

**Exhibit C**  
**Proposed Sale Order**

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

In re:  FRESH ACQUISITIONS, LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	§ § § § § § § §	Chapter 11  Case No. 21-30721 (SGJ)  (Jointly Administered)  <b>Re: Docket No. 165</b>
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**ORDER APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE  
DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”) for, among other things, entry of an order (this “Order”) approving (a) the sale of substantially all of the Debtors’ assets pursuant to the APA (as defined below) free and clear of

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<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 herein but not otherwise defined shall have the meanings ascribed to them in the Motion, the APA (as defined herein), or the Bid Procedures Order (as defined herein), as applicable.

liens, claims, and interests (other than the Assumed Liabilities set forth in the APA), and (b) the assumption and assignment of executory contracts and unexpired leases of the Debtors as may be requested by the Successful Bidder and the proposed cure amounts with respect thereto (the “Cure Amount”), all as more fully set forth in the Motion; and the Court being satisfied that the relief requested in the Motion is necessary and in the best interests of the Debtors and their estates; and it appearing that sufficient notice of the Motion has been given, and that no other or further notice is required; and this Court having reviewed the Motion and having considered the evidence and arguments presented at hearing on August 10, 2021 (the “Sale Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court hereby finds as follows:<sup>2</sup>

A. **Jurisdiction and Venue**. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

B. **Notice**. Proper, timely, adequate, and sufficient notice of (a) the Motion, (b) the sale of the Purchased Assets (as defined below) to the Purchaser (as defined below) pursuant to (i) the bidding procedures authorized by the Court in the Bidding Procedures Order (as defined below) and the Extension Order (as defined below) (the “Bidding Procedures”) and (ii) the APA (as defined below) and the transactions contemplated in connection therewith (the “Sale”), (c) the assumption and assignment to the Purchaser of certain executory contracts and unexpired leases as described and identified more fully in the APA (the “Assumed Contracts”), (d) the Cure Amounts, (e) the Sale Hearing, and (f) all deadlines related thereto, as extended through the *Agreed*

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<sup>2</sup> The findings of fact and conclusions of law herein constitute the Court’s findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

*Order (I) Continuing the Sale Hearing, (II) Modifying the Bidding Procedures Order to Extend Certain Dates; (III) Extending Certain Milestones Under the DIP Financing Order; and (IV) Granting Related Relief* [Docket No. 309] (the “Extension Order”), has been provided by the Debtors in the (i) *Notice of Bid Deadline, Auction, and Sale Hearing* [Docket No. 211] (as amended, the “Sale Notice”), (ii) *Amended Notice of Bid Deadline, Auction, and Sale Hearing* [Docket No. 310], (iii) *Second Amended Notice of Bid Deadline, Auction, and Sale Hearing* [Docket No. 311], (iv) Cure Notice (as defined below), and (v) Notice of Successful Bidder (as defined below), as relevant, in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007, 9008, and 9014, and in compliance with the *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. 203] (as amended by the Extension Order, the “Bidding Procedures Order”), to each party entitled thereto. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities.

C. The Debtors further filed with the Court and served upon the non-Debtor counterparties to the Assumed Contracts a *Notice of Executory Contracts and Unexpired Leases Subject to Possible Assumption and Assignment and Proposed Cure Amounts* [Docket No. 268] (the “Cure Notice”), identifying, among other things, the Cure Amounts, in accordance with the Bidding Procedures Order. The service of the Cure Notice was sufficient under the circumstances and in full compliance with the Bidding Procedures Order, and no further notice need be provided in respect of the Debtors’ assumption and assignment to the Purchaser of the Assumed Contracts, the Cure Amounts, or the Sale. All non-Debtor counterparties to the Assumed Contracts have had

an adequate opportunity to object to the assumption and assignment of the Assumed Contracts and the Cure Amounts.

D. The notice described in the foregoing paragraphs is good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Sale (and the transactions contemplated in connection therewith), the assumption and assignment to the Purchaser of the Assumed Contracts, the Cure Amounts, the Sale Hearing, and all deadlines related thereto is or shall be required.

E. **APA.** The assets being sold to the Purchaser (the “Purchased Assets,” as defined in the APA), as more fully described in that certain Asset Purchase Agreement dated as of July 29, 2021 (attached hereto as **Exhibit 1**, including all schedules attached thereto and all other documents contemplated thereby, collectively, the “APA”) between Tahoe Joe’s Inc., Buffets LLC, Hometown Buffet, Inc., Ryan’s Restaurant Group, LLC, and Fresh Acquisitions, LLC (collectively, the “Sellers”) and VitaNova Brands, LLC (the “Purchaser”) pursuant to which the Sellers have agreed to sell the Purchased Assets to the Purchaser, constitute property of the Sellers’ bankruptcy estates and title thereto is vested in the Sellers’ estates, within the meaning of section 541 of the Bankruptcy Code.

F. **The Bidding Process.** The Sale is duly authorized pursuant to sections 363(b)(1) and 363(f) of the Bankruptcy Code and Bankruptcy Rule 6004(f). As demonstrated by (i) the testimony and other evidence adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, the Debtors have marketed the Purchased Assets and conducted all aspects of the Sale process at arms’-length, in good faith, and in compliance with the Bidding Procedures and Bidding Procedures Order. The marketing process undertaken by the Debtors and their professionals, agents, and other representatives with respect to the Purchased

Assets has been adequate and appropriate and reasonably calculated to maximize value for the benefit of all stakeholders. The Bidding Procedures were duly noticed, were substantively and procedurally fair to all parties, and the bidding process was conducted in a diligent, non-collusive, fair, and good faith manner. The APA constitutes the highest and best offer for the Purchased Assets.

G. The Bid Deadline passed on July 23, 2021 at 4:00 p.m. (prevailing Central Time) in accordance with the Bidding Procedures and Bidding Procedures Order. Having received no Qualified Bids (as defined in the Bidding Procedures), the Debtors cancelled the Auction in accordance with the Bidding Procedures and Bidding Procedures Order. The Debtors, through their Chief Restructuring Officer, after consultation with Arizona Bank & Trust and the Official Committee of Unsecured Creditors, determined in a valid and sound exercise of their business judgment that the transactions contemplated by the APA were the highest or otherwise best bid and, therefore, Purchaser's bid was designated as the successful bid (the "Successful Bid"). On July 29, 2021, the Debtors filed their *Notice of (I) Cancellation of Auction, (II) Designation of VitaNova Brands, LLC as Successful Bidder, including (A) the Proposed Form of Asset Purchase Agreement and (B) the List of Assumed Executory Contracts and Unexpired Leases; and (III) the Proposed Form of Sale Order* [Docket No. \_\_\_] (the "Notice of Successful Bidder"), identifying the Purchaser as the Successful Bidder for the Purchased Assets in accordance with the Bidding Procedures Order.

H. **Business Justification.** The Debtors have articulated good and sufficient business reasons for the Court to: (i) approve the APA, and, subject to the terms of this Order, authorize the Debtors' consummation of the Sale, including the sale of the Purchased Assets to the Purchaser and/or its permitted assigns pursuant to the terms of the APA; (ii) authorize and approve the

assumption or assumption and assignment of the Assumed Contracts as set forth herein and in the APA; and (iii) authorize and approve the assumption of the Assumed Liabilities as set forth in the APA. Entry into the APA and consummation of the Sale are sound exercises of the Debtors' business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest.

I. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose for (i) the sale of the Purchased Assets outside of the ordinary course of business pursuant to Bankruptcy Code section 363(b) prior to and outside of a plan of reorganization because of the Debtors' current financial position; (ii) a restriction on the Debtors pursuing, considering, or accepting any further offers for the Purchased Assets from and after the entry of this Order through the earlier of the consummation of the Sale or termination of the APA in accordance with its terms; and (iii) the immediate assumption of the APA. Such circumstances and purposes include: (i) the Debtors conducted a robust marketing process to sell the Purchased Assets and the APA constitutes the highest and best offer for the Purchased Assets; (ii) the Bidding Procedures utilized were designed to yield the highest or otherwise best bids for the Purchased Assets; (iii) the APA and the closing of the Sale present the best opportunity to realize the highest value for the Purchased Assets; (iv) there is risk of deterioration of the value of the Purchased Assets if the Sale is not consummated in accordance with the terms of the APA and this Order; (v) the APA and the sale of the Purchased Assets to the Purchaser provide greater value to the Debtors' estates than would be provided by any other presently available alternative; and (vi) the Purchaser would not agree to purchase the Purchased Assets pursuant to the terms of the APA and this Order if the Purchased Assets remained subject to higher or better offers after the entry of this Order. To maximize the value of the Purchased Assets and preserve the viability of the operations

to which the Purchased Assets relate, it is essential that the Sale occur within the time constraints set forth in the APA and this Order and that the Buyer be protected against any further offers for the Purchased Assets.

J. **Good Faith.** The APA was negotiated, proposed, and is undertaken by the Debtors and the Purchaser at arms'-length, without collusion or fraud, and in good faith within the meaning of Bankruptcy Code section 363(m). The Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets, and agreed to, and did, subject its bid to the competitive Bidding Procedures approved in the Bidding Procedures Order. As established by the record of the Sale Hearing, the Debtors and the Purchaser have complied with the Bidding Procedures Order in all material respects. The Bidding Procedures afforded a full, fair, and reasonable opportunity for any entity or person to make a higher or otherwise better offer to purchase the Purchased Assets. Neither the Debtors, nor the Purchaser, nor any affiliate of the Purchaser has engaged in any conduct that would cause or permit the APA to be avoided under section 363(n) of the Bankruptcy Code. As a result of the foregoing, the Purchaser is entitled to the protections of Bankruptcy Code section 363(m), including in the event this Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with these cases. The APA was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

K. The Purchaser is, as disclosed from the outset of these chapter 11 cases, an "insider" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Notwithstanding the Purchaser's position as an "insider" of the Debtors, the Debtors have dealt with Purchaser at arms' length through its independent officers and directors. The Debtors have demonstrated their



independence from the Purchaser in negotiating the terms of the APA and accepting the Purchaser's offer for the Purchased Assets.

L. **Authority.** The Debtors, through their Chief Restructuring Officer, (i) have full corporate power and authority to execute the APA, and the Sale by the Debtors to the Purchaser has been duly and validly authorized by all necessary corporate action, (ii) have all of the corporate power and authority necessary to consummate the Sale and all transactions contemplated by the APA, (iii) have taken all corporate action necessary to authorize and approve the APA and the immediate assumption thereof, and the consummation by the Debtors of the Sale and all transactions contemplated thereby, and (iv) require no consents or approvals that have not been obtained, other than the Court's entry of this Order and those expressly provided for in the APA, to consummate such transactions.

M. **Highest and Otherwise Best Offer.** The total consideration provided by the Purchaser for the Purchased Assets represents the highest and best offer received by the Debtors, and the amount of aggregate consideration provided by the Purchaser to the Debtors pursuant to the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, applicable state laws, including, without limitation, the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other such applicable laws, and may not be avoided under Bankruptcy Code section 363(n) or any provision of chapter 5 of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. No other person or entity or group of persons or entities has offered to purchase the Purchased Assets for an amount of aggregate consideration that would provide greater economic value to the Debtors' estates than the Purchaser. The Debtors' determination that the APA constitutes the highest and best offer for

the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment. The Court's approval of the Motion, the Sale, and the APA, and the immediate consummation thereof, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

Q. **Valid Transfer.** As of the Closing, pursuant and subject to the terms of the APA, the transfer of the Purchased Assets and the Sale will effect a legal, valid, enforceable, and effective transfer of the Purchased Assets and will vest the Purchaser with all of the Debtors' right, title, and interest in the Purchased Assets, free and clear of all Liens,<sup>3</sup> claims, encumbrances, and other interests of any kind or nature whatsoever.

R. **Free and Clear.** The Purchaser would not have entered into the APA and would not have consummated the Sale, thus adversely affecting the Debtors, their estates, and their creditors, unless both (i) the Sale and (ii) the assumption and assignment of the Assumed Contracts to the Purchaser were free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever.

S. **Satisfaction of 363(f) Standards.** The Debtors may sell the Purchased Assets free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever, because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. All parties in interest, including, without limitation, any holders of Liens, claims, encumbrances, and other interests and any other non-Debtor counterparties to the Assumed Contracts, that did not object, or who withdrew their objection, to the Sale, the Motion, the assumption and assignment of the applicable Assumed Contract or the

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<sup>3</sup> As used herein "Liens" shall include, without limitation, ad valorem, property and similar tax liens subject to paragraph 14 hereof.

associated Cure Amount have consented to the relief granted herein pursuant to section 363(f)(2) of the Bankruptcy Code. Those (x) holders of Liens and (y) non-Debtor parties to Assumed Contracts who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, if any, attach to the portion of the net Sale proceeds ultimately attributable to the property against or in which they assert an interest, in the order of their priority, with the same validity, force, and effect that they now have as against such property, subject to any claims and defenses the Debtors may possess with respect thereto.

T. **No Successor Liability.** Neither the Purchaser nor any of its affiliates are successors to the Debtors or their estates by reason of any theory of law or equity, and neither the Purchaser nor any of its affiliates shall assume or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates, except as otherwise expressly provided in the APA. Without limitation, the assumption of liability on account of each respective Customer Program (as defined in the APA) specific to each Seller shall be undertaken by each Designated Assignee (as defined in the APA) separately, and not jointly and severally, and not by the Purchaser itself, and recourse thereon shall be limited and subject to the terms and conditions expressly stated in Section 2.3(b) of the APA.

U. **Assumed Contracts and Cure Costs.** The Debtors have demonstrated that the assumption and assignment of the Assumed Contracts to the Purchaser in connection with the consummation of the Sale is an exercise of the Debtors' sound business judgment and is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Assumed Contracts being assigned to the Purchaser are an integral part of the APA and the Sale and, accordingly, the assumption and assignment of the Assumed Contracts is reasonable and enhances

the value of the Debtors' estates. Any non-Debtor counterparty to an Assumed Contract that has not actually filed with the Court an objection to such assumption and assignment in accordance with the terms of the Bidding Procedures Order and Cure Notice is deemed to have consented to such assumption and assignment.

V. The Debtors and the Purchaser, as applicable under the APA, have, including by way of entering into the APA, and agreeing to the provisions relating to the Assumed Contracts therein, (i) cured, or provided adequate assurance of cure, of any default existing prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has, based upon the record of these proceedings, provided adequate assurance of its future performance of and under the Assumed Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. No default exists in the Debtors' performance under the Assumed Contracts as of the Closing Date other than the failure to pay Cure Amounts or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code. The Purchaser's promise under the APA to perform the obligations under the Assumed Contracts after the Closing shall constitute sufficient adequate assurance of future performance under the Assumed Contracts being assigned to the Purchaser within the meanings of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code. The Cure Amounts are hereby found to be the sole amounts necessary to cure any and all defaults under the Assumed Contracts under section 365(b) of the Bankruptcy Code.

W. **No Sub Rosa plan.** The Sale does not constitute a *sub rosa* chapter 11 plan. The Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a chapter 11 plan for any of the Debtors.

X. **Opportunity to Object.** A fair and reasonable opportunity to object or be heard with respect to the Motion, the Notice of Successful Bidder and the relief requested therein has been afforded to all interested persons and entities pursuant to the Bidding Procedures Order.

Y. **Settlement and Compromise.** As is more specifically described in the APA, the Purchaser has requested, and the Debtors have agreed, to assign or otherwise release all Purchased Actions (as defined in the APA), including (a) avoidance claims and causes of action against third parties (the "Third Party Claims"), and (b) any and all grounds at law or in equity against Purchaser, its Affiliates, Subsidiaries and their respective agents, officers, directors, shareholders, members, managers, agents, employees, representatives and attorneys (collectively the "Purchaser Released Parties" and such claims against such Purchased Released Parties, the "Released Claims"). The Released Claims include contentions by the Debtors or, derivatively, their creditors that the bankruptcy estates may be able to recover from certain Purchaser Released Parties based on avoidable transfers made by the Debtors to or for the benefit of the Purchaser Released Parties, as well as potential claims, causes of action, and various other legal theories, including, but not limited to, civil conspiracy, fraud, and breach of fiduciary duty. The Motion describes, and the APA contemplates, a comprehensive assignment or release and settlement of certain of the Released Claims (the "Compromise and Settlement"), which are supported by valuable consideration through the APA, as demonstrated from the record.

Z. **Releases.** The release of all Released Claims by the Debtors and their respective bankruptcy estates (the "Debtor Releasing Parties"), as and to the fullest extent necessary to

address all Purchased Actions that may be asserted against the Purchaser Released Parties (the “Releases”). Such Releases are critical to Purchaser’s agreement to enter into the APA, are supported by fair and reasonable consideration, are in the best interests of the Debtors’ bankruptcy estates, and, accordingly, are hereby approved pursuant to Bankruptcy Rule 9019. The Releases and Sale contemplated under the APA are mutually dependent upon each other and cannot be separated. The Releases granted herein are essential to the Sale of the Purchased Assets, which Sale would not take place absent the Releases.

AA. **Fair and Equitable/Best Interest.** Approval of the Sale and Releases under the APA and this Order is (i) fair and equitable, (ii) in the best interests of the Debtors’ bankruptcy estates, and (iii) falls within the reasonable range of litigation possibilities. The balance between the likelihood of the Debtors’ success on the merits after lengthy and costly litigation when compared to the concrete and tangible benefit to the Debtors’ bankruptcy estates under the terms of the APA, taken as a whole, weighs in favor of approval of the Releases. Moreover, it is certain that litigation of the Released Claims (including potential avoidance claims and fiduciary duty claims against the Purchaser Released Parties) would be costly, complex and protracted. The record supports approval of the Releases and Sale in favor of such costly and protracted litigation. The Debtors relied on experienced counsel from its professionals and advisors when exercising their business judgment to accept the Compromise and Settlement.

BB. **Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order, and, sufficient cause having been shown, waives any such stay, and expressly directs entry of judgment as set forth herein. The Debtors have demonstrated compelling circumstances and a good, sufficient and

sound business purpose and justification for the immediate approval and consummation of the Sale and Releases contemplated by the APA. The Purchaser, being a good faith purchaser under section 363(m) of the Bankruptcy Code, may consummate the Sale and Releases subject to the terms of this Order.

CC. **Time is of the Essence.** Time is of the essence in consummating the Sale and Releases. The consummation of the Sale and Releases as soon as practicable is necessary both to preserve and maximize the value of the Debtors' assets for the benefit of the Debtors, their estates, their creditors, interest holders and all other parties in interest in the Chapter 11 Cases, and to provide the means for the Debtors to maximize creditor and interest holder recoveries. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted as set forth herein and the Sale contemplated thereby and by the APA is approved as set forth in this Order.
2. All objections to the Motion or the relief granted herein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

**Approval of the APA**

3. The APA, and all other ancillary documents, including all of the terms and conditions thereof, are hereby approved and shall be deemed assumed immediately upon entry of this Order without the need for further action by any party or the Court.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and directed to execute and deliver, perform under, consummate, implement, comply with and close fully the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale and Releases, and consummate the Sale

and Releases pursuant to and in accordance with the terms and conditions of the APA and this Order. The Debtors are further authorized to pay, without further order of this Court, whether before, at, or after the Closing, any expenses or costs that are required to be paid in order to consummate the transactions contemplated by the APA or perform their obligations under the APA.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the APA, together with all additional instruments, documents, and other agreements that may be reasonably necessary or desirable to implement the APA, and to take all further actions as may be reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser or reducing to possession, the Purchased Assets, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA.

6. This Order and the APA shall be binding in all respects upon the Debtors and their estates, successors, and assigns, all creditors of and equity holders in any Debtor, and any and all other parties in interest, including, without limitation, any and all holders of Liens, claims, encumbrances, and other interests (including holders of any rights or claims based on any putative successor or transferee liability) of any kind or nature whatsoever in the Purchased Assets, all non-Debtor parties to the Assumed Contracts, and any trustee or successor trustee appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code. The APA and the Sale are not subject to rejection or avoidance (whether through any avoidance or recovery, claim, action, or proceeding arising under chapter 5 of the Bankruptcy Code or under any similar state or federal law or any other cause of action) by the Debtors, any chapter 7 or chapter 11 trustee of the Debtors' bankruptcy estates, or any other person or entity. The APA, this Order, and the Debtors' obligations therein and herein shall not be altered, impaired, amended, rejected,



discharged, or otherwise affected by any chapter 11 plan proposed or confirmed in these bankruptcy cases, any order confirming any chapter 11 plan, or any subsequent order of this Court without the prior written consent of the Purchaser. In furtherance of the foregoing, any estate representative, including a trustee appointed in this case under any chapter 11 plan confirmed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code, shall be obligated to comply with the preservation and production obligations of the Debtors set forth in the APA. Nothing contained in any chapter 11 plan confirmed in these chapter 11 cases or the confirmation order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the APA or this Order. This Order and the APA shall inure to the benefit of the Debtors, their estates, their creditors, the Purchaser, and their respective successors and assigns.

7. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in a writing signed by all parties, after consultation with both Arizona Bank & Trust and the Committee with respect to material modifications, and in accordance with the terms thereof, without further order of this Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

#### **Transfer of the Purchased Assets**

8. Except as expressly permitted or otherwise specifically provided for in the APA or this Order, pursuant to sections 105(a), 363(b), 363(f), 365(b), 365(f) of the Bankruptcy Code or any other applicable section of the Bankruptcy Code, upon the Closing, the Purchased Assets shall be transferred to the Purchaser, and such transfer shall constitute a legal, valid, binding, and effective transfer of the Purchased Assets free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever pursuant to section 363(f) of the Bankruptcy Code.

Upon the Closing, the Purchaser shall take title to and possession of the Purchased Assets subject only to the Assumed Liabilities and Permitted Liens (as each term is defined in the APA).

9. Except as expressly permitted or otherwise specifically provided by the APA or this Order, all persons and entities (as defined in section 101(15) of the Bankruptcy Code), including, but not limited to, all lenders, debt security holders, equity security holders, committees (statutory or otherwise), governmental, tax, and regulatory authorities, parties to executory contracts and unexpired leases, creditors holding Liens or claims of any kind or nature whatsoever against or in the Debtors or any of the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing, or the transfer of the Purchased Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting any Liens or claims of any kind or nature whatsoever, against the Purchaser and its successors, designees, assigns, or property, or the Purchased Assets conveyed in accordance with the APA. On the Closing Date, each of the Debtors' creditors is authorized to execute such documents and take all other actions as may be deemed by the Purchaser to be reasonably necessary or desirable to release Liens or Claims on the Purchased Assets, if any, as provided for herein, as such Liens or Claims may have been recorded or may otherwise exist.

10. The transfer of the Purchased Assets to the Purchaser pursuant to the APA shall constitute a legal, valid, and effective transfer of the Purchased Assets on the Closing, and shall vest the Purchaser with all of the Debtors' rights, title, and interests in the Purchased Assets free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever.

11. All persons and entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Purchaser or its assignee as of the Closing Date.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Liens in the Purchased Assets conveyed pursuant to the APA and this Order has not delivered to the Debtors, prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens which the person or entity has with respect to the Purchased Assets or otherwise, then (a) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets, and (b) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens in the Purchased Assets of any kind or nature whatsoever.

13. All liens on the Purchased Assets shall attach to the net proceeds of the Sale in the same order of priority as existed prior to the sale. The Debtors shall hold and retain the net sale proceeds pending either (i) confirmation of a chapter 11 plan or (ii) further order of the Court upon motion. The rights of all secured parties in the net proceeds of sale are preserved and shall remain subject to the terms of this Court's *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 157] (the "Final DIP Order").

**Ad Valorem Taxes**

14. The allowed ad valorem, property, and similar tax liens of [the taxing authorities] (collectively, the “Taxing Authorities”) are hereby expressly retained against the Purchased Assets until payment is made to fully satisfy the allowed 2021 ad valorem, property, and similar taxes, and any penalties or interest which may ultimately accrue to those 2021 taxes if not timely paid. The Sale of the Purchased Assets approved herein shall vest the Purchaser with all of the Debtors’ right, title, and interest in the Purchased Assets free and clear of ad valorem, property, and similar tax liens for any prior tax years, which ad valorem, property, and similar tax liens shall attach to the portion of the Sale proceeds ultimately attributable to the property against which they assert a lien, in the order of their priority, with the same validity, force, and effect that they now have as against such Purchased Assets, subject to any claims and defenses the Debtors and Debtors’ estates may possess with respect thereto.

**Assumption and Assignment of Assumed Contracts and Assumed Liabilities**

15. The Debtors are hereby authorized to and shall, in accordance with sections 105(a) and 365 of the Bankruptcy Code, (a) assume the Assumed Contracts, (b) assign the Assumed Contracts to the Purchaser, effective upon and subject to the occurrence of the Closing, free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever, which Assumed Contracts by operation of this Order shall be deemed assumed and assigned effective as of the Closing, and (c) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to the Purchaser. The Purchaser’s assumption of the Assumed Contracts on the terms set forth in the APA is hereby approved, and all requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption and assignment of the Assumed Contracts by the Debtors to the Purchaser have been satisfied.

16. Any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract on the consent of the non-Debtor counterparty thereto or allow the non-Debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, shall constitute unenforceable anti-assignment provisions that are void and of no force and effect.

17. Upon assignment to the Purchaser, (i) the Assumed Contracts shall remain in full force and effect for the benefit of the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, limits, or conditions such assignment or transfer; and (ii) in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title, and interest of the Debtors in each Assumed Contract free and clear of Liens, claims, encumbrances, and other interests of any kind or nature whatsoever.

18. The Purchaser is hereby substituted for all purposes as a party to all Assumed Contracts in the place of any applicable Debtor or Debtors party to any such Assumed Contracts, and the Purchaser shall have any and all rights and benefits of the respective Debtor or Debtors under all such Assumed Contracts without interruption or termination of any kind, and all terms applicable to such Debtor or Debtors shall apply to the Purchaser as if such Assumed Contracts were amended to replace such Debtor or Debtors with the Purchaser.

19. All defaults or other obligations of the Debtors under the Assumed Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) as to which no objections were

interposed and remain pending as of the date of this Order are deemed satisfied by the payment of the proposed amount necessary, if any, to cure all monetary defaults, if any, under such Assumed Contract in those amounts set forth in Schedule 2.6(a) of the APA and in the Cure Notice, which was served in compliance with the Bidding Procedures Order, and which were satisfied, or shall be satisfied as soon as practicable, as provided in the APA.

20. For all Assumed Contracts for which a Cure Notice was served, the Debtors or the Purchaser, as applicable under the APA, are authorized and directed to pay all Cure Amounts listed in such Cure Notice upon the later of (a) the Closing or (b) for any Assumed Contract for which a timely filed and served objection (an “Assumption Objection”) has been filed to the assumption and assignment of such agreement or the Cure Amounts relating thereto and such objection remains pending as of the date of this Order, the resolution of such Assumption Objection by settlement or order of this Court. For an Assumption Objection concerning a disputed Cure Amount, the Purchaser shall reserve the greater between: (i) the Cure Amount set forth in the Cure Notice; and (ii) the amount supported in writing and set forth in the timely filed and served Assumption Objection, and the Purchaser shall continue to hold such reserve until otherwise ordered by this Court or agreed to in writing by the non-Debtor objecting party to the Assumed Contract. If no out-of-court resolution can be reached, either party may request a hearing on no less than 14 days’ notice to the other party.

21. Pursuant to Section 2.6 of the APA, the Purchaser is authorized, in its sole discretion, to remove any contracts from Schedule 2.6(a), the list of those Contracts, Leases, and Permits that Purchaser elects to have assumed and assigned to Purchaser, at any time prior to the Closing Date.

22. Each non-Debtor party to an Assumed Contract is hereby forever barred, estopped, and permanently enjoined from asserting against the Debtors, the Purchaser, or any of their affiliates, or the property of any of them, any default, breach, claims of pecuniary losses existing as of the Closing or by reason of Closing, action, liability, or other cause of action existing as of the date of the Sale Hearing whether asserted or not, or, against the Purchaser or any of its affiliates, any counterclaim, defense, setoff or any other claim asserted or assertable against the Debtors. Each non-Debtor party to an Assumed Contract is hereby forever barred, estopped, and permanently enjoined from asserting any objection to the assumption and assignment of such non-Debtor party's Assumed Contract including, without limitation, that its consent is necessary for such assumption and assignment.

23. Subject to the qualifications enumerated in finding T above and the limitations specified in Section 2.3(b) of the APA, Purchaser shall further be responsible for paying or otherwise satisfying all Assumed Liabilities contemplated under Section 2.3 of the APA. The Debtors, or any successor in interest, reserve the right to seek reimbursement from the Purchaser for any and all Assumed Liabilities contemplated in Section 2.3 to the APA and summarized in Schedule 2.3 to the APA which remain unpaid or are otherwise asserted against the Debtors or their bankruptcy estates.

**Release of Released Claims Against the Purchaser Released Parties**

24. The Compromise and Settlement, including the Releases, are hereby approved, and the Releases are incorporated fully herein. The Debtors are authorized to enter into, perform their obligations under, and take all other actions to effect the Releases with respect to the Released Claims against the Purchaser Released Parties pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 6004 and 9019.

25. For the avoidance of doubt, effective as of the Effective Date of the APA, any and all DIP Obligations (as defined in the Final DIP Order) shall be deemed satisfied and fully discharged after giving effect to the permitted credit bid in connection with the APA in the form of a consummated Closing of the APA. In further consideration for the Releases, effective as of the Effective Date of the APA, all Purchaser Released Parties shall be deemed to have released any and all claims, causes of action, remedies and any other amounts due or payable from the Debtors and their bankruptcy estates, including, but not limited to, any rights of reimbursement, repayment of intercompany loans or advances, and any outstanding invoices for goods or services.

26. Effective as of the Effective Date of the APA, all Estate Releasing Parties, and any and all creditors and parties in interest in the Chapter 11 Cases, which have held or asserted, which hold or assert, or which in the future may hold or assert any Released Claim, directly or indirectly, against any of the Purchaser Released Parties, shall be forever barred and enjoined from (a) asserting against any Purchaser Released Parties, or (b) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against any Purchaser Released Parties on account of or in connection with or with respect to, any Released Claims, and any claims or causes of action alleging or relying on any legal or equitable theory that is premised or based, in whole or in part, on any Released Claim. Any of the Purchaser Released Parties may enforce this Order as a defense to any Claim brought against such Purchaser Released Party that is enjoined under this Order as to such Purchaser Released Party and may seek to enforce such injunction in a court of competent jurisdiction.

27. Notwithstanding anything to the contrary in this Order or the APA, the rights of insured persons and entities, if any, to access any insurance policies or the proceeds thereof (the "Policies") in their respective capacities as insureds thereunder, including those under which



the Debtors are insured, shall not be affected or diminished by this Order (even if Released Claims related thereto are otherwise released pursuant to the APA and this Order), and the rights, defenses and claims of the Debtors, their Estates, any representative of the Estates, and insurers are reserved with respect thereto; provided, further, nothing in the Motion, APA or this Order alters or amends the terms and conditions of the Policies, enjoins insurers or relieves the Debtors or any insurers of any of their obligations thereunder.

### **Additional Provisions**

28. This Order (a) shall be effective as a determination that, upon the Closing, all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged, and terminated and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, foreign, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to, the Purchased Assets.

29. Each and every federal, state, and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale transaction contemplated by the APA.

30. No governmental unit may revoke or suspend any right, license, copyright, patent, trademark or other permission relating to the use of the Purchased Assets sold, transferred or

conveyed to the Purchaser on account of the filing or pendency of the chapter 11 case or the consummation of the sale of the Purchased Assets.

31. At any time prior to the Closing, the Purchaser may assign the APA or its rights thereunder to one or more of its affiliates, which shall be entitled to assume and accede to the APA and to purchase and acquire any or some of the Purchased Assets in lieu of the Purchaser, and such affiliate(s) shall be deemed to be the Purchaser for all purposes under this Order.

32. Neither the Purchaser nor any of its affiliates are or shall be deemed, as a result of the consummation of the Sale contemplated herein, to: (a) be legal successors to the Debtors or their estates by reason of any theory of law or equity, (b) an affiliate of any of the Debtors, (c) have, *de facto* or otherwise, merged with or into the Debtors, or (d) be an alter ego or a mere continuation or substantial continuation or successor of the Debtors in any respect. Except as expressly permitted or otherwise specifically provided for in the APA or this Order, neither the Purchaser nor any of its affiliates shall (i) assume or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates or (ii) have any liability or responsibility for any liability or other obligation of the Debtors' arising under or related to the Purchased Assets or otherwise. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the APA, the Purchaser and its affiliates shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Purchaser and its affiliates shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of warranty, product liability, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including, but not limited to, liabilities on account of any taxes arising, accruing, or

payable under, out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing.

33. Following the Closing, no holder of a Lien in the Purchased Assets shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Lien, or any actions that the Debtors may take in these chapter 11 cases or any successor cases.

34. This Court retains jurisdiction to enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Purchased Assets or performance of other obligations owed to the Purchaser; (b) resolve any disputes arising under or related to the APA, except as otherwise provided therein; (c) interpret, implement, and enforce the provisions of this Order; and (d) protect the Purchaser and its affiliates against (i) any Liens in the Debtors or the Purchased Assets of any kind or nature whatsoever and (ii) any creditors or other parties in interest regarding the turnover of the Purchased Assets that may be in their possession.

35. The so-called "bulk sale" laws or any similar law of any applicable state or other jurisdiction are waived or inapplicable to the Sale.

36. Except as otherwise expressly provided in the APA, the Purchaser shall have no liability to pay wages, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any and all pension plans) or any other payment with respect to employees or former employees of the Debtors. Except as otherwise expressly provided in the APA, the Purchaser shall have no liability with respect to any collective bargaining agreement, employee pension plan, employee welfare or retention,

benefit and/or incentive plan to which any Debtor is a party and relating to the Purchased Assets (including, without limitation, arising from or related to the rejection or other termination of any such agreement), and the Purchaser shall in no way be deemed a party to or assignee of any such agreement, and no employee of the Purchaser shall be deemed in any way covered by or a party to any such agreement, and except as otherwise expressly provided in the APA, all parties to any such agreement are hereby enjoined from asserting against the Purchaser any and all Claims arising from or relating to such agreement.

37. The failure to specifically include any particular provision of the APA or other related documents in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the APA and other related documents be authorized and approved in their entirety.

38. To the extent of any conflict between the APA and this Order, the terms and provisions of the APA shall govern.

39. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to close the Sale under the APA in accordance with its terms at any time.

40. The Court shall retain jurisdiction over the interpretation or implementation of any and all provisions of this Order.

### END OF ORDER ###

Submitted by:

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**COUNSEL TO THE DEBTORS  
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**Exhibit 1**

**APA**