not conditioned upon any bid protections (such as a topping fee, termination fee, expense reimbursement, or similar type of payment);
- (d) contains an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors and their assets and businesses prior to making its offer, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the businesses and assets of the Debtors in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Debtors’ businesses or assets, or the completeness of any information provided in connection therewith or the Auction;
- (e) includes a list of assumed contracts and assumed liabilities (if any), a commitment to provide adequate assurances of future performance to all counterparties to such assumed contracts and/or leases⁴ and consummate the Proposed Sale and the assumption of the assumed liabilities (if any) within seven (7) days after entry of the Sale Order;
- (f) discloses (i) the identity of the Potential Bidder and each entity participating in connection with the Potential Bidder (including the identification of any authorized officers, directors, shareholders and/or the ultimate beneficial owners of the Potential Bidder) and the terms of such participation, and (ii) any other term sheets and other written or oral understandings between the Potential Bidder and its

⁴ Counterparties to any executory contract or unexpired lease that is scheduled to be assumed and assigned under these Bidding Procedures may review adequate assurance information for all Qualified Bidders before the Auction by: (i) contacting the Debtors’ professionals at the addresses in Section VII below; (ii) executed a non-disclosure agreement in a form acceptable to the Debtors, including the form attached hereto as Exhibit I. As soon as practicable after the Debtors’ receipt of such NDA, but no sooner than one business day after the Bid Deadline, the Debtors will send notice of a data room link to all such requesting counterparties. Such link will allow lease and contract counterparties access, on a confidential basis, to certain adequate assurance information for each Qualified Bidder (pursuant to section 365 of the Bankruptcy Code). **BY SUBMITTING A BID, A POTENTIAL BIDDER CONSENTS TO THE DEBTORS PROVIDING SUCH INFORMATION TO CONTRACT AND LEASE COUNTERPARTIES ON A CONFIDENTIAL BASIS**

affiliates on one hand, and any insider (as defined in section 101(31) of the Bankruptcy Code) of the Debtors, on the other;

- (g) is received by the Bid Deadline; and
- (h) contemplates payment in cash, in full, upon the closing of the Proposed Sale, of all secured obligations owed to AB&T and the DIP Lender, and sufficient funds to satisfy all allowed administrative expense claims, unless the Debtors agree otherwise, after consultation with the Consultation Parties and DIP Lender.

Except with respect to the Stalking Horse Bid, all other bids for a Proposed Sale must contemplate payment, in cash, upon the closing of the Proposed Sale, of all obligations owed to AB&T and the DIP Lender, and sufficient funds to satisfy all allowed administrative expense claims, unless the Debtors agree otherwise, after consultation with the Consultation Parties and DIP Lender.

Any bid that is not for cash, and does not otherwise comply with the above requirements, shall not be deemed to be a Qualified Bid.

Notwithstanding the foregoing, the Debtors shall have the right, in their sole discretion, after consultation with the Consultation Parties, to entertain bids that do not conform to one or more of the requirements specified herein and deem such bids to be Qualified Bids. A Qualified Bid will be valued, among other things, based upon factors such as the net value provided by such bid, the likelihood and timing of consummating the Proposed Sale in question, and any other factors that the Debtors may deem relevant to the Proposed Sale.

The Stalking Horse Bidder shall be deemed a Qualified Bidder and shall be permitted to include, as part of its Stalking Horse Bid, a Credit Bid to the extent authorized under the DIP Order.

Between the time the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid until the conclusion of the Auction, except for proposed amendments to increase the consideration contemplated by the Qualified Bid, or otherwise enhance the terms of the Qualified Bid.

The Debtors reserve the right to cancel, and not conduct, the Auction (as defined below) if the Debtors do not receive any Qualified Bids by the Bid Deadline. In such event, the Debtors will file a Notice of No Auction with the Bankruptcy Court.

By submitting a bid, a Potential Bidder warrants and represents that it is a principal acting on its own behalf, and not as a broker, finder, or agent acting on another's behalf. Such Potential Bidder acknowledges that it will not look to the Debtors or B. Riley for the payment of any fee or commission. In addition, the Potential Bidder agrees to be responsible for the payment of any fee, commission, or other compensation payable to any broker, finder, or agent who alleges it has dealt with or through the Potential Bidder.

VII.
Bid Deadline and Bid Recipients

A Qualified Bidder (other than a potential Stalking Horse) who desires to make a bid shall deliver written copies of their bid to each of the following, **no later than 4:00 p.m. Central Time on July 16, 2021** (the “Bid Deadline”):

Debtors’ Counsel:

Jason S. Brookner
Aaron M. Kaufman
Amber M. Carson
Gray Reed
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
akaufman@grayreed.com
acarson@grayreed.com

Debtors’ CRO and Financial Advisor:

Mark Shapiro, Chief Restructuring Officer
Joseph Pegnia
B. Riley Advisory Services
3500 Maple Avenue, Suite 420
Dallas, Texas 75219
Telephone: (972) 794-1056
Email: mshapiro@brileyfin.com
jpegnia@brileyfin.com

Debtors’ Independent Director:

Vineet “Vin” Batra
Soravine Advisors LLC
Telephone: (201) 394-7104
Email: soravineadvisors@gmail.com

AB&T:

Patrick A. Clisham
Engelman Berger, PC
2800 North Central Ave., Ste. 1200
Phoenix, Arizona 85004
Telephone: (602) 222-4968
Facsimile: (602) 222-4999
Email: pac@eblawyers.com

DIP Lender/Stalking Horse Bidder:

J. Michael Sutherland
Carrington, Coleman, Sloman & Blumenthal, L.L.P.
901 Main St., Ste. 5500
Dallas, Texas 75202
Telephone: (214) 855-3096
Email: msutherland@ccsb.com

Committee:

Carolyn J. Johnsen
William L. Novotny
Dickenson Wright, PLLC
1850 N. Central Avenue, Suites 1400
Phoenix, Arizona 85004
Telephone: (602) 285-5006
Fax: (844) 670-6009
Email: CJJohnsen@dickinson-wright.com
WNovotny@dickinsonwright.com

U.S. Trustee:

Meredyth Kippes, Trial Attorney
1100 Commerce Street, Room 976
Dallas, Texas 75242
Telephone: (214) 767-1079
Email: meredyth.a.kippes@usdoj.gov

VIII. **Due Diligence**

Following execution of a Confidentiality Agreement, the Debtors shall afford each interested party an opportunity to perform due diligence with respect to their businesses and assets. Due diligence access may include management presentations as may be scheduled by the Debtors, on-site inspections, and such other matters which an interested party may reasonably request and as to which the Debtors, in their sole discretion, may agree. The Debtors shall designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from interested parties. No due diligence shall continue after the Bid Deadline. The Debtors may, in their discretion, coordinate diligence efforts such that multiple interested parties have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections.

All diligence requests should be made to Mark Shapiro and Joseph Pagnia of B. Riley Advisory Services, mshapiro@brileyfin.com and jpegnia@brileyfin.com.

Each Qualified Bidder shall be deemed to acknowledge and represent that (i) it has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and assets prior to making its offer, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the businesses and assets in making its bid, (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the business or assets, or the completeness of any information provided in connection therewith, the Bidding Process or the Auction (as defined herein), except, as to a Successful Bidder other than the Stalking Horse Bidder, as expressly stated in the definitive agreement with such Successful Bidder approved by the Bankruptcy Court, and (iv) that it has not engaged and will not engage in collusion in connection with the bidding process at any time.

IX. **Stalking Horse Designation**

The Debtors have selected their DIP Lender VitaNova Brands, LLC, or its designee, to serve as its stalking horse bidder (the "Stalking Horse Bidder") with its relevant bid being set forth in the Asset Purchase Agreement filed at Docket No. 178 in the Bankruptcy Cases (the "Stalking Horse Bid").

X. **Auction**

If the Debtors receive more than one Qualified Bid, an auction (the "Auction") will be conducted, upon notice to all Qualified Bidders who have submitted Qualified Bids, at **10:00 a.m. Central Time on July 20, 2021**, at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201, in accordance with the following procedures:

- (a) Only the following persons shall be entitled to attend the Auction: (i) professionals and principals or members of the Debtors, (ii) counsel to, and business persons from,

AB&T, (iii) counsel to, and business persons from, the DIP Lender, (iv) counsel to the Committee and one Committee representative, (vi) the United States Trustee for the Northern District of Texas (the “U.S. Trustee”), and (vii) professionals and principals or members of any Qualified Bidder who has timely submitted a Qualified Bid (collectively, the “Participating Parties”). Only Qualified Bidders will be entitled to make any Subsequent Bids (as defined below) at the Auction.

(b) At the commencement of the Auction, Qualified Bidders in attendance will be informed of which Qualified Bid or combination of Qualified Bids the Debtors believes is the highest or otherwise best offer(s), and from which bidding will begin.

(c) All Participating Parties shall be entitled to be present for all Subsequent Bids (as defined below) with the understanding that the true identity of each bidder shall be fully disclosed to all other bidders and that all material terms of each Subsequent Bid shall be fully disclosed to all Participating Parties throughout the entire Auction.

(d) The Debtors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make Subsequent Bids) for conducting the Auction, *provided that* such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and after consulting with the Consultation Parties regarding the same.

(e) Bidding at the Auction shall begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids as identified by the Debtors at the onset of the Auction (the “Baseline Bid”). The initial overbid must exceed the Baseline Bid by at least \$50,000. Thereafter, the minimum bidding increment (the “Subsequent Bids” and each a “Subsequent Bid”) shall be \$50,000 (which increments may be increased or decreased by the Debtors, in their discretion, in consultation with the Consultation Parties). The Auction shall continue in one or more rounds of bidding, and each Qualified Bidder must present a Subsequent Bid during such round. The Auction shall conclude after each Participating Party has had the opportunity to submit one or more additional Subsequent Bids with full knowledge and confirmation of the then-existing highest bid or bids. If a Qualified Bidder, having the opportunity to do so, declines to make a Subsequent Bid during a round, such Qualified Bidder will be deemed to have withdrawn from the Auction.

The Debtors reserve the right, in the exercise of their business judgment in consultation with the Consultation Parties and the DIP Lender, to adjourn the Auction at one or more times to, among other things (i) facilitate discussions among the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) allow Qualified Bidders the opportunity to provide the Debtors with such additional information or evidence, as the Debtors may require in the exercise of their business judgment, that the Qualified Bidder has sufficient resources and sufficient non-contingent debt and/or equity funding commitments to consummate the Proposed Sale at the then-prevailing Subsequent Bid amount.

The Debtors shall maintain a transcript of the proceedings at the Auction, including the Baseline Bid, all Subsequent Bids, and the Successful Bid (as defined below).

XI.

Closing of Auction and Selection of Successful Bid

The Auction shall continue until there is only one bid or combination of bids that the Debtors determines, in their business judgment, after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid for a Proposed Sale or multiple Proposed Sale(s), after taking into account factors such as the speed and certainty of consummating the transaction(s) (each such bid being the “Successful Bid” and the bidder making such bid, the “Successful Bidder”). The Debtors shall file a notice of Successful Bid identifying the Successful Bidder and including a copy of the Successful Bid as soon as practicable after conclusion of the Auction. Such notice will include a copy of the final APA, with any non-confidential schedules, including the Assumed Contract Schedule.

All bidders will be deemed to have consented to the core and exclusive jurisdiction of the Bankruptcy Court.

XII.

Back-Up Bidder

If there is an Auction, the Qualified Bidder that submits the second highest Bid at the Auction shall be required to serve as the back-up bidder (the “Back-Up Bidder”) and keep its last Bid (the “Back-Up Bid”) open and irrevocable until the closing of the Proposed Sale with the Successful Bidder (the “Outside Back-Up Date”). If, after the Sale Hearing but prior to the Outside Back-Up Date for a Proposed Sale, the Successful Bidder fails to consummate or proceed with the relevant Proposed Sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to have the new Successful Bid, and the Debtors will be authorized, without further order of the Bankruptcy Court, to consummate the Proposed Sale with the Back-Up Bidder. The Debtors will provide notice to the Consultation Parties and the DIP Lender of any failure by the Successful Bidder to close the Proposed Sale and the election to proceed to close a Proposed Sale with the Back-Up Bidder.

XIII.

Right to Credit Bid

Any creditor that has a valid, perfected, unavoidable, and enforceable security interest (a “Security Interest”) in the Debtors’ assets (any such creditor, a “Secured Creditor”), which Security Interest is not subject to any contest or dispute in these chapter 11 cases or otherwise, may make one or more credit bids for all or any portion of the assets in which such Secured Creditor has a Security Interest at the Auction, subject to the requirements of section 363(k) of the Bankruptcy Code (a “Credit Bid”). In order to qualify to Credit Bid, a Secured Creditor, other than the Stalking Horse Bidder, (i) must be a Qualified Bidder and a Credit Bid must qualify as a Qualified Bid, and (ii) must have its Security Interests allowed prior to submitting a Credit Bid. The Stalking Horse Bidder shall be deemed a Qualified Bidder to the extent of its allowed secured claims described in Paragraph 6 of the DIP Order with respect to the DIP Collateral (as defined in Paragraph 6 of the DIP Order), and shall be permitted, but not have the obligation, to submit a Credit Bid for such DIP Collateral.

XIV.

The Sale Hearing and Return of Deposits

In the event one or more Proposed Sales are accepted by the Debtors, a hearing to approve the Sale(s) will take place before the Honorable Stacey G.C. Jernigan, United States Bankruptcy Judge, on August __, 2021 at _____.m. Central Time, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Earle Cabell Federal Building, 1100 Commerce Street, Dallas, Texas 75242. The Sale Hearing may be adjourned or rescheduled by the Debtors without notice other than by an announcement made at the Sale Hearing.

The Debtors will not be bound by a Successful Bid for a Proposed Sale or a Back-Up Bid for a Proposed Sale unless and until the Bankruptcy Court has approved the same. Following Bankruptcy Court approval of a Proposed Sale with the Successful Bidder, if the Successful Bidder fails to consummate the Proposed Sale for any reason, the Back-Up Bidder will be deemed to be the Successful Bidder and the Debtors will enter into a Sale with the Back-Up Bidder on the terms of the Back-Up Bid without any further order of the Bankruptcy Court, and the Debtors may pursue any and all available remedies against the Successful Bidder in connection with its failure to consummate the Sale.

The Deposit (together with interest, if any, thereon) of the Back-Up Bidder for a Proposed Sale will not be returned until two (2) business days following the Outside Back-Up Date. The Deposit (together with interest, if any, thereon) of all other Qualified Bidders will be returned within 48 hours of the Auction concluding. The Deposit of the Successful Bidder (together with interest, if any, thereon) shall be applied against the payment of the Proposed Sale consideration upon the closing of the Sale. In the event a Bidder fails to close as a result of its own default, its Deposit shall be released to, and retained by, the Debtors.

Deposits made by Potential Bidders who are not determined to be Qualified Bidders will be returned within five (5) business days after the Bid Deadline.

XV.

Reservation of Rights and Fiduciary Obligation

Notwithstanding any term to the contrary herein, the Debtors, in consultation with the Consultation Parties and the DIP Lender, reserve the right to: (i) modify these Bidding Procedures at any time; (ii) reject at any time, any bid that is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA; or (c) contrary to the best interests of the Debtors, their estates, and creditors as determined by the Debtors after consultation with the Consultation Parties and the DIP Lender; and (iii) pursue a sale or other transaction through a chapter 11 plan.

Nothing in these Bidding Procedures shall require the Debtors, the board of directors or similar governing body of the Debtors, or any individual board member or officer of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures or the Auction, to the extent such persons or entities determine, on the advice of counsel, that taking or refraining from taking such action, is required to comply with applicable law or its fiduciary obligations.

Exhibit 1 to Bidding Procedures
Form of Confidentiality Agreement

May 24, 2021

PRIVATE AND CONFIDENTIAL

Via email to: -----

Re: *In re Fresh Acquisitions, LLC, et al.*, Case No. 21-30721 (SGJ) (Bankr. N.D. Tex.)

Ladies and Gentlemen:

You have expressed interest in a potential transaction (a “**Transaction**”) with Fresh Acquisitions, LLC and its affiliated debtors and debtors in possession (collectively, the “**Debtors**” or the “**Company**”) in the above-referenced chapter 11 cases (collectively, the “**Case**”). In connection with a potential Transaction, and for no other purposes, the Company is prepared to make available to you certain information concerning the business, operations and assets of the Company, on the terms set forth in this letter agreement (this “**Agreement**”).

As a condition to such information being furnished to you and your directors, officers, employees, agents or advisors (including without limitation, your attorneys, accountants, bankers and financial advisors) (collectively, “**Representatives**”), you agree to treat any information concerning the Company (whether prepared by the Company, its advisors or otherwise and irrespective of the form of communication) which is furnished to you or to your Representatives by or on behalf of the Company (herein collectively referred to as the “**Evaluation Material**”) in accordance with the provisions of this Agreement.

The term “**Evaluation Material**” shall mean any data, reports, records or materials or other information which relates to past, present or future business activities of the Company or its customers that is (i) not publicly available as of the date of this Agreement or thereafter, (ii) not already in your possession at the time of disclosure, and (iii) not independently and rightfully disclosed to you by a third party who did not acquire such information directly or indirectly from the Company on a confidential basis.

You hereby agree that you and your Representatives shall use the Evaluation Material solely for the purpose of evaluating a possible Transaction between you and the Company. You further agree that the Evaluation Material will be kept confidential and that you and your Representatives will not disclose any of the Evaluation Material in any manner whatsoever; *provided, however*, that (i) you may make any disclosure of such information to which the Company gives its prior written consent and (ii) any such information may be disclosed to your Representatives who need to know such information for the purpose of evaluating a possible Transaction with the Company and who agree to keep such information confidential pursuant to the terms of this Agreement. You shall be responsible for any breach of this Agreement by any of your Representatives by virtue of any prohibited or unauthorized disclosure or use of the Evaluation Material. You will exercise such precautions and take such measures as are reasonable in the circumstances to prevent improper use or disclosure of Evaluation Material by such persons, and the Company shall be a third party beneficiary of the confidentiality obligations of such persons to you.

You agree that, without the prior written consent of the Company, you and your Representatives will not disclose to any person the fact that the Evaluation Material has been made available to you, that discussions or negotiations are taking place concerning a possible Transaction involving the Company, or any of the terms, conditions or other facts with respect thereto (including the status thereof).

You further agree not to contact any employees, landlords, lenders, suppliers, or other creditors of the Company regarding a possible Transaction or the Evaluation Materials without the Company’s prior written consent, and that all communications regarding a possible Transaction with the Company, requests for additional information and questions regarding procedures with respect to a possible Transaction will be first submitted or directed to B. Riley Advisory Services (“**B. Riley Advisory**”) and not to the Company or its Representatives.

In the event that you or any of your Representatives are requested or required to disclose any of the Evaluation Material in legal proceedings, subpoena, civil investigative demand or other similar process, you shall provide the Company with prompt written notice of any such request or requirement so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event such protective order or other remedy is not obtained, or the Company waives compliance with the provisions hereof, you agree to (i) furnish only that portion of the Evaluation Material for which the Company has waived compliance or for which you are advised by counsel is legally required and (ii) exercise your best efforts to obtain assurance that the Evaluation Material will be accorded such confidential treatment.

At any time upon the written request (email is sufficient) of the Company for any reason, you will, and will direct your Representatives to, promptly deliver to the Company or at your sole option destroy all Evaluation Material (and all copies thereof) in your possession or under your reasonable control. Upon written request of the Company, you shall confirm in writing to the Company (email is sufficient) that destruction has taken place. Notwithstanding anything herein to the contrary, you and your Representatives may retain Evaluation Material as required by Law or internal document retention policies. Notwithstanding the return or destruction of the Evaluation Material, you and your Representatives will continue to be bound by your obligations of confidentiality and other obligations hereunder for of the term of this Agreement.

You understand and acknowledge that the furnishing of the Evaluation Materials to you does not constitute a representation of any kind as to the accuracy or completeness of such information. None of the Company, B. Riley Advisory, nor any of their respective Representatives makes any express or implied representation or warranty as to the accuracy or completeness of the Evaluation Material. You agree that, if you determine to engage in a Transaction with the Company, your determination will be based solely on the terms of such definitive agreement and on your own investigation, analysis and assessment of the Company and the Transaction.

You agree that unless and until a definitive agreement regarding a Transaction has been executed, neither the Company nor you will be under any legal obligation of any kind whatsoever with respect to such a Transaction by virtue of this Agreement except for the matters specifically agreed to herein, and you hereby waive, in advance, any claims (including breach of contract) in connection with any possible Transaction with the Company unless and until you shall have entered into a final definitive agreement.

It is further understood and agreed that money damages will not be a sufficient remedy for any breach of this Agreement by you or any of your Representatives and that the Company shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by you of this Agreement, but shall be in addition to all other remedies available at law or equity to the Company.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to such state's principles of conflicts of laws.

This Agreement will terminate upon (a) the closing of the potential Transaction between the parties, or (b) the two-year anniversary of the date of this Agreement, whichever is earlier.

This terms of this Agreement may only be waived, amended or modified by an written instrument signed by the parties hereto.

Any notices required to be given hereunder shall be via email, as follows:

If to the Company:

B. Riley Advisory Services
3500 Maple Avenue, Suite 420
Dallas, Texas 75219
Attention: Mark Shapiro and Joe Pegnia
Email: mshapiro@brileyfin.com
jpegnia@brileyfin.com

With a copy to:

Gray Reed & McGraw
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Attention: Jason S. Brookner
Email: jbrookner@grayreed.com

If to -----:

[to come]

With a copy to:

[to come]

Please confirm your agreement with the foregoing by signing and returning one copy of this Agreement to the undersigned, whereupon this Agreement shall become a binding agreement between you and the Company. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[Signature Page Follows]

Sincerely,

B. Riley Advisory Services
as Agent for and on behalf of the Company

By: _____
Name:
Title:

[INSTITUTION]

By: _____
Name:
Title:

Appendix 2 to Bidding Procedures Order

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

| | | |
|---|---|-------------------------|
| In re: | § | |
| | § | Chapter 11 |
| FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹ | § | |
| | § | Case No. 21-30721 (SGJ) |
| Debtors. | § | (Jointly Administered) |
| | § | |

NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that on May 18, 2021, the Debtors filed its *Motion for (I) an Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof; and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof; and (II) an Order Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of Liens, Claims and Interests* [Docket No. 165] (the “Motion”).

PLEASE TAKE FURTHER NOTICE that on May 25, 2021, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof; and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. ___] (the “Bidding Procedures Order”) approving these Bidding Procedures approving certain bidding procedures attached thereto as Appendix 1.

PLEASE TAKE FURTHER NOTICE that all interested parties are invited to seek to become a Qualified Bidder and submit a Qualified Bid to purchase all or a portion of the Debtors’ businesses and assets in accordance with the terms of the Bidding Procedures Order and the bidding procedures. The deadline for Potential Bidders to submit Qualified Bids is **July 16, 2021 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, unless cancelled, an Auction will take place on July 20, 2021 commencing at 10:00 a.m. Central Time at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201. The Auction will proceed, and be conducted, pursuant to the terms of the Bidding Procedures.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe’s Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan’s Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors’ principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

PLEASE TAKE FURTHER NOTICE that a hearing on the sale of the Debtors' assets, including the assumption and assignment of any executory contracts (the "Sale Hearing"), will take place on **August __, 2021, at _____m. Central Time** in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242. Unless otherwise notified, the Sale Hearing will be conducted remotely using the Court's WebEx system by clicking on the following link: <https://us-courts.webex.com/meet/jerniga>. Parties are encouraged to review the Court's WebEx Hearing Instructions prior to attending any such hearing. As set forth in the Bidding Procedures, the Auction and the Sale Hearing may be cancelled, with a notice of cancellation to be filed by the Debtors with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that any objections, except Auction Results Objections (as defined in the Bidding Procedures Order) to the Motion or the Proposed Sale (a "Sale Objection") shall be filed with the Bankruptcy Court and served on the following parties so as to be actually received no later than **4:00 p.m. Central Time on July 9, 2021** (the "Sale Objection Deadline"): (a) proposed counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201 (Attn: Jason S. Brookner (jbrookner@grayreed.com), [Aaron M. Kaufman \(akaufman@grayreed.com\)](mailto:Aaron.M.Kaufman@grayreed.com), and Amber M. Carson (acarson@grayreed.com)); (b) the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Meredyth A. Kippes (meredyth.a.kippes@usdoj.gov)); (c) proposed counsel to the Creditors' Committee, if any; (d) counsel to AB&T, Engelman Berger, PC, 2800 North Central Avenue, Suite 1200, Phoenix, Arizona 85004 (Attn: Patrick A. Clisham (pac@eblawyers.com)); (e) counsel to the DIP Lender, Carrington Coleman, 901 Main Street, Suite 5500, Dallas, Texas 75202 (Attn: J. Michael Sutherland (msutherland@ccsb.com)) and (f) counsel to the Committee, Dickenson Wright, PLLC, 1850 N. Central Avenue, Suites 1400, Phoenix, Arizona 85004 (Attn: Carolyn J. Johnsen (CJJohnsen@dickinson-wright.com) and William L. Novotny (WNovotny@dickinsonwright.com)). Auction Results Objections shall be filed with the Bankruptcy Court and served on the same parties so as to be actually received no later than **4:00 p.m. Central Time on July 26, 2021** (the "Auction Results Deadline").

PLEASE TAKE FURTHER NOTICE that the failure to timely file and serve a Sale Objection by the Sale Objection Deadline shall be a bar to the assertion prior to, at the Sale Hearing, or thereafter, of any such objection to the Motion, the Sale, the Debtors' consummation of the Proposed Sale, or the proposed assumption and assignment of any executory contracts or unexpired leases. Failure to file and serve a Sale Objection by the Sale Objection Deadline shall be deemed to be consent to the Sale for purposes of Bankruptcy Code section 363(f) and a waiver of any preferential purchase rights or other similar rights to acquire any of the Debtors' assets.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed sale(s), including the Bidding Procedures Order (and attached Bidding Procedures) approved by the Bankruptcy Court, are available for free at www.bmcgroup.com/fresh, or on the Bankruptcy Court's website (for a fee) at www.txnb.uscourts.gov.

Respectfully submitted this ___th day of ____, 2021.

GRAY REED

By: _____

Jason S. Brookner
Texas Bar No. 24033684
Aaron M. Kaufman
Texas Bar No. 24060067
Amber M. Carson
Texas Bar No. 24075610

1601 Elm Street, Suite 4600
Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com
akaufman@grayreed.com
acarson@grayreed.com

**PROPOSED COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION**

CERTIFICATE OF SERVICE

I certify that on _____, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

Jason S. Brookner

Appendix 3 to Bidding Procedures Order

Cure Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

| | | |
|---|---------------------------------|---|
| In re: FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹ Debtors. | § § § § § § § | Chapter 11 Case No. 21-30721 (SGJ) (Jointly Administered) |
|---|---------------------------------|---|

NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES SUBJECT TO POSSIBLE ASSUMPTION AND ASSIGNMENT AND PROPOSED CURE AMOUNTS

PLEASE TAKE NOTICE that pursuant to the terms of that certain *Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof; and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof* [Docket No. ___] (the “Bidding Procedures Order”), the above-captioned debtors and debtors in possession (the “Debtors”), may hold an Auction for the sale of substantially all of its assets on July 20, 2021 at the Dallas office of Gray Reed.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures Order, the Debtors hereby provide its notice (the “Cure Notice”) of proposed cure amounts (each a “Cure Amount” and collectively, the “Cure Amounts”) for all contracts and leases subject to potential assumption and assignment to the successful bidder(s) at Auction.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit 1** are schedules of the executory contracts and unexpired leases (collectively, the “Potential Assumed Contracts and Leases”) that may be included as part of the sale of the Debtors’ assets and the proposed Cure Amount for each such lease or contract.

PLEASE TAKE FURTHER NOTICE that any objection to any proposed Cure Amount for any Potential Assumed Contract and Lease must be (a) in writing, (b) state the basis for such objection with specificity, (c) conform to the Bankruptcy Rules and Local Rules of the Northern District of Texas, and (d) be filed so as to be actually on or before **4:00 p.m. Central Time on July 9, 2021**. Any other objection to the proposed assumption and assignment of the Potential Assumed Contracts and Leases, including, without limitation, on adequate assurance grounds, must be (a) in writing, (b) state the basis for such objection with specificity, (c) conform to the

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe’s Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan’s Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors’ principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

Bankruptcy Rules and Local Rules of the Northern District of Texas, and (d) be filed so as to be actually on or before **4:00 p.m. Central Time on July 26, 2021.**

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order, the Cure Amounts set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. If an objection to the assumption and assignment of the Potential Assumed Contracts and Leases or to the Cure Notice and any Cure Amount cannot be resolved consensually among the parties, the Court will set a hearing to determine such matters as soon thereafter as is practicable, and the Debtors is permitted to give notice only to the objecting party and those parties who have filed a notice of appearance. The failure to timely file and serve an objection shall be deemed consent to the assumption and assignment of the Potential Assumed Contracts and Leases and to the Cure Amounts, and any and all objections thereto shall be deemed forever released and waived.

PLEASE TAKE FURTHER NOTICE that the inclusion of any contracts or leases on **Exhibit 1** hereto shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

Respectfully submitted this __ day of ____ 2021.

GRAY REED

By: _____
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**PROPOSED COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION**

CERTIFICATE OF SERVICE

I certify that on _____, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas. The Noticing Agent will provide a supplemental certificate of service upon completion of such service.

Jason S. Brookner

Exhibit 1

Schedule of Executory Contracts and Unexpired Lease