



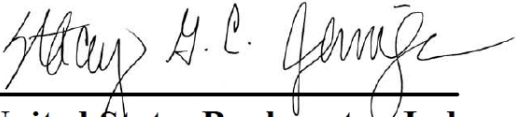
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 23, 2021


United States Bankruptcy Judge

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

In re:	§	
	§	Chapter 11
FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹	§	Case No. 21-30721 (SGJ)
Debtors.	§	(Jointly Administered)
	§	Re: Docket No. 16

**INTERIM 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 A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

Upon the *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral (II) Granting Liens*

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

and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief (the “Motion”),² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 105(a), 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Rules 2002-1, 4001-1(a), 4001-1(b), 5005-1, and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”), the Debtors seek entry of interim and final orders (respectively, the “Interim Order” and the “Final Order”):

I. Use of Cash Collateral and Grant of Adequate Protection:

- (a) Authorizing the Debtors to use cash collateral of the DIP Lender (in its capacity as a prepetition lender) and Arizona Bank & Trust (“AB&T”) in accordance with the terms and conditions set forth in this Interim Order and the Approved Budget;
- (b) Subject and subordinate to the Carve Out (as defined below), granting superpriority claims and automatically perfected liens, security interests, and other adequate protection to AB&T and the DIP Lender (in its capacity as a prepetition lender) with respect to any diminution in value of its interests in the Prepetition Collateral;³
- (c) Subject to certain challenge rights as set forth herein, approving certain stipulations by the Debtors with respect to (i) AB&T and the underlying prepetition loan documents with AB&T and (ii) the DIP Credit Agreement (as it pertains to the prepetition loan extended by the DIP Lender) and the liens, claims, and security interests arising therefrom;

² All capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

³ “Prepetition Collateral” as used herein means (i) AB&T’s collateral under its prepetition lending arrangements with Fresh and FMP and (ii) the collateral on which the DIP Lender was granted liens prepetition. As set forth in the First Day Declaration, shortly before the Petition Date, the DIP Lender extended a \$500,000 loan to the Debtors. The terms and provisions of that loan are contained within the DIP Credit Agreement. Similar to the requested DIP financing, the Debtors granted the DIP Lender junior liens on the intellectual property (the “IP Collateral”) held by Fresh Acquisitions, LLC (“Fresh”) and first liens on substantially all assets of all Debtors *other than* Fresh and FMP SA Management Group, LLC (“FMP,” together with Fresh, the “Furrs Debtors” and collectively, all Debtors other than the Furrs Debtors being the “Other Debtors”) in exchange for such prepetition extension of credit.

II. Senior and Junior DIP Financing:

- (a) Authorizing the Debtors, as borrowers, to obtain senior secured postpetition financing on all assets of the Other Debtors and junior secured postpetition financing with respect to the IP Collateral (the “DIP Financing”) on and pursuant to the terms of that certain Prepetition and Debtor in Possession Credit Agreement (the “DIP Credit Agreement”) attached hereto as **Exhibit A**, as follows:
- i. **DIP Loans.** (X) A new-money line of credit (the “New Money DIP Loans”) in an aggregate principal amount of up to \$3 million and plus (Y) upon entry of the Final Order, an additional \$500,000 (the “DIP Roll-Up Loan”) to be used to refinance the \$500,000 advanced prepetition (the “Prepetition DIP Loan”) by the DIP Lender (in its capacity as a prepetition lender); and
 - ii. **Interim Financing.** From the date of this Interim Order until the date a Final Order is entered, drawing up to \$1 million in New Money DIP Loans, subject to compliance with the terms, conditions, and covenants described in the DIP Credit Agreement, this Interim Order and the Approved Budget;
- (b) Authorizing the Debtors and the DIP Lender to perform under the DIP Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, notes and other documents reasonably required by the DIP Lender (collectively, and together with the DIP Orders, the “DIP Loan Documents,” and all obligations and indebtedness of any of the Debtors to the DIP Lender under the DIP Loan Documents (including, without limitation the DIP Loans), collectively being the “DIP Obligations”) and to perform their respective obligations thereunder and all such other and further acts as may be necessary, appropriate, or desirable in connection with the DIP Loan Documents, including, but not limited to, granting or perfecting liens or security interests by any of the Debtors in favor of and for the benefit of the DIP Lender on account of the DIP Financing;
- (c) Authorizing the Debtors to use the proceeds of the DIP Financing as expressly provided in the DIP Loan Documents and the Approved Budget;
- (d) Authorizing the Debtors to pay the principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents as such become earned, due and payable under and as set forth therein, including, but not limited to, the fees and costs of the DIP Lender’s professionals, advisors, and consultants (collectively, the “DIP Lender Reimbursements”);
- (e) Granting to the DIP Lender allowed superpriority claims, subject to the Carve Out (as defined below), pursuant to section 364(c)(1) of the Bankruptcy Code;

- (f) Granting to the DIP Lender (i) senior liens on the Other Debtors' collateral pursuant to sections 364(c)(2) and 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the Other Debtors' estates and all proceeds thereof, including, subject only to and effective upon entry of the Final Order, any Avoidance Proceeds (as defined below), in each case subject to the Carve Out and with the relative priorities set forth in this Interim Order; and (ii) junior liens pursuant to section 364(c)(3) of the Bankruptcy Code on the IP Collateral which shall at all times be junior to, and not senior to or *pari passu* with, the Prepetition Liens (defined below) granted to AB&T on the assets of the Furrs Debtors.

III. Modification of the Automatic Stay

Modifying the automatic stay of Bankruptcy Code section 362 (the "Automatic Stay") to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents, including the Interim Order;

IV. Waiver of any Applicable Stay of DIP Orders

Approving a waiver of any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness of this Interim Order;

V. Waiver of Marshalling and the Provisions of Section 506(c) and 552(b) of the Bankruptcy Code

Subject to entry of the Final Order approving such relief, waiving (a) the Debtors' right to surcharge the Prepetition Collateral and the collateral securing the DIP Financing (the "DIP Collateral") pursuant to section 506(c) of the Bankruptcy Code, and (b) any right of the Debtors under the "equities of the case" exception under section 552(b) of the Bankruptcy Code;⁴

VI. Final Hearing

Scheduling a final hearing (the "Final Hearing") to be held within 35 days of the Petition Date to consider final approval of the DIP Financing and use of Cash Collateral pursuant to the Final Order; and

VII. Other Relief

Granting such other and further relief as may be just and proper and necessary to implement the provisions of this Interim Order and the DIP Credit Agreement.

⁴ "DIP Collateral" means the assets of the Debtors on which the DIP Lender will be granted a lien pursuant to this Interim Order.

and this Court having found that, under the circumstances of these Chapter 11 Cases, proper, timely, adequate and sufficient notice of the Motion, this Interim Order, and the hearing to consider entry of this Interim Order (the “Interim Hearing”) has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion, the Interim Hearing, or this Interim Order being required; and this Court having reviewed the Motion and having heard and reviewed the evidence submitted at the Interim Hearing in support of the relief requested therein at the Interim Hearing; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors’ estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Petition Date. On April 20, 2021 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing these chapter 11 cases (the “Chapter 11 Cases”). The Chapter 11 Cases are being jointly administered. The Debtors are continuing to operate their business and manage their affairs as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner, or official committee (“Creditors’ Committee”) has been appointed in these Chapter 11 Cases.

B. Jurisdiction and Venue. This Court has jurisdiction over the Debtors’ Chapter 11 Cases, the Motion, and the parties and property affected hereby and thereby pursuant to 28 U.S.C. § 1334. This matter presents a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

Venue of the Chapter 11 Cases and proceeding on the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Debtors' Stipulations. In requesting the DIP Financing and use of Cash Collateral, and in exchange for and as a material inducement to the (1) DIP Lender to provide the DIP Financing and (2) DIP Lender (in its capacity as a prepetition lender) and AB&T to permit consensual use of use of Cash Collateral and the other Prepetition Collateral, the Debtors acknowledge, represent, stipulate, reconfirm, and agree, subject only to the challenge rights set forth in Paragraph 22 below, as follows (Paragraphs C(i) through C(xiii) are collectively defined as the "Debtors' Stipulations"):

(i) On or about January 2, 2015, Fresh Acquisitions, LLC ("Fresh") and non-Debtor Alamo Dynamics, LLC ("Alamo"), entered into a Commercial Loan Agreement ("CLA") with AB&T in the original principal amount of \$8,707,500. The CLA was guaranteed by, among others, FMP SA Management Group, LLC, one of the Debtors ("FMP"). On or around June 29, 2015, the CLA was modified to incorporate, among other things, a short term bridge loan of \$14,500,000. The CLA was further modified from time to time thereafter, including on or about May 30, 2017, when FMP was added as a borrower. The CLA is guaranteed by a variety of non-Debtor entities and individuals (the "Guarantors").

(ii) On or about February 18, 2021, AB&T entered into a forbearance agreement with Fresh, Alamo, FMP, and the Guarantors (the "Forbearance Agreement"), as a result of certain alleged defaults under the CLA which, among other things, extended the maturity date for the CLA to July 30, 2021.

(iii) As of the Petition Date, Fresh and FMP are indebted to AB&T in the amount of approximately \$13,466,151.50 in principal and accrued interest, plus additional costs and fees.

All amounts owing to AB&T are secured by substantially all assets of each of Fresh and FMP, and certain assets of Alamo. The CLA, the modifications thereto, the promissory notes and security documents executed in connection therewith, and the Forbearance Agreement are collectively referred to herein as the “Prepetition Loan Documents” and the obligations of Fresh and FMP thereunder are referred to herein as the “Prepetition Secured Obligations.”

(iv) The Prepetition Loan Documents constitute the legal, valid, properly authorized, binding and unconditional obligations of Fresh and FMP to AB&T, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(v) No portion of the Prepetition Secured Obligations or any payments made to AB&T or applied to or paid on account of the Prepetition Secured Obligations prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Prepetition Secured Obligations;

(vi) Pursuant to and in connection with the Prepetition Loan Documents, Fresh and FMP granted to AB&T continuing, legal, valid, binding, properly authorized and perfected, enforceable, non-avoidable first priority liens on and security interests (the “Prepetition Liens”) on the Prepetition Collateral (which constitutes substantially all of their assets), which Prepetition

Liens (a) secure all of the Prepetition Secured Obligations; (b) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (c) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (c) are and remain senior in priority over any and all other liens on and security interests in the Prepetition Collateral, subject only to valid, perfected and unavoidable liens on or security interests in the Prepetition Collateral that are senior to or *pari passu* with the Prepetition Liens (the “Permitted Encumbrances”);

(vii) AB&T duly perfected the Prepetition Liens in the Prepetition Collateral by, among other things, filing financing statements, and, where necessary, possessing the relevant instruments, certificates, or other property;

(viii) Effective as of April 16, 2021, each of the Debtors as a borrower entered into the DIP Credit Agreement with the DIP Lender, for a prepetition advance of \$500,000 (the “Prepetition DIP Advance”). In connection with the Prepetition DIP Advance, the Other Debtors granted to the DIP Lender a first lien on substantially all of their assets, and Fresh granted a second lien on the IP Collateral (the “Prepetition DIP Liens”). Although FMP is a borrower under the DIP Facility, it did not grant any prepetition liens to the DIP Lender.

(ix) The Prepetition DIP Liens (a) secure the Prepetition DIP Advance; (b) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (c) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect,

counterclaim, cross-claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (c) are and remain senior in priority over any and all other liens on and security interests in the Debtors' assets, *other than* the pre-existing liens on the IP Collateral held by AB&T which are and shall remain at all times senior to the Prepetition DIP Liens on such IP Collateral;

(x) The Debtors waive, discharge and release any right they may have to challenge the Prepetition Secured Obligations, the Prepetition DIP Advance, and the liens on the Prepetition Collateral granted to AB&T and the DIP Lender, and to assert any offsets, set-offs, recoupments, defenses, claims, objections, challenges of any kind, causes of action and/or choses of action against AB&T with respect to the Prepetition Secured Obligations, the Prepetition Liens, the Prepetition DIP Advance, the Prepetition DIP Liens or the Prepetition Collateral, *other than* with respect to willful misconduct and gross negligence;

(xi) All of (A) Fresh's and FMP's cash, including the cash in their deposit accounts and other accounts, wherever located, constitutes Cash Collateral (as defined below) and is Prepetition Collateral of AB&T; and (B) all of the Other Debtors' cash, including the cash in their deposit accounts and other accounts, wherever located, constitutes Cash Collateral (as defined below) and is Prepetition Collateral of the DIP Lender;

(xii) the Debtors admit, stipulate, acknowledge and agree that the AB&T and the DIP Lender may credit bid the full amount of (or any portion of) the Prepetition Secured Obligations, the Prepetition DIP Advance or the DIP Obligations; and

(xiii) AB&T and the DIP Lender are entitled, pursuant to sections 361, 362(c)(2), 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their respective

interests in the Prepetition Collateral, including Cash Collateral, to the extent of any diminution in the value of the Prepetition Collateral occurring from and after the Petition Date, in exchange for (a) the use of Cash Collateral and (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

D. Cash Collateral. For purposes of this Interim Order, the term “Cash Collateral” shall mean and include all “cash collateral,” as defined in section 363 of the Bankruptcy Code, in or on which AB&T or the DIP Lender have a prepetition lien, security interest or other interest (including, without limitation, any adequate protection liens or security interests), and shall include, without limitation:

(i) all cash proceeds arising from the collection, sale, lease or other disposition, use or conversion of any property, insurance policies insuring any property, or in or on which the AB&T or the DIP Lender have a lien or a replacement lien, whether as part of the Prepetition Collateral or pursuant to an order of the Court or applicable law or otherwise, and whether such property has been converted to cash, existed as of the commencement of these Chapter 11 Cases, or arose or was generated thereafter;

(ii) all of the respective deposits, refund claims and rights in retainers of the Debtors on which AB&T and the DIP Lender have a lien or replacement lien, whether as part of the Prepetition Collateral or pursuant to an order of the Court or applicable law or otherwise; and

(iii) the proceeds of any sale of Prepetition Collateral in connection with any sale consummated prior to entry of this Interim Order;

E. Findings Regarding Consent to Use of the Prepetition Collateral (including Cash Collateral). AB&T and the DIP Lender have consented to the adequate protection and the subordination of their liens and superpriority claims to the Carve-Out provided for in this Interim

Order; *provided, however*, that the respective consents of AB&T and the DIP Lender to subordinate their liens and superpriority claims to the Carve-Out, the use of the Prepetition Collateral (including Cash Collateral), and the sufficiency of the respective adequate protection provided for herein are expressly conditioned upon the entry of this Interim Order.

F. Findings Regarding the DIP Facility.

(i) *Need for Post-Petition Financing.* An immediate need exists for the Debtors to obtain the DIP Financing in order to continue operations and to administer and preserve the value of their estates for the benefit of their various stakeholders. The Debtors' ability to finance their operations, to preserve and maintain the value of their assets, and to maximize a return for all creditors, requires the availability of working capital from the DIP Financing (in each case in the manner and in the amounts provided herein and in the Approved Budget, the absence of which would immediately and irreparably harm the Debtors, their estates and their stakeholders.

(ii) *No Credit Available on More Favorable Terms.* As set forth in the Motion and the Supporting Declarations, the Debtors have been unable obtain any of the following:

- a. secured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense;
- b. credit for money borrowed with priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code;
- c. credit for money borrowed secured solely by a Lien on property of the estate that is not otherwise subject to a Lien; or
- d. credit for money borrowed secured by a junior Lien on property of the estate which is subject to a Lien;

in each case, on more favorable terms and conditions than those provided for in the DIP Credit Agreement and this Interim Order. The Debtors are unable to obtain credit from the DIP Lender without granting to the DIP Lender the DIP Protections (as defined below).

(iii) *Business Judgment; Good Faith Pursuant to Section 364(e) of the Bankruptcy Code.* The extension of credit under the DIP Financing, and the fees, costs and expenses to be paid thereunder (A) are fair, reasonable, and the best available under the circumstances, (B) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and (C) are supported by reasonably equivalent value and consideration. The DIP Financing was negotiated in good faith and at arms' length between the Debtors (through the Chief Restructuring Officer and the Independent Director) and the DIP Lender, and the proceeds to be extended under the DIP Financing will be so extended in good faith and used for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protections and benefits of sections 363(m) and 364(e) of the Bankruptcy Code.

(iv) *Approval of the DIP Roll-Up Loans.* Subject to entry of the Final Order, the DIP Roll-Up Loans provided for under the DIP Financing are appropriate and the DIP Lender would not be willing to provide the New Money DIP Loans or extend credit to the Debtors thereunder without the inclusion of the DIP Roll-Up Loans within the DIP Facility.

(v) *Credit Bidding.* The Debtors admit, stipulate, acknowledge and agree that the DIP Lender has acted in good faith and may credit bid the full amount of (or any portion of) the advances made and interest accrued under the DIP Financing (including any unpaid portion of the DIP Lender Reimbursements).

G. Necessity of Relief Requested. The Debtors have an immediate and critical need to continue to use the Prepetition Collateral (including Cash Collateral) and to enter into the DIP Financing in order to permit, among other things, the orderly continuation of the operation of their organization, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, and to satisfy other working capital and operational needs,

in each such case in accordance with the terms of this Interim Order, including in accordance with the Approved Budget. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, other Prepetition Collateral, and the DIP Financing is necessary to preserve and maintain the going concern value of the Debtors' estates and is vital to the Debtors' reorganization efforts. Without the use of Cash Collateral and the DIP Financing, the Debtors would likely not have sufficient liquidity to continue to operate. Entry of this Interim Order will preserve the assets of each Debtor's estate and their value and is in the best interests of the Debtors, their creditors, and their estates. The Adequate Protection Liens and the Adequate Protection Superpriority Claims (each as defined below), and the DIP Protections provided herein are consistent with and authorized by the Bankruptcy Code. Absent authorization to immediately access and use Cash Collateral and the DIP Financing, the Debtors, the estates, and their creditors would suffer immediate and irreparable harm.

H. Marshalling and Sections 506(c) and 552(b) Waivers. In light of (i) AB&T's and the DIP Lender's agreement to subordinate their liens and superpriority claims to the Carve-Out, (ii) their consent to use of their Cash Collateral, (iii) the DIP Lender's agreement to fund the DIP Financing, and (iv) the Approved Budget covering anticipated administrative costs projected by the Debtors, AB&Ts and the DIP Lender are entitled to, subject only to and effective upon entry of the Final Order, a waiver of (a) any "equities of the case" claims under section 552(b) of the Bankruptcy Code, (b) the provisions of section 506(c) of the Bankruptcy Code, and (c) the equitable doctrine of "marshalling" or any similar doctrine.

I. Exercise of Debtors' Business Judgment. Based on the Motion, the Declarations and the record presented to the Court at the Interim Hearing, the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral) and enter into the DIP

Financing pursuant to this Interim Order are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

J. Final Hearing. At the Final Hearing, the Debtors will seek final approval of the relief requested in the Motion on a final basis pursuant to the Final Order, notice of which Final Hearing will be provided in accordance with this Interim Order.

K. Immediate and Irreparable Harm. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtors and their estates will be immediately and irreparably harmed. Entry of this Interim Order and the use of Prepetition Collateral, including Cash Collateral, and approval of the DIP Financing in accordance with this Interim Order are in the best interests of the Debtors, their estates and their creditors. The terms of this Interim Order are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with fiduciary duties and are supported by reasonably equivalent value and fair consideration.

Based on the foregoing, the Motion, the First Day Declaration, the Supporting Declarations and the record made before the Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is **GRANTED** on an interim basis in accordance with the terms of this Interim Order.

2. Authorization to Use Cash Collateral. The Debtors are hereby authorized, subject to the terms and conditions of this Interim Order and compliance with the Approved Budget, to

use Cash Collateral, *provided that* AB&T is granted the adequate protection as hereinafter set forth.

3. Authorization to Incur DIP Financing.

(i) The Debtors are expressly and immediately authorized and empowered to execute and deliver the DIP Loan Documents and to incur and to perform under the DIP Financing in accordance with, and subject to, their respective terms and the terms of this Interim Order, and to execute and deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Loan Documents.

(ii) Subject to and effective upon entry of the Final Order, the DIP Roll-Up Loan will be deemed to refinance and repay the Prepetition DIP Advance in the aggregate amount of \$500,000, and such DIP Roll-Up Loan shall become DIP Obligations.

4. Approved Budget. The Debtors and the DIP Lender have agreed to an initial budget attached hereto as **Exhibit 2**, including a 13-week cash flow forecast setting forth all projected cash receipts and cash disbursements on a weekly basis (the “Approved Budget”). The Approved Budget includes and contains the Debtors’ reasonable estimate of all operational receipts and all operational disbursements, fees, costs, and other expenses that will be payable, incurred, and/or accrued by any of the Debtors during the period covered by the Approved Budget.

(i) *New Budgets.* Starting on the first Friday that is five (5) weeks following the entry of this Interim Order, and continuing every fourth calendar week until the Termination Date (defined below), the Debtors shall deliver to counsel to the DIP Lender an updated Approved Budget (the “Proposed Budget”) with respect to the Debtors for the current calendar week then

ended and the immediately following consecutive 12 weeks (collectively, 13 weeks), set forth on a weekly basis. Each Proposed Budget provided to the DIP Lender shall be of no force and effect unless and until it is approved by the DIP Lender, as described further below, and filed with the Court. Until such approval is given and filing made, the prior Approved Budget shall remain in effect. Upon written approval of the DIP Lender, and the filing of a notice with the Court, the Proposed Budget shall become, as of the date of such approval and filing, the Approved Budget, and shall prospectively replace any prior Approved Budget. If the Debtors and the DIP Lender are unable to agree on a Proposed Budget's terms, the Debtors reserve the right to seek an expedited hearing with the Court to resolve such disagreement. In that event, the DIP Lender shall not oppose the request for expedited consideration provided that any such hearing is held on not less than 48 hours' notice to the DIP Lender. In the event of any dispute regarding the terms of a Proposed Budget, the Debtors and the DIP Lender reserve any and all rights under the Bankruptcy Code or applicable law;

(ii) *Variance Reports.* On or before each Friday following the entry of this Interim Order, the Debtors shall deliver to counsel to the DIP Lender a report showing actual results, including ending cash balances, (a) for the prior week compared to the same week in the then-current Approved Budget, and (b) for the cumulative weeks' totals compared to the same cumulative weeks' totals in the then-current Approved Budget, with reasonably detailed explanations for any variance on a line-by-line basis. The Debtors shall have no authority to use Cash Collateral or borrowings under the DIP Facility hereunder other than in accordance with the Approved Budget, subject to the Permitted Variance (as defined below), and as set forth in this Interim Order. The DIP Lender (x) may assume the Debtors will comply with the Budget, (y) shall have no duty to monitor such compliance and (z) shall not be obligated to pay (directly or indirectly

from the Prepetition Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to the Budget, except the Carve-Out as permitted in this Interim Order.

(iii) *Permitted Variance*. Notwithstanding the Approved Budget, so long as no Event of Default (as defined below) has occurred, the Debtors shall be authorized to use Cash Collateral and the borrowings under the DIP Facility with respect to the Approved Budget. With respect to all disbursements other than Professional Fees (as defined below) and reasonable and documented professional fees incurred by the DIP Lender, there shall be a permitted negative variance of no more than 15% for each line item in the Approved Budget over the corresponding time period (each such variance representing, a “Permitted Variance”).

5. Adequate Protection of Prepetition Lenders. Pursuant to sections 361, 362, 363(c)(2), 363(e), and 507 of the Bankruptcy Code, AB&T and DIP Lender are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate actual diminution in the value of their respective interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code (such diminution in value, the “Adequate Protection Amount”). As adequate protection, AB&T and the DIP Lender are hereby granted the following:

(i) *Adequate Protection Liens*. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection against any actual diminution (if any) in value of the Prepetition Collateral, including Cash Collateral, effective as of the Petition Date and perfected without the need for execution by the Debtors or the recordation or other filing by AB&T or the DIP Lender of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by AB&T or the DIP Lender

of any Adequate Protection Collateral (as defined below), AB&T and DIP Lender are hereby granted, solely to the extent of any actual diminution in value, of the Prepetition Collateral, as security for the payment of the Adequate Protection Amount, valid, binding, continuing, enforceable, fully perfected replacement liens on and security interests, in the same order of priority as existed prepetition on the IP Collateral, in (collectively, the “Adequate Protection Liens”) any and all tangible and intangible pre- and postpetition property of the Debtors, wherever located, whether existing before, on or after the Petition Date, together with any proceeds thereof, including, without limitation, all Prepetition Collateral, any and all cash and any investment of such cash, inventory, accounts, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, personal property, books and records, machinery, equipment, general intangibles, goods, investment property, documents, instruments, support obligations, commercial tort claims, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, securities accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing (collectively, the “Adequate Protection Collateral”). Subject to and effective upon entry of the Final Order, the Adequate Protection Collateral shall also include, without limitation, the proceeds of any claims and causes of action of the Debtors arising under sections 502(d), 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (collectively, the “Avoidance Actions”); *provided, however,* that the Adequate Protection Collateral shall not include any Avoidance Actions of the Debtors; *provided, further,* that Adequate Protection Liens shall not attach to the Debtors’

leasehold interests, but may attach to the proceeds thereof. The Adequate Protection Liens shall be junior only to (a) the Carve-Out (as defined herein), and (b) the Permitted Encumbrances. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Adequate Protection Collateral. Subject in all respects to the Carve-Out (as defined herein), the Adequate Protection Liens shall not be subject to sections 506(c) (upon entry of the Final Order), 510, 549, 550, or 551 of the Bankruptcy Code. The Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Debtors' Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a "Successor Case").

(ii) *Adequate Protection Superpriority Claims.* The Adequate Protection Amount due to AB&T and DIP Lender shall constitute allowed superpriority administrative expense claims against the Debtors in the amount of any actual diminution in value of the Prepetition Collateral, including Cash Collateral, as provided in section 507(b) of the Bankruptcy Code, with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtors and any successor trustee or creditor in these Chapter 11 Cases or any Successor Case (the "Adequate Protection Superpriority Claims"), subject and subordinate only to the Carve-Out (as defined herein).

(iii) *Right to Credit Bid.* AB&T shall have the right to credit bid the full amount of (or any portion of) the Prepetition Secured Obligations during any sale of all or any portion of the Prepetition Collateral, including, without limitation, any sales occurring pursuant to section 363(k) of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code. AB&Ts shall have the absolute right to assign, sell, or otherwise dispose of their respective claims, and the attendant rights to credit bid, in connection with any credit bid or any acquisition entity or joint venture formed in connection with such bid.

6. DIP Protections.

(i) *DIP Liens and Superpriority Claim.* Pursuant to sections 361, 362, 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code, and subject to the limitations set forth below, effective immediately upon the entry of this Interim Order the DIP Lender is hereby granted, in the amount of the advances made and interest accrued under the DIP Financing (including any unpaid DIP Lender Reimbursements): (i) senior, first priority, priming and perfected liens under § 364(c)(2) and 364(c)(3) (the “DIP Liens”) in the Adequate Protection Collateral (the “DIP Collateral”); *provided that* that the DIP Liens on the IP Collateral shall at all times be and remain junior to the Prepetition Liens and Adequate Protection Liens granted to AB&T; and (ii) an allowed claim against the Debtors, jointly and severally, under § 364(c)(1) with priority in payment over any and all unsecured claims and administrative expense claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113, 1114 and any other provision of the Bankruptcy Code, and shall at all

times be senior to the rights of the Debtors and any successor trustee or creditor in these Chapter 11 Cases or any Successor Case (the “DIP Superpriority Claim” and together with the DIP Liens and DIP Collateral, the “DIP Protections”).

(ii) *The DIP Lender’s Fees and Expenses.* The DIP Lender shall receive from the Debtors, current cash payments of the DIP Lender Reimbursements. Payment of all such DIP Lender Reimbursements shall not be subject to allowance by the Court but shall be subject to the following process. At the same time such invoices are delivered to the Debtors, the professionals for the DIP Lender shall deliver a copy of their respective invoices to counsel for any Creditors’ Committee and the U.S. Trustee. The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, may be in summary form only, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee, or the Creditors’ Committee with respect to such invoices within five (5) calendar business days of receipt thereof will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Debtors. Except as otherwise ordered by the Court in the event an objection is timely filed, such fees and expenses shall not be subject to any setoff, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

(iii) *Right to Credit Bid.* The DIP Lender shall have the right to credit bid the full amount of (or any portion of) the advances made and interest accrued under the DIP Financing (including any unpaid DIP Lender Reimbursements) during any sale of all or any portion of the DIP Collateral, including, without limitation, any sales occurring pursuant to section 363(k) of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under

section 1129(b)(2)(A)(iii) of the Bankruptcy Code. The DIP Lender shall have the right to assign, sell, or otherwise dispose of their respective claims, and the attendant rights to credit bid, in connection with any credit bid or any acquisition entity or joint venture formed in connection with such bid. In the event of a purchase by the DIP Lender (or its assignee or designee) by credit bid, the DIP Lender (or its assignee or designee) shall be required to satisfy all liens and security interests of AB&T (including, without limitation, the Adequate Protection Liens) at closing or such liens and security interests shall remain attached to the applicable assets until they are fully paid. In the event that there are inadequate sale proceeds to satisfy all liens and security interests of AB&Ts (including, without limitation, the Adequate Protection Liens), including if the applicable assets are purchased by a credit bid by the DIP Lender, there shall be an exception from the lien release and injunctive provisions of the applicable order governing such sale that preserves the rights of AB&T and provides that all liens and security interests of AB&T (including, without limitation, the Adequate Protection Liens) remain valid and enforceable.

7. Additional Reporting. The Debtors shall provide the following additional reporting to the DIP Lender:

(i) all financial reports, forecasts and all other financial documentation, pleadings and other filings that are reasonably requested by the DIP Lender, or their representatives and agents;

(ii) on each Friday following the entry of this Interim Order, a report showing the actual cash receipts and disbursements for the week ending the preceding Friday;

(iii) all such information that is afforded to the Creditors' Committee and/or the Creditors' Committee's respective legal or financial advisors; and

(iv) in addition to, and without limiting, whatever rights to access AB&T has under the Prepetition Loan Documents and the DIP Lender has under the DIP Financing, upon reasonable notice, at reasonable times during normal business hours, the Debtors shall (a) permit representatives of AB&T and the DIP Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and (b) cause their representatives and agents to make themselves reasonably available to discuss the Debtors' affairs, financial condition, properties, business, operations and accounts with the representatives and agents of AB&T and the DIP Lender.

8. Cash Management. Subject to the Debtors' cash management order entered by the Court, the Debtors are authorized and directed to maintain their cash management system in a manner consistent with this Interim Order, and any order of this Court approving the maintenance of the Debtors' cash management system; *provided, however*, that such order is and remains at all times on terms and conditions reasonably acceptable to AB&T and the DIP Lender.

9. Requests for Further Adequate Protection. Nothing in this Interim Order shall be deemed to limit, abridge, waive or otherwise affect (a) any right of AB&T to request at any time that the Court provide different, additional or further adequate protection of its interests in the Prepetition Collateral or to seek different, additional, or further adequate protection in the event AB&T contends that the adequate protection provided herein is inadequate or (b) the ability of the Debtors or any other party in interest to oppose any such relief.

10. Continuation of Prepetition Liens. Subject to the challenge rights set forth in Paragraph 22, until AB&T is Paid in Full (as defined below), all liens and security interests of AB&T (including, without limitation, the Adequate Protection Liens) shall remain valid and

enforceable with the same continuing priority as described herein. The term “Paid in Full” or “Payment in Full” means (a) all of the Prepetition Secured Obligations, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount and/or Adequate Protection Superpriority Claims, have been indefeasibly paid in full in cash and completely satisfied; and (ii) AB&T shall receive a release from each Debtor of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities in form and substance acceptable to AB&T, and the Challenge Period has expired without the commencement of any Challenge Proceeding, or, if a Challenge Proceeding was timely commenced in accordance with Paragraph 22 of this Order, any such Challenge Proceeding has been resolved or dismissed on a final and non-appealable basis.

11. Modification of Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to enter into the DIP Financing and grant the DIP Protections; (c) permit the Debtors to perform such acts as AB&T or the DIP Lender may request to assure the perfection and priority of the liens granted herein; (d) permit the Debtors to incur all liabilities and obligations to AB&T and the DIP Lender under this Interim Order; (e) authorize the Debtors to pay, and AB&T and the DIP Lender to retain and apply, any payments made in accordance with the terms of this Interim Order; and (f) permit AB&T and the DIP Lender to exercise all rights and remedies provided for hereunder.

12. Perfection of Adequate Protection Liens and DIP Liens.

(i) AB&T and the DIP Lender are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the Adequate Protection Liens and the DIP Liens. Whether or not AB&T or the DIP Lender shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, patent filings, mortgages, deeds of trust, notices of lien or similar instruments, or take possession of or control over any cash, securities or any other property of the Debtors, or take any action that otherwise may be required under federal, state or local law in any jurisdiction to validate and perfect a security interest or lien, in any such case, the Adequate Protection Liens and the DIP Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination (subject to the priorities set forth in this Interim Order), at the time and on the date of entry of this Interim Order or thereafter. Upon the reasonable request of any of AB&T or the DIP Lender, AB&T and/or the DIP Lender (at the Debtors' cost and expense) and the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable AB&T and the DIP Lender to further validate, perfect, preserve and enforce the Adequate Protection Liens or the DIP Liens, as applicable. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(ii) A certified copy of this Interim Order (or the notice of the filing hereof) may, in the discretion of AB&T or the DIP Lender, be filed with or recorded in filing or recording offices in addition to or *in lieu* of such financing statements, mortgages, deeds of trust, notices of

lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order or notice for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit AB&T and the DIP Lender to take all actions, as applicable, referenced in this Paragraph 12.

13. Termination of Cash Collateral Authorization. Subject to any applicable cure or any notice period set forth below, if any, the Debtors' right to use Cash Collateral and any availability under the DIP Facility shall terminate (each, an "Event of Default," and the date of any such Event of Default, the "Termination Date"), without prior order of this Court or any further action by the DIP Lender, unless such Event of Default is waived by the DIP Lender in writing, on the earliest to occur of:

- (i) August 20, 2021;
- (ii) the effective date of a confirmed chapter 11 plan in these Chapter 11 Cases;
- (iii) the failure to meet or satisfy any of the following milestones:
 - (a) obtain entry of this Interim Order not later than five (5) days after the Petition Date, which shall be in full force and effect and shall not have been (A) vacated, reversed, or stayed, or (B) amended or modified;
 - (b) obtain entry of the Final Order within thirty-five (35) days after the Petition Date;
 - (c) file by the date that is twenty one (21) days following the Petition Date, a stalking horse asset purchase agreement and a motion seeking, among other things: (i) approval of bidding procedures; and (ii) approval of a stalking horse asset purchase agreement ("Bidding Procedures Motion"), all in a form and substance acceptable to the DIP Lender;
 - (d) obtain entry of an order approving the Bidding Procedures Motion within twenty one (21) days after filing the same, in a form and substance acceptable to the DIP Lender; and
 - (e) obtain entry of an order within seventy five (75) days after the Petition Date approving the sale of substantially all of the Debtors' assets, free and clear of all liens, claims, interests and encumbrances, and approving the assumption and assignment of certain executory contracts and

unexpired leases, all in a form and substance acceptable to the DIP Lender.

(iv) the occurrence and continuation of any “Event of Default” specified in section 7.01 of the DIP Credit Agreement that is not cured or otherwise waived in accordance with the DIP Credit Agreement and this Interim Order; and

(v) the Court shall have entered an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Interim Order in a manner materially adverse to AB&T or the DIP Lender without the consent of AB&T or the DIP Lender, as applicable.

14. Rights and Remedies upon the Event of Default.

(i) Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of Bankruptcy Code section 362, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Interim Order and the Carve Out, (A) the DIP Lender may declare (such declaration, a “Termination Notice”) (1) all DIP Obligations owing under the DIP Loan Documents to be immediately due and payable, (2) the termination, reduction, or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Financing, (3) termination of the DIP Financing and the DIP Loan Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations, and (4) that the application of the Carve Out has occurred through the delivery of the Carve Out Trigger Notice to the Debtors and (B) subject to this paragraph, the DIP Lender may declare the immediate termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral. The DIP Lender shall file with the Court any such Termination Notice, and serve the same upon any Creditors’ Committee and the U.S. Trustee.

(ii) After three (3) Business Days from the date the DIP Lender delivers a Termination Notice in accordance with the foregoing subparagraph (the “Remedies Notice Period”), (a) the DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Loan Documents and the Interim Order to satisfy the DIP Obligations, the DIP Superpriority Claims, and the DIP Liens, subject to the Carve Out; and (b) AB&T shall be entitled to exercise its rights and remedies to the extent available in accordance with its Prepetition Loan Documents and the Interim Order with respect to the Debtors’ use of Cash Collateral, subject to the Carve Out.

(iii) During the Remedies Notice Period, the Debtors, the Creditors’ Committee and/or any party in interest shall be entitled to seek an emergency hearing with the Court and neither the DIP Lender nor AB&T shall oppose the scheduling of such an emergency hearing. Except as set forth in this paragraph or otherwise ordered by the Court prior to the expiration of the Remedies Notice Period, the Debtors shall waive their right to and shall not be entitled to seek relief, including, without limitation, under Bankruptcy Code section 105, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Lender or AB&T under the Interim Order, the DIP Loan Documents, or the Prepetition Loan Documents.

(iv) Unless the Court orders otherwise, the automatic stay, as to each of the DIP Lender and AB&T (solely with respect to the use of Cash Collateral to the extent permitted hereunder) shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Lender and AB&T shall be permitted to exercise all remedies set forth herein, in the DIP Loan Documents, and as otherwise available at law without further order of or application or motion to this Court consistent

with the Interim Order; *provided that* AB&T shall be permitted to exercise remedies to the extent available solely with respect to the Debtors' use of Cash Collateral.

15. Carve Out.

(a) As used in this Interim Order, the "Carve Out" means the sum of:

(i) all fees required to be paid to the Clerk of the Court, or any claims and noticing agent acting in such capacity, and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Termination Declaration Date (defined below));

(ii) all accrued and unpaid fees, disbursements, costs, and expenses (the "Allowed Professional Fees") incurred by professionals or professional firms retained by the Debtor or its estate pursuant to sections 327, 328 or 363 of the Bankruptcy Code and any Creditors' Committee (collectively, the "Professionals" or "Professional Persons"), which Allowed Professional Fees: (x) are allowed by this Court, at any time, whether by interim order, procedural order, or otherwise; (y) were incurred (regardless of when invoiced or applied for) on or after the Petition Date, and prior to the Termination Declaration Date (defined below), and (z) are generally provided for in the Approved Budget; and

(iii) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$250,000 for all such Professionals (for the avoidance of doubt, in the aggregate and, not on a professional-by-professional basis), incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise and such availability remains in the Approved Budget for the payment of Allowed Professional Fees (the amounts set forth in this clause (iii) being the "Post-Carve Out Trigger Notice Cap").

(b) For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors' Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Financing, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

16. Carve Out Reserve. On the day on which a Carve Out Trigger Notice is given by the DIP Lender to the Debtors with a copy to counsel to the Creditors' Committee (the "Termination Declaration Date"), the DIP Lender shall advance to the Debtors under the DIP

Financing, or otherwise permit the use of Cash Collateral to fund, the agreed professional fee line item in the Approved Budget (the “Carve Out Reserve”). The Debtors shall deposit and hold the Carve Out Reserve in a segregated account in trust to pay such Allowed Professional Fees. The DIP Lender shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the DIP Lender for application in accordance with the DIP Loan Documents. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Financing, or in any Prepetition Loan Documents, the Carve Out shall be senior to all liens and claims securing the DIP Financing, the Adequate Protection Liens, the DIP Superpriority Claims and the Adequate Protection Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Obligations; *provided, however*, that the Carve Out Reserve shall not include funds that constitute the proceeds of the Texas ad valorem tax authorities’ collateral.

17. Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the delivery to the Debtors of Carve Out Trigger Notice in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code, and applicable law.

18. Prohibition on use of Carve Out. Notwithstanding the foregoing, the Carve Out shall not include, apply to, or be available for any fees or expenses incurred by any party in

connection with (i) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation (A) against the DIP Lender or AB&T or (B) challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim, or offset to, the obligations and the liens and security interests granted under the DIP Loan Documents (prepetition or postpetition) or the Prepetition Loan Documents, including, in each case, without limitation, for lender liability or pursuant to Bankruptcy Code section 105, 510, 544, 547, 548, 549, 550, or 552, applicable non-bankruptcy law or otherwise; (ii) attempts to modify any of the rights granted to the DIP Lender or AB&T; (iii) attempts to prevent, hinder, or otherwise delay any of the DIP Lender's or Prepetition Lender's assertion, enforcement, or realization upon any DIP Collateral or Prepetition Collateral, as applicable, in accordance with the DIP Credit Agreement, the DIP Loan Documents, the Prepetition Loan Documents, this Interim Order, and the Final Order; (iv) paying any amount on account of any claims arising before the commencement of the Chapter 11 Cases unless such payments are provided for in the Approved Budget and approved by an order of this Court; or (v) any direct or indirect objection or opposition to, or any other effort to impede or compromise in any way, any credit bid made by the DIP Lender or AB&T to the extent such bid is not consistent with this Interim Order; *provided that* no more than an aggregate of \$25,000 of the DIP Loan, and the DIP Collateral, proceeds of the foregoing, and the Carve Out may be used by the Creditors' Committee to investigate, but not prosecute Claims and Defenses (as defined in Paragraph 22).

19. Limitation on Charging Expenses Against Collateral. Nothing contained in this Interim Order shall be deemed a consent by AB&T or the DIP Lender to any charge, lien, assessment, or claim against the Prepetition Collateral or the DIP Collateral, or the Adequate Protection Liens or the DIP Liens, or otherwise. Subject only to and effective upon entry of the

Final Order, except to the extent of the Carve-Out, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases or any Successor Case at any time shall be surcharged against, and no person may seek to surcharge any costs or expenses of administration against AB&T and the DIP Lender, or any of the Prepetition Secured Obligations, the Carve-Out, the DIP Facility, the Prepetition Collateral or the DIP Collateral, pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of AB&T or the DIP Lender, as applicable. No action, inaction or acquiescence by AB&T or the DIP Lender, as applicable, shall be deemed to be or shall be considered evidence of any alleged consent to a surcharge against AB&T, the Prepetition Secured Obligations, the Prepetition Collateral, the DIP Lender, the DIP Facility, or the DIP Collateral.

20. Equities of the Case Waiver. Subject only to and effective upon entry of the Final Order, AB&T and the DIP Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and no person may assert an “equities of the case” claim under section 552(b) of the Bankruptcy Code against AB&T or the DIP Lender, as applicable, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable.

21. No Marshaling. Subject only to and effective upon entry of the Final Order, AB&T and the DIP Lender shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the DIP Collateral, and proceeds of the Prepetition Collateral or the DIP Collateral shall be received and applied pursuant to this Interim Order, the Loan Agreements, and the DIP Note notwithstanding any other agreement or provision to the contrary. Without limiting the generality of the immediately preceding sentence, no party shall be entitled, directly or indirectly, to direct the exercise of remedies or seek (whether

by order of this Court or otherwise) to marshal or otherwise control the disposition of the Prepetition Collateral or the DIP Collateral after an Event of Default.

22. Effect of Debtors' Stipulations.

(i) Each of the Debtors' Stipulations and each of the Debtors' other admissions, agreements and releases contained in this Interim Order, including, without limitation, in Paragraph C hereof, shall be binding upon each of the Debtors under all circumstances and for all purposes upon entry of this Interim Order. The Debtors' Stipulations and releases contained in this Interim Order, including, without limitation, in Paragraph C hereof, shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these cases (including a Creditors' Committee) and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes *unless* such Creditors' Committee or any other party in interest with standing has filed an adversary proceeding or contested matter (a "Challenge") by the date that is the later of (i) in the case of a party in interest other than any Creditors' Committee, 60 days after entry of this Interim Order; or (ii) in the case of a Creditors' Committee, 45 days after the filing of notice of appointment of the Creditors' Committee (the "Challenge Period"), (A) contesting, objecting or otherwise challenging the admissions, stipulations, findings or releases included in the Debtors' Stipulations and this Interim Order, (B) contesting, objecting or otherwise challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Obligations, the Prepetition Liens, the Prepetition DIP Advance or the Prepetition DIP Liens (including, but not limited to, those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code), (C) contesting, objecting or otherwise challenging the right of AB&T or the DIP Lender to credit

bid, up to the full amount of Prepetition Secured Obligations or the DIP Obligations in any sale of the Prepetition Collateral, in each case pursuant to section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise, or (D) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) or any other claims, counterclaims or causes of action, objections, contests, defenses, setoffs, offsets or recoupments, whether arising at law or equity against AB&T or the DIP Lender (all such claims defenses, challenges and other actions described in this Paragraph are referred to as “Claims and Defenses”

(ii) If no Challenge is filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such Challenge proceeding, then: (a) the Debtors’ Stipulations, admissions, agreements and releases contained in this Interim Order, including, without limitation, those contained in Paragraph C of this Interim Order, shall be binding on all parties in interest, including, without limitation, any Creditors’ Committee or any trustee appointed in these Chapter 11 Cases or any Successor Case; (b) the obligations of the Debtors under the DIP Credit Agreement (as they pertain to the Prepetition DIP Advance) and the Prepetition Loan Documents, shall constitute fully allowed secured claims within the meaning of Section 506 of the Bankruptcy Code not subject to defense, claim, counterclaim, recharacterization, subordination, offset or avoidance, for all purposes in these Chapter 11 Cases and any Successor Case; (c) the obligations of the Debtors under the DIP Credit Agreement (as they pertain to the Prepetition DIP Advance) and the Prepetition Loan Documents shall constitute fully allowed secured claims within the meaning of Section 506 of the Bankruptcy Code not subject to defense, claim, counterclaim,

recharacterization, subordination, offset or avoidance, for all purposes in these Chapter 11 Cases and any Successor Case; (d) the Prepetition Liens and Prepetition DIP Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense; and (e) the Prepetition Secured Obligations, the Prepetition Liens and the Prepetition DIP Liens shall not be subject to any other or further claim or challenge by any Creditors' Committee, any non-statutory committees appointed or formed in these Chapter 11 Cases, or any other party in interest acting or seeking to act on behalf of the Debtors' estates and any defenses, claims, causes of action, counterclaims and offsets by any Creditors' Committee, any non-statutory committees appointed or formed in these Chapter 11 Cases, or any other party acting or seeking to act on behalf of the Debtors' estates, whether arising under the Bankruptcy Code or otherwise, against AB&T or the DIP Lender arising out of or relating to the DIP Credit Agreement (as it relates to the Prepetition DIP Advance and the Prepetition DIP Liens) and the Prepetition Loan Documents and Prepetition Liens shall be deemed forever waived, released, and barred.

(iii) If any such Challenge Proceeding is timely filed during the Challenge Period, (i) any claim or action that is not brought shall forever be barred, and (ii) each of the Debtors' Stipulations and each of the Debtors' other admissions and agreements contained in this Interim Order, including, without limitation, those contained in Paragraph C of this Interim Order, shall nonetheless remain binding and preclusive on any Creditors' Committee and on any other person or entity, except to the extent that such stipulations, admissions, and agreements were successfully challenged in such Challenge Proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Creditors' Committee or any non-statutory

committees appointed or formed in these cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenge Proceedings with respect to the Loan Agreements, the Prepetition Secured Obligations or the Prepetition Liens.

23. Releases.

(i) *Release Related to Prepetition Financings.* The release, discharge, waivers, settlements, compromises, and agreements set forth in this subparagraph shall be deemed effective upon entry of this Interim Order and subject only to the challenge rights set forth in Paragraph 22 above. The Debtors forever and irrevocably (a) release, discharge, and acquit AB&T and the DIP Lender (in its capacity as a prepetition lender) and each of their respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type arising prior to the Petition Date, including, without limitation, any claims arising from any actions relating to any aspect of the relationship between AB&T, the DIP Lender (in its capacity as a prepetition lender) and the Debtors and their affiliates including any equitable subordination claims or defenses, with respect to or relating to the Prepetition Secured Obligations, the Prepetition Liens, the Prepetition Loan Documents, the Prepetition DIP Advance, the Prepetition DIP Liens and the DIP Credit Agreement (as it pertains to the Prepetition DIP Advance), any and all claims and causes of action arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of AB&T and the DIP Lender (as it pertains to the Prepetition DIP Advance), *other than* with respect to willful misconduct and gross

negligence; and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and non-avoidability of the Prepetition Secured Obligations, the Prepetition Liens, the Prepetition Loan Documents, the Prepetition DIP Advance, the Prepetition DIP Liens and the DIP Credit Agreement (as it pertains to the Prepetition DIP Advance).

(ii) *Release Related to DIP Financing.* The release, discharge, waivers, settlements, compromises, and agreements set forth in this subparagraph shall be deemed effective upon entry of this Interim Order. The Debtors forever and irrevocably (a) release, discharge, and acquit the DIP Lender, and each of its respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type arising in connection with the DIP Financing and the DIP Protections, including, without limitation, any claims arising from any actions relating to any aspect of the relationship between the DIP Lender and the Debtors and their affiliates including any equitable subordination claims or defenses, any and all claims and causes of action arising under the Bankruptcy Code, and any and all claims regarding the validity, priority, perfection or avoidability of the liens or secured claims of the DIP Lender, *other than* with respect to willful misconduct and gross negligence; and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and non-avoidability of the DIP Financing and the DIP Protections.

24. Binding Effect of Interim Order. The terms and provisions of this Interim Order, including all findings herein (limited only by the challenge rights provided in Paragraph 22), shall

be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the Debtors, AB&T, the DIP Lender, all other creditors of the Debtors, any Creditors' Committee, and each of their respective successors and assigns (including, without limitation, any trustee, examiner with expanded powers, responsible officer, estate administrator or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code) and shall inure to the benefit of the Debtors, AB&T, the DIP Lender, and their respective successors and assigns. For the avoidance of doubt, all DIP Protections set forth in Paragraph 6 of this Interim Order, and any other relief granted in favor of the DIP Lender as consideration for its willingness to advance funds under the DIP Financing, shall be binding on the Debtors, AB&T, all other creditors of the Debtors, any Creditors' Committee, and each of their respective successors and assigns (including, without limitation, any trustee, examiner with expanded powers, responsible officer, estate administrator or representative, or similar person appointed in a case for any Debtor under any chapter of the Bankruptcy Code), immediately upon entry of this Interim Order.

25. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order (a) confirming any plan of reorganization in any of these Chapter 11 Cases; (b) converting any of these cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of these cases or any Successor Case; or (d) pursuant to which this Court abstains from hearing any of these Chapter 11 Cases or any Successor Case. Notwithstanding the entry of any such order, the terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to AB&T and the DIP Lender pursuant to this Interim Order, shall continue in these Chapter 11 Cases, in any Successor Case, or following dismissal of these Chapter 11 Cases or any Successor Case, and shall maintain their priority as provided by this Interim Order and not be modified, altered or impaired in any way, whether by

act or omission, until all of the Prepetition Secured Obligations, the DIP Financing, any Adequate Protection Payments and, solely to the extent applicable, any Adequate Protection Amount, Adequate Protection Superpriority Claims, and/or the DIP Superpriority Claim, have been Paid in Full, notwithstanding the occurrence of an Event of Default or any earlier termination of the Debtors' authorization to use the Prepetition Collateral, including Cash Collateral, and the DIP Facility.

26. No Waiver. Other than as provided for in this Interim Order, nothing in this Interim Order shall be construed in any way as a waiver or relinquishment of any rights that the Debtors, AB&T, or the DIP Lender may have to bring or be heard on any matter brought before this Court.

27. Immediate Effectiveness/No Stay. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable effective as of the Petition Date. Notwithstanding any Bankruptcy Rule, any Local Rule, any Federal Rule of Civil Procedure, or other applicable law, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

28. Rights of PACA Trust Claimants. Notwithstanding any other recital, finding or provision of this Interim Order, nothing contained herein, the Final Order or the DIP Loan Documents, shall be construed to prime, diminish or impair the rights of parties holding valid claims under the statutory trust created pursuant to the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a, *et seq.* ("PACA Trust Claims"), or to require any party holding a valid PACA Trust Claim to bring a Challenge within the Challenge Period in order to preserve such rights. If any of the Debtors use any assets impressed with the PACA trust (each, a "PACA Trust Asset") on or after the Petition Date for any purpose other than to pay PACA Trust Claims, the PACA

Trust Claims in those PACA Trust Assets shall attach to the applicable Debtors' post-petition assets to the same extent to which such Debtors used PACA Trust Assets and with the same validity as existed as of the Petition Date.

29. Texas Taxing Authorities. Nothing in this order shall be construed to grant or acknowledge claims and/or liens that prime the prepetition and postpetition claims and liens (if any) of the Texas ad valorem tax authorities.

30. Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

31. Interim Order Controls. In the event of any inconsistency between the terms and conditions of this Interim Order and the DIP Financing, the provisions of this Interim Order shall govern and control.

32. Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

33. Necessary Action. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order.

34. Retention of Jurisdiction. The Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Interim Order.

35. Final Hearing. The Final Hearing to consider entry of the Final Order is scheduled for **May 6, 2021 at 9:30 a.m. (CT) before the Honorable Stacey G.C. Jernigan**, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Earle Cabell Federal Building, 1100 Commerce St., Dallas, Texas 75242-1496.

36. Notice of Final Hearing. Within three (3) Business Days of the date of the entry of this Interim Order, the Debtors shall serve, by United States mail, first-class postage prepaid, a

copy of the Motion and this Interim Order upon: (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (d) counsel to the DIP Lender; (e) counsel to AB&T; (f) financial institutions where the Debtors hold bank accounts; and (g) any party that has filed prior to such date a request for notices under Bankruptcy Rule 2002 with the Court.

37. Objection Deadline. Objections, if any, to the relief sought in the Motion and entry of the Final Order shall be in writing, shall set forth with particularity the grounds for such objections or other statement of position, shall be filed with the Clerk of the Court, and personally served upon: (a) proposed counsel to the Debtors, Gray Reed, 1601 Elm Street, Suite 4600, Dallas, Texas 75201 (Attn: Jason S. Brookner (jbrookner@grayreed.com), Amber M. Carson (acarson@grayreed.com) and Aaron M. Kaufman (akaufman@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)); (c) proposed counsel to the Creditors' Committee, if any; (d) counsel to AB&T, Engelman Berger, PC, 2800 North Central Avenue, Suite 1200, Phoenix, Arizona 85004 (Attn: Patrick A. Clisham (pac@eblawyers.com)); and (e) counsel to the DIP Lender, Carrington Coleman, 901 Main Street, Suite 5500, Dallas, Texas 75202 (Attn: J. Michael Sutherland (msutherland@ccsb.com)), so that such objections are filed with the Court and actually received by the foregoing parties **on or before 5:00 p.m. (CT) on May 4, 2021.**

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

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

Exhibit 1

DIP Credit Agreement and Promissory Note

PROMISSORY NOTE

\$3,500,000.00

April 16, 2021

FOR VALUE RECEIVED, the undersigned, **BUFFETS, LLC**, a Minnesota limited liability company ("**Buffets**"), **HOMETOWN BUFFET, INC.**, a Minnesota corporation ("**Hometown Buffet**"), **OCB RESTAURANT COMPANY, LLC**, a Minnesota limited liability company ("**OCB Restaurant**"), **OCB PURCHASING CO.**, a Minnesota corporation ("**OCB Purchasing**"), **RYAN'S RESTAURANT GROUP, LLC**, a South Carolina limited liability company ("**Ryan's**"), **FIRE MOUNTAIN RESTAURANTS, LLC**, an Ohio limited liability company ("**Fire Mountain**"), **TAHOE JOE'S, INC.**, a Minnesota corporation ("**Tahoe Joe**"), **FMP-OVATION PAYROLL, LLC**, a Texas limited liability company ("**FMP-Ovation Payroll**"), **ALAMO BUFFETS PAYROLL, LLC**, a Texas limited liability company ("**Alamo Buffets Payroll**"), **ALAMO OVATION, LLC**, a Texas limited liability company ("**Alamo Ovation**"), **FRESH ACQUISITIONS, LLC**, a Delaware limited liability company ("**Fresh Acquisitions**"), **ALAMO FRESH PAYROLL, LLC**, a Texas limited liability company ("**Alamo Fresh Payroll**"), **FMP-FRESH PAYROLL, LLC**, a Texas limited liability company ("**FMP-Fresh Payroll**"), **FOOD MANAGEMENT PARTNERS, INC.**, a Texas corporation ("**FMP**"), and **FMP SA MANAGEMENT GROUP, LLC**, a Texas limited liability company ("**FMP Management**"; and jointly and severally with Buffets, Hometown Buffet, OCB Restaurant, OCB Purchasing, Ryan's, Fire Mountain, Tahoe Joe, FMP-Ovation Payroll, Alamo Buffets Payroll, Alamo Ovation, Fresh Acquisitions, Alamo Fresh Payroll, FMP-Fresh Payroll, and FMP, "**Maker**"), jointly and severally, promise to pay to the order of **VITANOVA BRANDS, LLC**, a Texas limited liability company, and/or its successor(s) and assignee(s) ("**Payee**"), THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00), or so much thereof as shall be advanced, at the Maturity Date or acceleration of this Promissory Note (as may be amended, modified, supplemented, extended or renewed from time to time, this "**Note**"), with interest on the unpaid balance thereof from the date of this Note until the Maturity Date or acceleration at the rate or rates specified below, both principal and interest payable as provided below in lawful money of the United States of America at the address of Payee set forth below or at such other place as from time to time may be designated by the holder of this Note. All capitalized terms contained herein which are not defined herein shall have the meanings set forth in that certain Prepetition and Debtor-in-Possession Credit Agreement, executed by Maker and Payee, dated of even date herewith (as may be amended, modified, supplemented, extended or renewed from time to time, the "**DIP Credit Agreement**").

I. Interest Rates and Payments

The unpaid principal of this Note from time to time outstanding shall bear interest prior to maturity at a fixed rate of interest per annum equivalent to ten percent (10%). Notwithstanding anything contained herein to the contrary, in no event shall any rate of interest which this Note bears ever exceed the lesser of eighteen percent (18%) per annum or the Maximum Rate (as hereinafter defined). All interest accruing under this Note shall be calculated on the basis of a 360-day year applied to the actual number of days elapsed.

All unpaid principal of and accrued interest on this Note shall be due and payable on the earlier of (i) August 20, 2021, (ii) the closing date of a sale of all or substantially all of Maker's assets under Section 363 of the Bankruptcy Code and the authorization by the Bankruptcy Court to pay the proceeds of such sale to Payee, (iii) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code) of a plan or reorganization or liquidation filed in the Bankruptcy Cases that is confirmed pursuant to an order entered by the Bankruptcy Court, and (iv) the date of acceleration of the Loans (the "**Maturity Date**"). All

principal, interest, and other amounts which is past due under this Note shall bear interest from the Maturity Date or upon acceleration at the lesser of twelve percent (12%) per annum and the Maximum Rate.

The term “**Maximum Rate**”, as used herein, shall mean, with respect to each holder hereof, the maximum nonusurious interest rate, if any, that at any time, or from time to time, may under applicable law be contracted for, taken, reserved, charged or received on the indebtedness evidenced by this Note under the laws which are presently in effect of the United States and the State of Texas applicable to such holder and such indebtedness or, to the extent allowed by law under such applicable laws of the United States of America and State of Texas which may hereafter be in effect, which allow a higher maximum non-usurious interest rate than applicable laws now allow; provided, that in determining the Maximum Rate, due regard shall be given, to the extent required by applicable law, to any and all relevant payments, fees, charges, deposits, balances, agreements and calculations which may constitute or be deemed to constitute interest, or be deducted from principal to calculate the interest rate or otherwise affect interest rate determinations, so that in no event shall the Payee contract for, charge, receive, take, collect, reserve or apply, on the Note, any amount in excess of the maximum non-usurious rate of interest permitted by applicable law. The Maximum Rate shall not be limited to the applicable rate ceiling in Texas state law if Federal laws or other state laws now or hereafter in effect and applicable to this Note (and the interest contracted for, charged and collected hereunder) shall permit a higher rate of interest. If applicable Texas law establishes the Maximum Rate, the Maximum Rate shall be the “weekly ceiling” as defined in § 303 of the Texas Finance Code.

Maker shall have the right to prepay, without penalty, at any time and from time to time prior to maturity, all or any part of the unpaid principal balance of this Note and all or any part of the unpaid interest accrued to the date of such prepayment, provided that any such principal thus paid is accompanied by accrued interest on such principal. Any partial prepayments of principal shall be applied to installments thereof in the inverse order of maturity.

II. Governance and Security

This Note is governed by the DIP Credit Agreement and secured, in part, by security interests in the Collateral, as evidenced by the DIP Credit Agreement and the Pledge Agreements, and the nature and extent of the rights and powers of the holder of this Note in respect of the Collateral.

III. Right to Accelerate Upon Default

The holder of this Note shall have the option of declaring the principal balance hereof and the interest accrued hereon to be immediately due and payable upon the occurrence of an Event of Default.

IV. Waiver of Conditions and Defenses to Liability

Maker and any other party who is or becomes liable to pay all or any part of this Note, or who grants any lien or security interest to secure all or any part of this Note (each called an “other liable party” below), including but not limited to any drawer, acceptor, endorser, guarantor, surety or accommodation party, severally waive presentment for payment, demand, notice of demand and of dishonor and nonpayment of this Note, notice of intention to accelerate the maturity of this Note, notice of acceleration of the maturity of this Note, notice of intent to exercise any remedies hereunder or under any of the Loan Documents, protest and notice of protest, diligence in collecting, and the bringing of suit against any other party.

Following an Event of Default, the holder of this Note may apply all moneys received from Maker or others, or from any security (whether held under a security instrument or not), in such manner upon the indebtedness evidenced or secured by any Loan Documents (whether then due or not) as such holder may determine to be in its best interest, without in any way being required to marshal assets or to apply all or any part of such moneys upon any particular part of such indebtedness. The holder of this Note is not required to retain, hold, protect, exercise due care with respect to, perfect security interests in or otherwise assure or safeguard any security for this Note, and no failure by the holder of this Note to do any of the foregoing and no exercise or failure to exercise by such holder of any other right or remedy shall in any way affect any of Maker's or any other liable party's obligations hereunder or under other Loan Documents or affect any security or give Maker or any other liable party any recourse against the holder of this Note.

V. Usury Savings Provision

It is the intent of Maker and Payee in the execution of this Note and all other Loan Documents to contract in strict compliance with applicable usury law. In furtherance thereof, Maker and Payee stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Rate. Neither Maker nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Note shall ever be obligated or required to pay interest on this Note at a rate in excess of the Maximum Rate, and the provisions of this paragraph shall control over all other provisions of this Note and any other Loan Documents now or hereafter executed which may be in apparent conflict herewith. Payee expressly disavows any intention to contract for, to charge or to collect excessive unearned interest or finance charges in the event the maturity of this Note is accelerated. If the maturity of this Note shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the loan evidenced by this Note exceeds the Maximum Rate, the holder of this Note shall credit the amount of such excess against the principal balance of this Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest; provided, however, that if the principal hereof has been paid in full, such excess shall be refunded to Maker. If the holder of this Note shall receive money (or anything else) which is determined to constitute interest and which would increase the effective interest rate on this Note or the other indebtedness secured by the Loan Documents to a rate in excess of the Maximum Rate, the amount determined to constitute interest in excess of the lawful rate shall be credited against the principal balance of this Note then outstanding or, if the principal balance has been paid in full, refunded to Maker, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. If the holder of this Note shall not actually receive, but shall contract for, request or demand, a payment of money (or anything else) which is determined to constitute interest and which would increase the effective interest rate contracted for or charged on this Note or the other indebtedness evidenced or secured by the Loan Documents to a rate in excess of the Maximum Rate, the holder of this Note shall be entitled, following such determination, to waive or rescind the contractual claim, request or demand for the amount determined to constitute interest in excess of the Maximum Rate, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note Maker acknowledges that Maker believes as of the date hereof the loan evidenced by this Note to be non-usurious and agrees that if, at any time, Maker should have reason to believe that such loan is in fact usurious, Maker will use commercially reasonable efforts to give the holder of this Note notice of such condition and Maker agrees that the holder shall have sixty (60) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. Additionally, if, from any circumstance whatsoever, fulfillment of any provision hereof or of the DIP Credit Agreement or any other Loan Documents shall, at the time fulfillment of such provision be due, involve transcending the Maximum Rate then, ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate.

The term “applicable law” as used in this Note shall mean the laws of the State of Texas or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

VI. Miscellaneous

Should the indebtedness represented by this Note or any part thereof be collected at law or in equity or through any bankruptcy, receivership, probate or other court proceedings or if this Note is placed in the hands of attorneys for collection after default, Maker and all endorsers, guarantors and sureties of this Note jointly and severally agree to pay to the holder of this Note in addition to the principal and interest due and payable hereon all the costs and expenses of the holder in enforcing this Note including, without limitation, reasonable attorneys’ fees and legal expenses.

No amendment of this Note shall be binding unless expressed in a writing executed by Maker and the holder of this Note. The term “**holder**” as used herein includes Payee.

All notices pursuant to any provisions of this Note or any other Loan Document which require the giving of notice as a condition to creating or effectuating an obligation of Maker to Payee or a right on the part of Payee to exercise rights or remedies against Maker or any Collateral, and any notice by Maker to Payee to the effect that Payee has not fulfilled one or more of any obligation to Maker under this Note or under any other Loan Document, must be in writing and otherwise delivered in accordance with Section 9.18 of the Loan Agreement.

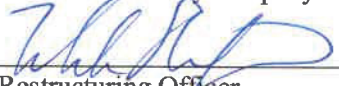
This Note and the rights, duties, and liabilities of the parties hereunder or arising from or relating in any way to the indebtedness evidenced by this Note or the transaction of which such indebtedness is a part shall be governed by and construed in accordance with the laws of the State of Texas and the laws of the United States applicable to transactions within such State, without regard to conflicts of law principals.

[SIGNATURE PAGE FOLLOWS]

This Note has been executed by Maker and is effective for all purposes as of the date set forth above.

MAKER:


BUFFETS, LLC,
a Minnesota limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


HOMETOWN BUFFET, INC.,
a Minnesota corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

OCB RESTAURANT COMPANY, LLC,
a Minnesota limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


OCB PURCHASING CO.,
a Minnesota corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


RYAN'S RESTAURANT GROUP, LLC,
a South Carolina limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


FIRE MOUNTAIN RESTAURANTS, LLC,
an Ohio limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

TAHOE JOE'S, INC.,
a Minnesota corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FMP-OVATION PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


ALAMO BUFFETS PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


ALAMO OVATION, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


FRESH ACQUISITIONS, LLC,
a Delaware limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

ALAMO FRESH PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FMP-FRESH PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FOOD MANAGEMENT PARTNERS, INC.,
a Texas corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FMP SA MANAGEMENT GROUP, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

PREPETITION AND DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of April 16, 2021 among

**BUFFETS, LLC, HOMETOWN BUFFET, INC.,
OCB RESTAURANT COMPANY, LLC, OCB PURCHASING CO.,
RYAN'S RESTAURANT GROUP, LLC,
FIRE MOUNTAIN RESTAURANTS, LLC, TAHOE JOE'S INC.,
FMP-OVATION PAYROLL, LLC, ALAMO BUFFETS PAYROLL, LLC,
ALAMO OVATION, LLC,
FRESH ACQUISITIONS, LLC,
ALAMO FRESH PAYROLL, LLC, FMP-FRESH PAYROLL, LLC,
FOOD MANAGEMENT PARTNERS, INC.,
AND FMP SA MANAGEMENT GROUP, LLC,**

as Borrowers,

and

VITANOVA BRANDS, LLC,

as Lender

**PREPETITION AND SENIOR SECURED SUPER-PRIORITY DEBTOR-IN-
POSSESSION FACILITY**

PREPETITION AND DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This **PREPETITION AND DEBTOR-IN-POSSESSION CREDIT AGREEMENT** (this “**Agreement**”) is entered into as of April 16, 2021 (the “**Effective Date**”), among **BUFFETS, LLC**, a Minnesota limited liability company (“**Buffets**”), **HOMETOWN BUFFET, INC.**, a Minnesota corporation (“**Hometown Buffet**”), **OCB RESTAURANT COMPANY, LLC**, a Minnesota limited liability company (“**OCB Restaurant**”), **OCB PURCHASING CO.**, a Minnesota corporation (“**OCB Purchasing**”), **RYAN’S RESTAURANT GROUP, LLC**, a South Carolina limited liability company (“**Ryan’s**”), **FIRE MOUNTAIN RESTAURANTS, LLC**, an Ohio limited liability company (“**Fire Mountain**”), **TAHOE JOE’S INC.**, a Minnesota corporation (“**Tahoe Joe**”), **FMP-OVATION PAYROLL, LLC**, a Texas limited liability company (“**FMP-Ovation Payroll**”), **ALAMO BUFFETS PAYROLL, LLC**, a Texas limited liability company (“**Alamo Buffets Payroll**”), **ALAMO OVATION, LLC**, a Texas limited liability company (“**Alamo Ovation**”), **FRESH ACQUISITIONS, LLC**, a Delaware limited liability company (“**Fresh Acquisitions**”), **ALAMO FRESH PAYROLL, LLC**, a Texas limited liability company (“**Alamo Fresh Payroll**”), **FMP-FRESH PAYROLL, LLC**, a Texas limited liability company (“**FMP-Fresh Payroll**”), **FOOD MANAGEMENT PARTNERS, INC.**, a Texas corporation (“**FMP**”), and **FMP SA MANAGEMENT GROUP, LLC**, a Texas limited liability company (“**FMP Management**”), each jointly and severally and as debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (as hereinafter defined) (each of Buffets, Hometown Buffet, OCB Restaurant, OCB Purchasing, Ryan’s, Fire Mountain, Tahoe Joe, FMP-Ovation Payroll, Alamo Buffets Payroll, Alamo Ovation, Fresh Acquisitions, Alamo Fresh Payroll, FMP-Fresh Payroll, FMP, and FMP Management, each a “**Borrower**” and, collectively, the “**Borrowers**”), and **VITANOVA BRANDS, LLC**, a Texas limited liability company (together with its successors and assigns, the “**Lender**”).

PRELIMINARY STATEMENTS:

The Borrowers seek to borrow \$3,500,000, in both prepetition loans and postpetition loans, for use in preparing for and during the course of anticipated voluntary cases under Chapter 11 of the Bankruptcy Code, to be filed in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. Upon the filing of the Bankruptcy Case(s) (as hereinafter defined), which is anticipated to occur no later than May 1, 2021, the Borrowers will continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

The Borrowers have requested that the Lender provide the prepetition loans and the postpetition loans in an aggregate principal amount not to exceed \$3,500,000 in order to effectuate, *inter alia*, the administration of their Chapter 11 Bankruptcy Case(s) through and including one or more 363 Sales (as hereinafter defined). The Lender has agreed to extend such credit to the Borrowers subject to the terms and conditions hereinafter set forth.

Each of the Borrowers acknowledges that it will receive substantial direct and indirect benefits from the loans and other financial accommodations provided for in this Agreement.

To provide security for the repayment of the loans and the payment of the other obligations of the Borrowers hereunder and under the other Loan Documents, the Borrowers will provide and grant to the Lender certain security interests, liens, and other rights and protections, provided that FMP Management will not grant to Lender a security interest in or lien on any of its assets. Prior to the filing of the Bankruptcy Case(s), such security interests, liens, and other rights and protections will be granted pursuant to the terms hereof. Following the filing of the Bankruptcy Case(s), upon approval of the Bankruptcy Court, such security interests, liens, and other rights and protections will be granted pursuant to the terms hereof and pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code (including without limitation allowance and ratification of any such rights granted prepetition to Lender by Borrowers), super-priority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, and other rights and protections, as more fully described herein

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
Definitions.

As used in this Agreement, all exhibits, appendices, and schedules hereto and in any note, certificate, report, or other Loan Documents made or delivered pursuant to or in connection with this Agreement, the following terms will have the meanings given such terms in this ARTICLE I or in the provision or section referred to below:

(a) “**363 Sale**” means, collectively, the sale or other disposition of all or substantially all of the Borrowers’ assets (or a portion thereof reasonably acceptable to the Lender) pursuant to Section 363 of the Bankruptcy Code.

(b) “**Advance**” shall mean a disbursement from Lender’s account to or for the benefit of Borrowers of any of the proceeds of the Loan(s) in accordance with any of the provisions of this Agreement or of any of the other Loan Documents.

(c) “**Advance Date**” shall have the meaning as defined in Section 2.03.

(d) “**Advance Request**” shall have the meaning as defined in Section 2.03.

(e) “**Advance Request Notice**” shall have the meaning as defined in Section 2.03.

(f) “**Affiliate**” shall mean, as applied to any Person, any other Person directly or indirectly Controlling (including any member of the senior management group of such Person), Controlled by, or under common Control with, that Person.

(g) “**Agreement**” has the meaning set forth in the introductory paragraph hereto.

(h) “**Alamo Buffets Payroll**” shall have the meaning as defined in the preamble.

(i) “**Alamo Fresh Payroll**” shall have the meaning as defined in the preamble.

(j) “**Alamo Ovation**” shall have the meaning as defined in the preamble.

(k) “**All Borrower Collateral**” shall have the meaning as defined in Section 4.01(b).

(l) “**Allowed Professional Fees**” has the meaning set forth in the definition of the term Carve Out.

(m) “**Approved Budget**” means the 13-week cash flow projection and budget of the Borrowers broken down by week, including the anticipated receipts and disbursements for such period, as approved by Lender, acting through its Chief Financial Officer, and by Borrowers, acting through the Chief Restructuring Officer of Borrowers.

(n) “**Bankruptcy Case(s)**” means, collectively or singularly, as context indicates, the cases first filed by each of the Borrowers after the date of this Agreement for relief under Chapter 11 of the Bankruptcy Code.

(o) “**Bankruptcy Code**” means the United States Bankruptcy Code (11 U.S.C. § 101, et seq.), as amended and in effect from time to time.

(p) “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division in which the Bankruptcy Case(s) are filed. In the event the United States District Court for the Northern District of Texas should withdraw the reference, in whole or in part, and exercise original (and not appellate) jurisdiction, “Bankruptcy Court” shall in such instance and as to such withdrawn matters also mean that United States District Court.

(q) “**Borrower**” and “**Borrowers**” shall have the meaning set forth in the preamble.

(r) “**Borrowers’ Loan Account**” shall mean the account(s) on the books of Lender in which Lender will record (i) loans, including without limitation any Advance made by Lender to or on behalf of Borrowers pursuant to this Agreement, (ii) payments received on such loans, and (iii) other appropriate debits and credits as provided by this Agreement or any of the other Loan Documents. All portions of the Loan(s) advanced shall be evidenced by the Note and by entering such Advances as debits to Borrowers’ Loan Account. Lender shall also record in Borrowers’ Loan Account (i) all other charges, expenses, and items properly chargeable to Borrowers hereunder, which shall also be evidenced by the Note, and (ii) all payments made by Borrowers on account of indebtedness under the Loan(s) and other appropriate debits and credits. The debit balance of Borrowers’ Loan Account shall also be evidenced by the Note and shall reflect the amount of Borrowers’ indebtedness to Lender as it exists from time to time hereunder.

(s) “**Borrower Representative**” means Tahoe Joe in its capacity as Borrower Representative pursuant to Section 9.01.

(t) “**Buffet Pledge Agreement**” means that certain Pledge and Security Agreement dated as of the Effective Date, executed by Buffets in favor of Lender, as it may be amended, modified, supplemented, extended, or renewed from time to time.

(u) “**Buffet Pledged Collateral**” means Buffet’s ownership interests in Hometown Buffet, as more particularly described in the Buffet Pledge Agreement.

(v) “**Buffets**” shall have the meaning as defined in the preamble.

(w) “**Buffets Collateral**” shall have the meaning as defined in Section 4.01(a).

(x) “**Carve Out**” shall mean the sum of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court, or any claims and noticing agent acting in such capacity, and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the Termination Declaration Date); (ii) all accrued and unpaid fees, disbursements, costs, and expenses (the “**Allowed Professional Fees**”) incurred by professionals or professional firms retained by the Borrowers or their estates pursuant to sections 327, 328 or 363 of the Bankruptcy Code and any statutory committee (each a “**Committee**”) appointed in the Bankruptcy Case(s) pursuant to section 1103 of the Bankruptcy Code (collectively, the “**Professional Persons**”), which Allowed Professional Fees: (x) are allowed by the Bankruptcy Court, at any time, whether by interim order, procedural order, or otherwise; (y) were incurred (regardless of when invoiced or applied for) on or after the Petition Date, and prior to the Termination Declaration Date, and (z) are generally provided for in the Approved Budget; and (iii) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$250,000.00 for all such Professional Persons (for the avoidance of doubt, in the aggregate and, not on a professional-by-professional basis), incurred after the first business day following delivery by the Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise and to the extent that availability therefor remains in the Approved Budget for the payment of Allowed Professional Fees (the amounts set forth in this clause (iii) being the “**Post-Carve Out Trigger Notice Cap**”).

(y) “**Carve Out Reserve**” has the meaning set forth in Section 7.03.

(z) “**Carve Out Trigger Notice**” shall mean a written notice delivered by email (or other electronic means) by the Lender to the Borrowers, their lead restructuring counsel, the U.S. Trustee, and counsel to each Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the Obligations, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(aa) “**Collateral**” means, collectively, the All Borrower Collateral, the Buffet Pledged Collateral, the Tahoe Joe Pledged Collateral, the Fresh Acquisitions Collateral, and any other collateral that secures the Obligations.

(bb) “**Committee**” has the meaning set forth in the definition of the term Carve Out.

(cc) “**Controlled by**” (including, with correlative meanings, the terms “Controlling,” “Control” and “under common Control with”) shall mean, as applied to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ability to exercise voting power, by contract or otherwise, including the customary powers conferred by applicable law of a manager or managing member of any limited liability company or any general partner of any limited partnership or any board of directors of any corporation or trust.

(dd) “**Default Rate**” shall mean the lesser of (i) (a) the Interest Rate, *plus* (b) two percent (2%) per annum, or (ii) the Maximum Rate.

(ee) “**DIP Facility**” means the facility for the Postpetition Loan(s) pursuant to this Agreement.

(ff) “**DIP Order**” means the Interim DIP Order or the Final DIP Order, as the context may require.

(gg) “**Distributions**” shall mean any and all distributions of any kind during the period in question.

(hh) “**Effective Date**” shall have the meaning as defined in the preamble.

(ii) “**Event of Default**” shall mean any of those events specified in Section 7.01.

(jj) “**Final DIP Order**” means, collectively, the final order or orders entered by the Bankruptcy Court with respect to the Borrowers in the Bankruptcy Case(s) authorizing and approving the DIP Facility and the terms of this Agreement and the other Loan Documents (including the payment of interest, fees, costs and expenses thereunder) on a postpetition basis and granting the Liens, status and protections satisfactory to Lender, in Lender’s sole and absolute discretion, which order or orders is in effect and not stayed, and as to which no appeal, petition for certiorari, or other proceeding for re-argument or re-hearing shall then be pending, or, if pending, no stay pending appeal shall have been granted, as the same may be amended, supplemented, or otherwise modified from time to time with the express written consent of Lender, which Final DIP Order shall be in form and substance satisfactory to Lender, in Lender’s sole and absolute discretion.

(kk) “**FMP**” shall have the meaning as defined in the preamble.

(ll) “**FMP-Fresh Payroll**” shall have the meaning as defined in the preamble.

(mm) “**FMP-Ovation Payroll**” shall have the meaning as defined in the preamble.

(nn) “**FMP Management**” shall have the meaning as defined in the preamble.

(oo) “**Fresh Acquisitions**” shall have the meaning as defined in the preamble.

(pp) “**Fresh Acquisitions Collateral**” shall have the meaning as defined in Section 4.01(b).

(qq) “**GAAP**” shall mean the generally accepted accounting principles promulgated by the United States Financial Accounting Standards Board.

(rr) “**Governmental Authority**” shall mean the government the United States and any state, city, or county, or any political subdivision of any of the foregoing.

(ss) “**Governmental Requirements**” shall mean all laws, ordinances, rules and regulations of any Governmental Authority applicable to Borrowers or the applicable Collateral.

(tt) “**Hometown Buffet**” shall have the meaning as defined in the preamble.

(uu) “**Interest Rate**” means a fixed rate equal to ten percent (10%) per annum.

(vv) “**Interim DIP Order**” means any interim order or orders entered by the Bankruptcy Court with respect to the Borrowers in the Bankruptcy Case(s) authorizing and approving on an interim basis the DIP Facility and authorizing and approving an interim advance or advances under the DIP Facility as may be necessary to avoid immediate and irreparable harm to the estates of the Borrowers, in a form approved by Lender, as the same may be amended, supplemented or otherwise modified from time to time with the express written consent of the Lender.

(ww) “**Interim Loan**” has the meaning set forth in Section 2.01(b)(i).

(xx) “**Lender**” shall mean VitaNova Brands, LLC and/or its successor(s) and assignee(s), as defined in the preamble.

(yy) “**Lien**” shall mean any lien, mortgage, security interest, pledge, charge, or encumbrance of any kind, including, without limitation, a mechanic’s lien, a materialman’s lien, the rights of a vender, lessor, or similar party under any conditional sales agreement or other title retention agreement or lease substantially equivalent thereto, and any other right of or arrangement with any creditor to have his claim satisfied out of any property or assets, or the proceeds therefrom, prior to the general creditors of the owner thereof.

(zz) “**Loan(s)**” means the loan(s) made in one or more Advances to Borrowers by Lender pursuant to the Note and subject to this Agreement and the other Loan Documents.

(aaa) “**Loan Amount**” means THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00) or so much thereof as shall be advanced.

(bbb) “**Loan Documents**” shall mean, collectively, the Note, this Agreement, the Pledge Agreements, all financing statements, and all other documents, instruments, and/or agreements evidencing, securing, guaranteeing, governing, warranting and pertaining to the Loan(s) or perfecting Lender’s security interest in the Collateral, and all other documents and

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agreements that Lender may require in connection with the Loan(s), as any such documents, instruments, and/or agreements may be amended, modified, supplemented, extended or renewed from time to time.

(ccc) “**Material Adverse Change**” shall mean with respect to all Borrowers, taken as a whole, if, in Lender’s reasonable discretion, the operations or financial condition of all Borrowers taken as a whole has changed in a material manner which is likely to materially impair the value of Lender’s security for the Loans, prevent timely repayment of the Loans, or otherwise prevent Borrowers from performing in all material respects any of its material obligations under the Loan Documents.

(ddd) “**Maximum Rate**” shall have the meaning as defined in the Note.

(eee) “**Note**” means the Promissory Note executed by Borrowers, in favor of Lender, dated of even date herewith, in the original principal amount of THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000) or so much thereof as shall be advanced, as it may be amended, modified, supplemented, extended, or renewed from time to time.

(fff) “**Obligations**” means any and all debt, obligations, liabilities, and agreements of or by Borrowers to Lender, now or hereafter existing, that arise directly between any Borrower and Lender under the Note, this Agreement, the Pledge Agreements, and/or the other Loan Documents.

(ggg) “**OCB Purchasing**” shall have the meaning as defined in the preamble.

(hhh) “**OCB Restaurant**” shall have the meaning as defined in the preamble.

(iii) “**Permitted Liens**” shall have the meaning as defined in Section 6.04.

(jjj) “**Person**” shall mean any natural person, corporation, partnership, limited liability company, trust, firm, association, Governmental Authority or any other public or private entity, whether acting in an individual, fiduciary or other capacity.

(kkk) “**Petition Date**” means the date on which the Bankruptcy Case(s) are filed.

(lll) “**Pledge Agreements**” means, collectively, the Buffets Pledge Agreement and the Tahoe Joe Pledge Agreement.

(mmm) “**Post-Carve Out Trigger Notice Cap**” has the meaning set forth in the definition of Carve Out.

(nnn) “**Postpetition Loan**” has the meaning set forth in Section 2.01(b)(ii).

(ooo) “**Prepetition Loan**” has the meaning set forth in Section 2.01(a).

(ppp) “**Prepetition Loan Payoff Amount**” has the meaning set forth in Section 2.01(b)(ii).

(qqq) “**Prepetition Obligations**” means all Obligations of the Borrowers to the Lender incurred prior to the Petition Date.

(rrr) “**Ryan’s**” shall have the meaning as defined in the preamble.

(sss) “**Subsidiary**” shall mean, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

(ttt) “**Tahoe Joe**” shall have the meaning as defined in the preamble.

(uuu) “**Tahoe Joe Pledge Agreement**” means that certain Pledge and Security Agreement dated as of the Effective Date, executed by Hometown Buffet in favor of Lender, as it may be amended, modified, supplemented, extended, or renewed from time to time.

(vvv) “**Tahoe Joe Pledged Collateral**” means Hometown Buffet’s ownership interests in Tahoe Joe, as more particularly described in the Tahoe Joe Pledge Agreement.

(www) “**Termination Declaration Date**” shall mean the day on which a Carve Out Trigger Notice is given by the Lender to the Borrowers with a copy to counsel to the Committee.

(xxx) “**UCC**” shall mean the Uniform Commercial Code as presently enacted in the State of Texas, and as amended from time to time.

ARTICLE II **Loan Advances.**

Section 2.01 Loans.

(a) Prior to the Effective Date, Lender funded \$200,000 to Fresh Acquisitions and \$200,000 to Tahoe Joe (collectively, the “**\$400,000 Funding**”), all \$400,000 of which remains outstanding as of the Effective Date. Lender has funded or agrees to fund to Borrowers an additional \$100,000, such that (after giving effect to the \$400,000 Funding) \$500,000 will be outstanding (the “**Prepetition Loan**”) pursuant to the provisions of this Section 2.01(a) and subject to the terms and conditions of this Agreement. The Prepetition Loan and Lender’s Liens arising thereunder shall be senior in priority and right of payment to (i) any Interim Loan and any Liens arising under any Interim Loan, and (ii) any Postpetition Loan and any Liens arising under any Postpetition Loans.

(b) With respect to the remaining \$3,000,000 of the Loan Amount, Lender shall advance all or any portion of such amount to the Borrowers as follows:

(i) In accordance with any Interim DIP Order, Lender shall advance to or on behalf of Borrowers an amount equal to \$1,000,000, or so much thereof as the Bankruptcy Court presiding over the Bankruptcy Case(s) may determine by and through any such Interim DIP Order to satisfy the criteria of Bankruptcy Rule 4001(c)(2) and as necessary to avoid immediate and irreparable harm to the estates of the Borrowers (the “**Interim Loan**”).

(ii) In accordance with the Final DIP Order, Lender shall advance to or on behalf of the Borrowers such remaining portion of the Loan Amount not previously advanced as the Prepetition Loan or the Interim Loan (collectively, the “**Postpetition Loan**”). Promptly following entry of the Final DIP Order and in accordance with the Final DIP Order, a portion of the Postpetition Loan shall be used to immediately repay (in part or in full) the Prepetition Loan together with additional sums for interest, fees, and attorney’s fees accrued on the Prepetition Loan (such repayment of the Prepetition Loan, the “**Prepetition Loan Payoff**”) in the amount permitted by the Final DIP Order to be used by Borrowers to effect the Prepetition Loan Payoff (such permitted amount, the “**Prepetition Loan Payoff Amount**”) (and such Prepetition Loan Payoff may, in Lender’s sole discretion, be effected by appropriate simultaneous book entries and not by actual exchanges of funds).

(c) (i) The amounts advanced or charged to Borrowers under Section 2.01(a) and Section 2.01(b) shall in no event exceed the aggregate sum of \$3,500,000.

(ii) Without the written consent of the Lender, Borrowers may re-borrow any portion of the Loan(s), including, without limitation, the Prepetition Loan Payoff Amount, that has been repaid.

(d) The proceeds of the Loan(s) shall be used solely for the following purposes, in each case in accordance with the Approved Budget: (i) provide working capital and for general corporate purposes of the Borrowers during the Bankruptcy Case(s); (ii) pay interest, fees, costs and expenses related to the Loan(s), this Agreement, the other Loan Documents, and the DIP Facility; (iii) pay the fees, costs and expenses of the estate professionals retained in the Bankruptcy Case(s); (iv) pay reasonable fees, costs and expenses of the Lender, including the reasonable fees and expenses of the Lender’s professionals, advisors, and consultants; (v) make all permitted payments of costs of administration of the Bankruptcy Case(s) as set forth in the Approved Budget and approved by the Bankruptcy Court; (vi) refinance the Prepetition Loan; and (vii) pay such prepetition expenses as are consented to by the Lender. No proceeds of the Loan(s) shall be used, directly or indirectly, to challenge, object to, contest or raise any defense to, the validity, security, perfection, priority, extent or enforceability of any amount due under or the liens or claims granted under or in connection with the Loan(s), other than amounts not to exceed \$25,000 in the aggregate incurred by any Committee in connection with an assessment of the extent and validity of the prepetition liens and claims granted to/held by the Lender under and pursuant to the Loan Documents.

(e) The outstanding principal balance of the Loans shall bear interest at the rates provided in the Note. The principal of and interest on the Loans shall be due and payable in accordance with the Note. Interest on the Loans shall be computed as provided in the Note.

Section 2.02 Conditions Precedent for Advances.

Lender's obligation to make any Advance at any time under this Agreement or any other Loan Document, shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Section 2.02, and Lender shall have no obligation to make any Advance if any condition precedent set forth in this Section 2.02 has not been fully satisfied. On and as of the date of any Advance:

(a) All representations and warranties set forth in this Agreement and in all other Loan Documents shall be true, complete and correct, with the same effect as if made and repeated on such date, and will remain true, complete and correct after the Advance;

(b) Borrowers shall be in full compliance with all of the covenants, agreements, obligations and undertakings required to be observed or performed by Borrowers under this Agreement and under the other Loan Documents, unless compliance thereof shall have been waived in writing by Lender;

(c) No Event of Default, and no event or condition which, with notice or the passage of time or both, would constitute an Event of Default has occurred and remains uncured to Lender's satisfaction, in Lender's sole and absolute discretion; and

(d) There shall have been no Material Adverse Change with respect to any Borrower and/or any of the Collateral, and none of the Collateral shall have suffered any significant damage by fire or other casualty not adequately covered by insurance, and no law, regulation, ordinance, moratorium, injunctive proceeding, shall be pending or threatened by any Governmental Authority if the result of such law, regulation, ordinance, moratorium, injunctive proceeding, restriction or like matter would have the effect, in Lender's reasonable judgment, of materially and adversely affecting the expected benefits to be gained by Borrowers in connection with the Collateral or by Lender in connection with its assisting Borrowers in financing the subject transactions for any reason.

(e) Borrowers shall have executed and delivered to Lender this Agreement and all other documents, agreements, instruments, and certificates as Lender, or its legal counsel, may reasonably require.

(f) Other than the Advance funded in connection with the Prepetition Loan, all orders entered by the Bankruptcy Court pertaining to cash management and adequate protection, and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance reasonably satisfactory to the Lender.

(g) As to any Advance of the Interim Loan, the Lender shall have been granted validly perfected Liens on the Collateral by the DIP Orders on the terms and conditions set forth therein, herein and in the other Loan Documents.

(h) As to any Advance of the Interim Loan, the Interim DIP Order shall have been entered by the Bankruptcy Court within seven (7) days following the commencement of the Bankruptcy Case(s) by Borrowers and such Interim DIP Order shall be in full force and effect and shall not (in whole or in part) have been temporarily, preliminarily, or permanently enjoined, reversed, modified, amended, stayed, vacated, appealed, or subject to a stay pending appeal, or otherwise challenged or subject to any challenge, absent the prior written consent of Lender.

(i) As to any Advance of the Postpetition Loan, (A) the Final DIP Order shall have been entered by the Bankruptcy Court within twenty-one (21) days following the commencement of the Bankruptcy Case(s) by the Borrowers, (B) the Final DIP Order shall provide for waivers of any surcharge against Lender or any of the Collateral and of any requirement that Lender marshal the Collateral, and (C) such Final DIP Order shall at all times be in full force and effect and shall not (in whole or in part) have been temporarily, preliminarily, or permanently enjoined, reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged or subject to any challenge, absent the prior written consent of Lender.

(j) Other than the Advance funded in connection with the Prepetition Loan, all DIP Orders, and any amendments thereto, shall provide that the Lender or its designee is acting and has acted in good faith and that the Lender or its designee is entitled to bid and credit bid in connection with any 363 Sale of any of the assets of any of the Borrowers the aggregate outstanding balances of the Prepetition Loan(s), the Interim Loan(s), and the Postpetition Loan(s), together with additional sums for interest, fees, and attorney's fees accrued thereon.

(k) No trustee, examiner or receiver shall have been appointed or designated with respect to any Borrower or their businesses, properties or assets, and no motion shall be pending seeking any such relief or seeking any other relief in the Bankruptcy Court to exercise control over any Collateral.

(l) The DIP Orders shall provide Lender with adequate protection with respect to the Prepetition Obligations, including replacement Liens securing the Prepetition Obligations and payments with respect to interest, fees and expenses, indemnification, and other reimbursement obligations, provided that Lender agrees that the receipt by Borrowers of the Prepetition Loan is not subject to the prior fulfillment of the condition set forth in this clause (l).

(m) Other than the Advance funded in connection with the Prepetition Loan, Lender shall have received and approved the Approved Budget.

(n) Other than the Advance funded in connection with the Prepetition Loan, the Borrowers shall be in compliance in all material respects with the DIP Orders and the Approved Budget.

(o) Borrowers must execute and/or deliver to Lender such other documents, instruments, and certificates as Lender, or its legal counsel, may reasonably require.

(p) All documentation provided or delivered to Lender shall at all times, unless otherwise specified herein, be in form and substance acceptable to Lender, in Lender's sole and absolute discretion.

(q) Lender shall have no obligation to make any Advance if any condition precedent set forth in this Section 2.02 has not been fully satisfied.

Section 2.03 Advance Request.

Advances may be requested by Borrowers by Borrower Representative providing a written notice to Lender (the "**Advance Request Notice**") requesting that Lender make such Advance to the applicable Borrower (the "**Advance Request**"). The Advance Request Notice shall specify the date on which Borrower Representative proposes that the Advance shall be effective (such date, or such later date as the conditions precedent to the Advance as required hereunder are satisfied, the "**Advance Date**"). On the Advance Date on which the Advance Request is effective, subject to the satisfaction of the terms and conditions set forth herein for Lender to make the Advance, including, without limitation the provisions set forth in Section 2.02, Lender shall make the Advance in accordance with the Advance Request Notice.

Notwithstanding the foregoing or anything herein to the contrary, Borrower Representative and Lender may, by written instrument or verbally, waive the requirement for a written Advance Request Notice, and, in such an event and subject to the satisfaction of the terms and conditions set forth herein for Lender to make the Advance, including, without limitation the provisions set forth in Section 2.02, Lender shall make the Advance to the applicable Borrower on a date mutually agreed upon between Lender and Borrower Representative, which date (or such later date as the conditions precedent to the Advance required under this Agreement are satisfied) shall be deemed to be the "**Advance Date**" for purposes of such Advance.

Section 2.04 Direct Disbursement and Application by Lender.

Either (i) upon the occurrence and during the continuance of an Event of Default, or (ii) with the prior written consent of Borrowers, which consent shall not be unreasonably withheld (each, a "**Direct Disbursement Condition**"), Lender shall have the right, but not the obligation, to the extent permitted by law, to disburse and apply the proceeds of any portion of an Advance to the satisfaction of any of Borrowers' obligations hereunder directly to any Person to whom payment is due from the Borrowers, including, without limitation, reasonable legal fees of Lender's attorneys which are payable by Borrowers. Any such portion of an Advance by Lender for such purpose shall be part of the Loan(s) and shall be secured by the Loan Documents. Borrowers hereby authorize Lender to hold, use, disburse, and apply the proceeds of the Loan(s) for the payment or performance of any obligation of Borrowers hereunder, including, without limitation, interest on the Loan(s), any Loan(s) fees owing to Lender, reasonable legal fees of Lender's attorneys which are payable by Borrowers, and such other sums as may be owing from time to time by Borrowers to Lender with respect to the Loan(s). Upon the occurrence of a Direct Disbursement Condition, no further direction or authorization from Borrowers shall be necessary

to warrant such direct Advances and all such Advances shall satisfy pro tanto the obligations of Lender hereunder and shall be secured by the Loan Documents as fully as if made directly to Borrowers. Notwithstanding the other provisions of this paragraph, nothing in this Agreement is intended to be for the benefit of, nor may be enforced by, nor should be relied upon by, any Person other than Borrowers.

Section 2.05 Advances Do Not Constitute A Waiver.

No Advance shall constitute a waiver of any of the conditions of Lender's obligations to make further Advances nor, in the event any Borrower is unable to satisfy any such condition, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default or any event which with notice and/or the passage of time could be an Event of Default. Lender at its option may waive any of the conditions in this ARTICLE II with respect to any Advance without waiving the right to require the same be satisfied or fulfilled for a subsequent Advance.

Section 2.06 Conditions Precedent for the Benefit of Lender.

All conditions precedent to the obligation of Lender to make an Advance are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lender will refuse to make an Advance in the absence of strict compliance with such conditions precedent. All requirements of this Agreement may be waived by Lender, in whole or in part, at any time.

Section 2.07 Mandatory Prepayments.

Subject to the terms and conditions of the DIP Orders, 100% of the net cash proceeds from any sale of assets of any Borrower not in the ordinary course of business in excess of \$100,000 shall be used to repay to Lender the outstanding balance of the Loan(s), including the outstanding principal balance and all accrued and unpaid interest.

ARTICLE III
Fees and Expenses.

Section 3.01 Reimbursement Costs.

Borrowers agree to immediately reimburse Lender for any expenses and costs Lender incurs in connection with the closing of the Loan(s), the making of any Advance, and the preparation of the Note, this Agreement, the Pledge Agreements and any agreement or instrument required by this Agreement. Costs and expenses include, but are not limited to, reasonable attorneys' fees and expenses, filing, recording and search fees, appraisal fees, title report fees and documentation fees.

Section 3.02 No Excess Fees.

Notwithstanding anything to the contrary in this ARTICLE III or in this Agreement, in no event shall any sum payable under this ARTICLE III or any of the Loan Documents (to the extent,

if any, constituting interest under applicable laws), together with all other amounts constituting interest under applicable laws and payable in connection with the Loan(s), exceed the Maximum Rate.

ARTICLE IV
Collateral.

Section 4.01 Grant of Security Interest.

As security for the payment and performance of all Obligations:

(a) Each Borrower, except Fresh Acquisitions and FMP Management, hereby grants to Lender a first priority continuing Lien on, security interest in, and right of set-off against all of each such Borrower's now owned or hereafter acquired assets, wherever located, and all proceeds thereof, including, without limitation, any of the following (collectively, the "**Buffets Collateral**"):

- (i) All cash and cash equivalents
- (ii) All accounts;
- (iii) All bank accounts (including deposit accounts and securities accounts);
- (iv) All inventory and equipment, wheresoever the same may be located;
- (v) All contract rights, investment property, chattel paper, electronic chattel paper and software, commercial tort claims, letter of credit rights, documents, documents of title, warehouse receipts, bills of lading, notes, notes receivable, instruments, intellectual property rights, general intangibles and payment intangibles;
- (vi) All deposit accounts and the cash therein now or hereafter; and
- (vii) Substitutions, accessions, additions, parts, accessories, attachments, replacements, proceeds and products of, for and to any and all of the foregoing, including, without limitation, any and all insurance and tort proceeds.

(b) Fresh Acquisitions hereby grants to Lender a continuing Lien on, security interest in and right of set-off against all of Fresh Acquisitions' now owned or hereafter required rights, title and interest in and to the intellectual property listed on Schedule 4.1(b) (collectively, the "**Fresh Acquisitions Collateral**," and collectively with the Buffets Collateral, the "**All Borrower Collateral**"). The prior lien of Arizona Bank & Trust against Fresh Acquisitions shall be a Permitted Lien.

(c) A reference to a type of collateral in this Section 4.01 shall not be limited by a separate reference to a more specific or narrower type of that collateral. All terms in this Section 4.01, to the extent defined in the UCC, shall have the meanings assigned to them in the

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UCC, as those meanings may be amended, revised or replaced from time to time. The terms herein which are defined in the UCC shall have, at all times, the broadest and most inclusive meanings possible.

(d) Lender's Lien on the All Borrower Collateral, if and to the extent not previously perfected, shall be perfected as of the date of entry of the Interim DIP Order, regardless of whether any pledge agreements, collateral assignments, control agreements, acknowledgements, financing statements, fixture filings, or other agreements or instruments have been executed, filed, or recorded and regardless of whether Lender has taken any action to obtain possession or control of any collateral. However, if required by Lender, Borrowers shall execute, file, or record any or all of the documents described in the preceding sentence and shall take any action required by Lender for Lender to obtain possession or control of any of the All Borrower Collateral.

(e) FMP Management is not granting a lien hereunder in any of its assets.

Section 4.02 Financing Statement Authorization.

Each Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any filing office any initial financing statements and amendments thereto that (a) describe the Collateral (i) for such Borrower (other than Fresh Acquisitions), as all assets of such Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC, (ii) as being of an equal or lesser scope or with greater detail, or (iii) for Fresh Acquisitions, which is consistent with Section 4.01(b), and (b) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment. Each Borrower also ratifies its authorization for Lender to file any initial financing statements or amendments thereto if filed prior to the date hereof. Lender shall file a termination of all UCC filings related to the Loan(s) upon full payment and satisfaction of the Loan(s) and all of the Obligations.

ARTICLE V

Representations and Warranties of Borrowers.

Section 5.01 Borrowers' Representations and Warranties.

Each Borrower hereby represents and warrants to Lender that the following are true and correct on the Effective Date and on each date that Borrowers request an Advance:

(a) Organization and Good Standing. Such Borrower (a) is a duly organized entity, validly existing and in good standing under the laws of the state of its formation; (b) has full power and authority to own its assets and conduct its business as now conducted or presently proposed to be conducted; (c) except as disclosed to Lender, has no Subsidiaries; (d) is duly qualified, registered and in good standing (and will remain so qualified, registered and in good standing) in every jurisdiction in which it is or shall be doing business or in which the failure to so qualify, register and remain in good standing would or could have an adverse effect on its business or properties, the Collateral or Lender.

(b) Authorization. The execution, delivery and performance of this Agreement and the other Loan Documents are within such Borrower's corporate powers, have been duly and validly authorized and are not in contravention of any applicable law or the terms of such Borrower's governing documents, or of any agreement to which such Borrower is a party or by which it or any of its properties is or may be bound. Upon execution and delivery hereof and thereof, this Agreement and all other Loan Documents will be valid and binding obligations of such Borrower enforceable against such Borrower in accordance with its and their terms, as applicable, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws at the time in effect affecting the rights of creditors generally.

(c) Notices; Consents. Such Borrower is not nor will it be required to give any notice to, or obtain any consent from, any Person or Governmental Authority in connection with the execution and delivery of this Agreement and the other Loan Documents or the consummation or performance of any of the contemplated transactions in connection therewith.

(d) Lawsuits. To such Borrower's knowledge and except as have been disclosed in writing to Lender, there is no lawsuit, proceeding, tax claim or other dispute pending or threatened against such Borrower which, if lost, would materially impair such Borrower's financial condition or ability to repay the Obligations.

(e) Tax Matters. All taxes due from such Borrower have been paid, except as have been disclosed in writing to Lender.

(f) No Event of Default. There is no event which is, or with notice or lapse of time or both would be, an Event of Default under this Agreement or any other Loan Document.

(g) Ownership of Property. Except for the Permitted Liens and the security interests granted to Lender hereby or by any of the other Loan Documents in favor of Lender, such Borrower is and, as to the Collateral created or acquired after the date hereof, shall be the sole and exclusive owner of every item of Collateral free from any Lien, claim, charge, security interest, mortgage, secondary financing or encumbrance and such Borrower shall defend the Collateral and all proceeds and products thereof against all claims and demands of all Persons (other than the holders of the Permitted Liens) at any time claiming the same or any interest therein adverse to the interests of Lender.

(h) Accuracy of Disclosure. Neither this Agreement, nor any document, certificate or statement furnished (or to be furnished) to Lender by or on behalf of such Borrower pursuant to or in connection with this Agreement or the other Loan Documents contains (or will contain) any untrue statement of a material fact or omits (or will omit) to state a material fact necessary to make the statements contained herein and therein not misleading. There is no fact known to such Borrower that materially and adversely affects, or will materially and adversely affect, the assets, business, operations, or condition of such Borrower that has not been specifically set forth in this Agreement or otherwise disclosed by such Borrower to Lender.

ARTICLE VI
Covenants.

Section 6.01 Insurance.

Each Borrower shall (i) maintain insurance (written by insurance companies acceptable to Lender) in form, amount, and substance acceptable to Lender, including, without limitation, extended multi-peril hazard, worker's compensation, general liability insurance and insurance upon such Borrower's property, all facets of their respective businesses and all the Collateral; (ii) furnish to Lender, upon request, a statement of the insurance coverage; (iii) use its best efforts to protect and preserve the Collateral and to obtain other or additional insurance promptly, upon request of Lender, to the extent that such insurance may be available; and (iv) cause Lender to be named as an additional insured and a lender loss payee as to all insurance covering Collateral, pursuant to endorsements in form and substance acceptable to Lender. All insurance proceeds, payments and other amounts paid to or received by Lender under or in connection with any and all such policies may be retained by Lender in whole or part as additional Collateral for the Obligations and/or, at Lender's option, be applied in whole or part to the payment of such of the Obligations as shall then be due and/or, at Lender's option, be held (in a remittance or other special account in which no Borrower or any guarantor shall have an interest) for application to Obligations not yet due and be applied to such Obligations as and when the same shall come due, in such order as Lender may determine in its sole but reasonable discretion. All insurance policies shall provide for a minimum of thirty (30) days' written cancellation notice to Lender and, at Lender's request, all such policies shall be delivered to and held by Lender. In the event of failure to provide and maintain insurance required by this Agreement, Lender may, at its option, provide such insurance and charge the costs and expenses incurred to Borrowers' Loan Account. Lender is hereby made attorney-in-fact for each Borrower to (i) obtain, adjust and settle, in its sole and absolute discretion, such insurance, and (ii) endorse any drafts or checks issued in connection with such insurance.

Section 6.02 Intellectual Property.

Prior to the time any Collateral is copyrighted, licensed, patented or trademarked or incorporates or is subjected, in whole or in part, to any copyright, license, patent or trademark, each Borrower shall notify Lender and shall take (or cause to be taken) all actions necessary to preserve the perfection and priority of Lender's security interest in such Collateral.

Section 6.03 Future Subsidiaries.

No Borrower shall form or acquire any Subsidiaries without Lender's prior written consent. Any Subsidiary of any Borrower, including one that any Borrower forms or acquires after the date of this Agreement, shall agree to accept and be bound by all of the terms of this Agreement, the other Loan Documents and any other agreement among Borrowers and Lender and shall execute and deliver all agreements and instruments which Lender may require to evidence the same.

Section 6.04 Other Liens.

Other than the Liens, security interests, and other rights in favor of Lender securing repayment of the Loan(s), no Borrower shall create, assume or allow any security interest or Lien (including judicial Liens) on any Collateral that any Borrower now or later owns (including any proceeds of the Collateral), except the following (collectively, the "**Permitted Liens**"):

- (a) The Carve Out;
- (b) Liens as set forth on Exhibit A attached hereto and incorporated herein as if set forth in full;
- (c) Liens for taxes, assessments or similar charges incurred in the ordinary course of business that are not yet past due or which are being diligently contested by any Borrower in good faith by appropriate proceedings, so long as the enforcement of such Liens has been stayed and such Liens do not individually or in the aggregate materially impair the value or use of the property subject thereto or the operation of any Borrower's business;
- (d) Pledges or deposits made in the ordinary course of business (i) to secure payment of workers' compensation, or to participate in any fund in connection with workers' compensation, unemployment insurance, old-age pensions or other social security programs, (ii) to secure performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or (iii) to secure statutory obligations, surety or appeal bonds, or indemnity, performance, or other similar bonds, in each case payment with respect to which is not past due or is being diligently contested by any Borrower in good faith by appropriate proceedings and against which adequate reserves satisfactory to Lender have been established, so long as the enforcement of such Lien has been stayed and such Lien does not individually or in the aggregate with other such Liens materially impair the value or use of the property subject thereto or the operation of any Borrower's business;
- (e) Liens of landlords, mechanics, materialmen, warehousemen, carriers or other like Liens arising by operation of law and not agreement of any Borrower, securing obligations incurred in the ordinary course of business that are not yet past due or which are being diligently contested by any Borrower in good faith by appropriate proceedings and against which adequate reserves or adequate bonds satisfactory to Lender have been established or obtained, so long as the enforcement of such Lien has been stayed and such Liens do not individually or in the aggregate materially impair the value or use of the property subject thereto or the operation of any Borrower's business; and

(f) Encumbrances consisting of zoning restrictions, easements or other restrictions on the use of real property which do not individually or in the aggregate materially impair or unreasonably restrict the use of such property, so long as none is violated in any material respect by existing or proposed structures or land use, as determined by Lender, in its sole discretion.

Notwithstanding anything to the contrary herein, the designation of a prior Lien as a “Permitted Lien” shall not operate in any way to preclude or estop the Borrowers or any other party in interest in the Bankruptcy Case(s) to object to the claim or Lien held by any entity designated as holding a “Permitted Lien”.

Section 6.05 Other Debts.

No Borrower shall incur or have outstanding any direct or contingent liabilities or capital, finance and/or operating lease obligations (other than those to Lender), or become liable for the liabilities of others, without Lender’s prior written consent. Notwithstanding the preceding sentence, Borrowers may:

- (a) Acquire goods, supplies or merchandise on normal trade credit in amounts not to exceed \$250,000.00 in the aggregate at any one time outstanding;
- (b) Endorse negotiable instruments received in the usual course of business;
- (c) Obtain surety bonds in the usual course of business;
- (d) Retain their current capital, finance and/or operating lease obligations and contractual obligations;
- (e) Enter into leases of personal property which are not “capital leases” under GAAP and for which the lessor’s remedy for a breach by the lessee thereunder is limited to recovery of the item leased; and
- (f) Liabilities incurred in connection with the Permitted Liens.

Section 6.06 Investments.

Except as provided in the Approved Budget or as permitted in Section 6.09(g), no Borrower shall make any investment in any Person or make any capital contributions or other transfers of assets to any Person, without Lender’s prior written consent.

Section 6.07 Loans.

Except as provided in the Approved Budget, no Borrower shall be permitted to make any loans, advances or other extensions of credit to any Person, including, without limitation, shareholders, directors, members, former members, officers, and employees of any Borrower or any of its Affiliates or Subsidiaries, without Lender’s prior written consent.

Section 6.08 Budget.

With respect to operating disbursements only, no Borrower shall permit any actual expenditure to exceed the applicable line item in the Approved Budget by more than fifteen percent (15%).

Section 6.09 Additional Negative Covenants.

No Borrower shall, without Lender's written consent, which consent shall be in Lender's sole and absolute, discretion:

(a) Enter into any consolidation, merger or other combination in which a Borrower is not the survivor, or become a partner in a partnership, a member of a joint venture or a member of a limited liability company (except the existing partnerships, joint ventures and limited liability companies of which a Borrower has previously informed Lender in writing), or transfer control or any ownership interests of a Borrower;

(b) Acquire or purchase a business or its assets other than in the ordinary course of business as presently conducted;

(c) Engage in any business activities substantially different from any Borrower's present business;

(d) Liquidate or dissolve such Borrower's business;

(e) Incur any indebtedness other than (i) as permitted by Section 6.05 of this Agreement and (ii) trade payables incurred in the ordinary course of such Borrower's business as presently conducted;

(f) Make any change in senior management of such Borrower; or

(g) Sell, transfer, lease, convey, or otherwise dispose of any assets of any Borrower other than (i) in connection with the ordinary course of such Borrower's business as presently conducted, (ii) any transfer, conveyance, or other disposition from one Borrower to another Borrower, and (iii) as otherwise ordered by the Bankruptcy Court.

Section 6.10 Pledge of Ownership Interests.

No Borrower and no officers or directors of any Borrower may authorize or otherwise allow any Person to pledge, mortgage, subject to a security interest or Lien or otherwise encumber all or any portion of such Person's ownership interest in a Borrower, except Liens in favor of Lender and holders of Permitted Liens.

Section 6.11 No Negative Pledge.

No Borrower shall enter into or permit to exist any arrangement or agreement, other than pursuant to this Agreement or any other Loan Document, which directly or indirectly prohibits any Borrower from creating or incurring any Lien on any of its assets.

Section 6.12 Payments to Affiliates.

Except as provided in the Approved Budget, no Borrower shall be permitted to make, extend or allow to remain outstanding any loans or advances to or investments in any Borrower's Affiliates, parent, Subsidiaries, owners, directors, employees, officers, or other related Persons or entities without the prior written consent of Lender. No Borrower shall make any Distribution of profits to its owners or members if an Event of Default has occurred and is continuing.

Section 6.13 Sale of Collateral.

Except in connection with the ordinary course of a Borrower's business as presently conducted, as permitted in Section 6.09(g), or pursuant to order of the Bankruptcy Court, no Borrower shall (or shall allow or permit any other Person to) sell, transfer, lease, convey or otherwise dispose of the Collateral, any portion thereof or any interest therein (or any of the proceeds thereof, including, without limitation, money, checks, money orders, drafts, notes, instruments, documents, chattel paper, Accounts, returns or repossessions), without Lender's prior written consent. Borrowers shall keep the Collateral in good condition.

Section 6.14 Lender's Costs and Fees.

Borrowers shall pay all reasonable costs necessary to obtain, preserve, perfect, defend and enforce Lender's security interest in the Collateral, collect the Obligations, and preserve, defend, enforce and collect the Collateral, including but not limited to taxes, assessments, insurance premiums, repairs, reasonable attorney fees and legal expenses, rent, storage costs and expenses of sale. Whether Collateral is or is not in Lender's possession, and without any obligation to do so and without waiving any Borrower's default for failure to make any such payment, Lender at its option may pay any such costs and expenses, discharge encumbrances on the Collateral, and pay for insurance of the Collateral, and such payment shall be a part of the Obligations. Each Borrower hereby agrees to reimburse Lender on demand for any reasonable costs so incurred.

Section 6.15 Additional Documents.

Borrowers shall execute and deliver to Lender, from time to time as requested by Lender, such other documents as shall be necessary to provide the rights and remedies to Lender granted or provided for by the Loan Documents. Borrowers shall sign any papers furnished by Lender which are necessary in the sole judgment of Lender to obtain, maintain and perfect the security interest in the Collateral and to enable Lender to comply with the Federal Assignment of Claims Act or any other applicable law in order to obtain or perfect Lender's interest in the Collateral or to obtain proceeds of the Collateral.

Section 6.16 Change of Name.

Each Borrower will promptly advise Lender in writing at least sixty (60) days prior to any change in such Borrower's name.

Section 6.17 Compliance with Governmental Requirements.

Each Borrower shall timely comply with all Governmental Requirements and shall take all actions necessary to correct any conditions existing with respect to the Collateral that are in violation of any Governmental Requirements and promptly deliver to Lender evidence of such compliance or correction, as applicable.

Section 6.18 Survival of Covenants.

All requirements, covenants, conditions, and agreements under this ARTICLE VI shall survive and continue to exist so long as any debt, obligation, and/or liability exist and remains outstanding under the Note and/or the Obligations.

ARTICLE VII
Default.

Section 7.01 Events of Default.

Each of the events set forth below shall constitute an Event of Default hereunder:

(a) The following, whether occurring before or after the Petition Date:

(i) Default in the timely payment of any part of the Obligations, including principal, interest, fees and other amounts thereon or in connection therewith, or of any other indebtedness of Borrowers to Lender;

(ii) Default in the timely performance or observance of any of the terms, conditions, covenants, or agreements set forth in this Agreement, in the other Loan Documents, or in any other agreement between or among Borrowers and Lender other than those specified in subsection (i) immediately preceding, if such default continues for thirty (30) days after Borrowers are notified thereof by Lender in writing (provided, however, that if such default cannot reasonably be cured within said time period, Borrowers shall be provided an additional reasonable period of time, but no longer than sixty (60) days, within which to cure such default provided that a Borrower so notifies Lender in writing, commences cure of the default within said 30-day time period and thereafter diligently and in good faith continues with said cure);

(iii) Default in the timely performance or observance of the terms, conditions or covenants in the Buffet Pledge Agreement beyond all applicable notice and cure periods, if any;

(iv) Default in the timely performance or observance of the terms, conditions or covenants in the Tahoe Joe Pledge Agreement beyond all applicable notice and cure periods, if any;

(v) Any warranty, representation or statement made or furnished to Lender herein, heretofore, or hereafter proves to have been false in any material respect when made, deemed made or furnished;

(vi) The occurrence of a Material Adverse Change;

(vii) The sale, loss, theft, destruction, encumbrance or transfer of any Collateral in violation hereof, or material damage to any Collateral, or an assignment of any part of the Collateral for the benefit of creditors;

(viii) The dissolution, merger or consolidation, or termination of existence of any Borrower or any Person liable on the Obligations; and

(ix) At any time after the execution and delivery thereof, (i) any Loan Document or a portion thereof, for any reason other than the satisfaction in full of the Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void for any reason other than the failure of Lender to take any action within its control, (ii) Lender shall not have or shall cease to have valid and perfected Lien(s) in any Collateral purported to be covered by the Loan Documents and in such priority Lender is purported to have under the Loan Documents, or (iii) any Borrower shall contest the validity or enforceability of any Loan Document or any provision thereof in writing or deny in writing that it has any further liability under any Loan Document or any provision thereof to which it is a party; and

(b) Before the Petition Date and other than with respect to the commencement of the Bankruptcy Case(s) and except as contemplated by this Agreement, no Borrower shall, without Lender's prior written consent, apply for, consent to or permit the appointment of a receiver, custodian, trustee or liquidator for any of its property or assets; or shall fail to or admit in writing its inability to pay its debts as they mature; or shall make an assignment for the benefit of creditors generally or shall be adjudicated bankrupt or insolvent; or shall give notice to any governmental body of insolvency or pending insolvency or suspension of operations; or shall file, other than the Bankruptcy Case(s), a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, rearrangement, dissolution or liquidation law or statute; or shall file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or statute; or shall be liquidated, dissolved, terminated or merged or shall effect a plan or other arrangement with creditors; or a trustee, receiver or custodian shall be appointed for it or for any of its property or assets and shall not be discharged within sixty (60) days after the date of his appointment; or a petition in involuntary bankruptcy or similar proceedings is filed against it and is not dismissed within sixty (60) days after the date of its filing, provided, however, that such cure opportunity will be terminated upon the entry of an order for relief in any bankruptcy or similar proceeding arising from such a petition; and

(c) After the Petition Date and except as contemplated by this Agreement, no Borrower shall, without Lender's prior written consent, apply for, consent to or permit the appointment of a trustee, examiner with expanded powers, officer, or custodian.

Section 7.02 Remedies of Lender Upon Default.

Upon the occurrence and during the continuance of an Event of Default, any sum or amount which becomes owing by any Borrower to Lender hereunder shall bear interest at the Default Rate. In addition, upon the occurrence and during the continuance of an Event of Default, Lender, without notice or demand, except as may be required under the UCC, may declare the Obligations in whole or part immediately due and payable and may enforce payment of the same and exercise any rights under the UCC, rights and remedies of Lender under this Agreement or any other Loan Document, or otherwise. In addition to, and without limiting the foregoing, subject to any authorization from the Bankruptcy Court as may be required, Lender shall have the right to sell or otherwise dispose of all or any part of the Collateral, in the name of Borrowers or in the name of Lender, or in the name of such party as Lender may designate, either at public or private sale or at any broker's board, in lots or in bulk, for cash or for credit, with or without representations or warranties, and upon such other terms and conditions as Lender in its sole discretion may deem advisable, and Lender shall have the right to purchase Collateral at any such sale. The proceeds of any disposition after default available to satisfy the Obligations shall be applied to the Obligations in such order and in such manner as Lender in its sole and absolute discretion shall decide. Lender's resort to any remedy provided hereunder or provided by the UCC or by any other applicable law shall not prevent Lender from pursuing or obtaining any other appropriate remedy or remedies.

Section 7.03 Carve Out Reserve.

On the Termination Declaration Date, the Lender shall advance under the DIP Facility, or otherwise permit the use of cash Collateral to fund, the agreed professional fee line item in the Approved Budget (the "**Carve Out Reserve**"). The Borrowers shall deposit and hold the Carve Out Reserve in a segregated account in trust to pay Allowed Professional Fees. Lender shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Borrowers until the Carve Out Reserve has been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserve, with any excess paid to the Lender for application in accordance with the Loan Documents. For the avoidance of doubt and notwithstanding anything to the contrary in the DIP Orders or in any Loan Document, the Carve Out shall be senior to all Liens and claims securing the Loans, any Liens or replacement Liens granted to Lender for adequate protection, or any superpriority claims or adequate protection superpriority claims granted to Lender securing the Obligations.

Section 7.04 Payment of Carve Out On or After the Termination Declaration Date.

Any payment or reimbursement made on or after the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the Obligations secured by the Collateral and shall be otherwise entitled to the protections granted under the DIP Orders, the Loan Documents, the Bankruptcy Code, and applicable law.

Section 7.05 Prohibition on use of Carve Out.

Notwithstanding the provisions of Section 7.03 and Section 7.04, the Carve Out shall not include, apply to, or be available for any fees or expenses incurred by any party in connection with (i) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation (A) against the Lender or (B) challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim, or offset to, the obligations and the Liens and security interests granted under the Loan Documents (prepetition or postpetition), including, in each case, without limitation, for Lender liability or pursuant to Bankruptcy Code section 105, 510, 544, 547, 548, 549, 550, or 552, applicable non-bankruptcy law or otherwise; (ii) attempts to modify any of the rights granted to the Lender; (iii) attempts to prevent, hinder, or otherwise delay the Lender's assertion, enforcement, or realization upon any Collateral in accordance with this Agreement, the other Loan Documents, and the DIP Orders; (iv) paying any amount on account of any claims arising before the commencement of the Bankruptcy Case(s) unless such payments are provided for in the Approved Budget and approved by an order of the Bankruptcy Court; or (v) any direct or indirect objection or opposition to, or any other effort to impede or compromise in any way, any credit bid made by the Lender to the extent such bid is not consistent with the DIP Orders; *provided* that no more than an aggregate of \$25,000.00 of the Loan Amount, the Collateral, proceeds of the foregoing, and the Carve Out may be used by any Committee to investigate, but not prosecute any claims and defenses.

ARTICLE VIII
Term of Agreement.

This Agreement shall be effective on the Effective Date. Upon payment in full of all of Borrowers' indebtedness to Lender under the Note and all other Obligations secured hereby, this Agreement shall automatically terminate without the need for any further action or notice. Upon such termination, Lender shall execute any and all releases or termination statements as may be necessary to release and terminate any UCC Financing Statements filed or recorded to perfect Lender's security interest in the Collateral.

ARTICLE IX
Miscellaneous.

Section 9.01 Appointment of Borrower Representative.

Each Borrower hereby designates Tahoe Joe, acting by and through the Chief Restructuring Officer of Tahoe Joe, as Borrower Representative hereunder to act on its behalf for the purposes of issuing Advance Request Notices, giving instructions with respect to the disbursement of the proceeds of the Loan(s), including, without limitation, instructions relating to which Borrowers shall be distributed the proceeds of the Loan(s) (or any portion thereof), giving and receiving all other notices and consents hereunder or under any of the other Loan Documents, executing Loan Documents on its behalf and taking all other actions (including in respect of compliance with covenants and amendments to the Loan Documents) on behalf of any Borrower under the Loan Documents. Tahoe Joe hereby accepts such appointment as Borrower Representative. Lender may regard any notice or other communication pursuant to any Loan Document from Borrower Representative as a notice or communication from every Borrower and may give any notice or

communication required or permitted to be given to any Borrower hereunder to Borrower Representative on behalf of such Borrower. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower. Each Borrower hereby jointly and severally agrees to indemnify Lender and hold Lender harmless against any and all liability, expense, loss or claim of damage or injury, made against Lender by any Borrower or by any Person whosoever, arising from or incurred by reason of Lender's relying on any instructions of the Borrower Representative.

Section 9.02 Expenses.

Each Borrower hereby agrees to pay on demand: (a) all reasonable costs and expenses of Lender in connection with the preparation, negotiation, execution, and delivery of this Agreement and the other Loan Documents and any and all amendments, modifications, renewals, extensions, and supplements thereof and thereto, including, without limitation, the reasonable fees and expenses of legal counsel, advisors, consultants, and auditors for Lender; (b) all reasonable costs and expenses of Lender in connection with any Event of Default and the enforcement of this Agreement or any other Loan Document, including, without limitation, the fees and expenses of legal counsel, advisors, consultants, and auditors for Lender; (c) all transfer, stamp, documentary, or other similar taxes, assessments, or charges levied by any Governmental Authority in respect of this Agreement or any of the other Loan Documents; (d) all reasonable costs, expenses, assessments, and other charges incurred in connection with any filing, registration, recording, or perfection of any Lien contemplated by this Agreement or any other Loan Document; and (e) all other reasonable costs and expenses incurred by Lender in connection with this Agreement or any other Loan Document, any litigation, dispute, suit, proceeding or action, the enforcement of its rights and remedies, and the protection of its interests in bankruptcy, insolvency or other legal proceedings, including, without limitation, all costs, expenses, and other charges (including Lender's internal charges) incurred in connection with evaluating, observing, collecting, examining, auditing, appraising, selling, liquidating, or otherwise disposing of the Collateral or other assets of any Borrower.

Section 9.03 INDEMNIFICATION.

EACH BORROWER SHALL INDEMNIFY LENDER AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, AND AGENTS FROM, AND DEFEND AND HOLD EACH OF THEM HARMLESS AGAINST, ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, CHARGES AND EXPENSES (INCLUDING ATTORNEYS' FEES) (COLLECTIVELY, "CLAIMS") TO WHICH ANY OF THEM MAY BECOME SUBJECT WHICH DIRECTLY OR INDIRECTLY ARISE FROM OR RELATE TO (A) THE NEGOTIATION, EXECUTION, DELIVERY, PERFORMANCE, ADMINISTRATION, OR ENFORCEMENT OF THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, (B) ANY OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS, (C) ANY BREACH BY ANY BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, OR OTHER AGREEMENT CONTAINED IN ANY OF THE

LOAN DOCUMENTS, (D) ANY AND ALL TAXES, LEVIES, DEDUCTIONS, OR CHARGES IMPOSED ON LENDER, OR (E) ANY INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY THREATENED INVESTIGATION, LITIGATION, OR OTHER PROCEEDING, RELATING TO ANY OF THE FOREGOING. WITHOUT LIMITING ANY PROVISION OF THIS AGREEMENT OR OF ANY OTHER LOAN DOCUMENT, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT EACH PERSON TO BE INDEMNIFIED UNDER THIS SECTION SHALL BE INDEMNIFIED FROM, AND DEFENDED AND HELD HARMLESS AGAINST ANY AND ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, PENALTIES, JUDGMENTS, DISBURSEMENTS, COSTS, CHARGES AND EXPENSES (INCLUDING ATTORNEYS' FEES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH PERSON TO BE INDEMNIFIED. NOTWITHSTANDING THE FOREGOING, EACH BORROWER'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION SHALL NOT APPLY TO THE EXTENT THAT THE CLAIMS ARISE AS A RESULT OF THE BAD FAITH, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PERSON.

Section 9.04 Limitation of Liability.

None of Lender, any Borrower nor any Affiliate, officer, director, employee, attorney, or agent of such Person shall have any liability with respect to, and each party to this Agreement hereby waives, releases, and agrees not to sue any other party to this Agreement upon, any claim for any special, indirect, incidental, exemplary, punitive, or consequential damages suffered or incurred by such Person in connection with, arising out of, or in any way related to, this Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

Section 9.05 No Duty.

All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Lender shall have the right to act exclusively in the interest of Lender and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to any Borrower or any of any Borrower's equity holders, Affiliates, officers, employees, attorneys, agents, or any other Person.

Section 9.06 Lender Not Fiduciary.

The relationship between or among Borrowers and Lender, in such capacity, is solely that of debtor and creditor, and Lender has, by virtue of such relationship and this Agreement, no fiduciary or other special relationship with any Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between or among Borrowers and Lender under this Agreement to be other than that of debtor and creditor.

Section 9.07 Intentionally reserved.

Section 9.08 Waivers by Borrowers.

Each Borrower hereby waives presentment, demand, notice of dishonor, notice of protest, notice of nonpayment and notice of the intention to accelerate and protest; waives notice of the amount of the Obligations outstanding at any time, notice of any change in financial condition of any Person liable for the Obligations or any part thereof, and all other notices respecting the Obligations; and agrees that maturity of the Obligations and any part thereof may be accelerated one or more times by Lender in its sole and absolute discretion in accordance with the terms and conditions of this Agreement.

Section 9.09 Waiver.

Lender's failure or delay in exercising any right, power or privilege under this Agreement and/or any other Loan Document shall not preclude its exercise of any other or further right, power or privilege under this Agreement and/or any other Loan Document. Lender's waiver of any right, power, privilege or default under this Agreement and/or any other Loan Document shall neither constitute a waiver of any right, power, privilege or default, nor shall it constitute a waiver of any future default of the same or of any other term of this Agreement or any other Loan Document. All rights and remedies in this Agreement and the other Loan Documents are cumulative and not exclusive of any other legal rights of remedies. No waiver of any Borrower's breach of any term or condition of this Agreement or any other Loan Document shall be effective unless in writing signed by a duly authorized representative of Lender. Lender's acceptance of any partial payment on the Loan(s) or Obligations shall not constitute a waiver of any right, power, privilege or default, nor shall it constitute a waiver of any future default of the same or of any other term of this Agreement or any other Loan Document.

Section 9.10 Setoff.

In addition to, and without limitation of, any rights of Lender under applicable law, if an Event of Default occurs and is continuing, then any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other indebtedness at any time held or owing by Lender or any Affiliate of Lender to or for the credit or account of Borrowers may be offset and applied toward the payment of the Obligations, whether or not the Obligations, or any part thereof, shall then be due.

Section 9.11 Power of Attorney.

Each Borrower hereby appoints Lender as its attorney-in-fact with full power in its name and behalf to do every act, upon the occurrence and during the continuance of an Event of Default, which it is obligated to do or may be required to do hereunder or in any other Loan Document including, without limitation, (a) to receive cash and to receive and to endorse the name of such Borrower on all checks, drafts, money orders, or other instruments for the payment of monies that are payable to such Borrower and constitute collections of the Collateral, (b) to execute in the name of such Borrower schedules, assignments, documents, financing statements, amendments of financing statements, and other papers reasonably deemed necessary or appropriate by Lender to perfect, preserve, or enforce Lender's security interests in the Collateral, (c) to exercise all rights of such Borrower in the Collateral, (d) to make withdrawals from and to close deposit accounts and other accounts with any financial institution into which proceeds may have been deposited and to apply funds so withdrawn as provided herein, (e) to receive, open, and read mail addressed

to such Borrower, and (f) to prepare, adjust, execute, deliver, and receive payment under insurance claims and to collect and receive payment of and endorse any instrument in payment of loss or return premiums on any other insurance refund or return and to apply such amounts as received by Lender, at Lender's sole and absolute discretion, toward repayment of the Obligations or replacement of the Collateral. **THE POWER OF ATTORNEY HEREIN CONFERRED IS GRANTED FOR VALUABLE CONSIDERATION, IS COUPLED WITH AN INTEREST, AND IS IRREVOCABLE SO LONG AS ANY PART OF THE OBLIGATIONS REMAINS OUTSTANDING.**

Section 9.12 Other Parties and Other Collateral.

No renewal or extension of or any other indulgence with respect to the Obligations or any part thereof, no release of any security, no release of any Person (including any maker, indorser, guarantor or surety) liable on the Obligations, no delay in enforcement of payment, and no delay or omission or lack of diligence or care in exercising any right or power with respect to the Obligations or any security therefor or guaranty thereof or under this Agreement or any other Loan Document shall in any manner impair or affect the rights of Lender under applicable law, under this Agreement, or under any other agreement pertaining to the Collateral. Lender need not file suit or assert a claim for personal judgment against any Person for any part of the Obligations or seek to realize upon any other security for the Obligations, before foreclosing upon the Collateral for the purpose of paying the Obligations.

Section 9.13 Governing Law.

This Agreement and the other Loan Documents shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles. To the extent that Lender has greater rights or remedies under federal law, whether as a national bank or otherwise, this paragraph shall not be deemed to deprive Lender of such rights and remedies as may be available under federal law.

Section 9.14 Usury Savings Clause.

It is the intention of the parties to comply with applicable usury laws. The parties agree that the total amount of interest contracted for, charged, collected or received by Lender under this Agreement shall not exceed the Maximum Rate. To the extent, if any, that Chapter 303 of the Texas Finance Code (as amended from time to time, the "**Texas Finance Code**") is relevant to Lender for purposes of determining the Maximum Rate, the parties elect to determine the Maximum Rate under the Texas Finance Code pursuant to the "weekly ceiling" from time to time in effect, as referred to and defined in § 303.001-303.016 of the Texas Finance Code; subject, however, to any right Lender subsequently may have under applicable law to change the method of determining the Maximum Rate. Notwithstanding any contrary provisions contained herein, (a) the Maximum Rate shall be calculated on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be; (b) in determining whether the interest hereunder exceeds interest at the Maximum Rate, the total amount of interest shall be spread throughout the entire term of this Agreement until its payment in full; (c) if at any time the interest rate chargeable under this Agreement would exceed the Maximum Rate, thereby causing the interest payable under this Agreement to be limited to the Maximum Rate, then any subsequent reductions in the interest

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rate(s) shall not reduce the rate of interest charged under this Agreement below the Maximum Rate until the total amount of interest accrued from and after the date of this Agreement equals the amount of interest which would have accrued if the interest rate(s) had at all times been in effect; (d) if Lender ever charges or receives anything of value which is deemed to be interest under applicable Texas law, and if the occurrence of any event, including acceleration of maturity of the Obligations, should cause such interest to exceed the maximum lawful amount, any amount which exceeds interest at the Maximum Rate shall be applied to the reduction of the unpaid principal balance under this Agreement or any other indebtedness owed to Lender by Borrowers, and if this Agreement and such other indebtedness are paid in full, any remaining excess shall be paid to Borrowers; and (e) Chapter 346 of the Texas Finance Code shall not be applicable to this Agreement or the indebtedness outstanding hereunder.

Section 9.15 Venue.

ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE BROUGHT IN THE COURTS OF THE STATE OF TEXAS LOCATED IN DALLAS COUNTY, TEXAS OR THE FEDERAL COURTS FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION. EACH BORROWER IRREVOCABLY SUBMITS AND AGREES TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS FOR THE RESOLUTION OF ALL CLAIMS, CONTROVERSIES, DISPUTES AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS AND EXPRESSLY WAIVES ALL OBJECTIONS IT NOW HAS OR MAY HAVE TO VENUE, WHETHER BASED ON INCONVENIENCE OR ANY OTHER REASON.

Section 9.16 Waiver of Jury Trial.

ALL PARTIES HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, THE NOTE, AND/OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY ALL PARTIES AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY ALL PARTIES.

Section 9.17 Successors and Assigns.

This Agreement is binding upon and shall inure to the benefit of Borrowers and Lender and their legal representatives, assigns and successors. Notwithstanding anything herein to the contrary, Lender may sell, assign or transfer all or any portion of its right, title or interest in the Loan(s) and/or the Loan Documents to any Person without the prior written consent of Borrowers.

Section 9.18 Notice.

All notices pursuant to any provisions of this Agreement or of the other Loan Documents which require the giving of notice as a condition to creating or effectuating an obligation of any Borrower to Lender or a right on the part of Lender to exercise rights or remedies against any Borrower or any Collateral, and any notice by any Borrower to Lender to the effect that Lender has not fulfilled one or more of any obligation to any Borrower under this Agreement or under any other Loan Document, must be in writing. Such notice shall be given in writing by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address shown below, or to such different address as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service, one (1) day after delivery to the courier providing such delivery service, in the case of mail, three (3) days after being deposited in the mail, or in the case of facsimile, upon receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least thirty (30) days written notice thereof, any Borrower or Lender shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

If to Lender:

VITANOVA BRANDS, LLC
2338 N. Loop 1604 W., Suite 350
San Antonio, Texas 78248
Attention: Jason Kemp

with a copy to:

Carrington, Coleman, Sloman & Blumenthal, LLP
901 Main Street, Suite 5500
Dallas, Texas 75201
Attention: J. Michael Sutherland

If to Borrowers:

BUFFETS, LLC
HOMETOWN BUFFET, INC.
OCB RESTAURANT COMPANY, LLC
OCB PURCHASING CO.
RYAN'S RESTAURANT GROUP, LLC
FIRE MOUNTAIN RESTAURANTS, LLC
TAHOE JOE'S, INC.
FMP-OVATION PAYROLL, LLC
ALAMO BUFFETS PAYROLL, LLC
ALAMO OVATION, LLC
FRESH ACQUISITIONS, LLC
ALAMO FRESH PAYROLL, LLC
FMP-FRESH PAYROLL, LLC
FOOD MANAGEMENT PARTNERS, INC.
FMP SA MANAGEMENT GROUP, LLC
2338 N. Loop 1604 W., Suite 350
San Antonio, Texas 78248
Attention: Mark Shapiro

with a copy to:

Gray Reed & McGraw
1601 Elm St., Suite 4600
Dallas, Texas 75201
Attention: Jason S. Brookner and Amber M. Carson

Section 9.19 Enforceability.

Any provision of this Agreement that may prove unenforceable shall not affect the validity of any other provision of this Agreement.

Section 9.20 Independence of Covenants.

All terms, conditions, covenants, or agreements in this Agreement and the other Loan Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such terms, conditions, covenants, or agreements, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another term, condition, covenant, or agreement shall not avoid the occurrence of an Event of Default if such action is taken or such condition exists.

Section 9.21 Gender and Number.

Where appropriate, the use of one gender shall be construed to include the others or any of them; and the singular number shall be construed to include the plural, and vice versa.

Section 9.22 Modifications.

Any modification, amendment, or addition to any Loan Document must be in writing and signed by a duly authorized representative of each party thereto.

Section 9.23 FINAL AGREEMENT AND DISCLAIMERS.

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO REGARDING THE MATTERS DESCRIBED HEREIN AND THEREIN, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. LENDER AND EACH BORROWER HEREBY WARRANT AND ACKNOWLEDGE THAT EACH OF THEM HAS BEEN GIVEN A REASONABLE PERIOD OF TIME TO CONSIDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THAT EACH OF THEM IS REPRESENTED BY LEGAL COUNSEL (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY LEGAL COUNSEL) IN REVIEWING AND NEGOTIATING THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THAT EACH OF THEM IS KNOWLEDGEABLE WITH RESPECT TO THE SUBJECT MATTER HEREOF, THE LOAN(S), THE NOTE, AND THE OTHER LOAN DOCUMENTS, THAT THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS WERE NEGOTIATED IN AN ARM'S LENGTH TRANSACTION, AND THAT EACH OF THEM HAS THOROUGHLY REVIEWED THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND AGREED

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TO THEIR RESPECTIVE TERMS. EACH BORROWER HEREBY REPRESENTS AND WARRANTS THAT IN EXECUTING THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, IT DID NOT RELY AND HAS NOT RELIED UPON ANY REPRESENTATION OR STATEMENT MADE BY ANY OF LENDER OR ITS REPRESENTATIVES OR AGENTS WITH REGARD TO THE SUBJECT MATTER HEREOF OR THEREOF, OR THE EFFECT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, INCLUDING ANY FACTS OR ISSUES WHICH MIGHT BE DEEMED MATERIAL TO ITS DECISION TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, OTHER THAN THE STATEMENTS THAT APPEAR IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. MOREOVER, IN EXECUTING THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, EACH BORROWER HEREBY: (I) DISCLAIMS ANY AND ALL RELIANCE WITH RESPECT TO ANY AND ALL DECISIONS MADE DURING NEGOTIATIONS OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, INCLUDING BUT NOT LIMITED TO, THE DECISION TO RESOLVE ANY FUTURE DISPUTES REGARDING THE LOAN(S) PURSUANT TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS; AND (II) DISCLAIMS AND DISAVOWS ANY FIDUCIARY RELATIONSHIPS THAT LENDER MIGHT OWE TO ANY BORROWER IN NEGOTIATING AND ENTERING INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. EACH BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS RELIED ON ITS OWN JUDGMENT AND ENTERED INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS KNOWINGLY AND VOLUNTARILY.

Section 9.24 Counterparts.

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed, including by transmission of facsimile or electronic mail, in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of such counterparts together shall constitute but one and the same instrument.

Section 9.25 Joint and Several Liability.

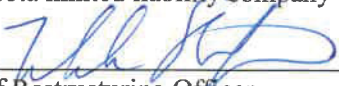
Each Borrower shall be jointly and severally responsible for all obligations, covenants, and agreements under this Agreement, including, but not limited to, performance of all terms and conditions hereunder.

[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF, Borrowers and Lender have executed this Agreement to be effective as of the Effective Date.

BORROWERS:


BUFFETS, LLC,
a Minnesota limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

HOMETOWN BUFFET, INC.,
a Minnesota corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

OCB RESTAURANT COMPANY, LLC,
a Minnesota limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

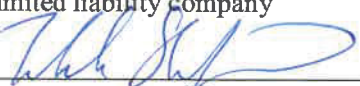
OCB PURCHASING CO.,
a Minnesota corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


RYAN'S RESTAURANT GROUP, LLC,
a South Carolina limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

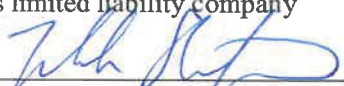
FIRE MOUNTAIN RESTAURANTS, LLC,
an Ohio limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

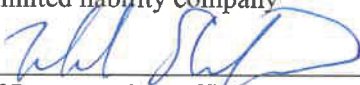
TAHOE JOE'S, INC.,
a Minnesota corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FMP-OVATION PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

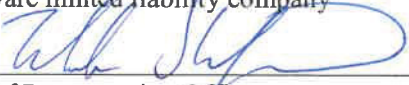
ALAMO BUFFETS PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

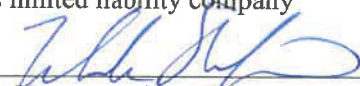
ALAMO OVATION, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


FRESH ACQUISITIONS, LLC,
a Delaware limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro


ALAMO FRESH PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FMP-FRESH PAYROLL, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FOOD MANAGEMENT PARTNERS, INC.,
a Texas corporation

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

FMP SA MANAGEMENT GROUP, LLC,
a Texas limited liability company

By: 
Its: Chief Restructuring Officer
Name: Mark Shapiro

LENDER:

VITANOVA BRANDS, LLC,
a Texas limited liability company

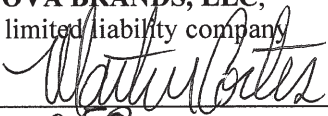
By: 
Its: CFO
Name: MARTIN CORTES

EXHIBIT A

Permitted Liens

1. The prior Lien of Arizona Bank & Trust, including, without limitation, UCC-1 financing statement number 20153665683 filed in favor of Arizona Bank & Trust on August 21, 2015, in the Office of the Secretary of State of Delaware, against Fresh Acquisitions, LLC.
2. Notice of Federal Tax Lien number 21-0010607966 filed in favor of Internal Revenue Service on March 16, 2021, in the Office of the Secretary of State of Texas, against Alamo Fresh Payroll, LLC.
3. UCC-1 financing statement number 21-0002517260 filed in favor of Sysco Central California, Inc. on January 20, 2021, in the Office of the Secretary of State of Texas, against Food Management Partners, Inc.
4. UCC-1 financing statement number OH00211433719 filed in favor of Meta Advisors LLC, as Trustee for the Unsecured Creditors Trust of Buffets, LLC et al., on May 19, 2017, in the Office of the Secretary of State of Ohio, against Fire Mountain Restaurants, LLC.
5. UCC-1 financing statement number 170519-1843426 filed in favor of Meta Advisors LLC, as Trustee for the Unsecured Creditors Trust of Buffets, LLC et al., on May 19, 2017, in the Office of the Secretary of State of South Carolina, against Ryan's Restaurant Group, LLC.
6. UCC-1 financing statement number 951121001281 filed in favor of Meta Advisors LLC, as Trustee for the Unsecured Creditors Trust of Buffets, LLC et al., on May 19, 2017, in the Office of the Secretary of State of Minnesota, against Buffets, LLC.
7. UCC-1 financing statement number 951121001293 filed in favor of Meta Advisors LLC, as Trustee for the Unsecured Creditors Trust of Buffets, LLC et al., on May 19, 2017, in the Office of the Secretary of State of Minnesota, against Hometown Buffet, Inc.
8. UCC-1 financing statement number 951121001318 filed in favor of Meta Advisors LLC, as Trustee for the Unsecured Creditors Trust of Buffets, LLC et al., on May 19, 2017, in the Office of the Secretary of State of Minnesota, against OCB Restaurant Company, LLC.
9. UCC-1 financing statement number 951121001306 filed in favor of Meta Advisors LLC, as Trustee for the Unsecured Creditors Trust of Buffets, LLC et al., on May 19, 2017, in the Office of the Secretary of State of Minnesota, against OCB Purchasing Co.
10. UCC-1 financing statement number 951121001320 filed in favor of Meta Advisors LLC, as Trustee for the Unsecured Creditors Trust of Buffets, LLC et al., on May 19, 2017, in the Office of the Secretary of State of Minnesota, against Tahoe Joe's, Inc.
11. UCC-1 financing statement number 828691500022 filed in favor of US Foods Inc. on June 3, 2015, in the Office of the Secretary of State of Minnesota, against OCB Purchasing Co.
12. UCC-1 financing statement number 1210429600029 filed in favor of Sysco Los Angeles, Inc. on January 14, 2021, in the Office of the Secretary of State of Minnesota, against Tahoe Joe's, Inc.

Schedule 4.1(b)

Fresh Acquisitions Collateral




Jurisdiction of Registration	LOGO	TRADEMARK	APP. NO.	APP. DATE	REG. NO.	REG. DATE
Arizona	FURR'S	FURR'S	19165	15-Dec-77	19165	15-Dec-77
United States of America	FURR'S	FURR'S	74067344	11-Jun-90	1870079	27-Dec-94
United States of America	FURR'S FAMILY BUFFET	FURR'S FAMILY BUFFET	78848164	28-Mar-06	3208318	13-Feb-07
United States of America		FURR'S FAMILY BUFFET & Design	78848146	28-Mar-06	3208315	13-Feb-07
United States of America	FURR'S FAMILY DINING	FURR'S FAMILY DINING	74067337	11-Jun-90	1878073	7-Feb-95
United States of America	FURR'S FRESH BUFFET	FURR'S FRESH BUFFET	78848154	28-Mar-06	3208316	13-Feb-07
United States of America		FURR'S FRESH BUFFET & Design	85311760	4-May-11	4180545	24-Jul-12
United States of America		FURR'S FRESH BUFFET & Design	78848159	28-Mar-06	3208317	13-Feb-07

Exhibit 2

Approved Budget

FRESH ACQUISITIONS, LLC, et al.,
 Cash Flow Forecast Through Week Ending July 16, 2021
 (\$ thousands)

	1	2	3	4	5	6	7	8	9	10	11	12	13	Total
Week Ending, Friday ->	23-Apr	30-Apr	7-May	14-May	21-May	28-May	4-Jun	11-Jun	18-Jun	25-Jun	2-Jul	9-Jul	16-Jul	
Week Number ->	1	2	3	4	5	6	7	8	9	10	11	12	13	
Total Cash Inflows	\$ 512	\$ 367	\$ 327	\$ 491	\$ 480	\$ 387	\$ 396	\$ 561	\$ 431	\$ 536	\$ 427	\$ 139	\$ 377	\$ 5,432
Operating Expenses - Variable														
Food Cost	272	113	101	151	148	119	122	173	133	165	131	43	116	1,785
Payroll & Taxes	326	-	352	-	251	-	351	-	283	-	359	-	348	2,271
Health Insurance/ 401k	-	-	17	-	-	-	17	-	-	-	17	-	-	51
Utilities	20	15	13	20	20	16	16	23	18	22	17	6	15	221
Sales & Use Tax	182	-	-	-	126	-	-	-	-	115	-	-	-	423
Miscellaneous	69	54	73	71	69	56	78	81	63	77	82	22	55	849
Subtotal - Operating Expenses Variable	869	181	556	242	614	191	584	276	496	379	607	70	535	5,600
Other Expense - Fixed														
Occupancy (Rent, CAM, Property Tax, Ins)	6	5	108	6	6	5	109	7	6	7	109	2	5	381
Monthly Insurance (GL, W/C, etc.)	-	-	32	-	-	-	32	-	-	-	32	-	-	96
Subtotal - Other Expenses Fixed	6	5	140	6	6	5	141	7	6	7	141	2	5	477
Total Expenses - Recurring	875	186	696	249	620	196	725	283	501	386	748	72	540	6,078
Total Non-Recurring Outflows	47	408	20	-	-	-	20	-	-	-	20	-	-	514
Restructuring Disbursements														
U.S. Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debtors' Professionals	209	-	181	-	-	-	246	-	-	-	246	-	-	881
Committee Professionals	-	-	10	-	-	-	10	-	-	-	10	-	-	30
DIP Financing Related Fees, Interest, etc.	125	-	13	-	-	-	12	-	-	-	16	-	-	167
Arizona Bank & Trust	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Crit. Vndr./PACA/PASA - Utility Ad. Prot.	100	-	-	-	-	-	-	-	-	-	-	-	-	100
Total Restructuring Disbursements	434	-	204	-	-	-	268	-	-	-	272	-	-	1,178
Net Cash Flow	\$ (845)	\$ (227)	\$ (592)	\$ 243	\$ (140)	\$ 191	\$ (617)	\$ 278	\$ (70)	\$ 151	\$ (613)	\$ 67	\$ (163)	\$ (2,338)
Beginning Cash	276	531	304	212	454	314	505	388	666	596	746	633	700	276
Net Cash Flow	(845)	(227)	(592)	243	(140)	191	(617)	278	(70)	151	(613)	67	(163)	(2,338)
Borrowings/(Payments)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debtor-In-Possession Funding	1,100	-	500	-	-	-	500	-	-	-	500	-	-	2,600
Ending Cash	\$ 531	\$ 304	\$ 212	\$ 454	\$ 314	\$ 505	\$ 388	\$ 666	\$ 596	\$ 746	\$ 633	\$ 700	\$ 538	\$ 538