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

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

In re:

FRESH ACQUISITIONS, LLC, *et al.*,¹

Debtors.

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Chapter 11

Case No. 21-30721 (SGJ)

(Jointly Administered)

**DEBTORS' EXPEDITED MOTION TO EXTEND THE EXCLUSIVE PERIOD
TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), for their Motion to Extend the Exclusive Period to File a Chapter 11 Plan and Solicit Acceptances Thereof (the “Motion”), respectfully represent as follows:

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' 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.

Jurisdiction and Venue

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The bases for the relief requested herein are sections 105 and 1121 of title 11 of the United States Code (the “Bankruptcy Code”) and rule 9013 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

4. Prior to the COVID-19 pandemic, the Debtors were a significant operator of buffet-style restaurants in the United States with approximately 90 stores operating in more than 27 states. The Debtors’ concepts include six buffet restaurant chains and a full-service steakhouse, operating under the names Furr’s®, Old Country Buffet®, Country Buffet®, HomeTown® Buffet, Ryan’s®, Fire Mountain®, and Tahoe Joe’s Famous Steakhouse®, respectively. Much like its competitors in the all-you-can-eat (AYCE) and dine-in restaurant businesses, the Debtors’ recent history has been impacted by the uncertainty, unexpected challenges, and ever-changing landscape resulting from the COVID-19 pandemic. A more detailed history of the Debtors’ operations is discussed in the *Declaration of Mark Shapiro, Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motion* [Docket No. 20]

5. On April 20, 2021 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these chapter 11 cases. On April 30, 2021, the United States Trustee for the Northern District of

Texas (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code. [Docket No. 94].

6. On May 18, 2021, the Debtors filed the *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 Thereof; and (II) an Order Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of Liens, Claims and Interests* [Docket No. 165]

7. On May 27, 2021, this Court entered 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] (the “Bidding Procedures Order”).² Pursuant to the terms of the Bidding Procedures Order, as evidenced by the *Notice of Bid Deadline, Auction, and Sale Hearing* [Docket No. 211], the Court scheduled a hearing to consider approval of a sale of substantially all of the Debtors’ assets on August 4, 2021, at 1:30 p.m. Central Time (the “Sale Hearing”).

8. On July 21, 2021, the Court entered the *Agreed 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], continuing the Sale Hearing to August 10, 2021, at 1:30 p.m. Central Time.

9. On August 3, 2021, the Court entered the *Second Agreed Order (I) Continuing the Sale Hearing; (II) Extending Certain Milestones Under the DIP Financing Order; and*

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

(III) *Granting Related Relief* [Docket No. 329], further continuing the Sale Hearing to August 24, 2021, at 9:30 a.m.

10. Section 1121(b) of the Bankruptcy Code establishes an initial period of 120 days after the commencement of a chapter 11 case during which only a debtor may file a plan (the “Filing Exclusivity Period”) and an additional 60-day period thereafter during which only the debtor may solicit votes for a plan (the “Solicitation Exclusivity Period”). Currently, the Filing Exclusivity Period will expire on August 18, 2021, before the continued Sale Hearing.

Relief Requested

11. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, extending the Filing Exclusivity Period and the Solicitation Exclusivity Period (collectively, the “Exclusivity Periods”) through and including October 17, 2021 and December 16, 2021, respectively.

Basis for Relief

12. Section 1121(d)(1) of the Bankruptcy Code permits a court to extend a Debtors’ exclusivity period “for cause.” Although the Bankruptcy Code does not define “cause,” bankruptcy courts have discretion to extend exclusivity to promote the orderly, consensual, and successful reorganization of a Debtors’ affairs. *See United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 372 (5th Cir. 1987) (noting that the meaning of “cause” under section 1121 should be viewed in context of the Bankruptcy Code’s goal of fostering reorganization); *In re Mirant Corp.*, No. 4-04-CV-476-A, 2004 WL 2250986, at *2 (N.D. Tex. Sept. 30, 2004) (noting that an extension of exclusivity is typically granted where “the debtor showed substantial progress had been made in negotiations toward reorganization”); *see also In re Adelphia Commc’ns Corp.*, 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006) (citing factors relevant to whether “cause” exists to extend exclusive periods).

13. Courts examine a number of factors to determine whether a debtor has had an adequate opportunity to develop, negotiate, and propose a chapter 11 plan and thus whether there is “cause” for extension of the Exclusivity Periods. These factors include:

- a) the size and complexity of the case;
- b) the need for sufficient time to permit the debtor to negotiate a chapter 11 plan and prepare adequate information;
- c) whether the debtor has made progress in negotiations with its creditors;
- d) the existence of good faith progress toward reorganization;
- e) whether the debtor is seeking to extend exclusivity to pressure creditors to accede to the Debtors’ reorganization demands;
- f) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- g) the fact that the debtor is paying its bills as they become due;
- h) the amount of time which has elapsed in the case; and/or whether an unresolved contingency exists.

See, e.g., In re New Millennium Mgmt., LLC, No. 13-35719, 2014 WL 792115, at *6 (Bankr. S.D. Tex. Feb. 25, 2014) (listing factors relevant to whether “cause” exists to extend exclusivity periods); *In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (applying the above-listed factors and finding cause to extend the period for 60 days). Not all factors are relevant to every case, and the existence of even one of the above-listed factors may be sufficient to extend a debtor’s exclusivity periods. *See, e.g., Express One Int’l, Inc.*, 194 B.R. at 100 (listing all nine factors later set forth in *Adelphia*, but relying on only four as relevant in determining whether there was “cause” to extend exclusivity); *see also In re Excel Maritime Carriers Ltd.*, No. 13-23060, 2013 WL 5155040, at *2 (Bankr. S.D.N.Y. Sept. 13, 2013) (noting in an exclusivity termination context that the ultimate consideration for the court is what will best move the case forward in the best interests of all parties). Further, courts regularly grant a debtor’s first request for an extension of the exclusive period to file a chapter 11 plan. *See Am. Network Leasing v. APEX Pharms., Inc. (In re Apex Pharms., Inc.)*, 203 B.R. 432, 441 (N.D. Ind. 1996) (noting that

during the initial 120-day period in which debtors have an exclusive right to file a chapter 11 plan, “bankruptcy courts have applied a lesser standard in determining whether the burden of showing ‘a reasonable possibility of a successful reorganization within a reasonable time’ has been satisfied.”) (citation omitted); *In re Borders Grp., Inc.*, 460 B.R. 818, 825 (Bankr. S.D.N.Y. 2011) (same).

14. Courts within the Fifth Circuit and in other jurisdictions have held that the decision to extend exclusivity is left to the sound discretion of the court, and should be based on the totality of circumstances in each case. *See, e.g., Mirant*, 2004 WL 2250986, at * 3 (noting that the decision to extend exclusivity “lies within the bankruptcy court’s discretion”); *Express One Int’l, Inc.*, 194 B.R. at 100 (extending exclusivity based on the totality of the circumstances); *Borders Grp.*, 460 B.R. at 822 (noting that “the court has broad discretion in extending or terminating exclusivity”); *In re Washington-St. Tammany Elec. Coop., Inc.*, 97 B.R. 852, 854 (Bankr. E.D. La. 1989) (citing *In re Sharon Steel Corp.*, 78 B.R. 762, 763 (Bankr. W.D. Pa. 1987) (“The decision of whether or not to extend the debtor’s period of exclusivity rests with the discretion of the Court.”)); *First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 966 (D. Del. 1986) (holding that section 1121(d) of the Bankruptcy Code provides the bankruptcy court “with flexibility to either reduce or increase that period of exclusivity within its discretion”)

15. Precedent in this and other districts supports the Debtors’ request for the initial extension of exclusivity requested herein. *See, e.g., In re Tuesday Morning Corp.*, No. 20-31476 (HDH) (Bankr. N.D. Tex. Nov. 23, 2020) (granting 60-day extension); *In re CHC Grp. Ltd.*, No. 16-31854 (BJH) (Bankr. N.D. Tex. Sept. 2, 2016) (granting 90-day extension); *In re ALCO Stores, Inc.*, No. 14-34941 (SGJ) (Bankr. N.D. Tex. March 6, 2015) (granting 60-day extension); *In re Vitro Asset Corp.*, Case No. 11-32600 (HDH) (Bankr. N.D. Tex. July 25, 2011) (granting 60-day

extension); *In re Pilgrim's Pride Corp.*, Case No. 08-45664 (DML) (Bankr. N.D. Tex. March 26, 2009) (granting 6-month extension); *In re Heartland Auto. Holdings, Inc.*, Case No. 08-40047 (DML) (Bankr. N.D. Tex. May 6, 2008), (granting 120-day extension); *In re GenOn Energy, Inc.*, No. 17-33695 (Bankr. S.D. Tex. Oct. 3, 2017) (granting an initial exclusivity extension of 180 days); *In re Ultra Petroleum Corp.*, No. 16-32202 (Bankr. S.D. Tex. Feb. 17, 2017) (granting initial exclusivity extension of 120 days); *In re CJ Holding Co.*, No. 16-33590 (Bankr. S.D. Tex. Nov. 3, 2016) (granting an initial exclusivity extension of 120 days); *In re SandRidge Energy Inc.*, No. 16-32488 (Bankr. S.D. Tex. Aug. 30, 2016) (granting an initial exclusivity extension of 120 days). Such initial extensions are reasonable, as serial short-term extensions lead to instability by forcing parties to continue returning to court over-and-over again to litigate exclusivity.

16. Here, as set forth in detail below, the relevant factors strongly favor initial extensions of the Exclusivity Periods.

A. The Debtors' chapter 11 cases are large and complex.

17. As reflected by the Court's *Order Granting Chapter 11 Complex Case Treatment* [Docket No. 66] (the "Complex Case Order"), the Debtors' significant number of creditors and assets make these cases large and complex.

B. The terms of a chapter 11 plan will depend on the outcome of the Sale Hearing.

18. While the Debtors have completed their marketing efforts and are preparing for the Sale Hearing, the ultimate terms of chapter 11 plan will depend on the outcome of the Sale Hearing. The assets to be distributed and the unexpired contracts and leases to be assumed or rejected through a plan will depend on the outcome of the Sale. Furthermore, the causes of action to be pursued or preserved will depend on the releases proposed and addressed at the Sale Hearing. Accordingly, the Debtors require additional time, following the conclusion of the Sale Hearing, to

negotiate with the Committee and all other stakeholders in an effort to propose a largely (if not completely) consensual plan following the Sale Hearing.

C. The Debtors have made significant progress in negotiating in good faith with all creditors and working towards a viable chapter 11 plan.

19. Since the Petition Date, the Debtors have negotiated in good faith and worked collaboratively with their stakeholders. The Debtors have, among other things, secured critical financial and operational relief through cash collateral usage and debtor in possession financing, negotiated a settlement and release with their prepetition lender, Arizona Bank & Trust, filed their schedules of assets and liabilities and statement of financial affairs, engaged in a postpetition marketing and sale process of their assets, and hired various professionals to help the Debtors through the reorganization process.

20. As mentioned above, the Sale Hearing has been continued to August 24, 2021. Given that the outcome of the Sale Hearing will largely drive final discussions with the Committee concerning the terms of a plan of reorganization or liquidation, the Debtors believe that extending the Exclusivity Periods until after the conclusion of the Sale Hearing is the most efficient use of estate resources. The Debtors expect to engage the Committee in an effort to file a consensual plan very shortly after the conclusion of the Sale Hearing.

D. The Debtors are not seeking to extend exclusivity to pressure creditors and an extension of the exclusivity periods will not prejudice creditors.

21. The Debtors have not sought an extension of exclusivity to pressure creditors or other parties in interest. On the contrary, all creditor constituencies are benefitted by providing the Debtors with sufficient time to continue to negotiate the terms of a chapter 11 plan and determine what transaction or combination of transactions will provide the greatest value to their estates and the greatest recovery to their creditors.

22. The Debtors seek to maintain exclusivity so parties with competing interests do not impede the Debtors' efforts to restructure. Extending exclusivity benefits all creditors by preventing the drain on time and resources that inevitably occurs when competing plans are filed. All stakeholders benefit from continued stability and predictability that a centralized process provides, which can only occur while the Debtors remain the sole plan proponent. Moreover, even if the Court approves an extension of the Exclusivity Periods, nothing prevents parties in interest from later seeking to reduce or terminate exclusivity for cause. Accordingly, an extension of the Exclusivity Periods is in the best interest of the Debtors, their creditors, and all parties in interest.

E. The Debtors are paying their bills as they come due.

23. The Debtors have paid their undisputed postpetition debts in the ordinary course of business or as otherwise provided by Court order.³

F. Significant time has not elapsed in these chapter 11 cases.

24. This is the Debtors' first request for an extension of the Exclusivity Periods and will result in an extension of approximately 60 days. As noted above, courts routinely grant a Debtors' request for an initial exclusivity extension. Moreover, as set forth above, the Sale Hearing has been continued to a date following the termination of the Filing Exclusivity Period. To facilitate the agreed-upon timeline, and to allow the Debtors the necessary time to navigate complex issues and constituent negotiations, an extension of the Exclusivity Periods is appropriate.

25. The Debtors believe that the requested extension of the Exclusivity Periods is warranted and appropriate under the circumstances, particularly since this is the Debtors' first request for extension. Each of the relevant factors support extension. Moreover, the requested extension is reasonable and necessary, will not prejudice the legitimate interests of creditors and

³ There are outstanding postpetition obligations potentially owing to two landlords, but in both cases, there are disputes over insurance and rent, both of which are being addressed.

other parties in interest, and will afford the Debtors a meaningful opportunity to pursue a feasible and consensual plan.

G. No opposition to the requested extension.

26. The Debtors have conferred with the U.S. Trustee, the Committee, and VitaNova, the DIP Lender and proposed purchaser and DIP Lender. Neither the U.S. Trustee nor VitaNova opposes the relief requested in this Motion. As of the filing of this Motion, the Committee has declined to provide its position with respect to the requested extension.

Notice

27. The Debtors will provide notice of this Motion to the following parties or their counsel: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to Arizona Bank & Trust; (d) counsel to the Debtors' DIP lender; (e) counsel for the Committee; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is needed.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as may be just and proper.

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Respectfully submitted this 5th day of August, 2021.

GRAY REED

By: /s/ Jason S. Brookner

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of August, 2021, he caused a true and correct copy of the foregoing pleading to be served via CM/ECF on all parties who have subscribed for electronic notice in this case.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Proposed Order

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

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

**ORDER EXTENDING THE DEBTORS' EXCLUSIVE PERIOD
TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

Upon the Motion to Extend the Exclusive Period to File a Chapter 11 Plan and Solicit Acceptances Thereof (the "Motion"),² filed by the above-captioned debtors and debtors in possession (the "Debtors"); and the Court having jurisdiction to consider the Motion pursuant to

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

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

28 U.S.C. § 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court finding that the relief requested in the Motion is in the best interests of the Debtors and their estates; and it appearing that due and sufficient notice of the Motion has been provided by the Debtors and that no other or further notice is required; and after due deliberation and good cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors' exclusive period to file a chapter 11 plan is extended through and including October 17, 2021.
3. The Debtors' exclusive period to solicit acceptances of a chapter 11 plan is extended through and including December 16, 2021.
4. Entry of this Order is without prejudice to (i) the Debtors' right to seek such additional and further extensions of the Exclusivity Periods as they may deem necessary or appropriate and (ii) the rights of parties in interest to oppose any such further extension.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.
6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

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Texas Bar No. 24060067

Amber M. Carson

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