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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**

<p>In re:</p> <p>FRESH ACQUISITIONS, LLC, <i>et al.</i>,<sup>1</sup></p> <p style="text-align: right;">Debtors.</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>
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**DEBTORS' EMERGENCY MOTION FOR (I) AN 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 THE  
FORM AND MANNER OF NOTICE TO CONTRACT COUNTERPARTIES;  
AND (II) AN ORDER APPROVING THE SALE OF SUBSTANTIALLY ALL OF  
THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS**

<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.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (the “Motion”):<sup>2</sup>

### **Introduction**

1. The Court is well versed in the Debtors’ prior efforts to sell their assets, having denied the Debtors’ first motion to sell substantially all of their assets to VitaNova Brands, LLC (“VitaNova”). Given the Court’s initial ruling on August 24, 2021, the Debtors have continued to market the Debtors’ assets to third party buyers, with assistance and cooperation from the Committee and its professionals. After weeks of additional marketing, the Debtors have received at least two indications of interest from third party buyers and believe there is sufficient interest to warrant an extremely expedited auction process. Based on the Debtors’ discussions with the Committee (as defined below), the Debtors believe that the Committee supports such an expedited and competitive process.

2. Accordingly, the Debtors seek to establish new bidding procedures that designate Serene Investment Management, LLC (“Serene”) as the new Stalking Horse Bidder (defined below), and authorize the Debtors to hold an auction within the next two weeks to determine the highest and best bids for substantially all of the Debtors’ assets. Specifically, by this Motion, the Debtors seek: (i) entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), (a) approving bidding procedures in substantially the same form as those attached as Appendix 1 to the Bidding Procedures Order (the “Bidding Procedures”), and certain bidding protections set forth therein for the proposed sale (the “Proposed Sale”) of substantially all of the Debtors’ assets as more fully described in the APA (defined below)

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<sup>2</sup> Capitalized terms used but not yet defined herein have the meanings ascribed to such terms later in this Motion or in the Bidding Procedures, as applicable.

(collectively, the “Assets”), (b) scheduling a bid deadline, auction date, and sale hearing and approving the form and manner of notice thereof, (c) approving the assumption and assignment of executory contracts and unexpired leases, including the form and manner of notice to counterparties, and (d) granting related relief; and (ii) following a subsequent hearing (the “Sale Hearing”), entry of an order, substantially in the form to be filed as set forth herein (the “Sale Order”), (x) approving the asset purchase agreement filed contemporaneously with this Motion (the “APA”) and the Proposed Sale of the Assets to the successful purchaser (the “Successful Bidder”) to be determined at auction (the “Auction”), free and clear of liens, claims and interests, (y) authorizing the assumption and assignment of executory contracts and unexpired leases to the Successful Bidder pursuant to the terms of the APA, including the Cure Costs (defined below) necessary to cure any default pursuant to section 365(b)(1) of the Bankruptcy Code, and (z) granting related relief.

### **Jurisdiction and Venue**

3. 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)(A), (M), (N), and (O).

4. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105, 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

6. Prior to the COVID-19 pandemic, the Debtors were significant operators 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 their 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] (the "First Day Declaration").

7. 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].

8. As the Court is aware, the Debtors were authorized to borrow funds from VitaNova, an affiliate of the Debtors and the management company responsible for substantially all of the Debtors' accounting and other back-office support. See *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, (V) Scheduling Final Hearing, and (VI) Granting Related Relief* [Docket No. 157] (the "DIP Order"). While the Debtors are operating under defaults in the DIP

Order, VitaNova has confirmed in most recent termination notice, filed on September 15, 2021,<sup>3</sup> that it consents to the Debtors' continued use of cash collateral to allow the Debtors to complete a sale pursuant to the procedures proposed hereunder.

9. Since the Court denied the Debtors' initial request to sell their Assets to VitaNova on August 24, 2021, the Debtors' professionals have contacted 137 of the most active potential buyers from their initial list of 654 unique potential buyers regarding a sale of the Assets, including 15 proposed by the Committee. Based upon the Debtors' efforts, the Debtors have received preliminary offers from Serene and at least one additional third party. Because Serene's offer was not conditioned on financing or additional due diligence, the Debtors believe that Serene is well positioned to serve as a stalking horse for other third party bids.

10. The Serene bid provides, in relevant part, as follows:

- a. Purchase Price: \$4,300,000.00 comprised of \$3,200,000.00 cash, plus cure costs for assumed contracts and cure costs for assumed real estate leases in an amount not to exceed \$1,000,000.00 and assumption of ordinary course operating administrative expenses through and including Closing not to exceed \$100,000.00.
- b. Warrants: The Debtors will receive 3% of the common equity above a \$5,000,000.00 value with certain milestones more fully detailed in the APA.
- c. Purchased Assets: Substantially all Assets of the Debtors, except estate causes of action against insiders, affiliates, and certain other third parties, as more fully described in the APA.

### **Relief Requested**

11. This Motion seeks relief in two stages. First, the Debtors seek entry of the Bidding Procedures Order, approving the Bidding Procedures for the sale of the Debtors' Assets,

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<sup>3</sup> See Docket No. 416 ("Notwithstanding, the DIP Lender consents to the use of Cash Collateral: (a) as already provided in the Final DIP Order, by the Debtors to fund the Carve Out Reserve and (b) by Tahoe Joe's Inc. to maintain its operations and sell its assets at least through close of business on Thursday, September 30, 2021, such consent by the DIP Lender in the foregoing subpart (b) being without prejudice to further extensions of such authorization.").

designating Serene, or its designee(s), as the Stalking Horse Bidder (defined below) and granting certain bidding protections including a Break-Up Fee (defined below), authorizing the Debtors to conduct an Auction, and scheduling the Sale Hearing (defined below) to approve the Proposed Sale.

12. Second, the Debtors seek entry of the Sale Order, substantially in the form to be filed pursuant to these procedures, approving the Proposed Sale and related transactions to the Successful Bidder following the Auction.

### **I. Proposed Sale Timeline**

13. The Debtors believe promptly concluding the marketing process for the Assets will maximize the value of these assets. Moreover, it is critical for the Debtors to execute the Proposed Sale expeditiously to reduce the costs associated with maintaining and operating the Tahoe Joe's business and the expenses associated with a lengthy chapter 11 process.

14. Accordingly, the Debtors propose the following timeline for the Proposed Sale:

Hearing to approve Bidding Procedures:	September 21, 2021 at 1:30 p.m. (CT)
Notice of Proposed Sale Order:	September 23, 2021
Bid Deadline:	September 29, 2021, at 4:00 p.m. (CT)
Notice of Qualified Bidders:	September 30, 2021, at 4:00 p.m. (CT)
Auction:	October 1, 2021, at 10:00 a.m. (CT)
Deadline to File Notice of Auction Results:	October 4, 2021, at 4:00 p.m. (CT)
Sale Objection, including Assumption Objections:	October 5, 2021, 4:00 p.m. (CT)
Sale Hearing:	To be determined

15. Given the prior and ongoing marketing process, as described at the prior sale hearing on August 24, 2021,<sup>4</sup> which will be supplemented at the Sale Hearing, the Debtors believe the proposed expedited sale timeline is reasonable and sufficient to determine the best available bids in advance of the Bid Deadline while limiting the administrative burdens on the estates. Given

<sup>4</sup> See Declaration of Mark Shapiro in Support of the Debtors' Motion for an Order Approving the Sale of Substantially all of the Debtors' Assets Free and Clear of Liens, Claims, and Interests [Docket No. 384].

the amount of interest demonstrated by a number of third party bidders, the Debtors believe that the above timeline is fair and reasonable, and that it will provide interested parties with sufficient time to finalize their bids to participate in the Auction.

## II. The Bidding Procedures

16. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed and proposed the Bidding Procedures, attached to the Bidding Procedures Order as Appendix 1, to govern the Auction process. The Debtors designed the Bidding Procedures to encourage all parties to put their best bids forward and to maximize the value of the Debtors' remaining assets. The Bidding Procedures establish, among other things, the manner in which bidders and bids become "qualified," the receipt and negotiation of bids received, the manner in which any Auction will be conducted, how the ultimate selection of the Successful Bidder will be determined, and the Court's approval thereof.

17. The proposed Bidding Procedures provide, in summary fashion, as follows:<sup>5</sup>

- a. Sale of Assets or Going Concern Transaction: The Debtors are entertaining bids for a Proposed Sale of the Assets. Any Successful Bidder(s) will be obligated to assume the assumed liabilities as may be set forth in any purchase agreement and the Debtors will assume and assign the assumed contracts to the Successful Bidder(s), as may be set forth in any purchase agreement(s) accepted by the Debtors.
- b. "As Is, Where Is": Any Proposed Sale(s) will be on an "as is, where is" basis, without representations or warranties of any kind, nature, or description by the Debtors, their agents, or estates, except as expressly agreed to in the applicable APA.
- c. Free of Any and All Claims and Interests: Any Proposed Sale(s) will be free and clear of all liens, claims, interests, and encumbrances (collectively,

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<sup>5</sup> This summary is qualified in its entirety by reference to the provisions of the Bidding Procedures themselves. In the event of any inconsistencies between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern. Unless otherwise defined, capitalized terms shall have the meanings ascribed to them in the Bidding Procedures.

the “Claims and Interests”), with such Claims and Interests attaching to the net proceeds of the sale(s).

- d. Participation and Bid Requirements: Any person or entity who wishes to participate in the Bidding Process (a “Potential Bidder”) must become a Qualified Bidder (as defined below) as indicated within the Bidding Procedures.
- e. Due Diligence: Following execution of a Confidentiality Agreement, the Debtors will afford each Potential Bidder an opportunity to perform due diligence with respect to their businesses and assets.<sup>6</sup> The Debtors have designated B. Riley Advisory to coordinate all reasonable requests for additional information from Potential Bidders and due diligence access. After the Bid Deadline, the Debtors and B. Riley Advisory shall not be required to furnish any information of any kind related to the businesses or the Assets to any person that is not a Qualified Bidder.
- f. Bid Deadline: A Qualified Bidder (other than the Stalking Horse Bidder) who desires to make a bid must deliver written copies of its bid, along with the Required Bid Documents (as defined within the Bidding Procedures), no later than 4:00 p.m. Central Time on September 29, 2021 (the “Bid Deadline”), at the addresses contained within the Bidding Procedures, to the following parties: (i) the Debtors (including their chief restructuring officer and retained professionals); (ii) the Committee and its counsel of record; and (iii) Vita Nova Brands, LLC, the Debtors’ postpetition lender (the “DIP Lender”) and its counsel (collectively, the “Consultation Parties”).<sup>7</sup>
- g. Qualified Bids: The Stalking Horse Bidder is deemed to be a Qualified Bidder. A bid (other than the Stalking Horse Bid) will be deemed a “Qualified Bid,” and such bidder, a “Qualified Bidder,” as determined by the Debtors after consultation with the Consultation Parties, and considered by the Debtors, **only** if the bid:
  - i. is on terms and conditions that are substantially similar to, and are not materially more burdensome or conditional to the Debtors than, those contained in the Stalking Horse Bid, and provides for payment of the Bid Protections (as defined below);

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<sup>6</sup> Given the prolonged marketing process (since May 2021), all, or nearly all, Potential Bidders completed due diligence in advance of the filing of this Motion and can reasonably complete such due diligence within the next week.

<sup>7</sup> VitaNova has reserved its rights to present a Credit Bid to the extent of its allowed secured claims described in Paragraph 6 of the DIP Order with respect to the DIP Collateral (as defined in Paragraph 6 of the DIP Order). Until VitaNova expressly notifies the Debtors and Committee in writing that it does not intend to submit a bid, it shall be considered an active bidder and, thus, shall not be considered Consultation Party.



- ii. contains no contingencies of any type, other than Bankruptcy Court approval of the Proposed Sale and any applicable regulatory conditions;
- iii. is not conditioned upon any bid protections (such as a topping fee, termination fee, expense reimbursement, or similar type of payment);
- iv. contains the acknowledgements and representations as listed in the Bidding Procedures;
- v. acknowledges that the Potential Bidder will close on the Potential Sale on the later of (i) October 8, 2021 and (ii) three (3) Business Days after entry of the Sale Order, unless such Sale Order is stayed;
- vi. includes a list of assumed contracts and assumed liabilities (if any), and a commitment to consummate the Proposed Sale and the assumption of the assumed liabilities (if any) upon closing of the Potential Sale;
- vii. identifies each regulatory and third-party approval required for the bidder to consummate the Proposed Sale, if any, and the time period within which the bidder expects to receive such regulatory and third-party approvals;
- viii. discloses (a) the identity of the Potential Bidder (including the identification of any authorized officers, directors, shareholders and/or the ultimate beneficial owners of the Potential Bidder) and the terms of such participation, and (b) any other term sheets and other written or oral understandings between the Potential Bidder and its affiliates on one hand, and any insider (as defined in section 101(31) of the Bankruptcy Code) of the Debtors, on the other;
- ix. is received by the Bid Deadline;
- x. is accompanied by a cash deposit by wire transfer in an amount equal to 10% of the aggregate value of the cash consideration of the bid to be held in an escrow account to be identified and established by the Debtors (the "Deposit"); and
- xi. contemplates payment in cash, in full, upon the closing of the Proposed Sale (other than a Credit Bid (as defined below)), unless the Debtors agree otherwise, after consultation with the Consultation Parties.

(a) Auction: If the Debtors receive more than one Qualified Bid, an auction (the "Auction") will be conducted, upon notice to all Qualified Bidders who have submitted Qualified Bids, at 10:00 a.m. Central Time on October 1, 2021, virtually and/or at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201, in accordance with the terms of the Bidding Procedures.

(b) Closing of Auction Selection of Successful Bid: The Auction will continue until there is only one bid or a combination of bids that the Debtors determine, in their

business judgment, after consultation with the Consultation Parties, is or are the highest or otherwise best Qualified Bid or Bids for each asset or group of assets (such bid or combination of bids being the “Successful Bid” or “Successful Bids,” as applicable, and the bidder or bidders making such bid or bids, the “Successful Bidder” or “Successful Bidders” as applicable).

(c) Back-Up Bidder. If there is an Auction, the Qualified Bidder that submits the second highest Bid at the Auction shall be required to serve as the back-up bidder (the “Back-Up Bidder”) and keep its last Bid (the “Back-Up Bid”) open and irrevocable until the closing of the Proposed Sale with the Successful Bidder (the “Outside Back-Up Date”). If, after the Sale Hearing but prior to the Outside Back-Up Date for a Proposed Sale, the Successful Bidder fails to consummate or proceed with the relevant Proposed Sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to have the new Successful Bid, and the Debtors will be authorized, without further order of the Bankruptcy Court, to consummate the Proposed Sale with the Back-Up Bidder. The Debtors will provide notice to the Consultation Parties of any failure by the Successful Bidder to close the Proposed Sale and the election to proceed to close a Proposed Sale with the Back-Up Bidder.

(d) Right to Credit Bid. Any creditor that has a valid, perfected, unavoidable, and enforceable security interest (a “Security Interest”) in the Debtors’ assets (any such creditor, a “Secured Creditor”), which Security Interest is not subject to any contest or dispute in these chapter 11 cases or otherwise, may make one or more credit bids for all or any portion of the assets in which such Secured Creditor has a Security Interest at the Auction, subject to the requirements of section 363(k) of the Bankruptcy Code (a “Credit Bid”). In order to qualify to Credit Bid, a Secured Creditor must (i) be a Qualified Bidder and a Credit Bid must qualify as a Qualified Bid, and (ii) have its Security Interests allowed prior to being able to submit a Credit Bid. The DIP Lender is entitled to submit a Credit Bid to the extent of its allowed secured claims described in Paragraph 6 of the DIP Order with respect to the DIP Collateral (as defined in Paragraph 6 of the DIP Order), and shall be permitted, but not have the obligation, to submit a Credit Bid for such DIP Collateral. Such Credit Bid may comprise part of the consideration for the DIP Lender’s bid, but such bid must comply with all other requirements under the Bidding Procedures in order to be considered a Qualified Bid.

(e) Jurisdiction: All bidders will be deemed to have consented to the exclusive jurisdiction of the Bankruptcy Court, consented to the entry of final orders and judgments by the Bankruptcy Court, and waived any right to a jury trial in connection with any and all disputes relating to, arising from, or connected with the Auction, the marketing process, the Proposed Sale, and the construction and enforcement of any purchase agreement.

(f) Reservation of Rights: Notwithstanding any term to the contrary in the Bidding Procedures, the Debtors, in consultation with the Consultation Parties, reserve the right to: (i) modify the Bidding Procedures at any time; (ii) determine which Qualified Bid, if any, is the highest or otherwise best bid; (iii) reject at any time, any bid that is: (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA, or

(c) contrary to the best interests of the Debtors, their estates, and creditors as determined by the Debtors after consultation with the Consultation Parties; and (iv) pursue a sale or other transaction through a chapter 11 plan.

18. Importantly, the Bidding Procedures recognize the Debtors' fiduciary obligations to maximize value, and, as such, do not impair the Debtors' ability to consider all Qualified Bid proposals. In addition, the Bidding Procedures preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize the value of their Assets.

### **III. The Stalking Horse Bidder and Proposed Bid Protections**

19. The Debtors designate Serene, or its designee(s), as the stalking horse bidder (the "Stalking Horse Bidder") pursuant to the terms of an APA executed between the Debtors and the Stalking Horse Bidder (the "Stalking Horse Bid") filed contemporaneously with this Motion. As detailed above, the Debtors anticipate that the Stalking Horse Bidder will acquire substantially all of the Debtors' Assets, including some or all of the remaining Tahoe Joe's restaurants, all of the Debtors' intellectual property, and certain estate causes of action as more fully described in the APA. In exchange for such Assets, the Stalking Horse Bidder's consideration consists of \$3,200,000.00 cash, payment of cure costs for assumed contracts and payment of cure costs for assumed real estate leases in an amount not to exceed \$1,000,000.00, assumption of ordinary course operating administrative expenses through Closing not to exceed \$100,000.00, and issuance of warrants in the purchaser entity, which provides potential upside for creditors in these cases.

20. The Debtors seek approval, in connection with the Stalking Horse Bid, of a break-up fee in the amount of \$150,000.00 (the "Break-Up Fee") in the event that the Successful Bidder is not the Stalking Horse Bidder. The Debtors believe that such a Break-Up Fee is reasonable and consistent with the market for such transactions, and that approval of such Break-Up Fee will not discourage other potential competing bidders from participating in this process.

#### **IV. The Sale Notice, Auction, and APA**

21. Within one (1) business day after entry of the Bidding Procedures Order, the Debtors will serve (a) a copy of the Bidding Procedures Order (which includes the Bidding Procedures), (b) the Stalking Horse Bid, and (c) the notice of Bid Deadline, Auction, and Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Appendix 2 (the “Sale Notice”) (collectively, the “Bid Package”) by electronic mail, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, upon the following (collectively, the “Bid Notice Parties”): (i) the U.S. Trustee; (ii) counsel to the DIP Lender; (iii) counsel to the Committee; (iv) counterparties to the Debtors’ executory contracts and unexpired leases; (v) any parties that have asserted a lien or security interest against or any other interest in, including, without limitation, preferential purchase rights or rights of first refusal on, any of the Debtors’ assets; (vi) any taxing authorities related to the Debtors’ assets; and (vii) all parties who have requested notice in this case.<sup>8</sup> Separately, B. Riley Advisory will upload a copy of the Bid Package into the Debtors’ virtual data room and provide electronic notice of the same to all potential buyers previously identified or solicited by the Debtors or B. Riley Advisory and any additional parties who have previously expressed an interest to the Debtors or B. Riley Advisory in potentially acquiring the Assets.

22. Further, the Debtors will file a notice of the proposed Sale Order no later than September 23, 2021.

23. At the Auction, the initial overbid must exceed the Stalking Horse Bid by at least \$200,000, which will account for the \$150,000 Break-Up Fee, plus an initial overbid of \$50,000.

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<sup>8</sup> All such entities shall be served by electronic mail to the extent the Debtors or their professionals have electronic mail addresses for such parties.

Thereafter, the minimum bidding increment (collectively, the “Subsequent Bids,” and each a “Subsequent Bid”) shall be \$50,000. The amount of any Subsequent Bids may be increased or decreased by the Debtors, in their discretion, in consultation with the Consultation Parties, as necessary in order to keep the bidding robust and active. The Auction shall continue in one or more rounds of bidding and shall conclude after each participating bidder has had the opportunity to submit one or more additional Subsequent Bid with full knowledge and confirmation of the then-existing highest bid or bids.

**V. Potential Assumed Contracts and Leases and Cure Notice**

24. The Debtors seek to assume and assign to the Successful Bidder certain executory contracts and unexpired leases to be designated by the Successful Bidder. Attached hereto as **Exhibit B** (the “Cure Notice”) is a proposed schedule of executory contracts and unexpired leases that may be assumed and assigned (the “Contract and Cure Schedule”) as part of the Proposed Sale (collectively, the “Potential Assumed Contracts and Leases”), along with the amounts, if any, that the Debtors believe to be owed to each counterparty to the Potential Assumed Contracts and Leases (each, a “Counterparty”) in order to cure any defaults that may exist under each Potential Assumed Contract and Lease (the “Cure Costs”). Any objection to the assumption and assignment of the applicable Potential Assumed Contract or Lease on the basis of lack of adequate assurance of future performance under section 365(b)(1) or the Cure Costs (collectively, an “Assumption Objection”), must be filed and served by the Counterparty by the deadline for all other objections to the sale, as set forth below. If a contract or lease is assumed and assigned as part of the Proposed Sale then, unless a Counterparty properly and timely files and serves an Assumption Objection pursuant to the Cure Notice, the Counterparty will receive payment from the Successful Bidder of the Cure Cost (if any) as set forth in the Cure Notice, unless the Counterparty agrees to alternative treatment in writing with the Debtors and the Successful Bidder.

25. Prior to the commencement of the Sale Hearing, the Debtors shall file with the Court a final schedule (the “Assumed Contract and Lease Schedule”) of executory contracts and unexpired leases elected to be assumed by the Successful Bidder (the “Assumed Contracts and Leases”). At the Sale Hearing, the Debtors shall seek authority to assume and assign the Assumed Contracts and Leases to the Successful Bidder effective as of the closing of the Proposed Sale; *provided, however*, that the Successful Bidder may remove or add any executory contract or unexpired lease to or from the Assumed Contract and Lease Schedule at any time up to the closing of the Proposed Sale. The Counterparty to any such added or removed contract will be notified no later than two (2) business days following such determination by written notice via electronic mail, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable.

26. If at any time after service of the Cure Notice and before closing of the Proposed Sale the Debtors identify additional Potential Assumed Contracts and Leases not included in the initial Cure Notice, the Debtors will serve a supplemental Cure Notice on the counterparties to the additional Potential Assumed Contracts and Leases and such counterparties will have until the later of (a) 4:00 p.m. Central Time on October 5, 2021; or (b) ten (10) days from service of the supplemental Cure Notice to object the assumption and assignment of such additional contract or lease.

### Arguments and Authorities

#### **I. The Bidding Procedures are Appropriate and Ensure That the Bidding Process is Fair, Reasonable, and Will Yield the Maximum Value to the Debtors and Their Estates, Creditors, Stakeholders, and Other Parties in Interest.**

27. 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).

28. 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, and the Bidding Procedures satisfy, 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.

29. 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 appropriate. *See In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business but the movant must articulate some business justification for the sale. . . .”); *Esposito v. Title Ins. Co. of Pa. (In re Fernwood)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987) (“[W]e do give deference to the business judgment of a debtor in possession . . . .”); *see also In re Rodriguez*, 353 B.R. 144, 149 (Bankr. N.D. Tex. 2006) (“[T]his Court gives great deference to the decisions of trustees in selling property . . . .”).

30. 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)). Therefore, any party objecting to the debtor’s proposed asset sale must make a showing of “bad faith, self-interest, or gross negligence.” *See id.* at 656; *see generally Mims v. Kennedy Capital Mgmt., Inc. (In re Performance Nutrition, Inc.)*, 239 B.R. 93 (Bankr. N.D. Tex. 1999) (discussing the former CEO’s participation in a scheme to sell the debtor’s assets below fair market value prior to the bankruptcy filing and awarding damages to the trustee based on breaches of fiduciary duties and civil conspiracy, among other theories); *cf. 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).

31. The paramount goal in any proposed sale of property of a debtor’s estate is to maximize the proceeds received by the estate. *See Cadle Co. v. Moore (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010) (debtor in possession “has the duty to maximize the value of the estate”); *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 352 (1985) (same). Thus, it is appropriate to approve bidding procedures that benefit a debtor’s estate by maximizing the value of the debtor’s assets. *See In re TM Vill., Ltd.*, No. 18-32770, 2019 WL 1004571, at \*10 (Bankr. N.D. Tex. Feb. 28, 2019) (“As long as the sale appears to enhance a debtor’s estate, court approval of a debtor-in-possession’s decision to sell should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code”) (quoting *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985)); *In re Tex.*



*Rangers Baseball Partners*, 431 B.R. 706, 711 (Bankr. N.D. Tex. 2010); *In re Edwards*, 228 B.R. 552, 561 (Bankr. N.D. Pa. 1998); *Integrated Res. Inc.*, 147 B.R. at 659.

32. The Debtors have sound business justifications for pursuing a Proposed Sale and seeking approval of the Bidding Procedures at this time. First, as the Court knows, the Debtors came into this chapter 11 case prepared to run a sale process. Although the Court denied the Debtors' initial request to sell their Assets to VitaNova, the Debtors have managed to identify alternative bidders willing to purchase the Debtors' Assets, including the going concern Tahoe Joe's restaurants, for an amount sufficient to satisfy the Debtors' obligations to the DIP Lender, while leaving sufficient funds in the estate to pay other administrative and priority claims. The Debtors believe that a sale of their remaining Assets is the best way to maximize the value of such Assets because, among other things, the Proposed Sale to the Stalking Horse will retain jobs and leave vendors with an on-going customer and business partner.

33. Second, insofar as the Bidding Procedures are concerned, the Bidding Procedures will set the parameters by which the value of the Debtors' assets and the overall transaction value may be established and tested. Before selecting Serene as the Stalking Horse Bidder, the Debtors received at least one other indication of interest from a third-party bidder. The Bidding Procedures will create a competitive and fair bidding process and increase the likelihood that the value of the assets is maximized.

34. The Debtors also believe that the Bidding Procedures will promote active bidding from seriously interested parties, and will dispel any doubt as to the highest and best offer reasonably available for the Debtors' Assets (or their businesses, to the extent there is a going concern transaction). The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders

who demonstrate an ability to close the Proposed Sale. The Debtors believe that the Bidding Procedures will encourage bidding, are consistent with other procedures previously approved by courts in this and other districts, and are appropriate under the relevant legal standards. *See generally, e.g., In re GGI Holdings, LLC*, Case No. 20-31318 (HDH) (Bankr. N.D. Tex. June 11, 2020); *In re Tuesday Morning Corp.*, Case No. 20-31476 (HDH) (Bankr. N.D. Tex. Oct. 1, 2020) [Docket No. 1090]; *In re The LaSalle Group, Inc.*, Case No. 19-31484 (HDH) (Bankr. N.D. Tex. Aug. 2, 2019) [Docket No. 270].

**II. The Form and Manner of Notice of the Bidding Procedures, the Auction, and the Sale Hearing are Reasonable, Adequate, and Appropriate.**

35. As stated previously, the Debtors request that the Court schedule two hearings in connection with this Motion: first, an emergency hearing to consider and approve the Bidding Procedures and schedule the Auction, Sale Hearing, and related deadlines; and second, an expedited hearing for the Sale Hearing itself.

36. As set forth above, the Debtors will serve the Bid Package and Sale Notice on the Bid Notice Parties within one (1) business day of entry of the Bidding Procedures Order. The Debtors propose to hold a Sale Hearing on slightly expedited notice, but such shortened notice is justified under the circumstances of these cases, specifically given the prior notices provided under the prior bidding procedures.

**III. The Break-Up Fee is Reasonable and Necessary to Ensure Maximum Value for the Debtor's Assets.**

37. As has been demonstrated over the years, obtaining a stalking horse bidder is often key to a successful, efficient, and value-maximizing sale process. The presence of a stalking horse sets a floor for the auction and encourages bidding, thereby maximizing the seller's return. To receive this benefit, however, the Debtors need to be able to compensate a Stalking Horse Bidder for the risk it takes by: (a) entering into an agreement that is subject to higher and better offers

without any assurances that its transaction will ultimately be consummated; (b) exposing its bid to the market; and (c) standing by its bid commitment while the marketing and sale process plays itself out. The Debtors, therefore, request that the Court approve the Break-Up Fee for the Stalking Horse Bidder.

38. Break-up fees and other bid protections are a normal and customary—and sometimes necessary—component of sales outside the ordinary course. *Integrated Res.*, 147 B.R. at 659-60 (“[B]ecause the directors of a corporation have a duty to encourage bidding, break-up fees can be *necessary* to discharge the directors’ duties to maximize value.”) (emphasis in original); *See, e.g., In re GGI Holdings, LLC*, Case No. 20-31318 (HDH) (Bankr. N.D. Tex. June 11, 2020) (approving break-up fee of 3% for an insider purchaser under similarly short timelines); *In re Lockwood Holdings, Inc.*, Case No. 18-30197 (DRJ) (Bankr. S.D. Tex. July 17, 2018) (approving break-up fee of 3% for potential stalking horse(s) to be named later); *In re Stone Energy Corp.*, Case No 16-36390 (MI) (Bankr. S.D. Tex. Jan. 18, 2017) [Docket No. 316] (approving a break-up fee in the amount of \$10,800,000, or 3% of the purchase price); *In re CXM, Inc.*, 307 B.R. 94, 104 (Bankr. N.D. Ill. 2004) (approving a \$200,000 break-up fee protecting stalking horse bidder); *In re Outboard Marine Corp.*, Case No. 00-37405-EIK-11 (Bankr. N.D. Ill. Jan. 10, 2001) [Docket No. 217] (authorizing payment of a 3% break-up fee to potential bidders); *In re 995 Fifth Ave. Assoc., L.P.*, 96 B.R. 24, 28-29 (Bankr. S.D.N.Y. 1989) (finding that \$500,000 break-up fee was not unreasonable absent evidence that it chilled the bidding). Specifically, stalking horse bid protections may be necessary to convince a stalking horse bidder to enter the bidding process by providing some form of compensation for the risks that it is undertaking. *In re Integrated Res., Inc.*, 147 B.R. at 660–61 (bid protections can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”); *In re Hupp Int’l Indus., Inc.*, 140

B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“[W]ithout such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence.”).

39. Courts in the Fifth Circuit analyze the appropriateness of bidding incentives under the “business judgment rule” standard. *See Asarco, Inc., v. Elliot Mgmt. (In re Asarco, LLC)*, 650 F.3d 593, 597-98, 602-03 n. 9 (5th Cir. 2011) (affirming bankruptcy court’s decision to apply the business judgment rule to evaluate whether an expense reimbursement bid protection was permissible). The proposed Break-Up Fee is reasonable under this standard. The Stalking Horse Bidder will expend—and has expended—time and resources negotiating, drafting, and performing due diligence in connection with and consummating the Proposed Sale. Nonetheless, there is a risk the Stalking Horse Bidder will not be deemed the Successful Bidder at the end of this lengthy process, especially considering that the DIP Lender is authorized to credit bid at the Auction. The Break-Up Fee is necessary to protect the Stalking Horse Bidder and incentivize it to assume an important role in the sale process. The benefit to the estates resulting from the participation of the Stalking Horse Bidder will outweigh the cost of any Break-Up Fee.

40. Additionally, the Debtors’ provision of a customary Break-Up Fee to the Stalking Horse Bidder—a third party not affiliated with the Debtors or VitaNova—likewise reflects the Debtors’ sound business judgment. The Break-Up Fee incentivizes the Stalking Horse Bidder to commit its time, money, and resources to perform the necessary negotiations with the Debtors, despite the inherent risks and uncertainties associated with the Auction and the chapter 11 process. In addition, the Break-Up Fee serves as additional protection for the Stalking Horse Bidder to continue to participate in the process as the Debtors pursue other offers consistent with their fiduciary obligations. Generally, courts have found break-up fees to be reasonable, and approved

the same, when they range up to approximately five percent (5%) of the consideration to be received. *See Integrated Res.*, 147 B.R. at 662 (noting expert testimony that 3.3% is industry average for break-up fees); *In re Stone Energy Corp.*, No. 16-36390 (MI) (Bankr. S.D. Tex. Jan. 18, 2017) (approving 3% break-up fee); *In re UGHS Senior Living, Inc.*, No. 15-80399 (DRJ) (Bankr. S.D. Tex. Nov. 24, 2015) (approving 3% break-up fee and 1% expense reimbursement); *In re Enron Corp.*, No. 01-16034 (AJG) (Bankr. S.D.N.Y., Apr. 8, 2004) (approving break-up fee equal to 5% of the purchase price); *In re TransCom USA Mgmt Co., L.P.*, No. 01-35158 (KKB) (Bankr. S.D. Tex., Feb. 12, 2002).

41. The \$150,000 proposed in this case is less than 5% of the cash component of the Stalking Horse Bidder's consideration, and less than 3.5% of the total consideration offered under the Stalking Horse Bid. By setting a floor through the Stalking Horse Bid, the Debtors have achieved certainty of maintaining Tahoe Joe's as a going concern, paying off their obligations to the DIP Lender, and incentivizing other bidders to complete their due diligence and participate in the auction process to maximize value for these bankruptcy estates. Based on the Debtors' discussions with other likely bidders, the Break-Up Fee will not chill additional bidding, and, upon information and belief, the Committee does not oppose such a Break-Up Fee. Under the circumstances, the Debtors, in their business judgment, believe it is reasonable and appropriate to provide the requested Break-Up Fee.

**IV. Any Proposed Sale Should be Approved Free and Clear of Liens, Claims, Interests, and Encumbrances.**

42. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, interest, or encumbrance in such property if, among other things:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

43. Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice for approval of the proposed sale. *See, e.g., In re Partners Oil Co.*, 216 B.R. 399, 401 (Bankr. S.D. Tex. 1998) (allowing a sale free and clear of liens when just one of the subsections of 363(f) were met); *In re Collins*, 180 B.R. 447, 449-50 (Bankr. E.D. Va. 1995) (“Section 363(f) is phrased in the disjunctive, such that only one of the enumerated conditions must be met in order for the Court to approve the proposed sale”); *Scherer v. Fed. Nat’l Mortg. Ass’n (In re Terrace Chalet Apts., Ltd.)*, 159 B.R. 821, 827 (N.D. Ill. 1993) (sale extinguishes liens under section 363(f) as long as one of the five specified exceptions applies).

44. Section 363(f) permits the Proposed Sale to proceed free and clear of all liens, claims, interests, and encumbrances, except for any liabilities specifically assumed by the Successful Bidder. Each lien, claim, interest, or encumbrance that is not the result of an assumed liability satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code. Indeed, the Debtors believe that the Proposed Sale will be unopposed by the DIP Lender and the Debtors’ prepetition lender Arizona Bank & Trust (“AB&T”), to the extent AB&T has not yet released all of its liens against the Assets, at the Sale Hearing. 11 U.S.C. § 363(f)(2). AB&T’s claim has already been satisfied,<sup>9</sup> and the DIP Lender will be paid in full in cash from the sale

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<sup>9</sup> *See Order (I) Authorizing and Approving the Settlement by and between the Debtors and Arizona Bank and Trust and (II) Granting Related Relief* [Docket No. 318].

proceeds. To the extent the Debtors seek to sell any Assets on which an entity has a lien, such party will receive the Sale Notice and will have an opportunity to object. Further, to the extent a Secured Creditor, the DIP Lender, AB&T, or any other entity with a lien on any assets to be sold has an objection to the Proposed Sale, but the Debtors nonetheless decide to proceed with the Proposed Sale over such objection, the Debtors will present appropriate evidence and lay the necessary foundation at the Sale Hearing to support approval of the Proposed Sale under one or more subdivisions of section 363(f).

45. The Debtors further submit that any lien, claim, interest, or encumbrance will be adequately protected by attachment to the net proceeds of the Proposed Sale, in the same order of priority as existed prior to the Petition Date, and all parties' rights to object to such Proposed Sale are preserved. Accordingly, the Debtors request that the Proposed Sale to the Successful Bidder be free and clear of all liens, claims, interests, and encumbrances, with such liens, claims, and encumbrances to attach to the proceeds of the Proposed Sale.

**V. The Stalking Horse, or the Successful Bidder, is a Good Faith Purchaser Pursuant to Section 363(m) of the Bankruptcy Code, and the Proposed Sale Should be Deemed Non-Avoidable Pursuant to Section 363(n) of the Bankruptcy Code.**

46. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

47. While the Bankruptcy Code does not define "good faith," the Fifth Circuit has held that a good faith purchaser is one who "purchases the assets for value, in good faith, and without notice of adverse claims." *Hardage v. Herring Nat'l Bank*, 837 F.2d 1319, 1323 (5th Cir. 1988) (quoting *Willemain v. Kivitz (In re Willemain)*, 764 F.2d 1019, 1023 (4th Cir. 1985)).

Furthermore, the good faith status of a purchaser can be destroyed with evidence of “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014).

48. The Debtors submit, and will present evidence at the Sale Hearing, that the Proposed Sale is an arms’ length transaction, in which the Successful Bidder and the Debtors at all times acted in good faith. In connection with approval of the Proposed Sale, the Debtors request that the Court make a finding that the Successful Bidder is a good faith purchaser and entitled to the protections of section 363(m) of the Bankruptcy Code.

**VI. The Assumption, Assignment, and Cure Procedures Relating to the Assumed Contracts are Appropriate and Should be Approved.**

49. In connection with the Proposed Sale, the Debtors seek authority to assume and assign the Assumed Contracts (if any) to the Successful Bidder. As noted above, a list of Potential Assumed Contracts and Leases is attached hereto as **Exhibit B**, and the Debtors will supplement such list based on the Auction results.

50. Section 365(f)(2) of the Bankruptcy Code provides that:

[t]he trustee may assign an executory contract or unexpired lease of the debtors only if –

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

51. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a



debtor's decision to assume or reject executory contracts or unexpired leases of nonresidential real property is whether the debtor's reasonable business judgment supports assumption or rejection. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *see also Tex. Health Enters. Inc. v. Lytle Nursing Home (In re Tex. Health Enters. Inc.)*, 72 F. App'x 122, 127 (5th Cir. 2003) (“[T]he bankruptcy code makes it clear that it is the choice of the debtor-in-possession, and not the bankruptcy court, to assume or reject an executory contract”); *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 162 (Bankr D. Del. 2006).

52. Here, the Court should approve the Debtors' request for authority to assume or assume and assign their executory contracts and unexpired leases where they determine, in their business judgment, it is an essential component of the Proposed Sale: **First**, the Debtors' executory contracts and unexpired leases may be necessary to effectively operate or utilize the Tahoe Joe's business and, as such, they are essential to inducing the best offer or offers for the Tahoe Joe's business. **Second**, it is possible a potential purchaser would not want to acquire certain assets unless a significant number of the contracts and leases associated with the Tahoe Joe's business are included in the Transaction. **Third**, the Debtors anticipate that the assumption and assignment of the Assumed Contracts will be integral to, and inextricably integrated in, the Proposed Sale. **Finally**, the Debtors' executory contracts and unexpired leases would be assumed or assumed and assigned through a process approved by the Court pursuant to the Bidding Procedures Order and, thus, would be reviewed by key constituents in these chapter 11 cases.

53. Section 365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an unexpired lease or executory contract of a debtor:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

54. Courts give the phrase “adequate assurance of future performance” in section 365(b)(1) a “practical, pragmatic construction.” *See, e.g., Appeal of Ill. Inv. Tr. v. Allied Waste Indus., Inc. (In re Res. Tech. Corp.)*, 624 F.3d 376, 383-84 (7th Cir. 2010) (adequate assurance required showing that performance was more likely to occur than not); *EBG Midtown S. Corp. v. McLaren/Hart Env’t Eng’g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (the presence of adequate assurance should be “determined under the facts of each particular case”); *In re Fifth Ave. Originals*, 32 B.R. 648, 652 (Bankr. S.D.N.Y. 1983) (holding that adequate assurance was furnished on two separate grounds). The phrase “adequate” assurance is not synonymous with “total” assurances. *See, e.g., In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D. N.J. 1988) (“the required assurance will fall considerably short of an absolute guarantee of performance”); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (“[I]t does not mean absolute insurance that the debtor will thrive and make a profit”).

55. The Debtors will satisfy the requirements for assumption or assumption and assignment of any executory contracts and unexpired leases in connection with any Proposed Sale. The Debtors will evaluate the financial wherewithal (e.g., financial credibility, willingness, and

ability of the interested party to perform under any executory contracts and unexpired lease proposed to be assigned) of Potential Bidders before designating any party a Qualified Bidder. Further, the Qualified Bidder may be required to provide adequate assurance of future performance. And, all counterparties to Assumed Contracts will be provided with notice of the proposed assumption and assignment and will have adequate time and opportunity to object to the assumption and proposed cure costs or otherwise be heard with respect thereto.

56. To the extent the Successful Bidder desires the Debtors to assume and assign some or all of the Debtors' executory contracts or unexpired leases, the Debtors have determined that such assumption and assignment is an exercise of sound business judgment and is in the best interests of the Debtors, their estates, and creditors. To the extent that any defaults exist under any Assumed Contract, the Debtors will cure, or make provisions for the cure of, any such default, as set forth in the Cure Notice.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

57. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

58. 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 AB&T; (d) counsel to the DIP Lender; (e) counsel to the Committee; (f) the United States Attorney's Office for the Northern District of Texas; (g) the Internal Revenue Service; (h) the state attorneys general for states in which the Debtors conduct business; (i) all Counterparties to Potential Assumed Contracts

and Leases listed in Exhibit B hereto; and (j) 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**

59. Other than the Debtors' previous motion to sell the Assets to VitaNova, which this Court denied on August 24, 2021, 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 (a) enter the Bidding Procedures Order, (b) enter a Sale Order at the Sale Hearing (to the extent a Sale Hearing occurs), and (c) grant such other and further relief as may be just and proper.

Respectfully submitted this 20th day of September, 2021.

**GRAY REED**

By: /s/ Jason S. Brookner

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

**CERTIFICATE OF SERVICE**

I certify that on September 20, 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**

**Bidding Procedures 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>,<sup>1</sup></p> <p style="text-align: right;">Debtors.</p>	§ § § § § § § § §	<p>Chapter 11</p> <p>Case No. 21-30721 (SGJ)</p> <p>(Jointly Administered)</p> <p><b>Re: Docket No. ___</b></p>
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**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**

<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.

Upon the motion (the “Motion”),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (the “Debtors”), for entry of an order pursuant to 11 U.S.C. §§ 363 and 365 and rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (a) approving the bidding procedures attached hereto as **Appendix 1** (the “Bidding Procedures”) and certain bidding protections, (b) scheduling the bid deadline, auction date, and sale hearing (the “Sale Hearing”) and approving the form and manner of notice thereof, and (c) approving procedures to cure any default pursuant to section 365(b)(1) of the Bankruptcy Code and the form and manner of notice thereof; and the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion and the Bidding Procedures Hearing was sufficient under the circumstances, and that no other or further notice is required; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors and their estates, and good and sufficient cause having been shown, the Court hereby FINDS as follows:

A. The Debtors have articulated good and sufficient reasons for (i) approving the Bidding Procedures, including their designation of the Stalking Horse Bidder, (ii) approving certain bidding protections for the Stalking Horse Bidder, including allowance of a Break-Up Fee under certain conditions, (iii) approving the manner of notice of the Motion, and establishing the Bid Deadline, the Auction, the Sale Hearing, and the assumption and assignment of the Assumed Contracts and proposed cure relating thereto, and (iv) scheduling the Sale Hearing.

B. The Debtors have demonstrated a compelling business justification for the payment of the Breakup Fee under the circumstances set forth in the Motion. The Debtors’ payment to the Stalking Horse Bidder of the Break-Up Fee is: (i) an actual and necessary cost and expense of

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



preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code; (ii) of substantial benefit to the Debtors' estates; (iii) reasonable and appropriate, in light of the size and nature of the Proposed Sale and the efforts that have been and will be expended by a potential Stalking Horse Bidder notwithstanding that the Proposed Sale is subject to higher or better offers; (iv) negotiated by the parties at arms' length and in good faith; and (v) necessary to ensure that a potential Stalking Horse Bidder will continue to pursue its proposed acquisition of the Debtors' assets. The Stalking Horse Bidder is unwilling to commit to purchase the Assets under the terms of the APA without approval of the Breakup Fee.

C. The Bidding Procedures are reasonable and appropriate and represent the best method for maximizing the realizable value of the Debtors' assets in part, in total, or as a going concern transaction.

**IT IS HEREBY ORDERED THAT:**

1. The Motion (as it pertains to approval of the matters set forth herein) is granted as set forth herein. Any objections that have not been previously resolved or withdrawn are overruled.

**Notice Procedures**

2. Within one (1) business day after entry of this Order, the Debtors shall serve copies of this Order, including (a) a copy of the Bidding Procedures attached hereto as **Appendix 1**, and (b) the notice of Bid Deadline, Auction, and Sale Hearing substantially in the form attached hereto as **Appendix 2** (the "**Sale Notice**") (collectively, the "**Bid Package**"), via electronic notification, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, upon the following (collectively, the "**Bid Notice Parties**"): (i) all potential buyers previously identified or solicited by the Debtors or B. Riley Advisory and any additional parties who have previously expressed an interest to the Debtors or B. Riley Advisory in potentially acquiring the Assets; (ii) other potentially interested parties identified by the Debtors or their advisors; (iii) the U.S.

Trustee; (iv) counsel to the DIP Lender; (v) counsel to Arizona Bank & Trust; (vi) counsel to the Committee; (vii) counterparties to the Debtors' executory contracts and unexpired leases; (viii) any parties that have asserted a lien or security interest against or any other interest in, including, without limitation, preferential purchase rights or rights of first refusal on, any of the Debtors' assets; (ix) any taxing, regulatory or any other government authorities related to the Debtors' assets that, as a result of the sale of the Assets, may have claims, contingent or otherwise, in connection with the Debtors' ownership of the Assets or have any known interest in the relief requested by the Motion; and (x) all parties who have requested notice in this case.<sup>3</sup>

3. The Cure Notice attached to the Motion as Exhibit B (the "Cure Notice") provided a schedule of executory contracts and unexpired leases that may be assumed and assigned as part of the Proposed Sale (collectively, the "Potential Assumed Contracts and Leases"), along with the amounts, if any, that the Debtors believe to be owed to each counterparty to the Potential Assumed Contracts and Leases (each, a "Counterparty") in order to cure any defaults that may exist under each Potential Assumed Contract and Lease (the "Cure Costs").

4. Following the Auction, but prior to the commencement of the Sale Hearing, the Debtors shall file with the Court a final schedule (the "Assumed Contract and Leases Schedule") of executory contracts and unexpired leases elected to be assumed by the Successful Bidder (the "Assumed Contracts and Leases"). At the Sale Hearing, the Debtors may seek authority to assume and assign the Assumed Contracts and Leases to the Successful Bidder effective as of the closing of the Proposed Sale; *provided, however*, that the Successful Bidder may remove or add any executory contract or unexpired lease to or from the Assumed Contract and Leases Schedule at any time up to the closing of the Proposed Sale. The Counterparty to any such added or removed

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<sup>3</sup> All such persons shall be served by electronic mail to the extent the Debtors or their professionals have electronic mail addresses for such parties.

contract will be notified by written notice via electronic mail, if possible, or first class U.S. mail, postage prepaid, where electronic delivery is unavailable, no later than two (2) business days following such determination.

5. Any objection to the assumption and assignment of the applicable Potential Assumed Contract or Lease on the basis of lack of adequate assurance of future performance under section 365(b)(1) or the Cure Costs (collectively, an “Assumption Objection”), set forth in the Cure Notice must be (a) in writing, (b) state the basis for such objection with specificity, (c) conform to the Bankruptcy Rules and Local Rules of the Northern District of Texas, and (d) be filed no later than **4:00 p.m. Central Time on October 5, 2021** (the “Assumption Objection Deadline”).

6. If, at any time after service of the Cure Notice and before closing of the proposed Sale, the Debtors identify additional Potential Assumed Contracts and Leases not included in the initial Cure Notice, the Debtors shall serve a supplemental Cure Notice on the counterparties to the additional Potential Assumed Contracts and Leases and such counterparties shall have until the later of (a) **4:00 p.m. Central Time on October 5, 2021**, or (b) ten (10) days from service of the supplemental Cure Notice to file an Assumption Objection to the additional Potential Assumed Contracts and Leases on the Assumed Contract and Leases Schedule.

#### **Bidding Procedures and Auction**

7. The Bidding Procedures attached hereto as **Appendix 1** and incorporated herein by reference as if fully set forth herein, are hereby approved and shall govern the bidding and Auction proceedings. The Debtors shall file a notice of the proposed Sale Order (the “Initial Proposed Sale Order”) no later than **September 23, 2021**. As set forth in Paragraph 10 below, the Debtors shall file any proposed changes to the Initial Proposed Sale Order following the conclusion of the Auction.

8. The Bid Deadline shall be **September 29, 2021 at 4:00 p.m. Central Time**, Qualified Bidders will be notified within one business day after the Bid Deadline, and deposits will be returned to non-Qualified Bidders by **October 5, 2021**.

9. An Auction is scheduled to take place on **October 1, 2021**, commencing at **10:00 a.m. Central Time**, virtually and/or at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, TX 75201.

10. As soon as practicable following the conclusion of the Auction (if any), and no later than **October 4, 2021 at 4:00 p.m.**, the Debtors shall file with the Court a notice (the "Notice of Auction Results") setting forth the results of the Auction, including: (i) the identity of the Successful Bidder, (ii) the operative asset purchase agreement (the "APA") to be approved at the Sale Hearing and any other necessary exhibits and schedules, to the extent available, (iii) the Assumed Contract and Leases Schedule; and (iv) a proposed revised Sale Order, combined with a comparison showing any changes to the Initial Proposed Sale Order.

11. The Debtors are authorized, in the exercise of their business judgment, to terminate the bidding process or the Auction at any time if they determine that continuing the bidding process will not maximize value for the Debtors' estates, with notice of such termination to be filed of record with the Court.

#### **Sale Hearing and Objections to the Proposed Sale**

12. The Sale Hearing shall commence on **October \_\_, 2021 at \_\_\_\_m.** Central Time in the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom #1, Dallas, Texas 75242, at which time the Court shall consider the Motion, the Proposed Sale, and confirm the results of the Auction, if any.

13. Sale Objections. Any objection (an “Objection”) to the Proposed Sale and entry of the Sale Order, including, but not limited to, Assumption Objections, shall be filed with the Court and served on the parties listed in Paragraph 14 below so as to be actually received no later than **4:00 p.m. Central Time on October 5, 2021** (each such deadline being the “Objection Deadline”).

14. Any and all Objections must be filed with the Bankruptcy Court and served on the following parties so as to be received prior to the applicable Objection Deadline: (a) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201 (Attn: Jason S. Brookner ([jbrookner@grayreed.com](mailto:jbrookner@grayreed.com)), Aaron M. Kaufman ([akaufman@grayreed.com](mailto:akaufman@grayreed.com)), and Amber M. Carson ([acarson@grayreed.com](mailto:acarson@grayreed.com))); (b) the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Meredyth A. Kippes ([meredyth.a.kippes@usdoj.gov](mailto:meredyth.a.kippes@usdoj.gov))); (c) counsel to AB&T, Engelman Berger, PC, 2800 North Central Avenue, Suite 1200, Phoenix, Arizona 85004 (Attn: Patrick A. Clisham ([pac@eblawyers.com](mailto:pac@eblawyers.com))); (d) counsel to the DIP Lender, Carrington Coleman, 901 Main Street, Suite 5500, Dallas, Texas 75202 (Attn: J. Michael Sutherland ([msutherland@ccsb.com](mailto:msutherland@ccsb.com))); and (e) counsel to the Committee, Dickinson Wright, PLLC, 1850 N. Central Avenue, Suites 1400, Phoenix, Arizona 85004 (Attn: Carolyn J. Johnsen ([CJJohnsen@dickinson-wright.com](mailto:CJJohnsen@dickinson-wright.com)) and William L. Novotny ([WNovotny@dickinsonwright.com](mailto:WNovotny@dickinsonwright.com))).

15. The failure to timely file and serve an Objection by the Objection Deadline shall be a bar to the assertion prior to, at the Sale Hearing, or thereafter, of any such objection to the Motion, the Sale, the Debtors’ consummation of the Proposed Sale, or the proposed assumption and assignment of any executory contracts or unexpired leases. Failure to file and serve an Objection by the Objection Deadline shall be deemed to be consent to the Sale for purposes of Bankruptcy

Code section 363(f) and a waiver of any preferential purchase rights or other similar rights to acquire any of the Debtors' assets.

16. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties and the Successful Bidder, from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment made in open court.

**Stalking Horse Bidder and Bid Protections**

17. Serene Investment Management, LLC (together with its successors, designees and assigns, the "Stalking Horse Bidder") is hereby granted "stalking horse" bidder status in connection with the Auction. The Stalking Horse Bidder shall be deemed a Qualifying Bidder, and its Stalking Horse Bid shall be deemed a Qualifying Bid. In the event that the Stalking Horse Bidder is not designated by the Debtors as the Successful Bidder at the conclusion of the Auction, and the Assets are thereafter sold or otherwise transferred to any other entity or entities, the Stalking Horse Bidder shall be entitled to receive from the Debtors a break-up fee of \$150,000 (the "Break-Up Fee"). The Break-Up Fee shall be an allowed super-priority administrative expense claim (senior to any other super-priority administrative expense claims except for administrative expense claims of the DIP Lender) pursuant to 11 U.S.C. §§ 363, 503(b)(1) and 507(a)(2), without further order of this Court. The Break-Up Fee shall be paid to the Stalking Horse Bidder substantially concurrently with the consummation of a Proposed Sale to any alternative Successful Bidder from the proceeds of the Proposed Sale by wire transfer of immediately available funds to the account specified by the Stalking Horse Bidder to the Debtors in writing, which wire payment shall be made no later than the first Business Day following the Closing. The obligation to pay the Break-Up Fee in full by wire transfer of immediately available funds when due shall not be

discharged, modified, or otherwise affected by any chapter 11 plan in the Chapter 11 Cases or by any other order or action of the Court.

18. Except for the Stalking Horse Bidder, no other entity (as defined in the Bankruptcy Code) submitting an offer or Bid for the Acquired Assets or a Qualified Bid shall be entitled to any expense reimbursement, or break-up, termination, or similar fees or payment.

#### **Miscellaneous**

19. Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived.

20. The terms of this Order shall control to the extent of any conflict with the Motion or the attached Bidding Procedures. Notwithstanding the foregoing, and except for any deadlines or court hearing dates, the Debtors (with the written consent of the Consultation Parties) may modify the Bidding Procedures if, in their business judgment, such modifications will maximize the value of the Assets for the benefit of creditors and other stakeholders.

21. The Order shall be binding and inure to the benefit of the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

22. All time periods set forth in this Order or the Bidding Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

23. To the extent that this Order is inconsistent with the Motion or Bidding Procedures, the terms of this Order shall control.

24. 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:

Jason S. Brookner  
Texas Bar No. 24033684

Aaron M. Kaufman  
Texas Bar No. 24060067

Amber M. Carson  
Texas Bar No. 24075610

**GRAY REED**

1601 Elm Street, Suite 4600  
Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com  
akaufman@grayreed.com  
acarson@grayreed.com

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



**Appendix 1 to Bidding Procedures Order**

**Bidding Procedures**

**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> , <sup>1</sup>	§	Case No. 21-30721 (SGJ)
Debtors.	§	(Jointly Administered)

**BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “Bidding Procedures”) to be used with respect to: (A) a sale of all or a portion of the assets of the above-captioned debtors and debtors in possession (the “Debtors”), or (B) a going concern sale (each, a “Proposed Sale”). The Proposed Sale contemplated by these Bidding Procedures is subject to competitive bidding as set forth herein and approval by the Bankruptcy Court (as defined herein) pursuant to either (x) sections 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) or (y) a confirmed chapter 11 plan of reorganization.

On September 20, 2021, the Debtors filed their *Motion for (I) an 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; and (II) an Order Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of Liens, Claims and Interests* [Docket No. \_\_] (the “Motion”). On September \_\_, 2021, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *Order (A) Approving Bidding 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* [Docket No. \_\_] (the “Bidding Procedures Order”), approving these Bidding Procedures.

The Bidding Procedures set forth herein describe, among other things, the manner in which bidders and bids become “Qualified Bidders” and “Qualified Bids,” respectively, the receipt and negotiation of bids received, the conduct of any Auction (as defined herein), the ultimate selection of the Successful Bidder (as defined herein) and the Bankruptcy Court’s approval thereof (collectively, the “Bidding Process”).

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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.

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

**I.**  
**Key Dates**

The Debtors and B. Riley Advisory (defined below), have already begun the marketing process. Before being provided with any diligence materials, interested parties must sign and return a confidentiality agreement, substantially in the form attached hereto as **Exhibit 1** (a “Confidentiality Agreement”). **Requests for a Confidentiality Agreement should be made to Mark Shapiro and Joseph Pegnia, B. Riley Advisory Services, mshapiro@brileyfin.com and jpegnia@brileyfin.com.** Once an interested party signs and returns a Confidentiality Agreement, it will receive access to an electronic data room. Further diligence information is set forth in Section VIII, below.

The deadlines and target dates are as follows:

Hearing to approve Bidding Procedures:	September 21, 2021 at 1:30 p.m. (CT)
Notice of Proposed Sale Order:	September 23, 2021
Bid Deadline:	September 29, 2021, at 4:00 p.m. (CT)
Notice of Qualified Bidders:	September 30, 2021, at 4:00 p.m. (CT)
Auction:	October 1, 2021, at 10:00 a.m. (CT)
Deadline to File Notice of Auction Results:	October 4, 2021, at 4:00 p.m. (CT)
Sale Objection, including Assumption Objections:	October 5, 2021, 4:00 p.m. (CT)
Sale Hearing:	To be determined

**II.**  
**Sale of Assets or Going Concern Transaction**

The Debtors are entertaining bids for (a) a going concern transaction, and (b) a sale of all or substantially all of their assets. The Debtors may enter into one Proposed Sale or several Proposed Sales with multiple parties, depending upon the bids received.

In addition, (i) the Successful Bidder(s) in any Proposed Sale shall assume the assumed liabilities as may be set forth in any purchase agreement and (ii) the Debtors shall assume and assign the assumed contracts to such Successful Bidder(s), as may be set forth in any purchase agreement(s) accepted by the Debtors.

**III.**  
**“As Is, Where Is”**

Any Proposed Sale(s) entered into by the Debtors shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors or their estates, except as expressly set forth in the applicable APA.

#### IV.

#### **Free of Any and All Claims and Interests**

Subject to approval by the Bankruptcy Court, any Proposed Sale(s) entered into by the Debtors shall be free and clear of all liens, claims, interests, and encumbrances (collectively, the “Claims and Interests”), with such Claims and Interests to attach to the net proceeds of the sale(s).

#### V.

#### **Participation and Bid Requirements**

Any person or entity, including any Secured Creditor (as defined herein) who intends to submit a Credit Bid (as defined herein), who wishes to participate in the Bidding Process (a “Potential Bidder”) must become a Qualified Bidder as indicated within the Bidding Procedures.

Following execution of a Confidentiality Agreement, the Debtors will afford each Potential Bidder an opportunity to perform due diligence with respect to their businesses and assets. The Debtors have designated B. Riley Advisory Services (“B. Riley Advisory”) to coordinate all reasonable requests for additional information from Potential Bidders and due diligence access. After the Bid Deadline, the Debtors and B. Riley Advisory are not required to furnish any information of any kind related to the businesses or the Assets to any person that is not a Qualified Bidder. As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver the following documents, in a form and substance acceptable to the Debtors (the “Required Bid Documents”) before the Bid Deadline to all parties at the addresses listed in Section VII below:

- (a) Evidence of the Potential Bidder’s financial ability to close a Proposed Sale, in a form and substance acceptable to the Debtors in their sole discretion, in consultation with VitaNova Brands, LLC (“VitaNova” or the “DIP Lender”) and the official committee of unsecured creditors (the “Committee,” and together with the DIP Lender, the “Consultation Parties”).<sup>2</sup> Such evidence may take the form of, among other things, current audited financial statements, bank statements, evidence of a non-contingent financing commitment, or such other documentation as the Debtors may accept in their discretion, after consultation with the Consultation Parties;
- (b) A letter stating that the Potential Bidder’s offer is irrevocable until immediately following the closing of the Sale and setting forth (i) the nature of the Proposed Sale, whether such is a going concern or asset sale, and which includes the proposed consideration and the liabilities (if any) to be assumed, (ii) any assets expected to be excluded from the Sale, and (iii) the structure and financing of the Proposed Sale (including, but not limited to, the sources of financing);

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<sup>2</sup> VitaNova has reserved its rights to present a Credit Bid to the extent of its allowed secured claims described in Paragraph 6 of the DIP Order with respect to the DIP Collateral (as defined in Paragraph 6 of the DIP Order). Until VitaNova expressly notifies the Debtors and Committee in writing that it does not intend to submit a bid, it shall be considered an active bidder and, thus, shall not be considered Consultation Party.

- (c) A binding, executed, and definitive copy of the asset purchase agreement included in Debtors' virtual data room (the "APA"), together with all schedules thereto marked to show changes to the Stalking Horse Bidder's APA and schedules that the Potential Bidder proposes (a "Marked APA"), including the purchase price in U.S. dollars for each asset or group of assets subject to the applicable bid;
- (d) A copy of the proposed Sale Order (the "Revised Sale Order"), marked to show changes to the form of Sale Order filed by the Debtors on or before September 23, 2021 (a "Marked Sale Order");
- (e) A good faith earnest money cash deposit (the "Deposit") in an amount equal to 10% of the total cash consideration of the of the Proposed Sale to be held in an escrow account to be identified and established by the Debtors;
- (f) Evidence of corporate authority to enter into the Proposed Sale;
- (g) An executed Confidentiality Agreement; and
- (h) Any additional information reasonably requested by the Debtors.

## VI.

### **Qualified Bidders and Qualified Bids**

A Potential Bidder (i) who delivers the documents described in Section V above, (ii) whose financial information and credit-quality support or enhancement demonstrate the financial capability of such Potential Bidder to consummate the Proposed Sale if selected as the Successful Bidder, (iii) who the Debtors determine is likely (based on availability of financing, experience, and other considerations) to be able to consummate the Proposed Sale within the time frame provided by the APA or otherwise applicable in the above-captioned chapter 11 cases, and (iv) whose bid constitutes a "Qualified Bid" pursuant to these Bidding Procedures, shall be deemed a "Qualified Bidder." The Debtors will determine whether a Potential Bidder is a Qualified Bidder after consultation with the Consultation Parties. Within one business day after the Bid Deadline, by September 30, 2021, the Debtors will notify Potential Bidders if they are Qualified Bidders, and will provide copies of all Qualified Bids to all parties listed in Section VII below. Notwithstanding the requirements of Section VI, the Stalking Horse Bidder is deemed to be a Qualified Bidder.

A bid will be deemed a "Qualified Bid" and considered by the Debtors only if the bid:

- (a) is on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that are substantially similar to, and are not materially more burdensome or conditional to the Debtors than, those contained in the Stalking Horse Bid, and provides for payment of the Break-Up Fee (as defined below);
- (b) contains no contingencies of any type, other than Bankruptcy Court approval of the Proposed Sale and any applicable regulatory conditions;

- (c) is not conditioned upon any bid protections (such as a topping fee, termination fee, expense reimbursement, or similar type of payment);
- (d) contains an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors and their assets and businesses prior to making its offer, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the businesses and assets of the Debtors in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Debtors' businesses or assets, or the completeness of any information provided in connection therewith or the Auction;
- (e) acknowledges that the Potential Bidder will close on the Potential Sale on the later of (i) October 8, 2021 and (ii) three (3) Business Days after entry of the Sale Order, unless such Sale Order is stayed;
- (f) includes a list of assumed contracts and assumed liabilities (if any), and a commitment to consummate the Proposed Sale and the assumption of the assumed liabilities (if any) upon closing of the Potential Sale;
- (g) discloses (i) the identity of the Potential Bidder (including the identification of any authorized officers, directors, shareholders and/or the ultimate beneficial owners of the Potential Bidder) and each entity participating in connection with the Potential Bidder and the terms of such participation, and (ii) any other term sheets and other written or oral understandings between the Potential Bidder and its affiliates on one hand, and any insider (as defined in section 101(31) of the Bankruptcy Code) of the Debtors, on the other;
- (h) is received by the Bid Deadline;
- (i) is accompanied by a cash deposit by wire transfer in an amount equal to 10% of the aggregate value of the cash consideration of the bid to be held in an escrow account to be identified and established by the Debtors (the "Deposit"); and
- (j) offers consideration of sufficient cash or a valid Credit Bid (as defined in Section XIII) to pay in full or otherwise satisfy all obligations due to the DIP Lender under the DIP Order upon the closing of the Proposed Sale, unless the Debtors (after consultation with the Consultation Parties and with the express, written consent of the DIP Lender) agree otherwise.

Any bid that is not for cash, and does not otherwise comply with the above requirements, shall not be deemed to be a Qualified Bid.

A Qualified Bid will be valued, among other things, based upon factors such as the net value provided by such bid, the likelihood and timing of consummating the Proposed Sale in question, and any other factors that the Debtors may deem relevant to the Proposed Sale. The Stalking Horse Bidder shall be deemed a Qualified Bidder.

Between the time the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid until the conclusion of the Auction, except for proposed amendments to increase the consideration contemplated by the Qualified Bid, or otherwise enhance the terms of the Qualified Bid.

The Debtors reserve the right to cancel, and not conduct, the Auction (as defined below) if the Debtors do not receive any Qualified Bids (other than the Qualified Bid of the Stalking Horse Bidder) by the Bid Deadline. In such event, the Debtors will file a Notice of No Auction with the Bankruptcy Court.

By submitting a bid, a Potential Bidder warrants and represents that it is a principal acting on its own behalf, and not as a broker, finder, or agent acting on another's behalf. Such Potential Bidder acknowledges that it will not look to the Debtors or B. Riley Advisory for the payment of any fee or commission. In addition, the Potential Bidder agrees to be responsible for the payment of any fee, commission, or other compensation payable to any broker, finder, or agent who alleges it has dealt with or through the Potential Bidder.

**VII.**  
**Bid Deadline and Bid Recipients**

A Qualified Bidder (other than a potential Stalking Horse) who desires to make a bid shall deliver written copies of their bid to each of the following, **no later than 4:00 p.m. Central Time on September 29, 2021** (the "Bid Deadline"):

**Debtors' Counsel:**

Jason S. Brookner  
Aaron M. Kaufman  
Amber M. Carson  
**Gray Reed**  
1601 Elm Street, Suite 4600  
Dallas, Texas 75201  
Telephone: (214) 954-4135  
Facsimile: (214) 953-1332  
Email: jbrookner@grayreed.com  
akaufman@grayreed.com  
acarson@grayreed.com

**Debtors' CRO and Financial Advisor:**

Mark Shapiro, Chief Restructuring Officer  
Joseph Pegnia  
**B. Riley Advisory Services**  
3500 Maple Avenue, Suite 420  
Dallas, Texas 75219  
Telephone: (972) 794-1056  
Email: mshapiro@brileyfin.com  
jpegnia@brileyfin.com



**Debtor's Independent Director:**

Vineet "Vin" Batra  
Soravine Advisors LLC  
Telephone: (201) 394-7104  
Email: soravineadvisors@gmail.com

**Stalking Horse Bidder**

Lance N. Jurich, Esq.  
**Loeb & Loeb LLP**  
10100 Santa Monica Blvd., Ste. 2200  
Los Angeles, CA 90067-4120  
Telephone: (310) 282-2100  
Email: ljurich@loeb.com  
vrubinstein@loeb.com

**DIP Lender:**

J. Michael Sutherland  
**Carrington, Coleman, Sloman & Blumenthal, L.L.P.**  
901 Main St., Ste. 5500  
Dallas, Texas 75202  
Telephone: (214) 855-3096  
Email: msutherland@ccsb.com

**Committee:**

Carolyn J. Johnsen  
William L. Novotny  
**Dickinson Wright, PLLC**  
1850 N. Central Avenue, Suites 1400  
Phoenix, Arizona 85004  
Telephone: (602) 285-5006  
Fax: (844) 670-6009  
Email: CJJohnsen@dickinson-wright.com  
WNNovotny@dickinsonwright.com

**U.S. Trustee:**

Meredyth Kippes, Trial Attorney  
1100 Commerce Street, Room 976  
Dallas, Texas 75242  
Telephone: (214) 767-1079  
Email: meredyth.a.kippes@usdoj.gov

**VIII.**  
**Due Diligence**

Following execution of a Confidentiality Agreement, the Debtors shall afford each interested party an opportunity to perform due diligence with respect to their businesses and assets. Due diligence access may include management presentations as may be scheduled by the Debtors, on-site inspections, and such other matters which an interested party may reasonably request and as to which the Debtors, in their sole discretion, may agree. The Debtors shall designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from interested parties. No due diligence shall continue after the Bid Deadline. The Debtors may, in their discretion, coordinate diligence efforts such that multiple interested parties have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections.

**All diligence requests should be made to Mark Shapiro and Joseph Pagnia of B. Riley Advisory, [mshapiro@brileyfin.com](mailto:mshapiro@brileyfin.com) and [jpegnia@brileyfin.com](mailto:jpegnia@brileyfin.com).**

Each Qualified Bidder shall be deemed to acknowledge and represent that (i) it has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and assets prior to making its offer, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the businesses and assets in making its bid, (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties



whatsoever, whether express, implied, by operation of law or otherwise, regarding the business or assets, or the completeness of any information provided in connection therewith, the Bidding Process or the Auction (as defined herein), except, as to a Successful Bidder other than the Stalking Horse Bidder, as expressly stated in the definitive agreement with such Successful Bidder approved by the Bankruptcy Court, and (iv) that it has not engaged and will not engage in collusion in connection with the bidding process at any time.

**IX.**  
**Stalking Horse and Bid Protections**

The Debtors have selected Serene Investment Management, LLC, or its designee, to serve as the stalking horse bidder (the “Stalking Horse Bidder”) with its relevant bid being set forth in the Asset Purchase Agreement filed at Docket No. \_\_\_ in these chapter 11 cases (the “Stalking Horse Bid”).

In the event that the Stalking Horse Bidder is not designated as the Successful Bidder at the conclusion of the Auction (if held), the Stalking Horse Bidder shall be entitled to receive from the proceeds of any alternative sale(s) of the Debtors’ assets a break-up fee in the amount of \$150,000 (the “Break-Up Fee”).

**X.**  
**Auction**

If the Debtors receive more than one Qualified Bid, an auction (the “Auction”) will be conducted, upon notice to all Qualified Bidders who have submitted Qualified Bids, at **10:00 a.m. Central Time on October 1, 2021**, at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201, in accordance with the following procedures:

- (a) Only the following persons shall be entitled to attend the Auction: (i) professionals and principals or members of the Debtors, (ii) counsel to, and business persons from, AB&T, (iii) counsel to, and business persons from, the DIP Lender, (iv) counsel and the financial advisor to the Committee and one Committee representative, (v) the United States Trustee for the Northern District of Texas (the “U.S. Trustee”), and (vi) professionals and principals or members of any Qualified Bidder who has timely submitted a Qualified Bid (collectively, the “Participating Parties”). Only Qualified Bidders will be entitled to make any Subsequent Bids (as defined below) at the Auction.
- (b) At the commencement of the Auction, Qualified Bidders in attendance will be informed of which Qualified Bid or combination of Qualified Bids the Debtors believe is the highest or otherwise best offer(s), and from which bidding will begin.
- (c) All Participating Parties shall be entitled to be present for all Subsequent Bids (as defined below) with the understanding that the true identity of each bidder shall be fully disclosed to all other bidders and that all material terms of each Subsequent Bid shall be fully disclosed to all Participating Parties throughout the entire Auction.

(d) The Debtors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction; *provided* that such rules are not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and after consulting with the Consultation Parties regarding the same.

(e) Bidding at the Auction shall begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids as identified by the Debtors at the onset of the Auction (the “Baseline Bid”). The initial overbid must exceed the Baseline Bid by at least \$200,000—*i.e.*, an amount sufficient to pay the Break-Up Fee, plus an additional initial bid increment of \$50,000. Thereafter, the minimum bidding increment (the “Subsequent Bids” and each a “Subsequent Bid”) shall be \$50,000 (which increments may be increased or decreased by the Debtors, in their discretion, in consultation with the Consultation Parties). The Stalking Horse Bidder’s overbid, if any, shall include credit for the Break-Up Fee. The Auction shall continue in one or more rounds of bidding, and each Qualified Bidder must present a Subsequent Bid during such round. The Auction shall conclude after each Participating Party has had the opportunity to submit one or more additional Subsequent Bids with full knowledge and confirmation of the then-existing highest bid or bids. If a Qualified Bidder, having the opportunity to do so, declines to make a Subsequent Bid during a round, such Qualified Bidder will be deemed to have withdrawn from the Auction.

The Debtors reserve the right, in the exercise of their business judgment in consultation with the Consultation Parties and the DIP Lender, to adjourn the Auction at one or more times to, among other things (i) facilitate discussions among the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) allow Qualified Bidders the opportunity to provide the Debtors with such additional information or evidence, as the Debtors may require in the exercise of their business judgment, that the Qualified Bidder has sufficient resources and sufficient non-contingent debt and/or equity funding commitments to consummate the Proposed Sale at the then-prevailing Subsequent Bid amount.

The Debtors shall maintain a transcript of the proceedings at the Auction, including the Baseline Bid, all Subsequent Bids, and the Successful Bid (as defined below).

## XI.

### **Closing of Auction and Selection of Successful Bid**

The Auction shall continue until there is only one bid or combination of bids that the Debtors determines, in their business judgment, after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid for a Proposed Sale or multiple Proposed Sale(s), after taking into account factors such as the speed and certainty of consummating the transaction(s) (each such bid being the “Successful Bid” and the bidder making such bid, the “Successful Bidder”). The Debtors shall file a notice of Successful Bid identifying the Successful Bidder and including a copy of the Successful Bid as soon as practicable after conclusion of the Auction. Such notice will include a copy of the final APA, with any non-confidential schedules, including the Assumed Contract and Leases Schedule.

All bidders will be deemed to have consented to the core and exclusive jurisdiction of the Bankruptcy Court.

**XII.**  
**Back-Up Bidder**

If there is an Auction, the Qualified Bidder that submits the second highest Bid at the Auction shall be required to serve as the back-up bidder (the “Back-Up Bidder”) and keep its last Bid (the “Back-Up Bid”) open and irrevocable until the later of: (i) 16 days after entry of a Sale Order or (ii) closing of the Proposed Sale with the Successful Bidder (the “Outside Back-Up Date”). If, after the Sale Hearing but prior to the Outside Back-Up Date for a Proposed Sale, the Successful Bidder fails to consummate or proceed with the relevant Proposed Sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to have the new Successful Bid, and the Debtors will be authorized, without further order of the Bankruptcy Court, to consummate the Proposed Sale with the Back-Up Bidder. The Debtors will provide notice to the Consultation Parties of any failure by the Successful Bidder to close the Proposed Sale and the election to proceed to close a Proposed Sale with the Back-Up Bidder.

**XIII.**  
**Right to Credit Bid**

Any creditor that has a valid, perfected, unavoidable, and enforceable security interest (a “Security Interest”) in the Debtors’ assets (any such creditor, a “Secured Creditor”), which Security Interest is not subject to any contest or dispute in these chapter 11 cases or otherwise, may make one or more credit bids for all or any portion of the assets in which such Secured Creditor has a Security Interest at the Auction, subject to the requirements of section 363(k) of the Bankruptcy Code (a “Credit Bid”). In order to qualify to Credit Bid, a Secured Creditor (i) must be a Qualified Bidder and a Credit Bid must qualify as a Qualified Bid, and (ii) must have its Security Interests allowed prior to submitting a Credit Bid. The DIP Lender (as defined in Section V above) shall be permitted to submit a Credit Bid to the extent of its allowed secured claims described in Paragraph 6 of the DIP Order with respect to the DIP Collateral (as defined in Paragraph 6 of the DIP Order), and shall be permitted, but not have the obligation, to submit a Credit Bid for such DIP Collateral. Such Credit Bid may comprise part of the consideration for the DIP Lender’s bid, but such bid must comply with all other requirements in Section VI above to be considered a Qualified Bid. For the avoidance of doubt, in the event a Secured Creditor is the Successful Bidder, it shall pay the Break-Up Fee in cash to the Stalking Horse Bidder no later than one (1) Business Day after the Closing.

**XIV.**  
**The Sale Hearing and Return of Deposits**

In the event one or more Proposed Sales are accepted by the Debtors, a hearing to approve the Sale(s) will take place before the Honorable Stacey G.C. Jernigan, United States Bankruptcy Judge, on **October \_\_, 2021 at \_\_\_\_ .m. Central Time**, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Earle Cabell Federal Building, 1100 Commerce Street, Dallas, Texas 75242. The Sale Hearing may be adjourned or rescheduled by the Debtors without notice other than by an announcement made at the Sale Hearing.

The Debtors will not be bound by a Successful Bid for a Proposed Sale or a Back-Up Bid for a Proposed Sale unless and until the Bankruptcy Court has approved the same. Following Bankruptcy Court approval of a Proposed Sale with the Successful Bidder, if the Successful Bidder fails to consummate the Proposed Sale for any reason, the Back-Up Bidder will be deemed to be the Successful Bidder and the Debtors will enter into a Sale with the Back-Up Bidder on the terms of the Back-Up Bid without any further order of the Bankruptcy Court, and the Debtors may pursue any and all available remedies against the Successful Bidder in connection with its failure to consummate the Sale.

The Deposit of the Successful Bidder (together with interest, if any, thereon) shall be applied against the payment of the Proposed Sale consideration upon the closing of the Sale. Unless, before the Outside Back-Up Date, the Debtors elect to proceed to close a Proposed Sale with the Back-Up Bidder as further described in Section XII, the Deposit (together with interest, if any, thereon) of the Back-Up Bidder for a Proposed Sale will be returned within two (2) business days following the Outside Back-Up Date. In the event a Bidder fails to close as a result of its own default, its Deposit shall be released to, and retained by, the Debtors.

Deposits made by Potential Bidders who are not determined to be Qualified Bidders will be returned within five (5) business days after the Bid Deadline.

## XV.

### **Reservation of Rights and Fiduciary Obligation**

Notwithstanding any term to the contrary herein, the Debtors, in consultation with the Consultation Parties, reserve the right to: (i) modify these Bidding Procedures at any time; (ii) determine which Qualified Bid, if any, is the highest or otherwise best bid; (iii) reject at any time, any bid that is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA; or (c) contrary to the best interests of the Debtors, their estates, and creditors as determined by the Debtors after consultation with the Consultation Parties; and (iv) pursue a sale or other transaction through a chapter 11 plan.

Nothing in these Bidding Procedures shall require the Debtors, the board of directors or similar governing body of the Debtors, or any individual board member or officer of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures or the Auction, to the extent such persons or entities determine, on the advice of counsel, that taking or refraining from taking such action, is required to comply with applicable law or its fiduciary obligations.

**Exhibit 1 to Bidding Procedures**  
**Form of Confidentiality Agreement**

September 20, 2021

**PRIVATE AND CONFIDENTIAL**

**Via email to: -----**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: *In re Fresh Acquisitions, LLC, et al.*, Case No. 21-30721 (SGJ) (Bankr. N.D. Tex.)

Ladies and Gentlemen:

You have expressed interest in a potential transaction (a “**Transaction**”) with Fresh Acquisitions, LLC and its affiliated debtors and debtors in possession (collectively, the “**Debtors**” or the “**Company**”) in the above-referenced chapter 11 cases (collectively, the “**Case**”). In connection with a potential Transaction, and for no other purposes, the Company is prepared to make available to you certain information concerning the business, operations and assets of the Company, on the terms set forth in this letter agreement (this “**Agreement**”).

As a condition to such information being furnished to you and your directors, officers, employees, agents or advisors (including without limitation, your attorneys, accountants, bankers and financial advisors) (collectively, “**Representatives**”), you agree to treat any information concerning the Company (whether prepared by the Company, their advisors or otherwise and irrespective of the form of communication) which is furnished to you or to your Representatives by or on behalf of the Company (herein collectively referred to as the “**Evaluation Material**”) in accordance with the provisions of this Agreement.

The term “**Evaluation Material**” shall mean any data, reports, records or materials or other information which relates to past, present or future business activities of the Company or their customers that is (i) not publicly available as of the date of this Agreement or thereafter, (ii) not already in your possession at the time of disclosure, and (iii) not independently and rightfully disclosed to you by a third party who did not acquire such information directly or indirectly from the Company on a confidential basis.

You hereby agree that you and your Representatives shall use the Evaluation Material solely for the purpose of evaluating a possible Transaction between you and the Company. You further agree that the Evaluation Material will be kept confidential and that you and your Representatives will not disclose any of the Evaluation Material in any manner whatsoever; *provided, however*, that (i) you may make any disclosure of such information to which the Company gives their prior written consent and (ii) any such information may be disclosed to your Representatives who need to know such information for the purpose of evaluating a possible Transaction with the Company and who agree to keep such information confidential pursuant to the terms of this Agreement. You shall be responsible for any breach of this Agreement by any of your Representatives by virtue of any prohibited or unauthorized disclosure or use of the Evaluation Material. You will exercise such precautions and take such measures as are reasonable in the circumstances to prevent improper use or disclosure of Evaluation Material by such persons, and the Company shall be third party beneficiaries of the confidentiality obligations of such persons to you.

You agree that, without the prior written consent of the Company, you and your Representatives will not disclose to any person the fact that the Evaluation Material has been made available to you, that discussions or negotiations are taking place concerning a possible Transaction involving the Company, or any of the terms, conditions or other facts with respect thereto (including the status thereof).

You further agree not to contact any employees, landlords, lenders, suppliers, or other creditors of the Company regarding a possible Transaction or the Evaluation Materials without the Company’s prior written consent, and that all communications regarding a possible Transaction with the Company, requests for additional information and questions regarding procedures with respect to a possible Transaction will be first submitted or directed to B. Riley Advisory Services (“**B. Riley Advisory**”) and not to the Company or its Representatives.



In the event that you or any of your Representatives are requested or required to disclose any of the Evaluation Material in legal proceedings, subpoena, civil investigative demand or other similar process, you shall provide the Company with prompt written notice of any such request or requirement so that the Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event such protective order or other remedy is not obtained, or the Company waives compliance with the provisions hereof, you agree to (i) furnish only that portion of the Evaluation Material for which the Company has waived compliance or for which you are advised by counsel is legally required and (ii) exercise your best efforts to obtain assurance that the Evaluation Material will be accorded such confidential treatment.

At any time upon the written request (email is sufficient) of the Company for any reason, you will, and will direct your Representatives to, promptly deliver to the Company or at your sole option destroy all Evaluation Material (and all copies thereof) in your possession or under your reasonable control. Upon written request of the Company, you shall confirm in writing to the Company (email is sufficient) that destruction has taken place. Notwithstanding anything herein to the contrary, you and your Representatives may retain Evaluation Material as required by Law or internal document retention policies. Notwithstanding the return or destruction of the Evaluation Material, you and your Representatives will continue to be bound by your obligations of confidentiality and other obligations hereunder for of the term of this Agreement.

You understand and acknowledge that the furnishing of the Evaluation Materials to you does not constitute a representation of any kind as to the accuracy or completeness of such information. None of the Company, B. Riley Advisory, nor any of their respective Representatives makes any express or implied representation or warranty as to the accuracy or completeness of the Evaluation Material. You agree that, if you determine to engage in a Transaction with the Company, your determination will be based solely on the terms of such definitive agreement and on your own investigation, analysis and assessment of the Company and the Transaction.

You agree that unless and until a definitive agreement regarding a Transaction has been executed, neither the Company nor you will be under any legal obligation of any kind whatsoever with respect to such a Transaction by virtue of this Agreement except for the matters specifically agreed to herein, and you hereby waive, in advance, any claims (including breach of contract) in connection with any possible Transaction with the Company unless and until you shall have entered into a final definitive agreement.

It is further understood and agreed that money damages will not be a sufficient remedy for any breach of this Agreement by you or any of your Representatives and that the Company shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by you of this Agreement, but shall be in addition to all other remedies available at law or equity to the Company.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to such state's principles of conflicts of laws.

This Agreement will terminate upon (a) the closing of the potential Transaction between the parties, or (b) the two-year anniversary of the date of this Agreement, whichever is earlier.

This terms of this Agreement may only be waived, amended or modified by an written instrument signed by the parties hereto.

Any notices required to be given hereunder shall be via email, as follows:

If to the Company:

B. Riley Advisory Services  
3500 Maple Avenue, Suite 420  
Dallas, Texas 75219  
Attention: Mark Shapiro and Joe Pegnia  
Email: [mshapiro@brileyfin.com](mailto:mshapiro@brileyfin.com)  
[jpegnia@brileyfin.com](mailto:jpegnia@brileyfin.com)

With a copy to:

Gray Reed & McGraw  
1601 Elm Street, Suite 4600  
Dallas, Texas 75201  
Attention: Jason S. Brookner  
Email: [jbrookner@grayreed.com](mailto:jbrookner@grayreed.com)

If to -----:

[to come]

With a copy to:

[to come]

Please confirm your agreement with the foregoing by signing and returning one copy of this Agreement to the undersigned, whereupon this Agreement shall become a binding agreement between you and the Company. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

*[Signature Page Follows]*



Sincerely,

B. Riley Advisory Services  
as Agent for and on behalf of the Company

By: \_\_\_\_\_  
Name:  
Title:

[INSTITUTION]

By: \_\_\_\_\_  
Name:  
Title:

**Appendix 2 to Bidding Procedures Order**

**Sale Notice**

**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>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</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>
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**NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE** that on September 20, 2021, the Debtors filed their *Motion for (I) an 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; and (II) an Order Approving the Sale of Substantially all of the Debtors’ Assets Free and Clear of Liens, Claims and Interests* [Docket No. \_\_\_] (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that on September \_\_, 2021, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *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. \_\_\_] (the “Bidding Procedures Order”) approving these Bidding Procedures approving certain bidding procedures attached thereto as Appendix 1.

**PLEASE TAKE FURTHER NOTICE** that all interested parties are invited to seek to become a Qualified Bidder and submit a Qualified Bid to purchase all or a portion of the Debtors’ businesses and assets in accordance with the terms of the Bidding Procedures Order and the bidding procedures. The deadline for Potential Bidders to submit Qualified Bids is **September 29, 2021 at 4:00 p.m.**

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the Bidding Procedures Order, unless cancelled, an Auction will take place on October 1, 2021 commencing at 10:00 a.m. Central Time at the offices of Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201. The Auction will proceed, and be conducted, pursuant to the terms of the Bidding Procedures.

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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.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding Procedures Order, the Debtors have included in Exhibit B to the Motion adequate notice (the “Cure Notice”) of proposed cure costs (each a “Cure Cost,” and collectively, the “Cure Costs”) for all the executory contracts and unexpired leases (collectively, the “Potential Assumed Contracts and Leases”) that may be included as part of the sale of the Debtors’ assets and the proposed Cure Cost for each such lease or contract to the successful bidder(s) at Auction.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Bidding Procedures Order, the Cure Costs set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. If an objection to the assumption and assignment of the Potential Assumed Contracts and Leases or to the Cure Notice and any Cure Cost cannot be resolved consensually among the parties, the Court will set a hearing to determine such matters as soon thereafter as is practicable, and the Debtors are permitted to give notice only to the objecting party and those parties who have filed a notice of appearance. The failure to timely file and serve an objection shall be deemed consent to the assumption and assignment of the Potential Assumed Contracts and Leases and to the Cure Costs and any and all objections thereto shall be deemed forever released and waived.

**PLEASE TAKE FURTHER NOTICE** that the inclusion of any contracts or leases on the Potential Assumed Contracts and Leases shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

**PLEASE TAKE FURTHER NOTICE** that a hearing on the sale of the Debtors’ assets, including the assumption and assignment of any executory contracts (the “Sale Hearing”), will take place on **October \_\_, 2021, at \_\_\_\_\_m. Central Time** in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242. Unless otherwise notified, the Sale Hearing will be conducted remotely using the Court’s WebEx system by clicking on the following link: <https://us-courts.webex.com/meet/jerniga>. Parties are encouraged to review the Court’s WebEx Hearing Instructions prior to attending any such hearing. As set forth in the Bidding Procedures, the Auction and the Sale Hearing may be cancelled, with a notice of cancellation to be filed by the Debtors with the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that any Objection (as defined in the Bidding Procedures Order) to the Motion, the Cure Cost, or the Proposed Sale shall be filed with the Bankruptcy Court and served on the following parties so as to be actually received no later than **4:00 p.m. Central Time on October 5, 2021** (the “Objection Deadline”): (a) counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201 (Attn: Jason S. Brookner ([jbrookner@grayreed.com](mailto:jbrookner@grayreed.com)), Aaron M. Kaufman ([akaufman@grayreed.com](mailto:akaufman@grayreed.com)), and Amber M. Carson ([acarson@grayreed.com](mailto:acarson@grayreed.com))); (b) the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Meredyth A. Kippes ([meredyth.a.kippes@usdoj.gov](mailto:meredyth.a.kippes@usdoj.gov))); (c) counsel to AB&T, Engelman Berger, PC, 2800 North Central Avenue, Suite 1200, Phoenix, Arizona 85004 (Attn: Patrick A. Clisham ([pac@eblawyers.com](mailto:pac@eblawyers.com))); (d) counsel to the DIP Lender, Carrington Coleman, 901 Main Street, Suite 5500, Dallas, Texas 75202 (Attn: J. Michael

Sutherland ([msutherland@ccsb.com](mailto:msutherland@ccsb.com)); and (e) counsel to the Committee, Dickinson Wright, PLLC, 1850 N. Central Avenue, Suites 1400, Phoenix, Arizona 85004 (Attn: Carolyn J. Johnsen ([CJJohnsen@dickinson-wright.com](mailto:CJJohnsen@dickinson-wright.com)) and William L. Novotny ([WNovotny@dickinsonwright.com](mailto:WNovotny@dickinsonwright.com))).

**PLEASE TAKE FURTHER NOTICE** that the failure to timely file and serve an Objection by the Objection Deadline shall be a bar to the assertion prior to, at the Sale Hearing, or thereafter, of any such objection to the Motion, the Sale, the Debtors' consummation of the Proposed Sale, or the proposed assumption and assignment of any executory contracts or unexpired leases. Failure to file and serve an Objection by the Objection Deadline shall be deemed to be consent to the Sale for purposes of Bankruptcy Code section 363(f) and a waiver of any preferential purchase rights or other similar rights to acquire any of the Debtors' assets.

**PLEASE TAKE FURTHER NOTICE** that copies of pleadings related to the proposed sale(s), including the Bidding Procedures Order (and attached Bidding Procedures) approved by the Bankruptcy Court, are available for free at [www.bmcgroup.com/fresh](http://www.bmcgroup.com/fresh), or on the Bankruptcy Court's website (for a fee) at [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov).

Respectfully submitted this \_\_\_th day of \_\_\_\_, 2021.

**GRAY REED**

By: \_\_\_\_\_  
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  
Dallas, Texas 75201  
Telephone: (214) 954-4135  
Facsimile: (214) 953-1332  
Email: [jbrookner@grayreed.com](mailto:jbrookner@grayreed.com)  
[akaufman@grayreed.com](mailto:akaufman@grayreed.com)  
[acarson@grayreed.com](mailto:acarson@grayreed.com)

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

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_, 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.

\_\_\_\_\_  
Jason S. Brookner

**Exhibit B**

**Cure Notice**

**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> , <sup>1</sup>	§	Case No. 21-30721 (SGJ)
Debtors.	§	(Jointly Administered)
	§	

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

**PLEASE TAKE NOTICE** that pursuant to the terms of that certain *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. \_\_\_] (the “Bidding Procedures Order”), the above-captioned debtors and debtors in possession (the “Debtors”), may hold an Auction for the sale of substantially all of their assets on October 1, 2021 at the Dallas office of Gray Reed.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding Procedures Order, the Debtors hereby provide their notice (the “Cure Notice”) of proposed cure costs (each a “Cure Cost,” and collectively, the “Cure Costs”) for all contracts and leases subject to potential assumption and assignment to the successful bidder(s) at Auction.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit 1** are schedules of the executory contracts and unexpired leases (collectively, the “Potential Assumed Contracts and Leases”) that may be included as part of the sale of the Debtors’ assets and the proposed Cure Cost for each such lease or contract.

**PLEASE TAKE FURTHER NOTICE** that any objection to any proposed Cure Cost for any Potential Assumed Contract or Lease or any other objection to the proposed assumption and assignment of the Potential Assumed Contracts and Leases, including, without limitation, on adequate assurance grounds, must be (a) in writing, (b) state the basis for such objection with specificity, (c) conform to the Bankruptcy Rules and Local Rules of the Northern District of Texas, and (d) be filed so as to be actually on or before **4:00 p.m. Central Time on October 5, 2021**.

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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.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Bidding Procedures Order, the Cure Costs set forth in the Cure Notice shall be binding on all parties unless an objection thereto is timely filed and served. If an objection to the assumption and assignment of the Potential Assumed Contracts and Leases or to the Cure Notice and any Cure Cost cannot be resolved consensually among the parties, the Court will set a hearing to determine such matters as soon thereafter as is practicable, and the Debtors is permitted to give notice only to the objecting party and those parties who have filed a notice of appearance. The failure to timely file and serve an objection shall be deemed consent to the assumption and assignment of the Potential Assumed Contracts and Leases and to the Cure Costs, and any and all objections thereto shall be deemed forever released and waived.

**PLEASE TAKE FURTHER NOTICE** that the inclusion of any contracts or leases on **Exhibit 1** hereto shall not constitute or be deemed to be a determination or admission by the Debtors that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

Respectfully submitted this \_\_ day of \_\_\_\_ 2021.

**GRAY REED**

By: \_\_\_\_\_

Jason S. Brookner  
Texas Bar No. 24033684  
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**COUNSEL TO THE DEBTORS  
AND DEBTORS IN POSSESSION**

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, 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. The Noticing Agent will provide a supplemental certificate of service upon completion of such service.

\_\_\_\_\_  
Jason S. Brookner



**Exhibit 1**

**Schedule of Executory Contracts and Unexpired Leases**

**Unexpired Leases**

Tenant	Landlord	Store Num./Location	Description	Lease Date	Cure Amount[1]
Tahoe Joe's Inc.	Slo Promenade De, LLC	825 - 485 Madonna Road, San Luis Obispo, CA	Property Lease	3/30/2000	\$ 124,667.00
Tahoe Joe's Inc.	Cedar Pointe Investors LP	822 - 7006 North Cedar Avenue, Fresno, CA	Property Lease	7/12/1996	152,258.00
Tahoe Joe's Inc.	Toor Village, LLC	831 - 4015 W Caldwell, Visalia, CA	Property Lease	7/10/2007	112,008.00
Tahoe Joe's Inc.	Donahue Schriber Realty Group L.P.	823 - 9000 Ming Ave, Building P, Bakersfield, CA	Property Lease	1/15/1999	408,156.00
Tahoe Joe's Inc.	Hormoz Demooei	828 - 1905 Taylor Road, Roseville, CA	Property Lease	12/28/2001	270,352.00
Tahoe Joe's Inc.	Midtown National Group LP	824 - 1040 Helen Power Drive, Vacaville, CA	Property Lease	10/14/1999	84,167.00
					\$ 1,151,608.00

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[1] Cure claims listed above are based on the amounts reflected in the Debtors' books and records, but the Debtors anticipate that the final Cure claims will be substantially lower than those reflected above as the result of ongoing negotiations through Hilco

Vendor Contracts		Debtor Entity	Vendor	Contract Date	Title/Description	Cure Amount
	Alamo Buffets Payroll, LLC	Newton@ Software, Inc. (Paycor, Inc )	03/23/20	Newtonsoftware.com website - User License and access	-	
	Alamo Buffets Payroll, LLC	Paycor, Inc.	03/23/20	Client Services Agreement	-	
	Alamo Buffets Payroll, LLC	Paycor, Inc.	03/23/20	Supplemental Agreement For Aca IRS Filing Services	-	
	Alamo Buffets Payroll, LLC	Paycor, Inc.	03/24/20	Addendum To Client Services Agreement	-	
	Alamo Buffets Payroll, LLC	Paycor, Inc.	03/23/20	Written authorization to represent employing unit in its relations with the Texas Workforce Commission	-	
	Alamo Fresh Payroll, LLC	National Payment Corporation	01/03/19	Paystub, W2	-	
	Alamo Fresh Payroll, LLC	Newton@ Software, Inc. (Paycor, Inc )	03/23/20	Newtonsoftware.com website - User License and access	-	
	Alamo Fresh Payroll, LLC	Paycor, Inc.	03/24/20	Addendum to Client Services Agreement	-	
	Alamo Fresh Payroll, LLC	Paycor, Inc.	03/23/20	Supplemental Agreement For ACA IRS Filing Services	-	
	Buffets LLC	Academy Fire Life Safety LLC	04/06/16	National Pricing Agreement	-	
	Buffets LLC	ADT, LLC (Protection One)	03/03/16	Additional Premises/ Equipment/Services - security Phone Line Conversions	-	
	Buffets LLC	ADT, LLC (Protection One)	09/26/17	Additional Premises / EQUIPMENT / SERVICES RIDER - THJ 835 (Chino, CA)	-	
	Buffets LLC	ADT, LLC (Protection One)	11/28/17	Additional Premises / EQUIPMENT / SERVICES RIDER - HTB 725 (Medford, OR - Closed)	-	
	Buffets LLC	ADT, LLC (Protection One)	12/07/17	Additional Premises / EQUIPMENT / SERVICES RIDER - Ryans 2118 (Rome, GA)	-	
	Buffets LLC	ADT, LLC (Protection One)	04/30/18	Additional Premises / EQUIPMENT / SERVICES RIDER - Ryans 2380 (Greenville, TN - Closed)	-	
	Buffets LLC	ADT, LLC (Protection One)	04/04/18	Additional Premises / EQUIPMENT / SERVICES RIDER - Ryans 2416 (Clarksburg, WV)	-	
	Buffets LLC	ADT, LLC (Protection One)	07/25/17	Equipment and Installation TJ 825 (San Luis Obispo, CA)	-	
	Buffets LLC	Airespring	03/06/17	Wireless Services	-	
	Buffets LLC	Ameripride Services, Inc.	08/20/18	National Services Agreement - Linen Supply	-	
	Buffets LLC	Arizona Bank And Trust	08/30/16	Bank Account Agreement	-	
	Buffets LLC	Benefitfocous.Com, Inc.	08/01/12	Service Agreement - Software and professional services for employee benefit administration	-	
	Buffets LLC	Crunchtime	01/04/11	Master License Agreement	-	
	Buffets LLC	Dinova, Inc.	10/10/19	Corporate Dining Restaurant Agreement	-	
	Buffets LLC	Donlin, Recano & Company, Inc.	03/04/16	Standard Claims Administration and Noticing Agreement	-	
	Buffets LLC	Ecolab, Inc.	03/01/17	Affiliate Participation Agreement for cleaning products	-	
	Buffets LLC	Ecolab, Inc.	10/30/20	Affiliate Agreement - Pest Elimination Services	-	
	Buffets LLC	Elavon	09/27/17	Merchant App - Credit Card	-	
	Buffets LLC	Engie Resources, LLC	05/01/17	Ohio Electricity - Variable Price - Ryans 61 (Toledo, OH) and Ryans 2441 (Sandusky, OH)	-	
	Buffets LLC	Engie Resources, LLC	05/01/17	Texas Electricity Matrix - Under 50 kw - Ryans 2474 (Waxahachie, TX)	1,439.97	
	Buffets LLC	Engie Resources, LLC	08/01/17	New York Electricity - Fixed Price - OCB 237 (Elmira, NY)	-	

Vendor Contracts		Debtor Entity	Vendor	Contract Date	Title/Description	Cure Amount
Buffets LLC		Engie Resources, LLC		01/01/20	Illinois Electricity - OCB 73 (Chicago, IL)	-
Buffets LLC		Engie Resources, LLC		08/01/18	Maine Electricity - HTB 204 (South Portland, ME)	-
Buffets LLC		Fifth Third Bank (Vantive)		10/01/07	Bank Card Merchant Agreement	-
Buffets LLC		Fishbowl Inc.		06/29/17	Maine Electricity - HTB 204 (South Portland, ME)	74,727.48
Buffets LLC		Grubhub Holdings, Inc.		09/29/20	Service Agreement	-
Buffets LLC		Grubhub Holdings, Inc.		09/29/20	Service Agreement - 3rd party delivery partners	-
Buffets LLC		Grubhub Holdings, Inc.		09/29/20	Service Agreement	-
Buffets LLC		Grubhub Holdings, Inc.		09/29/20	Service Agreement - 3rd party delivery partners	-
Buffets LLC		Grubhub Holdings, Inc.		09/29/20	Service Agreement - 3rd party delivery partners	-
Buffets LLC		Hudson Energy Services, LLC		08/01/19	NYC Electric Transaction Confirmation - OCB 138 (Buffalo, NY)	-
Buffets LLC		IT Problem Solver, Inc.		11/14/18	Smarter Takeout Service Contract (Online Takeout)	-
Buffets LLC		Just Energy Solutions Inc.		12/01/18	CA Natural Gas (Southern California Gas) - Bulk Contract	22,897.26
Buffets LLC		Kenexa, An IBM Company (Crunchtime)		10/18/13	IT - Project plan and Agreement:	31,200.00
Buffets LLC		Muzak, LLC		04/05/17	Music Service	-
Buffets LLC		NCR Corporation		12/23/16	Aloha POS - Hospitality Addendum	5,385.92
Buffets LLC		NCR Corporation		12/23/16	Master Agreement- POS system	-
Buffets LLC		NCR Corporation		03/17/17	Aloha POS - Professional Services Statement of Work	-
Buffets LLC		Nuco2, LLC		02/03/16	Affiliate Participation Agreement for Bulk Co2 gas	36,337.44
Buffets LLC		Patronix Systems, Inc.		04/06/17	Gift Card Service Agreement	-
Buffets LLC		Playertync, LLC		02/22/18	License agreement for training platform	7,632.40
Buffets LLC		Protection One		05/24/12	Affiliate Participation Agreement for Alarm	39,994.23
Buffets LLC		Punchh Inc.		09/30/20	Service Agreement	-
Buffets LLC		Royal Cup, Inc.		02/20/14	Coffee	-
Buffets LLC		SFE California		08/21/18	Commercial Gas Supply Agreement - CAA (HTB)	-
Buffets LLC		SFE California		08/21/18	Commercial Gas Supply Agreement - CAA (THJ)	-
Buffets LLC		Sysco Corporation		08/01/18	Distribution Agreement	-
Buffets LLC		The Wasserstrom Company		08/15/17	Affiliate Participation Agreement for the small ware	59,051.58
Buffets LLC		Vitanova Brands, LLC		01/01/21	Management Agreement	-
Buffets LLC		Waste Management National Services, Inc.		02/12/18	Master Services Agreement - Waste and recycling services	290,898.77
Buffets LLC		Wells Fargo Vendor Financial Services, LLC			Copiers lease	665.76
Buffets LLC		Where 2 Get It, Inc		10/16/17	Master Service Agreement	-
Buffets LLC		Zenrin USA, Inc.		08/17/17	First Amendment - Trademark License Agreement - Country Buffet, Hometown Buffet, Old Country Buffet	-
Buffets LLC		Zuppler Onl Food Ordering LLC		10/09/20	Master Service Agreement	-
Fire Mountain Restaurants, LLC		Airespring		03/06/17	Wireless Services	-
Fire Mountain Restaurants, LLC		Elavon		09/27/17	Merchant App - Credit Card	-
Fire Mountain Restaurants, LLC		Insight Communications Midwest, LLC		04/17/18	Commercial Account Right of Entry Agreement	-
Fire Mountain Restaurants, LLC		Muzak, LLC		04/05/17	Ryans 2138 (Summerville, SC)	-
Fire Mountain Restaurants, LLC		Portier, LLC		03/03/20	Music Service	-
Fire Mountain Restaurants, LLC		Postmates, Inc.		09/04/20	Affiliate Participation Addendum - Uber Eats	-
FMP SA Management Group, LLC		Fresh Acquisitions, LLC		08/18/15	Merchant Agreement	-
FMP SA Management Group, LLC		Portier, LLC		03/03/20	Management Agreement	-
FMP SA Management Group, LLC		Portier, LLC		03/03/20	Master Framework Agreement for Uber Eats	-
FMP SA Management Group, LLC		Portier, LLC		03/03/20	Affiliate Participation Addendum - Uber Eats	-

Vendor Contracts		Debtor Entity	Vendor	Contract Date	Title/Description	Cure Amount
		Food Management Partners, Inc.	Grubhub		Service for Commission	-
		Food Management Partners, Inc.	Grubhub		Service for Commission	-
		Food Management Partners, Inc.	Grubhub		Service for Commission	-
		Food Management Partners, Inc.	High-Tech-Tronics, Inc.		Business music service	-
		Fresh Acquisitions, LLC	Airespring	03/06/17	Internet Service	-
		Fresh Acquisitions, LLC	Ameripride Services, Inc.	08/20/18	National Services Agreement - Linen Supply	1,126.59
		Fresh Acquisitions, LLC	Arizona Bank And Trust	NA	Bank Account Agreement	-
		Fresh Acquisitions, LLC	AT&T	Unknown	Telecom Service - transfer Buffet LP contract to Fresh	-
		Fresh Acquisitions, LLC	Chowly Inc	06/25/20	Services Agreement	-
		Fresh Acquisitions, LLC	Crunchtime Information Systems. Inc.	09/01/09	License Agreement	8,710.80
		Fresh Acquisitions, LLC	Darling Ingredients Inc.	03/21/19	Service Agreement - Used cooking oil removal	-
		Fresh Acquisitions, LLC	Dinova, Inc.	10/10/2019	Corporate Dining Restaurant Agreement	-
		Fresh Acquisitions, LLC	Doordash	09/16/19	Delivery & Promotion agreement	-
		Fresh Acquisitions, LLC	Dr Pepper/Seven Up, Inc	01/01/17	covers Zio's, Furr's, and DP	-
		Fresh Acquisitions, LLC	Ecolab, Inc.	03/01/17	Dishmachine - Affiliate Participation Agreement for cleaning products	172.49
		Fresh Acquisitions, LLC	Ecolab, Inc.	10/30/20	Affiliate Agreement - Pest Elimination Services	36,823.44
		Fresh Acquisitions, LLC	Engie Resources, LLC	03/12/19	Electricity	40,957.85
		Fresh Acquisitions, LLC	Engie Resources, LLC	01/01/18	Electricity	-
		Fresh Acquisitions, LLC	Fishbowl Inc.	07/05/17	Marketing	13,482.72
		Fresh Acquisitions, LLC	FMP SA Management Group, LLC	08/18/15	Management Agreement	-
		Fresh Acquisitions, LLC	Fresh Concepts, Inc	10/16/17	Produce Supplier	-
		Fresh Acquisitions, LLC	Grubhub	06/25/20	Service for Commission	-
		Fresh Acquisitions, LLC	High-Tech-Tronics, Inc.	06/01/15	Business music service	5,865.00
		Fresh Acquisitions, LLC	IT Problem Solver, Inc,	11/14/18	Smarter Takeout Service Contract (Online Takeout)	-
		Fresh Acquisitions, LLC	Muzak, LLC	04/05/17	Music Service	-
		Fresh Acquisitions, LLC	NCR Corporation	08/08/17	Hospitality Addendum	-
		Fresh Acquisitions, LLC	NCR Corporation	08/07/17	Master Agreement	89,976.90
		Fresh Acquisitions, LLC	Nuco2, LLC	02/03/16	Affiliate Participation Agreement for Bulk Co2 gas	8,012.38
		Fresh Acquisitions, LLC	Paytronix Systems, Inc.	06/05/17	GC Service Agreement	5,700.00
		Fresh Acquisitions, LLC	Portier, LLC	03/04/20	Affiliate Participation Addendum - Uber Eats	-
		Fresh Acquisitions, LLC	Postmates, Inc.	09/04/20	Merchant Agreement	-
		Fresh Acquisitions, LLC	Protection One	12/07/16	Affiliate Participation Agreement for Alarm	19,773.17
		Fresh Acquisitions, LLC	Punchh Inc.	09/30/20	Service Agreement	-
		Fresh Acquisitions, LLC	Qwest Corporation	10/20/11	Business Lines	-
		Fresh Acquisitions, LLC	Taix Corporation (Equitax)	11/01/15	I-9 verification	-
		Fresh Acquisitions, LLC	Tiger Natural Gas, Inc.		Gas for all NM locations	12,285.56
		Fresh Acquisitions, LLC	Waste Connections Lone Star, Inc.	06/03/20	Waste Services	2,980.92
		Fresh Acquisitions, LLC	Waste Management National Services, Inc.	02/12/18	Master Services Agreement - Waste and recycling services	24,365.96
		Fresh Acquisitions, LLC	Wells Fargo	10/22/13	Merchant Processing Agreement	-
		Fresh Acquisitions, LLC	Where 2 Get It, Inc	09/12/17	Master Service Agreement	-
		Fresh Acquisitions, LLC	Zenrin USA, Inc.	08/17/17	First Amendment - Trademark License Agreement - Country Buffet, Hometown Buffet, Old Country Buffet	-
		Fresh Acquisitions, LLC	Zuppler Onl Food Ordering LLC	10/09/20	Master Service Agreement	1,000.00

Vendor Contracts		Debtor Entity	Vendor	Contract Date	Title/Description	Cure Amount
Hometown Buffet, Inc.	Agera Energy, LLC		05/01/17	California Commercial Core Natural Gas - HTB 713 (Fresno, CA); HTB 739 (Bakersfield, CA); HTB 718 (Newark, CA)	-	
Hometown Buffet, Inc.	Agera Energy, LLC		05/05/17	California Electricity- Bakersfield, Newark, Santa Maria	-	
Hometown Buffet, Inc.	Agera Energy, LLC/Constellation Newenergy LLC		05/01/17	California Large Commercial Electricity - HTB 707 (Stockton, CA);	-	
Hometown Buffet, Inc.	Doordash		09/16/19	Delivery & Promotion agreement	-	
Hometown Buffet, Inc.	Grubhub Holdings, Inc.		05/28/20	Service Agreement	-	
Hometown Buffet, Inc.	Just Energy Solutions Inc.		05/01/19	CA Natural Gas - Pacific Gas & Electric - Bulk Contract	-	
Hometown Buffet, Inc.	Just Energy Solutions Inc.		05/01/19	CA Natural Gas - San Diego Gas and Electric- (HTB 705 Chula Vista, CA and HTB 263 San Diego, CA)	-	
Hometown Buffet, Inc.	Portier, LLC		03/03/20	Affiliate Participation Addendum - Uber Eats	-	
Hometown Buffet, Inc.	Postmates, Inc.		09/04/20	Merchant Agreement	-	
Hometown Buffet, Inc.	Royal Cup, Inc.		02/20/14	Purchasing Agreement - Coffee	-	
OCB Purchasing, Co.	Coca-Cola North America		02/27/13	coke freestyle test agt- for Colorado	-	
OCB Purchasing, Co.	Coca-Cola North America		07/21/11	coke freestyle test agt- for Colorado	-	
OCB Restaurant Company, LLC	Agera Energy, LLC		05/01/17	California Commercial Core Natural Gas - HTB 707 (Stockton, CA), HTB 340 (Fairfield, CA), HTB 785 (Santa Maria, CA), OCB 146 (Salinas, CA), HTB 269 (Fresno, CA), HTB 339 (Hayward, CA)	-	
OCB Restaurant Company, LLC	Agera Energy, LLC		05/01/17	California Large Commercial Electricity - OCB 146 (Salinas, CA), HTB 340 (Fairfield, CA), HTB 269 (Fresno, CA), HTB 339 (Hayward, CA)	-	
OCB Restaurant Company, LLC	Agera Energy, LLC/Constellation Newenergy LLC		08/01/18	Virginia Commercial Enrollment - Natural Gas - OCB 211 (Woodbridge, VA)	-	
OCB Restaurant Company, LLC	Agera Energy, LLC/Constellation Newenergy LLC		05/01/17	California Commercial Core Natural Gas - HTB 707 (Stockton,CA); HTB 340 (Fairfield, CA); HTB 785 (Santa Maria, CA); HTB 269 (Fresno, CA); and HTB 339 (Hayward, CA); HTB 146 (Salinas, CA)	-	
OCB Restaurant Company, LLC	Doordash		09/16/19	Delivery & Promotion agreement	-	
OCB Restaurant Company, LLC	Elavon		09/27/17	Merchant App - Credit Card	-	
OCB Restaurant Company, LLC	Engie Resources, LLC		05/01/17	Pennsylvania Electricity - OCB 181 (York, PA)	-	
OCB Restaurant Company, LLC	Engie Resources, LLC		05/01/17	Pennsylvania Electricity - OCB 214 (Whitehall, PA) and OCB 234 (Harrisburg, PA)	-	
OCB Restaurant Company, LLC	Grubhub Holdings, Inc.		05/28/20	Service Agreement	-	
OCB Restaurant Company, LLC	Hudson Energy Services, LLC		11/01/19	IL Natural Gas - OCB 73 (Chicago, IL)	-	
OCB Restaurant Company, LLC	Hudson Energy Services, LLC		08/01/19	NY Natural Gas - OCB 138 (Buffalo, NY)	-	
OCB Restaurant Company, LLC	Just Energy Solutions Inc.		07/01/19	CA Natural Gas (Southern California Gas) - Bulk Contract	-	
OCB Restaurant Company, LLC	Portier, LLC		03/03/20	Affiliate Participation Addendum - Uber Eats	-	
OCB Restaurant Company, LLC	Postmates, Inc.		09/04/20	Merchant Agreement	-	
OCB Restaurant Company, LLC	Royal Cup, Inc.		02/20/14	Purchasing Agreement - Coffee	-	
OCB Restaurant Company, LLC	Santana Energy Services		09/01/18	Consumer Energy Gas Choice Commercial Sales Contract - OCB 36 (Burton, MI) and OCB 66 (Saginaw, MI)	-	
OCB Restaurant Company, LLC	YMCA Of San Diego County		02/08/19	Catering Services	-	

Vendor Contracts		Debtor Entity	Vendor	Contract Date	Title/Description	Cure Amount
	Ryan's Restaurant Group, LLC	Doordash	09/16/19	Marketplace Post-Sale Promotions Addendum	-	
	Ryan's Restaurant Group, LLC	Doordash	09/16/19	Marketplace Post-Sale Promotions Addendum	-	
	Ryan's Restaurant Group, LLC	Grubhub Holdings, Inc.	05/28/20	Service for Commission	-	
	Ryan's Restaurant Group, LLC	Postmates, Inc.	09/04/20	Merchant Agreement	-	
	Ryan's Restaurant Group, LLC	Zenrin Usa, Inc.	08/17/17	First Amendment - Trademark License Agreement	-	
	Tahoe Joe's Inc.	Agera Energy, LLC	05/01/17	California Commercial Core Natural Gas - TJ 828 (Roseville, CA), TJ 830 (Modesto, CA), TJ 822 (Fresno, CA) and TJ 824 (Vacaville, CA)	-	
	Tahoe Joe's Inc.	Agera Energy, LLC	05/01/17	California Large Commercial Electricity - TJ TJ 824 (Vacaville, CA), TJ 825 (San Luis Obispo, CA), 822 (Fresno, CA) and TJ 823 (Bakersfield, CA)	-	
	Tahoe Joe's Inc.	Airespring	03/06/17	Wireless Services	5,009.98	
	Tahoe Joe's Inc.	Chowly Inc	09/26/18	Services Agreement	-	
	Tahoe Joe's Inc.	Darling Ingredients Inc.	03/21/19	Service Agreement - Used cooking oil removal	-	
	Tahoe Joe's Inc.	Dinova, Inc.	10/10/19	Corporate Dining Restaurant Agreement	-	
	Tahoe Joe's Inc.	Doordash	01/31/19	Delivery & Promotion agreement	-	
	Tahoe Joe's Inc.	Ecolab, Inc.	10/30/20	Affiliate Participation Agreement for cleaning products	614.46	
	Tahoe Joe's Inc.	Elavon	09/27/17	Merchant App - Credit Card	-	
	Tahoe Joe's Inc.	Fishbowl Inc.	07/03/17	Marketing	10,129.64	
	Tahoe Joe's Inc.	Grubhub Holdings, Inc.	11/13/20	online ordering	-	
	Tahoe Joe's Inc.	Grubhub Holdings, Inc.	11/13/20	Service Agreement - 3rd party delivery partners	-	
	Tahoe Joe's Inc.	Just Energy Solutions Inc.	07/01/19	CA Natural Gas (Southern California Gas) - Bulk Contract	21,646.28	
	Tahoe Joe's Inc.	Muzak, LLC	04/05/17	Music Service	-	
	Tahoe Joe's Inc.	NCR Corporation	08/07/17	Aloha POS - Addendum#7- Connected payment appendix	-	
	Tahoe Joe's Inc.	NCR Corporation	09/18/12	Master Agreement- POS system	53,882.59	
	Tahoe Joe's Inc.	NCR Corporation	08/07/17	Aloha POS - Addendum#7- Connected payment appendix	-	
	Tahoe Joe's Inc.	Nuco2, LLC	02/03/16	Affiliate Participation Agreement for Bulk Co2 gas	-	
	Tahoe Joe's Inc.	Paytronix Systems, Inc.	05/31/17	GC Service Agreement	1,400.00	
	Tahoe Joe's Inc.	Portier, LLC	03/03/20	Master Framework Letter Agreement - Uber Eats	-	
	Tahoe Joe's Inc.	Portier, LLC	03/03/20	Affiliate Participation Addendum - Uber Eats	-	
	Tahoe Joe's Inc.	Punchh Inc.	09/30/20	Service Agreement	-	
	Tahoe Joe's Inc.	Sysco Of Central California	08/01/18	Distribution Agreement	798,462.00	
	Tahoe Joe's Inc.	The Wasserstrom Company	08/15/17	Affiliate Participation Agreement for the small ware	9,709.47	
	Tahoe Joe's Inc.	Waste Management National Services, Inc.	02/12/18	Master Services Agreement - Waste and recycling services	-	
	Tahoe Joe's Inc.	Where 2 Get It, Inc	09/12/17	Master Service Agreement	-	
	Tahoe Joe's Inc.	Where 2 Get It, Inc	10/16/17	Statement of Work (SOW)	-	
	Tahoe Joe's Inc.	Zenrin USA, Inc.	08/17/17	Trademark License Agreement	-	
	Tahoe Joe's Inc.	Zuppler Onl Food Ordering LLC	10/09/20	Master Service Agreement	1,333.34	
<b>Total Vendor Cure Costs</b>						
					<b>\$ 1,743,652.35</b>	