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

**DEBTORS’ MOTION FOR AN ORDER (A) APPROVING THE
SALE OF A LIQUOR LICENSE AND (B) GRANTING RELATED RELIEF**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE BANKRUPTCY COURT AT EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE ST., RM. 1254, DALLAS, TX 75242-1496 BEFORE THE CLOSE OF BUSINESS ON THE DATE THAT IS TWENTY-FOUR (24) DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS

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

FILED, A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT HEREIN.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):

Relief Requested

The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) authorizing the Debtors to sell the liquor License (as defined below) to Upland Abbey LLC (“Upland” or the “Purchaser”) and (b) granting related relief. In support of this Motion, the Debtors submit the *Declaration of Mark Shapiro in Support of the Debtors’ Motion for an Order (A) Approving the Sale of a Liquor License and (B) Granting Related Relief* attached hereto as **Exhibit B** (the “Shapiro Declaration”).

Preliminary Statement

1. Debtor Tahoe Joe’s Inc. (“Tahoe Joe’s” or “Debtor,” and together with Upland, the “Parties”) wishes to sell one of its liquor licenses—specifically “On-Sale General Eating Place” license, No. 47-540679, with the California Department of Alcoholic Beverage Control (the “License”)—previously used at its now-closed restaurant location at 3968 Grand Avenue, Suite 100, Chino, California 91710, in San Bernardino County (the “San Bernardino Location”), which was closed before the Petition Date (as defined below).

2. The Debtors received an offer from Upland to purchase the License in exchange for total payments of \$35,000.00, subject to higher and better offers.

3. The Debtors have already sought higher and better offers but will continue to review any higher and better offer for the License, provided that any such offers are

(a) presented to the Debtors, in writing, through their counsel (at the addresses listed above) and their Chief Restructuring Officer (via e-mail to mshapiro@brileyfin.com and jpegnia@brileyfin.com), and (b) received at least seven (7) calendar days before the deadline for objections to this Motion.

4. The Debtors believe that the offer from Upland is fair value for licenses of this kind in this market. Details of the proposed sale (the “Sale”) are memorialized in the *Escrow Instructions, Alcoholic Beverage License Transfer Only* (as amended and supplemented, the “Agreement”), a true and correct copy of which is attached hereto as **Exhibit C**.

Background

5. 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].

6. 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.

7. 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]. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

8. Since the Petition Date, the Debtor has negotiated the terms of the proposed Sale with Upland. As memorialized in the Agreement, the total purchase price is expected to be \$35,000, comprised of the following deposits (collectively, the “Purchase Price”): (i) a \$3,500 initial deposit; and (ii) a \$31,500 final deposit to be funded within five (5) business days of the entry of an order approving the Sale. As described more fully in the Agreement, the Purchase Price will be held by California Business Escrow, Inc., as the escrow holder, pending final approval by the California Department of Alcoholic Beverage Control (the “ABC”) and then transferred to the Debtors upon closing of the Sale. The Debtors have not retained a broker for the Sale of the License. Any broker fees or commissions to be paid will be paid separately by the Purchaser, not out of the Purchase Price.

Arguments and Authorities

9. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

10. This Court’s power under Bankruptcy Code section 363 is supplemented by section 105(a), which provides in relevant part that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). As set forth below, the Debtors submit that they have satisfied the requirements of sections 105 and

363 for a sale outside the ordinary course of business, as those sections have been construed by courts in the Fifth Circuit.

11. To approve a sale under section 363(b)(1) of the Bankruptcy Code, courts in the Fifth Circuit require a debtor to show that the decision to sell the property outside of the ordinary course of business is grounded in the debtor's business judgment. *See Inst'l Creditors of Cont'l Airlines, Inc. v Cont'l Airlines, Inc. (In re Cont'l Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988). A bankruptcy court is to give deference to the business judgment of the trustee or debtor in possession when it deems the sale to be appropriate. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987); *see also In re Rodriguez*, 353 B.R. 144, 149 (Bankr. N.D. Tex. 2006).

12. Once the debtor articulates a valid business justification, its decision to sell property out of the ordinary course of business enjoys a strong presumption that "the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company." *Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re STAK Design, Inc.*, 612 B.R. 872, 875-76 (Bankr. N.D. Tex. 2020) (concluding that debtor demonstrated its "reasonable business judgment" to sell assets in a private sale, without conducting a public auction, due to the "low probability" of finding a better offer under the circumstances).

13. The Debtors have sound business justifications for pursuing the Sale of the License. As previously mentioned, the San Bernardino Location was closed prepetition, the underlying lease has been rejected, and the Sale provides a meaningful way to monetize the License, without

decreasing the value of the Debtors' remaining assets that are being sold through the previously approved auction process. The Debtors have received an offer from Upland. While such offer is subject to higher and better offers from other third parties, the Debtors do not expect to receive a significant amount of interest in this License to warrant a full-scale auction process.

14. The Debtors believe that Upland is a good faith purchaser under 11 U.S.C. § 363(m). The Bankruptcy Code does not explicitly define "good faith." *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014). In the context of § 363(m), the Fifth Circuit has defined the term in two ways. *Id.* The first is by defining "good faith purchaser" as "one who purchases the assets for value, in good faith, and without notice of adverse claims." *See also Hardage v. Herring Nat'l Bank*, 837 F.2d 1319, 1323 (5th Cir. 1988). The other is by noting that any potential misconduct that would otherwise extinguish a good faith purchaser's status comprises "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *See Bleaufontaine, Inc. v. Roland Int'l (In re Bleaufontaine, Inc.)*, 634 F.2d 1383, 1388 n. 7 (5th Cir. 1981) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

15. Upland is not an insider or related party to the Debtors, and Upland's offer was negotiated at arms' length through an independent license broker, whose fee will be paid by Upland separately. Likewise, Upland has not engaged in any fraudulent activity that would otherwise give it an unfair advantage over the Debtors concerning the Sale. As such, Upland is a "good faith purchaser" as noted in 11 U.S.C. § 363(m).

16. The Debtors seek authority to pay certain claims, including taxes and other priority claims, through the escrow agent (as set forth in the terms of the Agreement), using the sale

proceeds held in escrow. Lastly, on information and belief, the Committee does not oppose the Sale. The Sale will maximize the value of the License without decreasing the value of the Debtors' remaining assets.

Waiver of Bankruptcy Rule 6004(h)

17. To implement the foregoing successfully, the Debtors request that the Court waive the fourteen (14) day stay period under Bankruptcy Rule 6004(h).

Notice

18. The Debtors will provide notice of this Application 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; (f) the California taxing authorities; and (g) 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.

No Prior Request

19. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 8th day of September, 2021.

GRAY REED

By: /s/ Jason S. Brookner

Jason S. Brookner

Texas Bar No. 24033684

Aaron M. Kaufman

Texas Bar No. 24060067

Amber M. Carson

Texas Bar No. 24075610

1601 Elm Street, Suite 4600

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akaufman@grayreed.com

acarson@grayreed.com

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

CERTIFICATE OF SERVICE

I certify that on September 8, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Proposed Order

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

<p>In re:</p> <p>FRESH ACQUISITIONS, LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 21-30721 (SGJ)</p> <p>(Jointly Administered)</p> <p>Re: Docket No. ____</p>
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**ORDER (A) APPROVING THE SALE OF A
LIQUOR LICENSE AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing Debtor Tahoe Joe’s Inc. to sell the License to Upland, and (b) granting related relief, all as more fully set forth

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

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

in the Motion; 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 under 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and this Court having determined that the legal and factual bases set forth in the Motion and the Shapiro Declaration establish just cause for the relief granted herein; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; 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 Motion is granted as set forth herein.
2. The Debtors are hereby authorized to sell the On-Sale General Eating Place License, No. 47-540679 by the California Department of Alcoholic Beverage Control (the "License") for \$35,000 to Upland Abbey, LLC, pursuant to the terms of the Escrow Instructions, Alcoholic Beverage Transfers Only, a copy of which is attached to the Motion as Exhibit C.
3. Upland Abbey, LLC is a good faith purchaser as that term is used in 11 U.S.C. § 363(m) and, as such, is entitled to all protections afforded thereunder.
4. The Debtors are authorized to direct California Business Escrow, Inc. (the "Escrow Agent") to pay from the sale proceeds any liens and or claims that the Debtors

believe in good faith are required to be paid under applicable law or regulation. All net proceeds from the sale of the License shall be remitted to the Debtor or its successor in interest.

5. Any stay of this order, as otherwise required under Fed. R. Bankr. P. 6004(h), is hereby waived.

6. This Court reserves jurisdiction over the interpretation and implementation of this Order and the Sale of the License.

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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acarson@grayreed.com

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

Exhibit B

Shapiro Declaration

**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)
	§	

**DECLARATION OF MARK SHAPIRO IN SUPPORT
OF THE DEBTORS’ MOTION FOR AN ORDER (A) APPROVING
THE SALE OF A LIQUOR LICENSE AND (B) GRANTING RELATED RELIEF**

I, Mark Shapiro, hereby declare under penalty of perjury:

1. I am a Senior Managing Director of GlassRatner Advisory & Capital Group, LLC d/b/a B. Riley Advisory Services (“B. Riley Advisory”),² a professional services firm engaged in the business of providing interim management, financial advisory and related consulting services with principal offices located at 3445 Peachtree Road, Suite 1225, Atlanta, GA 30326 and 3500 Maple Ave, Ste 420, Dallas, TX 75219. On June 25, 2021, the Court approved my retention as the Chief Restricting Officer (“CRO”) for the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I have functioned continuously in the CRO capacity since February 2, 2021, and I have continued in this role pursuant to a Court order approving my retention throughout these chapter 11 cases.

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

² B. Riley Advisory Services is the trade name used by GlassRatner Advisory Capital Group, LLC (“GlassRatner”) and its affiliate Great American Group Advisory and Valuation Services, LLC. All services to be provided to the Debtors hereunder will be performed solely by GlassRatner, and references to the B. Riley or B. Riley Advisory trade name herein refer to GlassRatner.

2. As Chief Restructuring Officer, I am responsible for overseeing the operations and financial activities of the Debtors, including, but not limited to, monitoring cash flow, business relationships, workforce issues, and financial planning. As a result of my tenure with the Debtors and my turnaround experience, my review of public and non-public documents, and my discussions with other members of the Debtors' management team, I am generally familiar with the Debtors' businesses, financial condition, policies and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from the Debtors' employees or retained advisors that report to me in the ordinary course of my responsibilities.

3. The statements set forth herein are based upon my personal knowledge or upon records kept in the ordinary course of the Debtors' businesses, as applicable, that were, as appropriate, reviewed by me or others under my supervision and direction. I attest that Debtor Tahoe Joe's Inc.'s San Bernardino Location was closed before the Debtors commenced their bankruptcy cases, and that the underlying lease has been rejected by a Court order. In addition, the San Bernardino Location is no longer operating or generating revenue. Thus, the Debtors have no use for the License, and such License is not necessary to maximize value for the Debtors' other assets that are being marketed in the Court approved sale process. A private sale of the License will generate proceeds that will benefit the Debtors' estates and creditors, and both the price and process by which the Debtors have sought to sell the License are fair and reasonable for the restaurant market.

4. Based on discussions with the Committee's representatives and representatives of the DIP Lender and proposed purchaser for the remainder of the Debtors' assets, I have no reason to believe that any party will oppose the proposed Sale of the License to Upland.

5. I have read the Motion and, to the best of my knowledge, information, and belief, the assertions made in the Motion are accurate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: September 8, 2021

/s/ Mark Shapiro

Mark Shapiro
Senior Managing Director
GlassRatner Advisory & Capital Group, LLC
d/b/a B. Riley Advisory Services

Exhibit C

Escrow Agreement



1748 Main St.
Escalon, CA 95320
Ph: (209) 838-1100
Fax: (209) 838-1115

ESCROW INSTRUCTIONS
ALCOHOLIC BEVERAGE LICENSE TRANSFER ONLY

To: California Business Escrow, Inc.
1748 Main Street
Escalon, CA
(209)-838-1100 FX (209)-838-1115

Escrow No. 21-6767-DB
Date: April 29, 2021
Escrow Officer: Diane Boudreau

CALIFORNIA BUSINESS ESCROW, INC. IS LICENSED BY THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION, STATE OF CALIFORNIA, LICENSE NO. 963 7062

These instructions are given this April 29, 2021 by and between the SELLER (herein called SELLER/TRANSFEROR), **TAHOE JOE'S, INC., A MINNESOTA CORPORATION** whose address is: 2338 N LOOP 1604 W STE. 350, SAN ANTONIO, TX 78248

And the BUYER (hereinafter called BUYER/TRANSFEREE), **UPLAND ABBEY LLC, A CALIFORNIA LIMITED LIABILITY COMPANY** whose address is: 114 N. INDIAN HILL BLVD., SUITE E, CLAREMONT, CA 91711

The subject of this escrow, which Seller/Transferor owns and agrees to sell and Buyer/Transferee agrees to purchase from Seller/Transferor, subject to all conditions and contingencies stated herein, is the following described alcoholic beverage license: **ON-SALE GENERAL EATING PLACE LICENSE NO. 47-540679** now issued for premises at: **3968 GRAND AVE STE 100, CHINO, CA 91710** for transfer to premises at **1902 N CAMPUS AVE., UPLAND, CA 91784** under the terms and conditions as stated herein.

The Parties hereto acknowledge and agree that Tahoe Joes, Inc. is selling the Liquor License, as the CDebto in Possession Chapter 11 Liquidation Trustee in the case entitled In re Fresh Acquisitions LLC., in the United States Bankruptcy Court For the Northern District of Texas, Case No. 21-30721 (SGJ) The parties further acknowledge and agree and that the sale contemplated hereby shall be subject to, and contingent on, any final court approvals.

IT IS AGREED BETWEEN THE SELLER/TRANSFEROR AND BUYER/TRANSFEREE THAT, REGARDLESS OF DATE HEREINAFTER SET FORTH FOR PAYMENT OF THE CONSIDERATION, NONE OF THE SAID CONSIDERATION WILL BE PAID FOR THE TRANSFER OF THE LICENSE(S) UNTIL SUCH TIME AS ESCROW HOLDER HAS BEEN NOTIFIED IN WRITING BY THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL ("ABC") THAT THE LICENSE HAS BEEN TRANSFERRED.

Total Purchase Price of said license shall be the sum of \$35,000.00

Payable as follows:

	\$3,500.00
Initial Deposit	
Deposit Prior to Close of Escrow	\$31,500.00
Total Cash Thru	\$35,000.00
TOTAL CONSIDERATION	\$35,000.00

Seller's Initials

Buyer's Initials

1. Escrow shall be deemed opened when these instructions, signed by all parties, are deposited with Escrow Holder. Escrow shall close upon issuance of subject alcoholic beverage license to the Buyer/Transferee by the Department of Alcoholic Beverage Control.
2. In addition to the Purchase Price, Buyer/Transferee agrees to pay 100% of the escrow fees and costs in this transaction. For its ordinary services hereunder, and immediately upon acceptance of this escrow, California Business Escrow, Inc., shall be entitled to a non-refundable escrow fee of \$1,200.00 payable by Buyer/Transferee. Additional fees and costs which can be charged include, without limitation, courier, messenger, overnight mail. California Business Escrow, Inc., is authorized and instructed to deduct the costs from the Transferee's deposit and is released from any and all liability for disbursement of Buyer/Transferee's earnest money deposit.
3. ~~Seller/Transferor agrees to pay 100% of the costs (including courier/overnight services) associated with processing creditor claims and/or claims by taxing authorities against Seller/Transferor, if applicable. There will be a charge of \$25.00 for each claim paid through escrow, payable by and on behalf of Seller/Transferor, \$50.00 for processing each disputed claim, payable by and on behalf of Seller/Transferor, and \$100.00 for each State Agency (SBOE, FTB, COUNTY TAX COLLECTOR, IRS, EDD) paid through escrow by and on behalf of Seller/Transferor.~~
4. In the event that escrow fails to consummate for any reason, California Business Escrow, Inc., is authorized to retain its costs and fees associated with this escrow from any money deposited with it without further authorization.
5. Pursuant to Section 24073 of the Business and Professions Code of the State of California, Seller/Transferor and Buyer/Transferee will execute the Notice of Intended Transfer and deposit with Escrow Holder. Escrow Holder will record in the office of the county recorder and provide a copy of said notice, certified by the county recorder, to the Buyer/Transferee, to be deposited with the Department of Alcoholic Beverage Control.
6. Within the latter of thirty days after application has been filed with the Department of Alcoholic Beverage Control or any extension of the filing period set forth in Section 24074.3 of the Business and Professions Code of the State of California, the Buyer/Transferee will cause to be handed to Escrow Holder the full amount of the Purchase Price as set out above, and any and all additional funds required by Escrow Holder to complete said transaction. Escrow Holder is instructed to then execute and forward ABC form 226 to the Department of Alcoholic Beverage Control, indicating that the consideration has been deposited into the escrow.
7. If notified by the Department of Alcoholic Beverage Control that any tax agency, under the provisions of Section 24049 of the California Business and Professions Code, has a hold on the transfer of the ABC License, preventing the issuance of the ABC License to the Buyer/Transferee, then California Business Escrow, Inc., is authorized and instructed to pay, from funds on deposit in escrow, the amount of taxes demanded by any such agency and deduct same from Seller's/Transferor's proceeds without further authorization from any party required.
8. All claims approved by Seller/Transferor shall be deemed to be bona fide and California Business Escrow, Inc. may pay such approved claims. Should any claims be filed, which the Seller/Transferor refuses to approve, all parties agree to proceed in accordance with Section 24074 of Business and Professions Code of the State of California.
9. Buyer/Transferee shall make application for the transfer of the subject ABC license at the office of the Department of Alcoholic Beverage Control and the ABC License Transfer Fee shall be paid by the Buyer/Transferee. In the event the ABC License has not been issued to the Buyer/Transferee prior to MARCH 31, 2022 (next renewal date), both parties understand that it is the Buyer's/Transferee's responsibility to pay the ABC license renewal Fee to the Department of Alcoholic Beverage Control on or before the current renewal date from funds on deposit in escrow with no further instruction on the part of any party required. The Buyer/Transferee and Seller/Transferor further instruct and authorize Escrow Agent to pay from Buyer's/Transferee's funds on deposit in escrow all renewals that come due before the Authority to Close is

Seller's Initials



Buyer's Initials



received from the Department of Alcoholic Beverage Control. The Seller/Transferor warrants that the ABC License is currently in good standing with the Department of Alcoholic Beverage Control.

- 10. California Business Escrow, Inc is instructed to act in accordance with sections 24049 and 24074 of California Business and Professions Code.
- 11. The parties have deposited with California Business Escrow, Inc (if applicable in this transaction), a form letter (known as a Rule 64B Request) under Section 24044 of the Business and Professions Code of California, whereby the Department of Alcoholic Beverage Control shall be requested to issue the subject license to the Buyer/Transferee with the same to be held by the Department of Alcoholic Beverage Control pending Buyer's/Transferee's request for the delivery of the same. Escrow Holder is to forward the said letter when informed that the proposed premises to be licensed have been sufficiently completed to comply with the requirement of the Department of Alcoholic Beverage Control and that the license be issued and escrow closed with no unnecessary delays.
- 12. The parties hereto understand that this escrow is accepted by California Business Escrow, Inc., as Escrow Holder, predicated on the representation of the parties that there will be sufficient funds deposited into escrow to pay all creditors, costs, expenses and fees incurred in this escrow in full. If sufficient funds are not deposited, then California Business Escrow, Inc., has the absolute right, at it's sole option, to resign as escrow agent by giving at least ten (10) days prior written notice of such intent to all parties concerned, paying all costs, fees and expenses incurred in this escrow from any funds on deposit with it, and returning any remaining funds to the party who has deposited same.
- 13. NO REAL ESTATE, TAX OR LEGAL ADVICE:
Escrow Holder does not provide any real estate, tax, legal or other advice concerning this transaction, or advice on the validity and effect of any of the documentation concerning the transaction. The parties are specifically directed to their own independent real estate professional, attorney and accountant for any such advice. The parties acknowledge that any comments made by Escrow Holder concerning the transaction are not meant to provide such advice, but only to aid in facilitating the performance of Escrow Holder's duties arising hereunder.
- 14. AFFILIATIONS
Escrow Holder discloses to the parties that Michael Brewer is affiliated with California Business Escrow, Inc.
- 15. ADDITIONAL ESCROW CONDITIONS AND INSTRUCTIONS

The signatories to these escrow instructions hereby direct Escrow Holder to also comply with the following:

- A. Escrow Funds. All funds received in this escrow may be deposited with funds from other escrows in a general non-interest earning trust account in any state or federal bank of Escrow Holder's choosing. No interest shall be paid to the party depositing money with Escrow Holder. The parties recognize that the FDIC insurance on this account may not be sufficient to cover all of their specific deposit, but request that Escrow Holder maintain all funds in such account. All disbursements shall be made by Escrow Holder's check on this account.
- B. Fees and Expenses. Buyer/Transferee agrees to pay Escrow Holder's customary and reasonable charges and fees and all other costs and expenses incurred by Escrow Holder on behalf of Buyer/Transferee. Escrow Holder may, in Escrow Holder's discretion, charge additional fees to the Buyer/Transferee for services which are beyond those usual in this type of escrow, attorney consultation fees, and any special courier fees above the standard courier use and charge those costs to the responsible Parties.

If, for any reason, Escrow Holder is required to appear in and/or defend any litigation, arbitration or administrative proceeding concerning this escrow as a party or a witness, the parties jointly and severally shall pay Escrow Holder for all reasonable costs, expenses and losses incurred by Escrow Holder in such matter, including Escrow Holder's reasonable attorney's fees.


Seller's Initials WF

Buyer's Initials LE

If, in Escrow Holder's discretion, Escrow Holder deems it necessary to obtain legal advice regarding any issue in this escrow, the parties, jointly and severally, shall reimburse Escrow Holder for any reasonable fees and expenses incurred.

- C. Disclosures. Escrow Holder has no responsibility to give any disclosure not required by law to be given by an escrow agent.
- D. Instructions. Escrow Holder need comply only with the written instructions deposited in this escrow. If Escrow Holder receives any form of contract pertaining to the transaction on which this escrow is based, Escrow Holder has no responsibility to enforce or comply with the terms of it except as described in these instructions. A signature on these instructions and any document concerning this escrow means that the signatory has read, understands and approves the instruction or document. Escrow Holder has no responsibility to determine the validity or sufficiency of any document or signature on any document deposited in this escrow, unless further written Escrow Instructions to do so are received and the additional escrow fees are deposited. Any purported oral instructions, amendment, supplement, modification, notice or demand deposited with Escrow Holder by the parties or either of them shall be ineffective and invalid. The Escrow Instructions and supporting documents may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All such counterparts together shall constitute the same document. The parties acknowledge and understand that you, as Escrow Holder, are not authorized to practice the law nor does Escrow Holder give financial advice. The parties are advised to seek legal and financial counsel and advice concerning the effect of these Escrow Instructions. Escrow Holder shall not comply with any notice, demand or instruction that is not in writing. Escrow Holder may furnish copies of the escrow instructions and closing statements to real estate brokers and liquor license brokers representing the parties to this escrow, the Department of Alcoholic Beverage Control, and any lender to a party.
- E. Conflicts in Escrow Instructions; Disputes. If Escrow Holder receives any conflicting notices, instructions or demands, or cannot close this escrow for any reason, in Escrow Holder's reasonable sole discretion and without any liability, and without concern over the merits of any disputes between the parties, Escrow Holder may take any reasonable action Escrow Holder deems appropriate, including no further action in this escrow until the conflict is resolved, or the bringing of an interpleader or other litigation. The parties, jointly and severally, will pay promptly on demand any reasonable costs, expenses and losses incurred by Escrow Holder in complying with this instruction, including Escrow Holder's reasonable attorney's fees. Escrow Holder's reasonable fees and the costs incurred in this escrow may be taken from any monies on deposit with Escrow Holder; the parties assume responsibility for determining liability for payment between themselves.
- F. Attorney's Fees. If any legal action, arbitration or other proceeding is brought relating to these instructions or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of the transactions involved in these instructions, the successful or prevailing party shall be entitled to recover reasonable costs incurred, including reasonable attorney's fees. In any collection of monies due hereunder without litigation, the collecting party shall be entitled to its reasonable costs incurred, including reasonable attorney's fees.
- G. Closing; Cancellation; Payment of Fees and Costs. Escrow Holder shall close the escrow as soon as possible unless Escrow Holder receives a written notice of cancellation. On receipt at any time of a notice of cancellation, Escrow Holder shall mail a copy to all other parties at the addresses on these instructions. In the event of cancellation, Escrow Holder may take from any monies on deposit with Escrow Holder any sums necessary to pay all fees and costs incurred in this escrow. It is further understood that all notices, demands and instructions must be in writing and executed by all parties
- H. Corrections. In the event monies are disbursed incorrectly by Escrow Holder for any reason, each party agrees to cooperate with Escrow Holder and to promptly return to Escrow Holder any monies disbursed incorrectly to him/her/it immediately upon notice from Escrow Holder. If any legal action, arbitration or other proceeding is brought to collect monies incorrectly disbursed, the successful or prevailing party shall be entitled to recover costs incurred, including reasonable attorney's fees. Escrow Holder is further instructed and authorized to make any corrections necessary regarding perfecting any and all premise

Seller's Initials



Buyer's Initials



addressess, corrections of any and all names and any and all other necessary documents that need to be re-recorded to reflect any changes, without further instruction from either parties.

- I. Forms. The parties understand the forms used by Escrow Holder are generally in use in the industry, and assume the responsibility of making certain those forms and the completion of them by Escrow Holder accurately describes the intended transaction.
- J. Venue for Litigation. All rights and duties of the parties hereunder shall be governed by the laws of the State of California, and any litigation, arbitration or other proceeding brought regarding this escrow shall be brought in a court or tribunal of appropriate jurisdiction closest to San Joaquin County, California.
- K. Time is of the Essence. The parties shall cooperate with Escrow Holder in carrying out the escrow instructions they deposit with Escrow Holder and completing this escrow. The parties shall deposit into escrow, upon request, any additional funds, instruments, documents, the Department of Alcoholic Beverage Control required documents, instructions, authorizations, or other items that are necessary to enable Escrow Holder to comply with demands made to Escrow Holder by third parties, or to otherwise carry out the terms of their instructions and close this escrow. Both parties further understand that "time is of the essence" and will facilitate any needed documents in a timely manner. Notwithstanding anything to the contrary, and in addition to any other contingency or condition, Buyer's/Transferee's obligation to purchase the license(s) shall be subject to the ABC approving the transfer to Buyer's/Transferee's and Seller's/Transferor's performance.
- L. Destruction of Escrow File. Escrow Holder may destroy and dispose of all documents in this escrow after five (5) years of closing or cancellation of the escrow without liability or further notice to the parties. In the event of any dispute or litigation the escrow file will remain available and intact until such time as the matter has been resolved.

Buyer/Transferee and Seller/Transferor acknowledge that they have read, understand, accept, approve and hereby create, execute, and enter into the foregoing escrow and instructions, each party acknowledges receipt of a copy hereof.

SELLER:

BUYER:

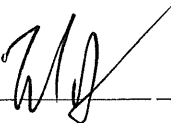
TAHOE JOE'S, INC
A MINNESOTA CORPORATION

UPLAND ABBEY LLC
A CALIFORNIA LIMITED LIABILITY COMPANY


By: 
Mark Shapiro, Chief Restructuring Officer

By: 
JOHN ENGLEHARDT, MANAGER

Seller's Initials



Buyer's Initials





1748 Main St.
Escalon, CA 95320
Ph: (209) 838-1100
Fax: (209) 838-1115

August 4, 2021

TO: California Business Escrow, Inc

Escrow No.: 6767-DB

Property Address: 1902 N CAMPUS AVE STE A, UPLAND, CA 91784

ADDITION AND/OR AMENDMENT TO ESCROW INSTRUCTIONS

The instructions in this Escrow No. 6767 are hereby modified, amended and/or supplemented in the following particulars only:


BUYER AND SELLER AUTHORIZE AND INSTRUCT ESCROW HOLDER TO AMEND ALL DOCUMENTS OT REFELCT THE UPDATED AND PERFECT ED PREMISE TO THE FOLLOWING:

1902 N CAMPUS AVE. STE A
UPLAND CA 91784

All other terms and conditions remain the same.

EACH OF THE BELOW SIGNED STATES THAT HE/SHE/THEY HAS/HAVE READ THE FOREGOING INSTRUCTIONS AND UNDERSTANDS AND AGREES TO THEM.

TAHOE JOE'S, INC
A MINNESOTA CORPORATION

By: 
Mark Shapiro, Chief Restructuring Officer

UPLAND ABBEY LLC
A CALIFORNIA LIMITED LIABILITY COMPANY

By: 
JOHN ENGLEHARDT, MANAGER