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

**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 REVISED PROPOSED ORDER
GRANTING DEBTORS’ APPLICATION FOR ENTRY
OF AN ORDER AUTHORIZING THE EMPLOYMENT OF HILCO REAL
ESTATE, LLC AS REAL ESTATE CONSULTANT, EFFECTIVE AS OF APRIL 21, 2021**

PLEASE TAKE NOTICE that on May 21, 2021, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Application for Entry of an Order Authorizing the Employment of Hilco Real Estate, LLC as Real Estate Consultant, Effective as of*

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.

April 21, 2021 [Docket No. 177] (the “Application”). A proposed order granting the Motion was attached thereto as Exhibit A (the “Original Proposed Order”).

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is a revised proposed *Order Granting Debtors’ Application for Entry of an Order Authorizing the Employment of Hilco Real Estate, LLC as Real Estate Consultant, Effective as of April 21, 2021* (the “Revised Proposed Order”).

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit B** is a redline of the Revised Proposed Order marked against the Original Proposed Order.

[Remainder of page intentionally left blank]

Respectfully submitted this 22nd day of June, 2021.

GRAY REED

By: /s/ Jason S. Brookner

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CERTIFICATE OF SERVICE

I certify that on June 22nd, 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.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Revised Proposed Order

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

<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. 177</p>
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**ORDER GRANTING DEBTORS’ APPLICATION FOR ENTRY
OF AN ORDER AUTHORIZING THE EMPLOYMENT OF HILCO REAL
ESTATE, LLC AS REAL ESTATE CONSULTANT, EFFECTIVE AS OF APRIL 21, 2021**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) (i) authorizing the retention and employment of Hilco Real Estate, LLC (“Hilco”) and (ii) granting related relief; all

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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

as more fully set forth in the Application; and upon the Baker Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Debtors are authorized to employ Hilco as their real estate consultant, effective as of April 21, 2021, under the terms and conditions set forth in the Engagement Agreements attached hereto as Exhibit 1, except as modified in this Order.
3. Except as otherwise provided herein, the terms of Hilco's employment and compensation as set forth in the Engagement Agreements, including the Fee and Expense Structure and the indemnification provisions, are approved pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, and Hilco shall be compensated, reimbursed, and indemnified pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms of, and at the times specified

in, the Engagement Agreements, except as modified herein. For the avoidance of doubt and notwithstanding anything to the contrary herein, the Debtors are authorized to pay the Initial Fees under the Engagement Agreements in the aggregate amount of \$30,000 upon entry of this Order, subject to paragraph 9 of this Order.

4. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any order of this Court (including any order approving interim compensation procedures), or any other guideline regarding the submission and approval of fee applications, Hilco's professionals shall be excused from (a) submitting monthly fee statements and interim fee applications as set forth in Bankruptcy Rule 2016 and (b) maintaining time records in connection with the Services to be rendered pursuant to the Engagement Agreements.

5. Upon the earlier of the completion of its Services and the termination or expiration of the Engagement Agreements, Hilco shall file a final fee application with a summary of fees earned and expenses incurred along with a summary of the fees and expenses paid to date to obtain final approval of its fees and expenses.

6. In addition, Hilco may submit invoices to the Debtors, counsel to the Debtors, counsel to the Committee, counsel to any other statutory committee, and the U.S. Trustee, for the payment of compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases in accordance with the terms of the Engagement Agreements when such compensation becomes due and owing and such expenses are incurred.

7. The Debtors, counsel to the Debtors, counsel to the Committee, any other statutory committee, and the U.S. Trustee shall have fifteen (15) days to review and dispute any such invoice submitted by Hilco, and if no such disputes are received, without any further order of the Court, the Debtors shall be authorized to pay the invoices in full in accordance with the terms of the

Engagement Agreements. If an objection is received by Hilco, the Debtors shall withhold the payment of the portion of the payment that is objected to and promptly pay the remainder. All objections that are not resolved shall be preserved and presented to the Court for determination.

8. The payment of all fees and reimbursement of expenses pursuant to the Engagement Agreements shall be free and clear of all liens, claims and encumbrances; *provided, however*, that such fees and reimbursements of expenses shall be subject to disgorgement in the event that the Court does not approve Hilco's final fee application.

9. The fees payable to Hilco pursuant to the Engagement Agreements shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code; *provided, however*, that notwithstanding the foregoing, the U.S. Trustee and the Court may review the reasonableness of Hilco's fees requested in the final fee application under section 330 of the Bankruptcy Code. This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee or the Court to challenge the reasonableness of Hilco's fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding on the U.S. Trustee or the Court, on appeal or otherwise, with respect to the reasonableness of Hilco's fees.

10. The Debtors shall indemnify Hilco under the terms of the Engagement Agreements, as modified pursuant to this Order. Hilco shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreements for services other than the Services provided under the Engagement Agreements, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court. Notwithstanding anything to

the contrary herein or in the Engagement Agreements, the indemnification approved by this Order shall only be to the extent allowed under Fifth Circuit authority, including *Bank of N.Y. Trust Co. v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 253 (5th Cir. 2009).

11. Notwithstanding anything to the contrary in the Engagement Agreements, the Debtors shall have no obligation to indemnify Hilco, or provide contribution or reimbursement to Hilco, for any claim or expense that is judicially determined (the determination having become final) to have arisen solely from Hilco's gross negligence, willful misconduct, fraud, bad faith, self-dealing, or breach of fiduciary duty (if any).

12. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

13. To the extent of any inconsistency between the Engagement Agreements and this Order, this Order shall control.

14. The Debtors and Hilco are authorized to take all steps necessary or appropriate to carry out the provisions of this Order.

15. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

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

END OF ORDER

Submitted by:

Jason S. Brookner

Texas Bar No. 24033684

Aaron M. Kaufman

Texas Bar No. 24060067

Amber M. Carson

Texas Bar No. 24075610

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Exhibit B

Redline

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

<p>In re:</p> <p>FRESH ACQUISITIONS, LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	§ § § § § § § § §	<p>Chapter 11</p> <p>Case No. 21-30721 (SGJ)</p> <p>(Jointly Administered)</p> <p>Re: Docket No. 177</p>
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**ORDER GRANTING DEBTORS’ APPLICATION FOR ENTRY
OF AN ORDER AUTHORIZING THE EMPLOYMENT OF HILCO REAL
ESTATE, LLC AS REAL ESTATE CONSULTANT, EFFECTIVE AS OF APRIL 21, 2021**

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as more fully set forth in the Application; and upon the Baker Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Debtors are authorized to employ Hilco as their real estate consultant, effective as of April 21, 2021, under the terms and conditions set forth in the Engagement Agreements attached hereto as Exhibit 1, except as modified in this Order.
3. Except as otherwise provided herein, the terms of Hilco's employment and compensation as set forth in the Engagement Agreements, including the Fee and Expense Structure and the indemnification provisions, are approved pursuant to ~~section~~sections 327(a) and 328(a) of the Bankruptcy Code, and Hilco shall be compensated, reimbursed, and indemnified pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms of,

and at the times specified in, the Engagement Agreements, [except as modified herein](#). For the avoidance of doubt and notwithstanding anything to the contrary herein, the Debtors are authorized to pay the Initial Fees under the Engagement Agreements in the aggregate amount of \$30,000 upon entry of this Order, [subject to paragraph 9 of this Order](#).

4. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any order of this Court (including any order approving interim compensation procedures), or any other guideline regarding the submission and approval of fee applications, Hilco's professionals shall be excused from (a) submitting monthly fee statements and interim fee applications as set forth in Bankruptcy Rule 2016 and (b) maintaining time records in connection with the Services to be rendered pursuant to the Engagement Agreements.

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10. The Debtors shall indemnify Hilco under the terms of the Engagement Agreements, as modified pursuant to this Order. Hilco shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreements for services other than

the Services provided under the Engagement Agreements, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court. Notwithstanding anything to the contrary herein or in the Engagement Agreements, the indemnification approved by this Order shall only be to the extent allowed under Fifth Circuit authority, including *Bank of N.Y. Trust Co. v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 253 (5th Cir. 2009).

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13. To the extent of any inconsistency between the Engagement Agreements and this Order, this Order shall control.

14. The Debtors and Hilco are authorized to take all steps necessary or appropriate to carry out the provisions of this Order.

15. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

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

END OF ORDER

Submitted by:

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Input:	
Document 1 ID	netdocuments://4844-2946-6860/1
Description	Furr's - ORDER on Hilco Employment Application
Document 2 ID	netdocuments://4844-2946-6860/3
Description	Furr's - ORDER on Hilco Employment Application
Rendering set	Standard

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

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Moved to	0
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Format changed	0
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