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ATTORNEYS FOR SLO PROMENADE DE, LLC

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

In re:

FRESH ACQUISITIONS, LLC., *et al.*,

Debtors.

Chapter 11

Case No. 21-30721 (SGJ)

(Jointly Administered)

**Cure Objection Deadline:
July 9, 2021 at 4:00 p.m. (CT)**

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

COMES NOW SLO Promenade DE, LLC (the “Landlord”), and files this, its Objection to Notice of Executory Contracts and Unexpired Leases Subject to Possible Assumption and Assignment and Proposed Cure Amounts (the “Objection”) regarding the cure amount set forth in the *Notice of Executory Contracts and Unexpired Leases Subject to Possible Assumption and Assignment and Proposed Cure Amounts* [Doc. No. 268] (“Cure Notice”), and in support thereof, respectfully states as follows:

BACKGROUND

1. On April 20, 2021 (the “Petition Date”), the above-captioned debtors and debtors-

in-possession (“Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. Landlord and Tahoe Joe’s Inc. are parties to an unexpired lease of nonresidential real property located at 485 Madonna Road, San Luis Obispo, California (the “Lease”). A true and correct copy of the Lease is attached hereto and incorporated by reference as Exhibit 1.

3. On May 18, 2021, the Debtors filed the *Motion to sell property free and clear of liens under Section 363(f) Debtors’ Motion for (I) an Order (A) Approving Bidding Procedures and Certain Bid Procedures, (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 There of; and (II) an Order Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of Liens, Claims and Interests (Doc. No. 165)* (“Bid Procedures Motion”), pursuant to which they sought approval of bidding procedures for a sale of the Debtors’ assets.

4. On June 25, 2021, in conjunction with the Bid Procedures Motion, the Debtors filed the Cure Notice, which lists the Debtors’ proposed cure amount for the Lease in the amount of \$123,338.54. (“Proposed Cure Amount”).

OBJECTION

5. Landlord objects to the Proposed Cure Amount as it is inaccurate according to Landlord’s books and records. The actual cure amount under the Lease is no less than \$135,372.41.

6. As the Debtors’ Proposed Cure Amount does not take into consideration the passage of time between the filing of the Cure Notice and the effective date of any assumption and assignment of the Lease by the Debtors, any order that is entered establishing a cure amount with

respect to the Lease should require that the Debtors (i) comply with all obligations under the Lease pending it's assumption and assignment, and (ii) cure any additional defaults that may occur under the Lease between the date of Landlord's proof of claim and the effective date of any assumption and assignment by the Debtors. *See* 11 U.S.C. § 365(b)(1).

7. Further, Landlord may be entitled to certain attorneys' fees and costs under Section 365 of the Bankruptcy Code. *See In re F&N Acquisition Corp.*, 152 B.R. 304, 308 (Bankr. W.D. Wash. 1993); *In re Westworld Community Healthcare, Inc.*, 95 B.R. 730, 733 (Bankr. C.D. Cal. 1989); and *In re Child World, Inc.*, 161 B.R. 349, 353-354 (Bankr. S.D.N.Y. 1993). The cure amount should include all of Landlord's attorneys' fees and costs to which it is entitled under the Lease.

JOINDER

8. Landlord joins in the objections to the Debtors' requested relief filed by other landlords and parties-in-interest to the extent they are not inconsistent with the Objection.

RESERVATION OF RIGHTS

9. Nothing in this Objection is intended to be, or should be construed as, a waiver by Landlord of any of their rights under the Lease, the Bankruptcy Code, or applicable law. Landlord expressly reserves all such rights, including, without limitation, the right to: (i) supplement and/or amend this Objection and to assert additional objections to the proposed assumption and assignment of the Lease on any and all grounds; (ii) amend the cure amount; (iii) assert additional non-monetary defaults under the Lease; (iv) assert any rights for indemnification or contribution Debtors, as applicable, arising under the Lease; and (v) assert any further objections as they deem necessary or appropriate.

WHEREFORE, for all of the foregoing reasons, Landlord respectfully requests that any order entered that establishes cure amounts with respect to the Lease is consistent with the

Objection and relief requested herein, and that the Court grant Landlord such other and further relief as is just and proper.

Dated: July 9, 2021

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**ATTORNEYS FOR SLO
PROMENADE DE, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of July, 2021, a copy of the foregoing was electronically filed and served via CM/ECF on all parties requesting electronic notification in this case, and also was served on the parties listed below by electronic mail.

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/s/ J. Seth Moore

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