

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	
	:	Chapter 11
FAIRWAY GROUP HOLDINGS	:	
CORP., et al.,	:	Case No. 20-[_____] (____)
	:	
Debtors.¹	:	(Joint Administration Pending)
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**DECLARATION OF MICHAEL NOWLAN
PURSUANT TO RULE 1007-2 OF LOCAL BANKRUPTCY
RULES FOR SOUTHERN DISTRICT OF NEW YORK**

I, Michael Nowlan, make this declaration under 28 U.S.C. § 1746:

1. I am a Senior Managing Director with Mackinac Partners (“**Mackinac**”).

I have more than twenty (20) years of financial restructuring, interim management, turnaround, and management consulting experience. I have been involved in many aspects of the restructuring process, including the development and evaluation of strategic business plans, the implementation of liquidity management strategies, and advising on numerous out-of-court and chapter 11 proceedings, including in the chapter 11 cases *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 15-23007 (RDD) (Bankr. S.D.N.Y. 2015).

2. On December 4, 2019, Mackinac was engaged by Fairway Group Holdings Corp. (“**Holdings**”) and its debtor affiliates (collectively, the “**Debtors**” or “**Fairway**”) to, among other things, provide Fairway and its other professionals financial advisory services in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Fairway Group Holdings Corp. (2788); Fairway Group Acquisition Company (2860); Fairway Bakery LLC (4129); Fairway Broadway LLC (8591); Fairway Chelsea LLC (0288); Fairway Construction Group, LLC (2741); Fairway Douglaston LLC (2650); Fairway East 86th Street LLC (3822); Fairway eCommerce LLC (3081); Fairway Georgetowne LLC (9609); Fairway Greenwich Street LLC (6422); Fairway Group Central Services LLC (7843); Fairway Group Plainview LLC (8643); Fairway Hudson Yards LLC (9331); Fairway Kips Bay LLC (0791); FN Store LLC (9240); Fairway Paramus LLC (3338); Fairway Pelham LLC (3119); Fairway Pelham Wines & Spirits LLC (3141); Fairway Red Hook LLC (8813); Fairway Stamford LLC (0738); Fairway Stamford Wines & Spirits LLC (3021); Fairway Staten Island LLC (1732); Fairway Uptown LLC (8719); Fairway Westbury LLC (6240); and Fairway Woodland Park LLC (9544). The location of the Debtors’ corporate headquarters is 2284 12th Avenue, New York, New York 10027. Fairway Community Foundation Inc., a charitable organization, owned by Fairway Group Holdings Corp., is not a debtor in these proceedings.

connection with Fairway's evaluation and development of strategic alternatives and to assist Fairway in its negotiations with creditors.

3. Effective as of the Commencement Date (defined herein), I was appointed Chief Restructuring Officer ("**CRO**") of Holdings and its affiliated debtors and debtors in possession in connection with the above-captioned chapter 11 cases. As CRO, I report and provide strategic advice to the Company's Board of Directors and Chief Executive Officer in connection with the Debtors' chapter 11 cases, and I am responsible for carrying out the Debtors' chapter 11 strategy and objectives described herein and in the Porter Declaration (defined below), filed contemporaneously herewith.

4. On the date hereof (the "**Commencement Date**"), Holdings and its affiliated Debtors each commenced with this court (the "**Court**") a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). I am knowledgeable and familiar with Fairway's day-to-day operations, business and financial affairs, books and records, and the circumstances leading to the commencement of these chapter 11 cases (the "**Chapter 11 Cases**").

5. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees of Mackinac or Fairway or advisors and counsel to Fairway, or my opinion based upon my experience, knowledge, and information concerning Fairway's operations. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

6. This Declaration is submitted pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**") for the purpose of apprising the Court and parties in interest of the circumstances that led to the commencement of

these Chapter 11 Cases and in support of the motions and applications that the Debtors have filed with the Court, including the “first day motions” (the “**First Day Pleadings**”). I am authorized to submit this Declaration on behalf of Fairway. I understand that the Debtors have also submitted the *Declaration of Abel Porter Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York* (the “**Porter Declaration**,” and together with this Declaration, the “**First Day Declarations**”), which has been filed with this Court contemporaneously herewith.

7. Section I provides an overview of these Chapter 11 Cases. Section II provides a summary of the First Day Pleadings and factual bases for the relief requested therein.

I. **Overview**²

8. As described in more detail in the Porter Declaration, time is of the essence in these Chapter 11 Cases. In large part due to underperformance compared to business projections, by late 2019, the Debtors had limited liquidity and were at risk of defaulting under their prepetition debt. The Debtors’ current limited liquidity is comprised of less than \$1 million cash on hand as of the date hereof. In the weeks leading to the Commencement Date, news of the Debtors’ continued financial challenges permeated throughout the market, and as a result, the Company has had to address vendor termination and contraction of terms, with some suppliers and vendors demanding that the Debtors pay cash in advance as a condition for further deliveries, further compounding the Company’s liquidity issues. The Chapter 11 Cases, among other things, will provide the Debtors a much-needed reprieve from their significant liquidity issues. Indeed, the Debtors and their advisors estimate that they could not have continued operating their businesses past the Commencement Date, given the Company’s liquidity

² Capitalized terms used but not defined in this overview section shall have the meanings ascribed to such terms in the Porter Declaration or the respective First Day Pleadings, as applicable.

position, and filing the Chapter 11 Cases was absolutely essential to giving the Debtors the ability to implement the Sale Strategy and maximize value.

9. As described in further detail in the Porter Declaration and Moses Declaration, Fairway has commenced these Chapter 11 Cases to implement a strategic asset sales strategy (the “**Sale Strategy**”). The Sale Strategy is the foundation of these Chapter 11 Cases and is critical to maximizing recoveries for all creditors and preserving potentially thousands of jobs. Given the current circumstances and the need for the Debtors to move as quickly as possible, the Bidding Procedures set forth an expeditious bidding and sale process with the following key proposed dates and deadlines for the sale process (subject to Court approval):³

February 13, 2020	Hearing to consider approval of Bidding Procedures and entry of Bidding Procedures Order
February 28, 2020	Objection deadline for sale of Stalking Horse Package to the Stalking Horse Bidder
February 28, 2020	Global Bid Deadline for all Assets
March 10, 2020	Auction, if necessary, for the Stalking Horse Package <i>or</i> Sale Hearing for Stalking Horse Bid (if no other Qualified Bids are Received for the Stalking Horse Package)
March 11, 2020	Auction for Other Assets
March 26, 2020	Sale Hearing for Stalking Horse Package (if other Qualified Bids received for Stalking Horse Package and Auction held)
March 26, 2020	Sale Hearing for Other Assets

10. As described in the Porter Declaration, in support of the Debtors’ chapter 11 filing, the Ad Hoc Group has committed to provide the Debtors with a debtor-in possession

³ The foregoing is only a summary of certain provisions and dates in the Bidding Procedures. Interested parties should refer to the Bidding Procedures for a complete understanding of the Sale Process and deadlines applicable thereto. Capitalized terms used in this summary and not otherwise defined have the meanings given to them in the Bidding Procedures.

new money credit facility (together, the “**DIP Facility**”) of up to \$25 million to support the Debtors’ liquidity during the chapter 11 cases. The DIP Facility, together with the consensual use of cash collateral, should provide the Debtors with sufficient liquidity to implement the Sale Strategy in an orderly and value-maximizing manner. Due to the rapidly diminishing liquidity as described above, the Debtors require immediate access to DIP financing as described in further detail below. Put simply, due to its liquidity position, the Debtors require immediate access to debtor-in-possession financing and the authority to use Cash Collateral to continue to operate as a going concern. Without additional financing, the Debtors will be in a negative cash position in the coming days.

11. While the DIP Facility provides the liquidity needed to carry out the Sale Strategy, it cannot be emphasized enough that time is of the essence. Given the significant costs associated with continued operations, the DIP Credit Agreement and RSA impose strict milestones (the “**Milestones**”) on the Debtors to accomplish various objectives in an expeditious manner. A quick Chapter 11 Case is essential to the preservation of the value of their assets and estates. Fairway’s stakeholders have supported Fairway’s business leading up to the filing in anticipation of a quick and efficient Sale Process.

12. As noted above, in the months leading up to commencing the Chapter 11 Cases, rumors of the Company’s bankruptcy filing led the Company’s vendors, landlords, and competitors to put increasing pressure on the Company. The Company has been extremely concerned about possible key employee attrition and alignment of incentives given the enormous additional burden that has been placed upon the Company’s senior management team and other key employees leading up to the chapter 11 filing, and the likely continued demand on such key employees during the Chapter 11 Cases. In response, the Company implemented an employee

incentive plan for nine (9) key employees, including certain insiders, to ensure that such employees remain with the Company and stay focused to execute the Sale Strategy in these Chapter 11 Cases to maximize value. Specifically, the Special Committee adopted an employee incentive plan for key employees that collectively provides for the payment of up to approximately \$1.87 million in the aggregate, with individual amounts ranging from 50% to 100% of such employees' annual salary, subject to satisfaction of certain criteria. Fifty percent (50%) of each individual's total eligible amount (aggregating approximately \$935,000) was paid to the key employees on January 21, 2020. The remaining fifty percent (50%) (aggregating up to approximately \$935,000) is payable upon satisfaction of certain incentive-based performance criteria that will be developed by the Company in consultation with the Ad Hoc Group, subject to Bankruptcy Court approval. Importantly, these payments are subject to claw-back, should an employee voluntarily terminate their employment within nine (9) months of the agreement execution date.

II. **First Day Pleadings**

13. As mentioned in the Porter Declaration, Fairway operates in a highly competitive industry. It is imperative that it make a seamless transition into chapter 11 to preserve the reputation of its business and the loyalty and goodwill of customers, suppliers and employees. Sales and operations must continue in the ordinary course of business to preserve the value of the business and implement the Sale Strategy successfully. Accordingly, the Debtors have filed a number of First Day Pleadings designed to facilitate their transition into these

Chapter 11 Cases. The Debtors anticipate that the Court will conduct a hearing soon after the Commencement Date at which the Court will consider many of the First Day Pleadings.⁴

14. I have reviewed each of the First Day Pleadings with the Debtors' counsel, and I believe that the relief sought in each of the First Day Pleadings is tailored to meet the goals described above and will be necessary and critical to the Debtors' ability to administer these chapter 11 cases and is in the best interests of the Debtors' estates and creditors. I adopt and affirm the factual representations contained in each of the First Day Pleadings. A description of the relief requested and the facts supporting each of the pleadings is set forth below.

A. Administrative Motions

- (i) Motion of Debtors for Entry of an Order Directing the Joint Administration of Related Chapter 11 Cases

15. The Debtors request entry of an order directing joint administration of these chapter 11 cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and that the Court maintain one file and one docket for all of the Chapter 11 Cases under the lead case, Fairway Group Holdings Corp. Joint administration of the Chapter 11 Cases will provide significant administrative efficiencies without harming the substantive rights of any party in interest. Many of the motions, hearings and orders that will be filed in the Chapter 11 Cases almost certainly will affect each of the Debtors. The entry of an order directing joint administration of the Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings objections, notices, and hearings, and will allow all parties in interest to monitor the Chapter 11 Cases with greater ease and efficiency.

⁴ Capitalized terms used below in the descriptions of the First Day Pleadings and not otherwise defined have the meanings given to them in the applicable First Day Pleading.

- (ii) Motion of Debtors for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statements of Financial Affairs; (II) Authorizing Debtors to (A) File a Consolidated List of Creditors (B) File a Consolidated List of Debtors' 20 Largest Unsecured Claims, (III) Authorizing Debtors to Redact Certain Personal Identification Information for Individual Creditors and Interest Holders, and (IV) Approving Form and Manner of Notifying Creditors of Commencement of these Chapter 11 Cases

16. The Debtors request entry of an order granting additional time to file their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs. As a consequence of the size and complexity of the Debtors' business operations, the number of creditors likely to be involved in these chapter 11 cases, the geographical spread of the Debtors' operations, the numerous critical operational matters that the Debtors' management and employees must address, a 30-day extension (without prejudice to further extensions) is necessary and appropriate.

17. To prepare the Schedules, the Debtors must compile information from books, records, and other documents that requires an enormous expenditure of time and effort on the part of the Debtors, their employees, and their professionals. While the Debtors, with the assistance of their professional advisors, are mobilizing their employees to work diligently and expeditiously on preparing the Schedules, the Debtors' resources are strained. An extension of the time to file the Schedules will ultimately maximize the value of the Debtors' estates for the benefit of their creditors and all other parties in interest.

18. Additionally, the Debtors seek entry of an order (i) authorizing the Debtors to (a) file a consolidated list of creditors in lieu of submitting separate mailing matrices for each individual Debtor (the "**Creditor Matrix**") and (b) file a consolidated list of the Debtors' forty (40) largest unsecured claims; (ii) authorizing the Debtors to redact certain personal identification information for individual creditors and interest holders; and

(iii) approving the form and manner of notifying creditors of commencement of these chapter 11 cases. Permitting the Debtors to maintain one single consolidated list of creditors in lieu of filing a separate creditor matrix for each Debtor entity is warranted under the circumstances of these chapter 11 cases and will benefit the Debtors and their estates by allowing the Debtors to more efficiently provide required notices to parties in interest and reduce the potential for duplicate mailings.

19. Cause also exists to authorize the Debtors to redact address information of individual creditors—many of whom are the Debtors’ employees—and interest holders from the creditor list because such information is sensitive, could be used to perpetrate identity theft, and is unnecessary to disclose.

(iii) Motion of Debtors for Entry of an Order Implementing Certain Notice and Case Management Procedures

20. The Debtors seek entry of an order approving and implementing certain notice, case management, and administrative procedures (collectively, the “**Case Management Procedures**”). Given the size and scope of these cases, the Case Management Procedures will facilitate service of notices, motions, applications, declarations, objections, responses, memoranda, briefs, supporting documents, and other papers filed in these chapter 11 cases that will be less burdensome and costly than serving such documents on every potentially interested party. This, in turn, will maximize the efficiency and orderly administration of these chapter 11 cases, while at the same time ensuring that appropriate notice is provided.

(iv) Motion of Debtors for Entry of An Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Interests in the Debtors

21. The Debtors seek entry of an order approving procedures to protect the potential value of the Debtors’ tax net operating loss carryforwards (“**NOLs**”) and certain other

tax attributes (collectively, the “**Tax Attributes**”). The Debtors possess certain Tax Attributes, including, as of the Commencement Date, estimated NOLs in excess of \$200 million. Given the significance of maximizing the value of the Debtors’ estates, I believe that it is critical that the Tax Attributes be preserved. The Tax Attributes are valuable property of the Debtors’ estates and should be protected from actions that would diminish or eliminate their value, including transfers that would trigger an Ownership Change. The trading procedures request authority to restrict trading of Fairway Stock that could result in an ownership change occurring before the effective date of a chapter 11 plan or any applicable Bankruptcy Court order. Such restriction would protect the Debtors’ ability to use the Tax Attributes during the pendency of these chapter 11 cases.

B. Operational Motions Requesting Immediate Relief

22. The Debtors intend to ask for immediate interim relief with respect to the following First Day Pleadings and, therefore, will present these motions at the “first day” hearing.

- (i) Motion of Debtors for (I) Authorization (A) to Obtain Postpetition Financing, (B) to Use Cash Collateral, (C) to Grant Liens and Provide Superpriority Administrative Expense Status, (D) to Grant Adequate Protection, (E) to Modify the Automatic Stay and (F) to Schedule a Final Hearing and (II) Related Relief

23. The Debtors seek authorization to obtain postpetition financing (the “**DIP Financing**”) and approval of their entry into a superpriority secured debtor-in-possession credit facility in an aggregate principal amount of up to \$25 million (the “**DIP Facility**”), provided by certain of the Debtors’ prepetition secured lenders (solely in such capacity, the “**DIP Lenders**”) and agented by Ankura Trust Company, LLC (solely in such capacity, the “**DIP Agent**”), with an interim draw of \$15 million under the proposed DIP Financing, subject to entry of an interim order.

24. I am familiar with and was involved with the negotiation of terms of the DIP Facility and the adequate protection proposed to be provided by the Debtors in exchange for access to Cash Collateral and the DIP Financing. Based on my general experience in the restructuring industry and my experience with the Debtors' businesses, interim approval of the DIP Facility is necessary and appropriate to allow the Debtors immediate access to liquidity. Mackinac worked closely with the Debtors' management team to develop the Budget and to determine the amount of interim funding required to meet the Debtors' short-term liquidity needs pending approval of the Motion on a final basis. Interim funding in the amount of \$15 million and immediate access to Cash Collateral will provide the Debtors with sufficient liquidity to assure their employees, customers, vendors, and suppliers that the Debtors have the working capital necessary to continue to their operations in the ordinary course of business.

25. News of the Debtors' continued financial challenges recently has permeated throughout the market, which has caused a number of the Debtors' suppliers and vendors to reduce or eliminate trade terms, with some suppliers and vendors demanding that the Debtors pay cash in advance as a condition for further deliveries. The actions taken by these suppliers and vendors have further contributed to the Debtors' deteriorating cash position. As a result, during the first four (4) weeks after the Commencement Date, the Debtors' available cash—without taking account of authorized proceeds under the DIP Facility—is forecasted to sink as low as negative \$9 million. Without access to interim funding under the DIP Facility, the Debtors' ability to continue their operations during the first weeks of their Chapter 11 Cases would be in serious jeopardy.

26. The Debtors anticipate that the commencement of these chapter 11 cases and increased demands by constituents will increase the strains on their free cash during the early

phase of these cases. Under these circumstances, for the next four weeks, the Debtors expect to experience cash losses totaling approximately \$10 million. As such, immediate access to Cash Collateral and the interim financing under the DIP Facility is essential to the Debtors' ability to minimize disruptions and avoid irreparable harm to their businesses.

27. As of the Commencement Date, the Debtors have less than \$1 million in cash on hand. Thus, from the outset of these chapter 11 cases, the Debtors require immediate access to the DIP Financing and authority to use cash collateral to ensure they have sufficient liquidity to operate their business as a going concern. In my professional opinion, the proposed DIP Financing is sufficient to support the Debtors' operations and to maintain sufficient liquidity, for the projected duration for these chapter 11 cases, thereby providing the Debtors with (a) sufficient working capital to operate their business and to administer their estates; (b) an appropriate liquidity cushion for anticipated vendor contraction and tightening of trade terms; (c) the ability to timely pay administrative expenses incurred during these chapter 11 cases; and (d) a positive message to convey to the grocery industry that these chapter 11 cases are sufficiently funded, which is critical to address the concerns of the Debtors' customers, employees, and vendors.

28. Minimizing disruption to the Debtors' business and operations is especially critical in light of the Sale Strategy. The Debtors have entered into the Stalking Horse APA for the going concern sale of five (5) stores and the PDC for an aggregate purchase price of approximately \$70 million. To close the sales, the Debtors must continue to operate those stores in the ordinary course and not take risks that might disrupt the operations of those stores. In addition to the stores in the Stalking Horse Package, the Sale Strategy contemplates the possible sale of additional stores on a going concern basis. For the same reasons, it is critical that the

Debtors continue their operations at stores not subject to the Stalking Horse Bid without interruption.

29. As reflected in the DIP Milestones, the first 45 to 60 days of these Chapter 11 Cases are absolutely critical. As such, it is imperative that the Debtors have immediate access to sufficient liquidity. Based on the foregoing, I submit that the Court should grant the DIP Motion on an interim basis and allow the Debtors to access up to \$15 million under the DIP Facility.

- (ii) Motion of Debtors for Entry of an Order (I) Authorizing Debtors to (A) Continue Using Existing Cash Management System, Bank Accounts, and Business Forms, (B) Implement Changes to Cash Management System in the Ordinary Course of Business, and (C) Continue Intercompany Transactions; (II) Confirming Administrative Expense Priority For Postpetition Intercompany Claims; and (III) Granting Related Relief

30. The Debtors request entry of an order (i) authorizing them to (a) continue their existing cash management system, including the continued maintenance of their existing bank accounts and business forms, (b) implement changes to their cash management system in the ordinary course of business, including opening new or closing existing bank accounts, and (c) continue to perform under and honor intercompany transactions in the ordinary course of business, in their business judgment and at their sole discretion; (ii) confirming administrative expense priority for postpetition intercompany claims; and (iii) granting related relief.

31. The Debtors further request that the Court authorize Citizens Bank, N.A. (“**Citizens Bank**”), with which the Debtors maintain their bank accounts, to (a) continue to maintain, service, and administer the Debtors’ bank accounts, and (b) debit their bank accounts in the ordinary course of business on account of (i) wire transfers or checks drawn on their bank accounts; provided that any payments drawn, issued, or made prior to the Commencement Date shall not be honored absent direction of the Debtors and an order of the Court authorizing such

prepetition payment, or (ii) undisputed service charges owed to Citizens Bank for maintenance of the Debtors' cash management system, if any.

32. In the ordinary course of business, the Debtors utilize an integrated, centralized Cash Management System to collect, transfer, and disburse funds generated by their operations, comprised of approximately thirty (30) bank accounts at Citizens that collect, organize, and track various forms of customer receipts and cash disbursements (collectively, the "**Bank Accounts**"). The Cash Management System is tailored to meet the Debtors' operating needs as an operator of a supermarket chain and enables the Debtors to efficiently collect and disburse cash generated by their business, pay their financial obligations, centrally control and monitor corporate funds and available cash, comply with the requirements of their financing agreements, reduce administrative expenses, and efficiently obtain accurate account balances and other financial data. It is critical that the Cash Management System remain intact to ensure seamless continuation of transactions and uninterrupted collection of revenues.

33. In the ordinary course of business, the Debtors engage in intercompany transactions with each other (the "**Intercompany Transactions**"). Such Intercompany Transactions result in intercompany receivables and payables (the "**Intercompany Claims**"). Intercompany Claims are not settled by actual transfers of cash among the Debtors. The Debtors track all Intercompany Transactions electronically in their accounting system, which concurrently are recorded on the applicable Fairway entities' balance sheets. The accounting system requires that all general-ledger entries be balanced at the legal-entity level, and, therefore, when the accounting system enters an intercompany receivable on one entity's balance sheet, it also automatically creates a corresponding intercompany payable on the applicable affiliate's balance sheet.

34. To minimize expenses, the Debtors seek authorization to continue using all business forms substantially in the forms used immediately prior to the Commencement Date, without reference to the Debtors' status as debtors in possession; provided that in the event that the Debtors generate new business forms during the pendency of these cases other than from their existing stock, such business forms and checks will include a legend referring to the Debtors as "Debtors-In-Possession." To the extent practicable, the Debtors also will laser print such legend on any business forms electronically generated during these cases.

- (iii) Motion of Debtors or Authority, but not Direction, to (I) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (II) Pay and Honor Employee Medical and Other Benefits, and Continue Employee Benefits Program, and (III) Related Relief

35. The Debtors request the entry of interim and final orders authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries and other compensation, taxes, withholdings and related costs and reimbursable employee expenses, (ii) pay and honor obligations relating to employee medical, insurance and other benefits programs, and continue their employee medical, insurance and other benefits programs on a postpetition basis, and (iii) related relief. The relief requested includes compensation for the Debtors' full-time and part-time employees, temporary employees retained through an outside agency, and independent contractors and consultants that provide services related to various aspects of the Debtors' operations and are vital to the Debtors' businesses. As of the date hereof, certain prepetition obligations to such employees and supplemental workers may be due and owing.

36. The majority of the Debtors' workforce relies on the Debtors' compensation, benefits and reimbursement of expenses to satisfy daily living expenses. The workforce will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid compensation, benefits and reimbursable expenses. These

Employees will be exposed to significant financial difficulties and other distractions if the Debtors are not permitted to honor their obligations for unpaid compensation, benefits and reimbursable expenses. Moreover, if the Debtors are unable to satisfy such obligations, morale and loyalty will be jeopardized at a time when support is critical. In the absence of such payments, the workforce may seek alternative employment opportunities, including with the Debtors' competitors, hindering the Debtors' ability to meet their customer obligations and likely diminishing customer confidence. Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements. Additionally, loss of valuable employees would distract the Debtors' from focusing on their operations and administering the Chapter 11 Cases at this critical juncture.

(iv) Motion of Debtors for Authority to Pay Certain Prepetition Taxes and Fees

37. The Debtors request authorization to pay certain taxes, assessments, fees, and other charges in the ordinary course of business, whether accrued or arose before or after the Commencement Date, including any such taxes and fees subsequently determined, upon audit or otherwise, to be owed (collectively, the "**Taxes and Fees**"). In the ordinary course of operating their business, the Debtors collect, withhold, and incur an assortment of Taxes and Fees that they remit periodically to various federal, state, and local taxing, licensing, regulatory, and other governmental authorities (collectively, the "**Authorities**"). Many of the Taxes and Fees collected are held in trust for and must be turned over to the Authorities. The Debtors also seek to pay certain prepetition Taxes and Fees in order to, among other things, forestall Authorities from taking actions that might interfere with the administration of these Chapter 11 Cases, which may include bringing personal liability actions against directors, officers, and other key employees (whose full-time attention to the Debtors' Chapter 11 Cases is required to avoid

business disruptions and maximize recoveries to the Debtors' creditors), asserting liens on the Debtors' property or assessing penalties and/or significant interest on past-due taxes. In addition, the non-payment of such Taxes and Fees may give rise to priority claims pursuant to section 507(a)(8) of the Bankruptcy Code. Accordingly, the relief requested in the Taxes and Fees Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest, and will enable the Debtors to continue to operate their businesses.

- (v) Motion of Debtors Requesting Entry of an Order (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Providers, (II) Establishing Procedures for Determining Adequate Assurance of Payment for Future Utility Services, and (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service

38. The Debtors request entry of an order (i) approving the Debtors' proposed form of adequate assurance of payment to utility providers, (ii) establishing procedures for determining adequate assurance of payment for future utility services, (iii) determining that the Debtors are not required to provide any additional adequate assurance beyond what is proposed in this Motion, except as otherwise agreed by the Debtors or ordered by the Court, and (iv) prohibiting utility providers from altering or discontinuing service on account of outstanding prepetition invoices.

39. Preserving utility services on an uninterrupted basis is essential to the Debtors' ongoing operations and the Sale Process. Indeed, any interruption in utility services—even for a brief period of time—would seriously disrupt the Debtors' ability to continue operations and service their customers. This disruption would adversely impact customer relationships and would result in a decline in the Debtors' revenues. It also would affect the value of inventory—particularly items like perishable goods and frozen food. Such a result

could seriously jeopardize the Debtors' restructuring efforts and, ultimately, creditor recoveries. Therefore, it is critical that utility services continue uninterrupted during these chapter 11 cases.

40. The Debtors intend to pay postpetition obligations owed to the Utility Providers in a timely manner. The Debtors expect that cash flows from operations and the DIP Facility will be sufficient to pay postpetition obligations related to their utility services in the ordinary course of business. Furthermore, the Debtors propose to deposit into a segregated bank account a sum equal to the cost of two weeks' worth of the average utility cost for each Utility Provider based on the average that the Debtors were billed for the fiscal year ending 2019 (collectively, the "**Adequate Assurance Deposit**"). The Adequate Assurance Deposit, in conjunction with the DIP Financing, cash flow from operations, and cash on hand will demonstrate the Debtors' ability to pay for future utility services in the ordinary course of business and constitute sufficient adequate assurance to the Utility Providers.

- (vi) Motion of Debtors for (I) Authorization to (A) Continue to Maintain their Insurance Policies and Programs and Surety Bonds and (B) Honor All Obligations with Respect Thereto, (II) Modification of the Automatic Stay with Respect to the Workers' Compensation Program, and (III) Granting Related Relief

41. The Debtors request (i) authority, but not direction, to (a) continue to maintain, and renew, in their sole discretion, their Insurance Policies and Programs (including the Workers' Compensation Program and the Debtors' premium financing arrangements) and the Surety Bond Program, (b) honor their Insurance and Surety Obligations in the ordinary course of business during the Chapter 11 Cases, and (c) pay any prepetition Insurance and Surety Obligations, including, without limitation, amounts owed under the Premium Financing Agreements and to the Insurance Service Providers; (ii) modification of the automatic stay if

necessary to permit the Debtors' employees to proceed with any claims they may have under the Workers' Compensation Program; and (iii) granting related relief.

42. The Debtors maintain various liability, property, workers compensation and other insurance policies to help manage and limit the various risks associated with operating their businesses. The Debtors also maintain workers' compensation insurance as required by statute in each of the states in which they operate. The Debtors employ certain insurance service providers, such as brokers and consultants, to help them procure, negotiate, and evaluate their insurance policies and identify and review claims that arise under such policies.

43. The Insurance Policies and Programs are essential to the preservation of the value of the Debtors' businesses, properties, and other assets. Some of the Insurance Policies and Programs are required by the various regulations, laws, and contracts that govern the Debtors' commercial activities. If any of the Debtors' insurance policies are terminated or lapse, the Debtors would be exposed to substantial liability to the detriment of all parties in interest and could be in violation of law. State law may prohibit the Debtors from operating without certain insurance. Additionally, given that the Debtors' insurance service providers are intimately familiar with the Debtors' insurance policies, even the temporary loss of their services would be detrimental to the Debtors' estates. Accordingly, authorization to pay all insurance-related obligations is critical to the continued operation of the Debtors' businesses.

44. The Debtors finance premiums under certain of their Insurance Policies on a lump-sum, quarterly, or monthly basis. Accordingly, in the ordinary course of business, the Debtors finance the premiums on the Financed Policies pursuant to two Premium Financing Agreements with AFCO Credit Corporation. By the Insurance Motion, the Debtors request authority, but not direction, to continue making payments to the Premium Financing

Agreements, and to renew such agreements and entered into new Premium Financing Agreements as necessary in the ordinary course of business.

- (vii) Motion of Debtors for (I) Authority to Pay Prepetition Critical Vendors; (II) Approval of Related Procedures; and (III) Granting Related Relief (the “**Critical Vendor Motion**”)

45. The Debtors request entry of an order (i) authorizing, but not directing, the Debtors to pay up to \$5.5 million on an interim basis (the “**Interim Critical Vendor Cap**”) and an additional \$1 million on a final basis (the “**Final Critical Vendor Cap**”) and, together with the Interim Critical Vendor Cap, the “**Critical Vendor Caps**”) in aggregate Critical Vendor Claims; (ii) approving procedures to address those vendors who repudiate and refuse to honor their contractual obligations to the Debtors; and (iii) granting related relief.

46. To keep their business running efficiently and seamlessly, the Debtors rely on a carefully-designed inventory system through which store locations receive daily deliveries of branded and non-branded products including baked goods, frozen foods and desserts, carbonated beverages and water, cookies and salty snacks, and beer, wine, and liquor via direct-store-delivery or similar supply processes. Direct-store delivery vendors also supply Fairway with fresh and perishable food, including bread, milk, eggs, cheese, and other dairy and deli products. Many of these vendors are invaluable, as they are sole- or limited-source or high-volume suppliers for certain popular branded or otherwise “in-demand” goods. In addition, many of the Debtors’ beer, wine, and liquor distributors hold exclusive distribution rights to the region in which Fairway operates—effectively requiring the Debtors to utilize these particular merchandisers.

47. The Debtors do not have long-term supply agreements with many of their vendors and, instead, source goods on an order-by-order, week-by-week, and even day-by-day basis. Accordingly, despite their heavy reliance on direct-store-delivery vendors, the Debtors

have limited leverage to compel performance on commercially reasonable terms. Additionally, in many instances, the Debtors simply cannot obtain the branded products supplied from direct-store delivery vendors from other third-party suppliers.

48. The Debtors and their advisors engaged in a process (the “**Critical vendor Pre-Screening Process**”) to (i) identify those vendors, suppliers and/or service-providers that may be “critical” to the Debtors’ businesses (the “**Potential Critical Vendors**”) and (ii) develop the Critical Vendor Caps based on an estimate of the aggregate amount of outstanding Critical Vendor Claims as of the Commencement Date. More specifically, the Debtors and their advisors spent significant time and effort reviewing and analyzing the Debtors’ books and records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable laws, regulations, and historical practices to identify business relationships which, if lost, could materially harm the Debtors’ businesses, shrink their market share, reduce their enterprise value, and/or impair their restructuring process. In this process, the Debtors considered a variety of factors, as set forth in the Critical Vendor Motion.

(viii) Motion of Debtors for Authority to (I) Pay Prepetition Claims Of Shippers, and Miscellaneous Lien Claimants, (II) Confirm Administrative Expense Priority of Undisputed Commencement Date Orders and Satisfy Such Obligations in the Ordinary Course of Business, and (III) Pay PACA/PASA Claims (“**Lienholders’ Motion**”)

49. The Debtors request approval of interim and final orders (i) authorizing, but not directing them, to pay (a) Shipping Charges, (b) Miscellaneous Lien Claims, (c) certain amounts in connection with Commencement Date Orders to suppliers, and (d) the PACA/PASA Claims (each as defined below) and (ii) granting related relief. Certain suppliers deliver Merchandise directly to the Supermarkets and some deliver to the PDC. In limited situations, suppliers’ Merchandise is delivered by third-party transporters engaged by Debtors (the

“**Shippers**”) to the PDC or the Supermarkets. In the event that the Debtors fail to reimburse the Shippers for charges incurred in connection with the of the Merchandise, various state laws permit the Shippers to assert statutory liens against the Merchandise in their possession that is the subject of any delinquent charges, securing such charges and potentially blocking the Debtors’ access to the Merchandise (as that term is defined in the Lienholders’ Motion).

50. The Debtors also contract with a number of third parties (the “**Miscellaneous Lien Claimants**”) along with certain subcontractors (collectively, the “**Subcontractors**”) to perform repairs and make improvements to their property and the equipment that the Debtors use in the operation of their business, including refrigeration equipment, electrical systems, plumbing, elevator and escalator systems, and various types of food service equipment. Absent payment of their prepetition claims, the Miscellaneous Lien Claimants could potentially assert liens under applicable law, including mechanic’s liens, artisan’s liens, and materialman’s liens against the Debtors’ property for amounts the Debtors owe to these third parties (the “**Miscellaneous Lien Claims**”). If the Debtors are unable to pay the Miscellaneous Lien Claims, the Debtors risk losing access to equipment and other property that is critical to the continued operation of the Supermarkets.

51. In addition, prior to the Commencement Date, and in the ordinary course of business, the Debtors ordered Merchandise that will not be delivered until on or after the Commencement Date (the “**Commencement Date Orders**”). To avoid becoming general unsecured creditors of the Debtors’ estates with respect to related Merchandise, certain vendors and suppliers may refuse to provide Merchandise to the Debtors or may recall such shipments with respect to such Commencement Date Orders. The Debtors therefore require the relief requested in the Lienholders’ Motion to prevent any disruption to the Debtors’ retail operations.

- (ix) Motion of Debtors for Authority to (i) Maintain and Administer Prepetition Customer Programs, Promotions, and Practices and (ii) Pay and Honor Related Prepetition Obligations Relief

52. The Debtors request authority to, in the ordinary course of business and consistent with past practice, (i) maintain and administer prepetition customer programs and promotions and (ii) to pay and otherwise honor their obligations to customers relating thereto, whether arising prior to or after the Commencement Date, as necessary and appropriate in the Debtors' business judgment.

53. The Debtors' businesses depend upon the loyalty of their customers. To maximize customer loyalty, the Debtors have maintained and followed, in the ordinary course of business, various practices and programs (collectively, the "**Customer Programs**") to reward and provide incentives to existing customers and to attract new customers to the Debtors' stores. Such programs are standard in the retail food business. Without the ability to continue their Customer Programs and to satisfy prepetition obligations in connection therewith, the Debtors risk losing market share and value of their businesses. In order to maintain the Debtors' reputation for reliability and to maintain the loyalty, goodwill and support of their customers, the Debtors must maintain their Customer Programs and honor their obligations thereunder. Failure to provide the Customer Programs will place the Debtors at a significant—and potentially insurmountable—comparative disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from these chapter 11 filings.

- (x) Motion of Debtors to (I) Maintain Certain Trust Programs, (II) Release Certain Funds Held in Trust, and (III) Continue to Perform and Honor Related Obligations, and (IV) Related Relief

54. The Debtors request authority, but not direction, to continue to perform and honor obligations under programs or other arrangements requiring the Debtors to release certain funds held in trust for the benefit and on behalf of non-Debtor third parties (collectively,

the “**Trust Fund Programs**”). The Debtors engage in various marketing and sales practices designed to offer a convenience to their customers, attract new customers, promote loyalty among the existing customer base, and producing alternative streams of income. Such practices include selling third-party retail gift cards and cooking school classes, the hosting of an annual food festival, publication of a quarterly magazine, offering charitable donation opportunities, and bottle depository. The Debtors are also parties to other beneficial relationships with certain vendors or suppliers that allow them to receive additional streams of income by way of commission payments. It is essential that the Debtors honor their obligations in connection with such services and arrangements to preserve reputational integrity and continue to attract existing and new customers of their stores. The payment of the Trust Funds is important to the Debtors’ continued business operations, and the value of the Debtors’ businesses could be significantly harmed if the Debtors are unable to continue to offer the Trust Programs, and may drive customers to the Debtors’ competitors for access these programs and products.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed this 23 day of January, 2020

/s/ Michael Nowlan
Michael Nowlan
Chief Restructuring Officer

Fairway Group Holdings Corp. and
its Affiliated Debtors