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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) |
| | § | |

**CERTIFICATE OF NO OBJECTION REGARDING THE DEBTORS’
MOTION TO REJECT NON-RESIDENTIAL REAL PROPERTY LEASE (EL PASO, TX)**

Pursuant to rule 9007-1(g) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Bankruptcy Rules”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) certify as follows:

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.

1. On July 21, 2021, the Debtors filed and served via CM/ECF the *Debtors' Motion to Reject Non-Residential Real Property Lease (El Paso, TX)* [Docket No. 308] (the "Motion"). On the same date, the Debtors' claims agent served the Motion on the Landlord (as defined in the Motion) and the limited service list maintained in these chapter 11 cases via electronic mail and U.S. First Class Mail. [Docket No. 319]. The Motion included twenty-four day negative notice language and thus, objections to the Motion were due by August 16, 2021 (the "Objection Deadline").

2. As of the date hereof, the Debtors have not received any formal objections to the Motion. Furthermore, the undersigned counsel has reviewed the Court's docket and no objection/response appears thereon.

3. However, the Landlord and certain taxing authorities sent informal comments to the Debtors prior to the Objection Deadline. The Debtors have worked with these parties to amend the proposed order granting the Motion to address their concerns. The Debtors certify that all known objections have been resolved by the form of proposed order attached hereto as Exhibit A. A redline of the revised order marked against the form of proposed order filed with the Motion is attached hereto as Exhibit B.

4. Accordingly, the Debtors respectfully request that the Court enter the proposed order granting the Motion, attached hereto as Exhibit A, in accordance with the negative notice procedures outlined in the Local Bankruptcy Rules.

Respectfully submitted this 13th day of September, 2021.

GRAY REED

By: /s/ Jason S. Brookner

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CERTIFICATE OF SERVICE

I certify that on the 13th day of September, 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

Revised Proposed Order

**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)

Re: Docket No. 308

**ORDER GRANTING DEBTORS' MOTION TO REJECT
NON-RESIDENTIAL REAL PROPERTY LEASE (EL PASO, TX)**

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”), 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

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.

proceeding pursuant to 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 relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; 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 Lease is hereby rejected effective as of July 21, 2021 (the "Rejection Effective Date").
3. The Debtors are authorized to abandon property, if any, that may be located at the Leased Premises and all such property is deemed abandoned (the "Abandoned Property"), effective as of the Rejection Effective Date. The Landlord may use or dispose of the Abandoned Property without notice or liability to the Debtors or any third parties. The automatic stay, to the extent applicable, is modified to allow for such utilization or disposition.
4. Nothing in this Order authorizes the Debtors to lease, sell, or otherwise transfer to any other party, the personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including but not limited to an individual's first name (or initial) and last name, physical address, electronic address, telephone number, social security number, date of birth, government-issued identification number, account number and credit or debit card number) ("PII") of any customers unless such sale or transfer or lease is permitted by the Debtors' privacy policy and state or federal privacy and/or identity theft prevention laws and rules. The Debtors shall remove or cause to be removed any PII in any of the

Debtors' hardware, software, computers or cash registers or similar equipment which are to be abandoned pursuant to the Motion (if any) so as to render the PII unreadable or undecipherable.

5. As of the Rejection Effective Date, the Debtors' interest in the Leased Premises and any improvements thereon shall be extinguished and those interests shall be transferred to the Landlord. The Landlord may present this Order to any governmental authority as proof that the Landlord holds such interests and has clear title to any improvements as of the Rejection Effective Date, and such governmental authority shall honor this Order as proof of same without the need for any further filings.

6. The Landlord is permitted to pursue or continue pursuing any claims against the Debtors' insurance policies permitted under the Lease and the automatic stay is lifted to the extent necessary to permit the Landlord to pursue or continue pursuing such claims.

7. The Landlord shall be required to file any claims resulting from the rejection of the Lease, including any pre-petition amounts due, within thirty (30) days after the entry of this Order.

8. Entry of this Order will not prevent the Debtors from seeking to assume or reject an executory contract and/or unexpired lease, other than the Lease, by separate motion or pursuant to a chapter 11 plan.

9. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of the Lease rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. The Debtors reserve the right to assert that any provisions in any executory contract or unexpired lease that expressly or effectively restrict, prohibit, condition, or limit the assignment or effectiveness of the contract or lease are unenforceable anti-assignment or ipso facto clauses. In addition, nothing

in this Order or the Motion shall limit the Debtors' ability, or the ability of the Landlord, to subsequently assert that the Lease is terminated and is no longer an unexpired lease.

10. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

13. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

14. 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. 24033684

Aaron M. Kaufman

Texas Bar No. 24060067

Amber M. Carson

Texas Bar No. 24075610

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Exhibit B

Redline of Revised Proposed Order

**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)

Re: Docket No. -308

**ORDER GRANTING DEBTORS' MOTION TO REJECT
NON-RESIDENTIAL REAL PROPERTY LEASE (EL PASO, TX)**

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"), 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

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proceeding pursuant to 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 relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; 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 Lease is hereby rejected effective as of ~~the date the Motion was filed~~ July 21, 2021 (the "Rejection Effective Date").

3. The Debtors are authorized to abandon property, if any, that may be located at the Leased Premises and all such property is deemed abandoned (the "Abandoned Property"), effective as of the ~~date the Motion was filed~~ Rejection Effective Date. Subject to any ad valorem tax liens, if applicable, tTThe Landlord may ~~effectuate its rights and remedies with respect to such property~~ use or dispose of the Abandoned Property without notice or liability to the Debtors or any third parties. The automatic stay, to the extent applicable, is modified to allow for such utilization or disposition.

4. Nothing in this Order authorizes the Debtors to lease, sell, or otherwise transfer to any other party, the personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including but not limited to an individual's first name (or initial) and last name, physical address, electronic address, telephone number, social security number, date of birth, government-issued identification number, account number and credit or debit card number) ("PII") of any customers unless such sale or transfer or

lease is permitted by the Debtors' privacy policy and state or federal privacy and/or identity theft prevention laws and rules. The Debtors shall remove or cause to be removed any PII in any of the Debtors' hardware, software, computers or cash registers or similar equipment which are to be abandoned pursuant to the Motion (if any) so as to render the PII unreadable or undecipherable.

5. As of the Rejection Effective Date, the Debtors' interest in the Leased Premises and any improvements thereon shall be extinguished and those interests shall be transferred to the Landlord. The Landlord may present this Order to any governmental authority as proof that the Landlord holds such interests and has clear title to any improvements as of the Rejection Effective Date, and such governmental authority shall honor this Order as proof of same without the need for any further filings.

6. The Landlord is permitted to pursue or continue pursuing any claims against the Debtors' insurance policies permitted under the Lease and the automatic stay is lifted to the extent necessary to permit the Landlord to pursue or continue pursuing such claims.

7. The Landlord shall be required to file any claims resulting from the rejection of the Lease, including any pre-petition amounts due, within thirty (30) days after the entry of this Order.

5.8. Entry of this Order will not prevent the Debtors from seeking to assume or reject an executory contract and/or unexpired lease, other than the Lease, by separate motion or pursuant to a chapter 11 plan.

6.9. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of the Lease rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. The Debtors reserve the right to assert that any provisions in any executory contract or unexpired lease that expressly or effectively restrict, prohibit, condition, or limit the assignment or effectiveness

of the contract or lease are unenforceable anti-assignment or ipso facto clauses. In addition, nothing in this Order or the Motion shall limit the Debtors' ability, or the ability of the Landlord, to subsequently assert that the Lease is terminated and is no longer an unexpired lease.

7.10. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

8.11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9.12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

~~10.13.~~ The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

~~11.14.~~ 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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