



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 24, 2021

  
United States Bankruptcy Judge

**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> , <sup>1</sup>	§	Case No. 21-30721 (SGJ)
Debtors.	§	(Jointly Administered)
	§	<b>Re: Docket No. 177</b>

**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")<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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 Court reserves the right, after notice and a hearing, to require VitaNova Brands, LLC ("VitaNova") to reimburse the Debtors and their bankruptcy estates for some or all of the allowed administrative expenses paid to Hilco pursuant to this Order or any further orders of the Court, if the following conditions are met: (i) VitaNova or one or more of its affiliates becomes the successful bidder for all or substantially all of the Debtors' assets; (ii) a motion for reimbursement from VitaNova is filed by the Debtors, the Committee or the U.S. Trustee within 14 days following the entry of an order approving Hilco's final fee application pursuant to Paragraph 9 above; and (iii) the movant demonstrates, after notice and a hearing, that the benefits to VitaNova from Hilco's services were greater than the benefits to the Debtors' and their bankruptcy estates. Notwithstanding the foregoing reservation, nothing in this Paragraph 12 shall be construed as limiting or modifying the Court's approval of Hilco's employment, its compensation, and the procedures governing payment of Hilco's compensation under the preceding paragraphs of this Order.

13. 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.

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

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

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

17. 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

**GRAY REED**

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akaufman@grayreed.com  
acarson@grayreed.com

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

**Exhibit 1**

**Engagement Agreements**

**REAL ESTATE CONSULTING AND ADVISORY SERVICES AGREEMENT**

This Agreement is entered into effective as of March 12, 2021, by and between Hilco Real Estate, LLC (“Hilco”) and Buffets, LLC (“Buffets”), on behalf of itself and its subsidiary (the “Subsidiaries”) entities, that are owners of the leasehold interests or otherwise parties to the Leases (as defined herein) set forth on Exhibit A (Buffets and the Subsidiaries collectively, the “Company”).

Recitals:

WHEREAS, the Company is the owner of the leasehold interests listed on Exhibit A attached hereto (each a “Lease” and collectively, the “Leases”);

WHEREAS, the Company plans to file petition to seek protections under Chapter 11 of title 11, United States Code (the “Bankruptcy Case”); and

WHEREAS, the Company seeks to engage Hilco in the Bankruptcy Case to provide certain consulting services in connection with the Leases as provided herein.

Agreement:

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Hilco agree as follows:

- 1) Consulting and Advisory Services. Hilco shall provide the consulting and advisory services described below (collectively, the “Services”) to the Company with respect to the Leases:
  - a) Meet with the Company to ascertain the Company’s goals, objectives and financial parameters;
  - b) Mutually agree with the Company with respect to a strategic plan for restructuring, assuming, assigning, rejecting, and/or shortening term of the Leases (the “Strategy”);
  - c) On the Company’s behalf, negotiate the terms of restructuring and term shortening agreements with the landlords under the Leases, in accordance with the Strategy;
  - d) Provide written reports periodically to the Company regarding the status of such negotiations;
  - e) Assist the Company in closing the pertinent Lease restructuring and term agreements; and
  - f) Providing testimony with respect to the foregoing, as needed and requested by the Company.

The Company may add additional leases to Exhibit A with the consent of Hilco (which consent may be provided in email) in which case such additional leases shall be considered “Leases” for



purposes of this Agreement and the Company and Hilco shall mutually agree on a Strategy covering the additional leases.

2) Term and Termination.

- a) Term. The term of this Agreement shall commence upon the execution hereof and shall expire on the date that is the earlier of (i) twelve (12) months therefrom and (ii) the date both parties agree that there are no further material services to be rendered.
- b) Termination. The Company shall have the right to terminate this Agreement for cause upon written notice to Hilco. Termination for cause shall mean any termination as a result of Hilco's failure to diligently perform the Services or any fraud, misrepresentation, gross negligence, willful misconduct or material breach by Hilco of any of the terms of this Agreement.
- c) Effect of Termination. Upon termination of this Agreement by the Company, Hilco shall: (i) immediately discontinue all Services; and (ii) deliver to the Company all information, reports, papers, and other materials prepared or obtained by Hilco in performing the Services, whether completed or in process. Upon termination, the Company shall be liable only for payment of accrued and unpaid Expenses of Hilco as of the effective date of the termination; and no compensation shall be due unless such fees shall have been earned by Hilco as of the effective date of termination in accordance with Sections 4, 5, 6 and 7 below.

3) Authority. Hilco shall serve as the Company's exclusive agent for the purpose of providing the Services. For the avoidance of doubt, Hilco shall be the Company's exclusive provider of the Services in connection with all of the Company's leased real property locations. All communications and inquiries regarding restructuring or shortening term of the Leases, including those directed to the Company (including (without limitation) its officers, agents and employees), shall be redirected to Hilco, unless otherwise agreed to by Hilco and the Company. Hilco shall promptly advise the Company of all offers made with respect to the Leases. Hilco is authorized only to negotiate the terms of agreements with respect to restructuring or term shortening the Leases in accordance with the Strategy at the direction and on the behalf of the Company, but not to commit the Company to any such agreement or arrangement or to sign any instrument on behalf of the Company. Company has the right, in its sole discretion, to accept or reject any offers with respect to the Leases, and, in the event of such rejection, the Company shall not be liable to Hilco for any fee or compensation, except as provided in Sections 4, 5, 6, and 7 below.

4) Compensation. As compensation for Hilco's Services, the Company will pay to Hilco compensation in accordance with the following; provided, that for any Restructured Lease that is rejected during a pending Chapter 11 bankruptcy case, fees shall be due or payable with respect to such Restructured Lease solely to the extent that (i) the Company realizes the benefit of any Restructured Lease Savings resulting from an agreement negotiated by Hilco prior to rejection of such Restructured Lease, in which case Hilco's compensation shall be calculated solely based on the Restructured Lease Savings realized by the Company on a post-petition basis prior to rejection; or (ii) the Company realizes the benefit of Restructured

Lease Savings resulting from a Restructured Lease that is designated for rejection but ultimately reinstated with improved terms for the Company pursuant to an agreement negotiated by Hilco, in which case Hilco's Compensation shall be based solely on the Restructured Lease Savings realized by the Company on a post-petition basis.

a) Certain Definitions.

- i) "Restructured Lease" means any Lease for which the Company, or any assignee or designee thereof (including, if applicable, any purchaser in a Bankruptcy Sale Process), enters into a written agreement with the applicable landlord that has the effect of modifying the terms of such Lease.
- ii) "Restructured Lease Savings Fee" means, for any Restructured Lease, an amount equal the aggregate Restructured Lease Savings multiplied by four and one-half percent (4.5%).
- iii) "Restructured Lease Savings" means an amount equal to the net savings created by a Restructured Lease, including (without limitation) the sum of (x) the aggregate reduction of base rent, percentage rent, CAM, real estate taxes, insurance, and deferred maintenance or maintenance obligations (including clean up) payable under a lease (exclusive of term shortening), and (y) the aggregate amount of any tenant improvement allowance dollars secured, minus any restructuring, termination or similar fees paid by the Company to the counterparty to the leased property, or any other party, in connection with the Restructured Lease. Where term is extended and the rent during such extended period is not specifically fixed or calculable within a leased property, Restructured Lease Savings shall be based on the last year's rent immediately prior to the extended period under a leased property.
  - (1) Percentage of sales calculation. To the extent the Company's rents under certain Restructured Leases are converted to a percentage of sales or revenue, the Company and Hilco shall agree in good faith to an appropriate sales projection on a portfolio basis for the period of such savings to determine Hilco's Restructured Lease Savings Fee. These aforementioned projections will be used to calculate Hilco's Restructured Lease Savings when compared to the scheduled lease rents for each such Restructured Lease converted to a variable or percentage of sales structure.
- iv) "Term Shortened Lease" means any Lease for which the Company, or any assignee or designee thereof (including, if applicable, any purchaser in a Bankruptcy Sale Process), enters into a written agreement with the applicable landlord that has the effect of providing the Company with an early termination right or otherwise having the effect of shortening the term of such Lease.
- v) "Term Shortened Lease Fee" means for any Term Shortened Lease where the Company is provided with an early termination right or the term of the Lease is otherwise shortened, an amount equal to three quarters (.75) of monthly gross rent

under such Term Shortened Lease. To the extent a Lease is both a Restructured Lease and a Term Shortened Lease, any lease savings attributable solely to the shortening of a Restructured Lease term shall be excluded from the calculation of the applicable Restructured Lease Savings Fee, and Hilco shall be entitled to receive (1) the applicable Term Shortened Lease Fee on account of such Restructured Lease term shortening, and (2) the applicable Restructured Lease Savings Fee on account of all other Restructured Lease Savings.

- b) Restructuring. For each Lease that becomes a Restructured Lease, Hilco shall earn a fee equal to the Restructured Lease Savings Fee. The amounts payable on account of a Restructured Lease shall be paid in a lump sum upon closing of the transaction having the effect of restructuring the Lease, which may include a transaction subject to entry of an order by the Bankruptcy Court (as defined herein) approving an assignment to any acquiror of applicable Leases (or any portion thereof), including through a purchase of the Company's or a portion of the Company's assets to such acquiror (whether through a credit bid, plan of reorganization, 363 sale or otherwise), directly or through designation rights (collectively, a "Bankruptcy Sale Process").
  - c) Term Shortening. For each Lease that becomes a Term Shortened Lease, Hilco shall earn a fee equal to the Term Shortened Lease Fee. The amounts payable on account of a Term Shortened Lease shall be paid in a lump sum upon closing of the transaction that provides the Company with an early termination right or has the effect of terminating or otherwise shortening the term of such Lease, which may include a transaction subject to entry of an order by the Bankruptcy Court (as defined herein) approving an assignment to any acquiror of applicable Leases (or any portion thereof), including through a purchase of the Company's or a portion of the Company's assets to such acquiror, whether through a Bankruptcy Sale Process or otherwise.
  - d) Free and Clear. All fees payable to Hilco hereunder shall be free and clear of any liens, claims and encumbrances, including the liens of any secured parties.
- 5) Initial Fee. The Company shall pay Hilco an initial fee of \$20,000 immediately upon entry of the Retention Order (the "Initial Fee"). The Initial Fee shall be earned in full upon the entry of the Retention Order and shall be non-refundable.
- 6) Expenses. All Expenses (defined below) shall be borne by the Company, and Hilco shall be entitled to reimbursement from the Company for all Expenses. Billing shall be monthly and invoices are due not later than thirty (30) days after the date of invoice. "Expenses" means all reasonable, documented (through receipts or invoices) out-of-pocket expenses incurred by Hilco in connection with its performance of its Services hereunder, including, without limitation: reasonable expenses of advertising, marketing, coach travel and transportation, including, the cost of out-of-town travel and postage and courier/overnight express fees and other mutually agreed upon expenses incurred in connection with performing the services required by this Agreement, and subject to applicable U.S. Trustee guidelines. Hilco will not incur any outside the ordinary course expenses or travel expenses without prior approval of the Company.

- 7) Survival. Within fifteen (15) calendar days after termination of this Agreement, Hilco shall provide the Company with a list of all third parties, including landlords (each, a "Prospect") that Hilco has engaged in negotiations with respect to the Leases covered hereunder. If within one hundred and eighty (180) days after the expiration of the Term of this Agreement, or any extension thereof agreed to in writing by the Company and Hilco, the Company, or any assignee or designee thereof (including any purchaser in a Bankruptcy Sale Process), and any Prospect should enter into a written agreement covered by this Agreement, incorporating deal terms that are identical or reasonably similar to terms that were negotiated and/or proposed by Hilco in connection with the Leases, Hilco shall be entitled to a fee calculated in accordance with the terms of this Agreement.
  
- 8) Hilco and Company Covenants. In consideration of this Agreement, Hilco agrees to utilize commercially reasonable efforts and diligence to achieve the purpose of this Agreement. Hilco shall conduct all negotiations on behalf of the Company in a professional and businesslike manner and in accordance with the Company's and its officers', representatives' and counsel's reasonable instructions. The Company agrees to cooperate reasonably with Hilco and to make available to Hilco such information as Hilco reasonably requests, including true and correct copies of the Leases, all information relating to occupancy-related expenses for the Leases and related correspondence. Buffets represents, warrants, and covenants that it has authority to execute this Agreement on behalf of itself, and the Subsidiaries. The execution, delivery and performance of this Agreement (i) has been duly authorized by all necessary actions of the Company, (ii) this Agreement constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms and conditions, and (iii) the consent of no other entity or person is required for the Company to fully perform all of their obligations herein.
  
- 9) Confidentiality. Hilco acknowledges that information furnished or made available by the Company, its employees or representatives to Hilco and its employees or representatives relating to the Leases and the business or affairs of the Company is confidential and is the property of the Company. During and after the term of this Agreement, Hilco will not disclose any such information to any person or use any such information for any purpose other than the performance of its obligations hereunder, in each case, without the prior written consent of the Company.
  
- 10) Assignment; Successors and Assigns. Neither party may assign its rights or delegate any of its obligations hereunder without the prior written consent of the other party; provided, however, if the Company files the Bankruptcy Case, the Company shall use its commercially reasonable best efforts to assign its rights and obligations hereunder to an assignee or purchaser of the Leases(s) pursuant to section 363 and/or 365 of the Bankruptcy Code (as defined herein) or otherwise. For the avoidance of doubt, if a purchaser of the Company's or a portion of the Company's assets (whether through a Bankruptcy Sale Process or otherwise) acquires the Leases (or any portion thereof), directly or through designation rights, and enters into an agreement (in connection with such purchase) for a Lease that incorporates deal terms that are identical or reasonably similar to terms that were negotiated and/or proposed by Hilco in connection with such Lease, then Hilco shall be entitled to the Restructured Lease Savings Fee and/or Term Shortened Lease Fee with respect to such Leases, and such fee shall be paid by the Company, or, in the event such assignee or purchaser assumes this Agreement

and the Company's obligations hereunder, by the assignee or purchaser. Subject to that limitation, this Agreement shall be binding upon and shall inure to the benefit of each party and its successors and assigns.

11) Indemnification.

- a) The Company shall indemnify Hilco and hold it harmless against any and all losses, claims, damages, liabilities and expenses incurred by Hilco, including without limitation, reasonable legal expenses, arising from, related to, or in any way connected with the negotiation, execution and/or rendering of services by Hilco hereunder, unless such losses, claims, damages, liabilities and expenses resulted from the fraud, misrepresentation, negligence (including omissions) or, willful misconduct or material breach by Hilco of any of the terms of this Agreement.
- b) Hilco shall indemnify the Company and hold it harmless against any and all losses, claims, damages, liabilities and expenses incurred by the Company, including without limitation, reasonable legal expenses, arising from, related to, or in any way connected with the negotiation, execution and/or rendering of services by Hilco hereunder, unless such losses, claims, damages, liabilities and expenses resulted from the fraud, misrepresentation, negligence (including omissions) or, willful misconduct or material breach by the Company of any of the terms of this Agreement.

12) General Provisions.

- a) The Company and Hilco shall deal with each other fairly and in good faith so as to allow both parties to perform their duties and earn the benefits of this Agreement.
- b) In the event the Company commences a case under Chapter 11 of title 11, United States Code (the "Bankruptcy Code"), with a bankruptcy court (the "Bankruptcy Court"), the Company shall promptly file a motion under section 327 and 328 of the Bankruptcy Code, in form and substance reasonably acceptable to Hilco, authorizing the Company's entry into this Agreement, which the Company agrees to use its reasonable commercial efforts to obtain (the "Retention Order"). The Company will use its reasonable commercial efforts to ensure that such order shall specifically provide that: (i) Hilco is being retained pursuant to sections 327 and 328 of the Bankruptcy Code by the Company; (ii) the payment of all fees and reimbursement of expenses hereunder to Hilco is approved under section 328(a) of the Bankruptcy Code and shall be free and clear of all liens, claims and encumbrances; (iii) all such payments of fees and reimbursement of expenses shall be made without further order of the Bankruptcy Court and in accordance with this Agreement; and (iv) Hilco is not required to maintain time records or file interim fee applications.
- c) The Company recognizes and acknowledges that the services to be provided by Hilco pursuant to this Agreement are, in general, transactional in nature, and Hilco will not be billing the Company by the hour or maintaining time records. It is agreed that Hilco is not

requested or required to maintain such time records and that its compensation will be fixed on the percentages set forth herein.

d) Any correspondence or required notice shall be addressed as follows:

If to Hilco: Hilco Real Estate, LLC  
5 Revere Drive  
Suite 206  
Northbrook, Illinois 60062  
Tel. (847) 504-2462  
Email: [sbaker@hilcoglobal.com](mailto:sbaker@hilcoglobal.com)  
Attn: Sarah Baker

If to the Company: Buffets, LLC  
2338 N. Loop 1604 W. Ste 350  
San Antonio TX, 78248  
Tel. (210) 245-8265  
E-mail: [mcortes@vitanb.com](mailto:mcortes@vitanb.com)  
Attn: Martin Cortes


- e) This Agreement shall be deemed drafted by both parties hereto, and there shall be no presumption against either party in the interpretation of this Agreement.
- f) By executing or otherwise accepting this Agreement, the Company and Hilco acknowledge and represent that they are represented by and have consulted with independent legal counsel with respect to the terms and conditions contained herein.
- g) The construction, validity and interpretation of this Agreement will be governed by the internal law of the State of Texas, without regard to any choice of law principle that might otherwise result in the application of the law of any other jurisdiction. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other in respect of any matter arising out of or in connection with this Agreement. Any dispute arising under this Agreement shall be resolved by the Bankruptcy Court, to the extent that its jurisdiction extends to the matter in dispute, and otherwise shall be resolved in an appropriate state or federal court in Dallas, Dallas County, Texas, and each of the parties hereto agrees to such venue and consents to personal jurisdiction of such courts for purposes hereof.
- h) This Agreement may be executed in original counterparts, and if executed and delivered via facsimile shall be deemed the equivalent of an original.
- i) The parties hereto agree, and the Company hereby expressly acknowledges, that Hilco has not guaranteed the Company any return or results with respect to the services to be provided.

- j) This Agreement constitutes the entire agreement between the Company and Hilco and supersedes all prior discussions, negotiations, understandings, representations, and agreements, whether oral or written. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of the parties to this Agreement.
- k) If either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs actually incurred.
- l) Hilco may use the Company's name on Hilco's representative client lists, in any advertisements, publications or as a reference.


\* \* \*

IN WITNESS WHEREOF, the Company and Hilco have executed and delivered this Agreement as of the date first above written.

**BUFFETS, LLC, for itself and  
Subsidiaries**

By:   
Title CFO  
Date 3/12/21

**HILCO REAL ESTATE, LLC**

By:   
Title: VP & AGC, Managing Member  
Date: March 12, 2021



**EXHIBIT A**

Leases

Store	Concept	Address	City	State	Zip	Store Phone
822	TJ	7006 NORTH CEDAR AVENUE	FRESNO	CA	93720	(559) 299-9740
823	TJ	9000 MING AVE, BUILDING P	BAKERSFIELD	CA	93311	(661) 664-8723
824	TJ	1040 HELEN POWER DRIVE	VACAVILLE	CA	95687	(707) 455-1326
825	TJ	485 MADONNA ROAD	SAN LUIS OBISPO	CA	93405	(805) 543-8383
828	TJ	1905 TAYLOR ROAD	ROSEVILLE	CA	95661	(916) 787-5637
830	TJ	3801 PELANDALE AVE BUILDING D	MODESTO	CA	95356	(209) 545-6885
831	TJ	4015 W CALDWELL	VISALIA	CA	93277	(559) 735-9079

**REAL ESTATE CONSULTING AND ADVISORY SERVICES AGREEMENT**

This Agreement is entered into effective as of March 12, 2021, by and between Hilco Real Estate, LLC (“Hilco”) and Fresh Acquisitons, LLC (“Fresh”, or “Company”).

Recitals:

WHEREAS, the Company is the owner of the leasehold interests listed on Exhibit A attached hereto (each a “Lease” and collectively, the “Leases”);

WHEREAS, the Company plans to file petition to seek protections under Chapter 11 of title 11, United States Code (the “Bankruptcy Case”); and

WHEREAS, the Company seeks to engage Hilco in the Bankruptcy Case to provide certain consulting services in connection with the Leases as provided herein.

Agreement:

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Hilco agree as follows:

- 1) Consulting and Advisory Services. Hilco shall provide the consulting and advisory services described below (collectively, the “Services”) to the Company with respect to the Leases:
  - a) Meet with the Company to ascertain the Company’s goals, objectives and financial parameters;
  - b) Mutually agree with the Company with respect to a strategic plan for restructuring, assuming, assigning, rejecting, and/or shortening term of the Leases (the “Strategy”);
  - c) On the Company’s behalf, negotiate the terms of restructuring and term shortening agreements with the landlords under the Leases, in accordance with the Strategy;
  - d) Provide written reports periodically to the Company regarding the status of such negotiations;
  - e) Assist the Company in closing the pertinent Lease restructuring and term sagreements; and
  - f) Providing testimony with respect to the foregoing, as needed and requested by the Company.

The Company may add additional leases to Exhibit A with the consent of Hilco (which consent may be provided in email) in which case such additional leases shall be considered “Leases” for purposes of this Agreement and the Company and Hilco shall mutually agree on a Strategy covering the additional leases.

2) Term and Termination.

- a) Term. The term of this Agreement shall commence upon the execution hereof and shall expire on the date that is the earlier of (i) twelve (12) months therefrom and (ii) the date both parties agree that there are no further material services to be rendered.
- b) Termination. The Company shall have the right to terminate this Agreement for cause upon written notice to Hilco. Termination for cause shall mean any termination as a result of Hilco's failure to diligently perform the Services or any fraud, misrepresentation, gross negligence, willful misconduct or material breach by Hilco of any of the terms of this Agreement.
- c) Effect of Termination. Upon termination of this Agreement by the Company, Hilco shall: (i) immediately discontinue all Services; and (ii) deliver to the Company all information, reports, papers, and other materials prepared or obtained by Hilco in performing the Services, whether completed or in process. Upon termination, the Company shall be liable only for payment of accrued and unpaid Expenses of Hilco as of the effective date of the termination; and no compensation shall be due unless such fees shall have been earned by Hilco as of the effective date of termination in accordance with Sections 4, 5, 6 and 7 below.

- 3) Authority. Hilco shall serve as the Company's exclusive agent for the purpose of providing the Services. For the avoidance of doubt, Hilco shall be the Company's exclusive provider of the Services in connection with all of the Company's leased real property locations. All communications and inquiries regarding restructuring or shortening term of the Leases, including those directed to the Company (including (without limitation) its officers, agents and employees), shall be redirected to Hilco, unless otherwise agreed to by Hilco and the Company. Hilco shall promptly advise the Company of all offers made with respect to the Leases. Hilco is authorized only to negotiate the terms of agreements with respect to restructuring or term shortening the Leases in accordance with the Strategy at the direction and on the behalf of the Company, but not to commit the Company to any such agreement or arrangement or to sign any instrument on behalf of the Company. Company has the right, in its sole discretion, to accept or reject any offers with respect to the Leases, and, in the event of such rejection, the Company shall not be liable to Hilco for any fee or compensation, except as provided in Sections 4, 5, 6, and 7 below.

- 4) Compensation. As compensation for Hilco's Services, the Company will pay to Hilco compensation in accordance with the following; provided, that for any Restructured Lease that is rejected during a pending Chapter 11 bankruptcy case, fees shall be due or payable with respect to such Restructured Lease solely to the extent that (i) the Company realizes the benefit of any Restructured Lease Savings resulting from an agreement negotiated by Hilco prior to rejection of such Restructured Lease, in which case Hilco's compensation shall be calculated solely based on the Restructured Lease Savings realized by the Company on a post-petition basis prior to rejection; or (ii) the Company realizes the benefit of Restructured Lease Savings resulting from a Restructured Lease that is designated for rejection but ultimately reinstated with improved terms for the Company pursuant to an agreement

negotiated by Hilco, in which case Hilco's Compensation shall be based solely on the Restructured Lease Savings realized by the Company on a post-petition basis.

a) Certain Definitions.

- i) "Restructured Lease" means any Lease for which the Company, or any assignee or designee thereof (including, if applicable, any purchaser in a Bankruptcy Sale Process), enters into a written agreement with the applicable landlord that has the effect of modifying the terms of such Lease.
- ii) "Restructured Lease Savings Fee" means, for any Restructured Lease, an amount equal the aggregate Restructured Lease Savings multiplied by four and one-half percent (4.5%).
- iii) "Restructured Lease Savings" means an amount equal to the net savings created by a Restructured Lease, including (without limitation) the sum of (x) the aggregate reduction of base rent, percentage rent, CAM, real estate taxes, insurance, and deferred maintenance or maintenance obligations (including clean up) payable under a lease (exclusive of term shortening), and (y) the aggregate amount of any tenant improvement allowance dollars secured, minus any restructuring, termination or similar fees paid by the Company to the counterparty to the leased property, or any other party, in connection with the Restructured Lease. Where term is extended and the rent during such extended period is not specifically fixed or calculable within a leased property, Restructured Lease Savings shall be based on the last year's rent immediately prior to the extended period under a leased property.
  - (1) Percentage of sales calculation. To the extent the Company's rents under certain Restructured Leases are converted to a percentage of sales or revenue, the Company and Hilco shall agree in good faith to an appropriate sales projection on a portfolio basis for the period of such savings to determine Hilco's Restructured Lease Savings Fee. These aforementioned projections will be used to calculate Hilco's Restructured Lease Savings when compared to the scheduled lease rents for each such Restructured Lease converted to a variable or percentage of sales structure.
- iv) "Term Shortened Lease" means any Lease for which the Company, or any assignee or designee thereof (including, if applicable, any purchaser in a Bankruptcy Sale Process), enters into a written agreement with the applicable landlord that has the effect of providing the Company with an early termination right or otherwise having the effect of shortening the term of such Lease.
- v) "Term Shortened Lease Fee" means for any Term Shortened Lease where the Company is provided with an early termination right or the term of the Lease is otherwise shortened, an amount equal to three quarters (.75) of monthly gross rent under such Term Shortened Lease. To the extent a Lease is both a Restructured Lease and a Term Shortened Lease, any lease savings attributable solely to the

shortening of a Restructured Lease term shall be excluded from the calculation of the applicable Restructured Lease Savings Fee, and Hilco shall be entitled to receive (1) the applicable Term Shortened Lease Fee on account of such Restructured Lease term shortening, and (2) the applicable Restructured Lease Savings Fee on account of all other Restructured Lease Savings.

- b) Restructuring. For each Lease that becomes a Restructured Lease, Hilco shall earn a fee equal to the Restructured Lease Savings Fee. The amounts payable on account of a Restructured Lease shall be paid in a lump sum upon closing of the transaction having the effect of restructuring the Lease, which may include a transaction subject to entry of an order by the Bankruptcy Court (as defined herein) approving an assignment to any acquiror of applicable Leases (or any portion thereof), including through a purchase of the Company's or a portion of the Company's assets to such acquiror (whether through a credit bid, plan of reorganization, 363 sale or otherwise), directly or through designation rights (collectively, a "Bankruptcy Sale Process").
  - c) Term Shortening. For each Lease that becomes a Term Shortened Lease, Hilco shall earn a fee equal to the Term Shortened Lease Fee. The amounts payable on account of a Term Shortened Lease shall be paid in a lump sum upon closing of the transaction that provides the Company with an early termination right or has the effect of terminating or otherwise shortening the term of such Lease, which may include a transaction subject to entry of an order by the Bankruptcy Court (as defined herein) approving an assignment to any acquiror of applicable Leases (or any portion thereof), including through a purchase of the Company's or a portion of the Company's assets to such acquiror, whether through a Bankruptcy Sale Process or otherwise.
  - d) Free and Clear. All fees payable to Hilco hereunder shall be free and clear of any liens, claims and encumbrances, including the liens of any secured parties.
- 5) Initial Fee. The Company shall pay Hilco an initial fee of \$10,000 immediately upon entry of the Retention Order (the "Initial Fee"). The Initial Fee shall be earned in full upon the entry of the Retention Order and shall be non-refundable.
- 6) Expenses. All Expenses (defined below) shall be borne by the Company, and Hilco shall be entitled to reimbursement from the Company for all Expenses. Billing shall be monthly and invoices are due not later than thirty (30) days after the date of invoice. "Expenses" means all reasonable, documented (through receipts or invoices) out-of-pocket expenses incurred by Hilco in connection with its performance of its Services hereunder, including, without limitation: reasonable expenses of advertising, marketing, coach travel and transportation, including, the cost of out-of-town travel and postage and courier/overnight express fees and other mutually agreed upon expenses incurred in connection with performing the services required by this Agreement, and subject to applicable U.S. Trustee guidelines. Hilco will not incur any outside the ordinary course expenses or travel expenses without prior approval of the Company.
- 7) Survival. Within fifteen (15) calendar days after termination of this Agreement, Hilco shall provide the Company with a list of all third parties, including landlords (each, a "Prospect")

that Hilco has engaged in negotiations with respect to the Leases covered hereunder. If within one hundred and eighty (180) days after the expiration of the Term of this Agreement, or any extension thereof agreed to in writing by the Company and Hilco, the Company, or any assignee or designee thereof (including any purchaser in a Bankruptcy Sale Process), and any Prospect should enter into a written agreement covered by this Agreement, incorporating deal terms that are identical or reasonably similar to terms that were negotiated and/or proposed by Hilco in connection with the Leases, Hilco shall be entitled to a fee calculated in accordance with the terms of this Agreement.

- 8) Hilco and Company Covenants. In consideration of this Agreement, Hilco agrees to utilize commercially reasonable efforts and diligence to achieve the purpose of this Agreement. Hilco shall conduct all negotiations on behalf of the Company in a professional and businesslike manner and in accordance with the Company's and its officers', representatives' and counsel's reasonable instructions. The Company agrees to cooperate reasonably with Hilco and to make available to Hilco such information as Hilco reasonably requests, including true and correct copies of the Leases, all information relating to occupancy-related expenses for the Leases and related correspondence. Fresh represents, warrants, and covenants that it has authority to execute this Agreement on behalf of itself, and the Subsidiaries. The execution, delivery and performance of this Agreement (i) has been duly authorized by all necessary actions of the Company, (ii) this Agreement constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms and conditions, and (iii) the consent of no other entity or person is required for the Company to fully perform all of their obligations herein.
- 9) Confidentiality. Hilco acknowledges that information furnished or made available by the Company, its employees or representatives to Hilco and its employees or representatives relating to the Leases and the business or affairs of the Company is confidential and is the property of the Company. During and after the term of this Agreement, Hilco will not disclose any such information to any person or use any such information for any purpose other than the performance of its obligations hereunder, in each case, without the prior written consent of the Company.
- 10) Assignment, Successors and Assigns. Neither party may assign its rights or delegate any of its obligations hereunder without the prior written consent of the other party; provided, however, if the Company files the Bankruptcy Case, the Company shall use its commercially reasonable best efforts to assign its rights and obligations hereunder to an assignee or purchaser of the Leases(s) pursuant to section 363 and/or 365 of the Bankruptcy Code (as defined herein) or otherwise. For the avoidance of doubt, if a purchaser of the Company's or a portion of the Company's assets (whether through a Bankruptcy Sale Process or otherwise) acquires the Leases (or any portion thereof), directly or through designation rights, and enters into an agreement (in connection with such purchase) for a Lease that incorporates deal terms that are identical or reasonably similar to terms that were negotiated and/or proposed by Hilco in connection with such Lease, then Hilco shall be entitled to the Restructured Lease Savings Fee and/or Term Shortened Lease Fee with respect to such Leases, and such fee shall be paid by the Company, or, in the event such assignee or purchaser assumes this Agreement and the Company's obligations hereunder, by the assignee or purchaser. Subject to that

limitation, this Agreement shall be binding upon and shall inure to the benefit of each party and its successors and assigns.

11) Indemnification.

- a) The Company shall indemnify Hilco and hold it harmless against any and all losses, claims, damages, liabilities and expenses incurred by Hilco, including without limitation, reasonable legal expenses, arising from, related to, or in any way connected with the negotiation, execution and/or rendering of services by Hilco hereunder, unless such losses, claims, damages, liabilities and expenses resulted from the fraud, misrepresentation, negligence (including omissions) or, willful misconduct or material breach by Hilco of any of the terms of this Agreement.
- b) Hilco shall indemnify the Company and hold it harmless against any and all losses, claims, damages, liabilities and expenses incurred by the Company, including without limitation, reasonable legal expenses, arising from, related to, or in any way connected with the negotiation, execution and/or rendering of services by Hilco hereunder, unless such losses, claims, damages, liabilities and expenses resulted from the fraud, misrepresentation, negligence (including omissions) or, willful misconduct or material breach by the Company of any of the terms of this Agreement.

12) General Provisions.

- a) The Company and Hilco shall deal with each other fairly and in good faith so as to allow both parties to perform their duties and earn the benefits of this Agreement.
- b) In the event the Company commences a case under Chapter 11 of title 11, United States Code (the "Bankruptcy Code"), with a bankruptcy court (the "Bankruptcy Court"), the Company shall promptly file a motion under section 327 and 328 of the Bankruptcy Code, in form and substance reasonably acceptable to Hilco, authorizing the Company's entry into this Agreement, which the Company agrees to use its reasonable commercial efforts to obtain (the "Retention Order"). The Company will use its reasonable commercial efforts to ensure that such order shall specifically provide that: (i) Hilco is being retained pursuant to sections 327 and 328 of the Bankruptcy Code by the Company; (ii) the payment of all fees and reimbursement of expenses hereunder to Hilco is approved under section 328(a) of the Bankruptcy Code and shall be free and clear of all liens, claims and encumbrances; (iii) all such payments of fees and reimbursement of expenses shall be made without further order of the Bankruptcy Court and in accordance with this Agreement; and (iv) Hilco is not required to maintain time records or file interim fee applications.
- c) The Company recognizes and acknowledges that the services to be provided by Hilco pursuant to this Agreement are, in general, transactional in nature, and Hilco will not be billing the Company by the hour or maintaining time records. It is agreed that Hilco is not

requested or required to maintain such time records and that its compensation will be fixed on the percentages set forth herein.

d) Any correspondence or required notice shall be addressed as follows:

If to Hilco: Hilco Real Estate, LLC  
5 Revere Drive  
Suite 206  
Northbrook, Illinois 60062  
Tel. (847) 504-2462  
Email: [sbaker@hilcoglobal.com](mailto:sbaker@hilcoglobal.com)  
Attn: Sarah Baker

If to the Company: Fresh Acquisitions, LLC  
2338 N. Loop 1604 W. Ste 350  
San Antonio TX, 78248  
Tel. (210) 245-8265  
E-mail: [mcortes@vitanb.com](mailto:mcortes@vitanb.com)  
Attn: Martin Cortes

- e) This Agreement shall be deemed drafted by both parties hereto, and there shall be no presumption against either party in the interpretation of this Agreement.
- f) By executing or otherwise accepting this Agreement, the Company and Hilco acknowledge and represent that they are represented by and have consulted with independent legal counsel with respect to the terms and conditions contained herein.
- g) The construction, validity and interpretation of this Agreement will be governed by the internal law of the State of Texas, without regard to any choice of law principle that might otherwise result in the application of the law of any other jurisdiction. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other in respect of any matter arising out of or in connection with this Agreement. Any dispute arising under this Agreement shall be resolved by the Bankruptcy Court, to the extent that its jurisdiction extends to the matter in dispute, and otherwise shall be resolved in an appropriate state or federal court in Dallas, Dallas County, Texas, and each of the parties hereto agrees to such venue and consents to personal jurisdiction of such courts for purposes hereof.
- h) This Agreement may be executed in original counterparts, and if executed and delivered via facsimile shall be deemed the equivalent of an original.
- i) The parties hereto agree, and the Company hereby expressly acknowledges, that Hilco has not guaranteed the Company any return or results with respect to the services to be provided.




- j) This Agreement constitutes the entire agreement between the Company and Hilco and supersedes all prior discussions, negotiations, understandings, representations, and agreements, whether oral or written. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of the parties to this Agreement.
- k) If either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs actually incurred.
- l) Hilco may use the Company's name on Hilco's representative client lists, in any advertisements, publications or as a reference.


\* \* \*

IN WITNESS WHEREOF, the Company and Hilco have executed and delivered this Agreement as of the date first above written.

**FRESH ACQUISITONS, LLC**

**HILCO REAL ESTATE, LLC**

By:   
Title: CFO  
Date: 3/12/21

By:   
Title: VP & AGC, Managing Member  
Date: March 12, 2021

## EXHIBIT A

## Leases

Stor	Concept	Address	City	Stat	Zip	Operating Entity	Open Dat
118	Furr's- Santa Fe	522 Cordova	Santa Fe	NM	87501	Fresh Acquisitions, LLC	4/1/1964
123	Furr's- Amarillo	2221 S. Soney	Amarillo	TX	79109	Fresh Acquisitions, LLC	2/1/1968
148	Furr's- Garland	1540 Eastgate Drive	Garland	TX	75041	Fresh Acquisitions, LLC	10/1/1973
160	Furr's- ALBQ- San Mateo	6111 San Mateo Blvd. NE, Suite 109	Albuquerque	NM	87109	Fresh Acquisitions, LLC	7/1/1975
175	Furr's- Farmington	3030 E. Main	Farmington	NM	87401	Fresh Acquisitions, LLC	9/1/1977
190	Furr's- Lubbock	2817 Loop 289 South	Lubbock	TX	79423	Fresh Acquisitions, LLC	9/1/1979
313	Furr's- Arlington	300 East I-20 Highway	Arlington	TX	76018	Fresh Acquisitions, LLC	10/14/2014
335	Furr's- El Paso	11925 Gateway West Blvd.	El Paso	TX	79936	Fresh Acquisitions, LLC	6/1/2000