

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re )  TIJUANA FLATS RESTAURANTS, ) LLC, <i>et al.</i> , <sup>1</sup> )  <div style="text-align: center;">Debtors. )</div> _____ )	Case Nos. 3:24-bk-1122-BAJ and 3:24-bk-1128-BAJ  Chapter 11  Jointly Administered Under Case No. 3:24-bk-1128-BAJ
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**DEBTORS' MOTION FOR  
APPROVAL OF POSTPETITION  
CREDIT AGREEMENT WITH US FOODS, INC.**

Debtors, Tijuana Flats Restaurants, LLC and Tijuana Flats #176, LLC (collectively, “Debtors”), move the Court pursuant to §§ 105(a), 363(b), 364, 1107(a) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an order (i) approving a postpetition credit arrangement with US Foods, Inc. (“US Foods”), and (ii) authorizing the Debtors to pay US Foods’ “PACA” and § 503(b)(9) claims in the ordinary course, and in support of the motion state:

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<sup>1</sup> The Federal Employer Identification Number of the Debtor is 47-4472442. The principal address of the Debtor is 2300 Maitland Center Parkway, Suite 306, Maitland, Florida 32751.

### **Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a), 363(b), 364, 1107(a) the Bankruptcy Code, and 1108, and Bankruptcy Rule 6003.

### **Background**

2. On April 19, 2024 (the “Petition Date”), Tijuana Flats #176, LLC (“TJ 176”), filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.<sup>2</sup>

3. Later that same morning, its parent, Tijuana Flats Restaurants, LLC (“Restaurants, LLC”), filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

4. The Debtors are continuing in possession of their properties, and are managing their businesses, as debtors in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

5. Restaurants, LLC owns and operates 65 “Tijuana Flats” ® restaurants located across Florida, inclusive of TJ 176. Another 26 “Tijuana Flats” restaurants are operated by franchisees pursuant to franchise agreements with TJF Franchise Group, LLC,

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<sup>2</sup> Debtors’ cases have been jointly administered pursuant to this Court’s Orders dated April 24, 2024 [Docket Nos. 26 and 38].

a wholly-owned subsidiary of Restaurants LLC. The Tijuana Flats restaurants provide fast, casual dining featuring a “Tex-Mex” cuisine.

6. As a purveyor of casual, fast-food cuisine, Debtors depend on an uninterrupted supply of food and logoed paper products to meet its customers’ needs. Obtaining such materials from multiple suppliers across Florida on a store by store basis is not practical for 65 owned restaurants and 26 franchised locations, and risks supply interruptions and inconsistency in the products available at each restaurant.

7. For these reasons, the Debtors have historically utilized US Foods as its sole source provider for virtually all of the Debtors’ food product and restaurant supply needs, all pursuant to a Master Distribution Agreement dated April 3, 2020, as amended (the “Distribution Agreement”).

8. Under the terms of the Distribution Agreement, US Foods manages, among other things, the Debtors’ upstream supply chain by entering into third-party agreements with suppliers of discrete goods, obtaining the goods from such suppliers, and warehousing the goods until needed. Most importantly, US Foods arranges for delivery of the purchased goods to each of the Debtors’ owned and franchised locations on a weekly or as-needed basis.

9. Besides the operational efficiencies derived from the foregoing arrangement, utilizing a single source provider like US Foods allows the Debtors to obtain bulk pricing discounts which would not otherwise be available to the Debtors if they were dependent on local food and beverage suppliers. The Debtors very much desire to continue this relationship postpetition.

10. As of the Petition Date and under the terms of the Distribution Agreement, the Debtors enjoyed 30-day credit terms with US Foods Payments were typically made by ACH draws.

11. Prepetition, the Debtors' purchases from US Foods averaged roughly \$630,000 per week. Following the closure of 25 stores in the Spring of 2024, the Debtors' purchases from US Foods are approximately 25% lower, averaging approximately \$475,000 per week.

12. As of the Petition Date, US Foods was owed \$2,816,853.37, \$1,503,691.54 of which is attributable to products purchased within the 20 days preceding the Petition Date. These purchases enjoy priority claim status pursuant to § 503(b)(9) of the Bankruptcy Code. Another \$235,588.04 of the total represents sums owing for purchases of perishable agricultural commodities. As explained below, these claims enjoy priority payment status over all creditors pursuant to the Perishable Agricultural Commodities Act of 1930, as amended ("PACA"), 7 U.S.C. §§ 499a, *et. seq.* US Foods for its part, owes the Debtors \$282,569.69 in administrative fees, commonly known as rebates, a good portion of which may be owed to the franchise operators.

13. US Foods is presently holding \$895,914.28 in post-petition payments (the "Postpetition Payment") that were automatically drawn from the Debtors' accounts by ACH debits before such automatic draws were suspended.

14. Continuation of the relationship with US Foods is absolutely essential to the Debtors' reorganization efforts. Any delay in the shipment or delivery of goods or services could bring the Debtor's operations to a halt, which would irreparably harm the Debtors' businesses and reputation. Though US Foods has not threatened to cut off delivery to the

Debtors, resolution of their claims and their continued provision of products to the Debtors and their franchisees is absolutely essential to the Debtors' reorganization.

**Relief Requested**

15. By this Motion, Debtor seeks entry of an order granting it authority to continue receiving products from US Foods on 30-day credit terms by allowing the Debtors to pay US Foods for all products provided to it in the 20 days preceding the Petition Date, as well as all sums due for perishable agricultural products received from US Foods irrespective of time frame. The Debtors also request that the Court permit the \$895,914.28 in post-petition payments that US Foods is holding to be applied to the Debtors' prepetition PACA claims, with the balance applied to US Foods' § 503(b)(9) claims in date sequence order, oldest invoice being paid first, with any remaining balance paid in order of priority on 30-day payment terms.

16. The Debtors are also owed a \$15,155.18 credit ("Recall Credit") on account of a product recall on certain goods delivered to Restaurants, LLC prior to the Petition Date. The Debtor's request that the Court permit application of the Recall Credit to US Foods' § 503(b)(9) claim.

17. After application of the foregoing sums, the balance of US Foods' § 503(b)(a) claim is \$828,210.12, which Debtors propose to pay in twelve (12) monthly installments of \$69,017.51 each until satisfied or paid in connection with confirmation of a plan of reorganization or assumption of the Distribution Agreement, with the initial payment due September 15, 2024.

18. US Foods, for its part, has agreed to continue providing credit to the Debtors on the terms outlined above, and, upon entry of an order granting this motion, has agreed to release the \$240,480.68 earnings in the first quarter of 2024 and all administrative fees accrued during the second quarter of 2024 both prior to and after the Petition Date to provide much needed liquidity to the Debtors. Administrative fees accrued in the second quarter will be paid in the ordinary course of business.

19. The Debtors do not seek authority to pay US Foods any portion of its general unsecured claim at this time.

**Basis for Relief**

20. In the 20 days preceding the Petition Date, US Foods delivered \$1,503,691.54 in food and other products to the Debtors for which US Foods has not been paid. Pursuant to § 503(b)(9), those deliveries are entitled to administrative expenses priority in payment:

After notice and a hearing, there shall be allowed,  
administrative expenses, other than claims allowed  
under section 502(f) of this title, including –

\* \* \*

(9) the value of any goods received by the  
debtor within 20 days before the commencement of  
a case under this title in which the goods have been  
sold to the debtor in the ordinary course of such  
debtor's business; . . .

11 U.S.C. § 503(b)(9)  
(emphasis added)

21. In addition, a portion of the products provided by US Foods constitute “perishable agricultural commodities” falling within the scope of PACA.

22. PACA provides various protections to fresh fruit and vegetables sellers, including the establishment of a statutory constructive trust (the “PACA Trust”) comprised of (i) a purchaser’s entire inventory of food and other derivatives of agricultural commodities, (ii) the products derived therefrom, and (iii) the proceeds related to any of the commodities or products sold to the purchaser. *See*, 7 U.S.C. § 499e(c)(2). PACA trust beneficiaries like US Foods are entitled to receive payment ahead of all other creditors of the buyer, including those possessing liens on or security interests in the buyer’s assets. *See e.g. Pacific Int’l. Marketing v. A & B Produce, Inc.*, 462 F.3d 279, 283 (3<sup>rd</sup> Cir. 2006)(“PACA statutory trusts grants certain unpaid suppliers and sellers of produce and their agents an interest in PACA trust assets superior to that of a buyer’s perfected, secured creditor”).

23. PACA requires that certain procedural steps be taken by a seller of perishable agricultural products in order to preserve its rights as a trust beneficiary. Specifically, a PACA vendor must provide written notice (a “PACA Notice”) to the purchaser of such goods and its intent to preserve the benefits of the PACA trust. *Tanimura & Antle, Inc. v. Packed Fresh Produce, Inc.*, 222 F.3d 132, 136 (3<sup>rd</sup> Cir. 2000) written notice under PACA may be accomplished by either (a) including the statutorily mandated language on the face of the vendor’s invoice, or (b) providing written notice to the purchaser of the PACA goods within thirty (30) days after the time payment is due. *Tanimura*, 122 F.3d at 136.

24. The Debtors and US Foods have determined that \$235,588.04 of the fruits and vegetables which Debtors purchased from US Foods prior to the Petition Date qualify as “perishable agricultural commodities” under PACA. It appears further that US Foods has provided the Debtors with an appropriate PACA Notice prior to or contemporaneous with the delivery of the underlying product.

25. US Foods’ entitlement to payment for its administrative and PACA claims is therefore undisputed, and requiring that they be paid of the conclusion of the case or at confirmation of any plan of reorganization creates a confirmation hurdle which the Debtors may be unable to overcome as the Debtors may not have enough cash to satisfy the requirements of § 1129(a)(9) that administrative expenses be paid in full as a condition of confirmation.

26. As stated above, the maintenance of the Debtor’s business during the Chapter 11 cases is crucial to the ability to pursue restructuring alternatives and preserve going concern value for the benefit of all of the stakeholders. Accordingly, this Court should allow payment of US Foods’ § 503(b) and PACA claims as outlined above.

27. The relief requested in this Motion is appropriate under Bankruptcy Code §§ 363 and 364 of the Bankruptcy Code. Courts have used § 363 of the Bankruptcy Code as a basis for granting critical vendor status where a sound business purpose exists for doing so. *See In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005)(“This Court finds that a bankruptcy court may utilize sections 105(a) and 363 of the Bankruptcy Code to justify the grant of critical vendor status under appropriate circumstances.”); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 397 (S.D.N.Y. 1983)(under § 363, court authorized contractor to pay prepetition

claims of some suppliers who were potential lien claimants, because payments were necessary for general contractors to release funds owed to debtors, thus benefiting estate).

28. Additionally, § 364 of the Bankruptcy Code provides the Court with the authority to approve payments to critical vendors like US Foods. *See, e.g., In re Ambassadors Int'l, Inc.*, Case No. 11-11002 (KG) (Bankr. D. Del. April 5, 2011)(authorizing Debtors to pay critical vendors under §§ 363 and 364 of the Bankruptcy Code where the Debtor relied upon the services of third party providers to operate and maintain a cruise line); *see also In re UAL Corp.*, Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002)(authorizing Debtors under sections 363 and 364 of the Bankruptcy Code to use their reasonable judgment to pay prepetition trade claims of essential creditors).

29. Theoretically the Debtors could assume its contract with US Foods under the business judgment standard. However, to do so would require the payment in full of all prepetition amounts owing to US Foods, including its general unsecured claim, and would saddle the estate with long term obligations. Thus, permitting the Debtors to pay US Foods in the ordinary course will enable the Debtors to continue to receive the critical goods and services they need to operate while preserving maximum flexibility with respect to the assumption or rejection of the Distribution Agreement.

#### **Waiver of Bankruptcy Rule 6004(h)**

30. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). To

successfully implement the foregoing, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h).

WHEREFORE, Debtors respectfully request that the Court enter an Order, substantially in the form attached as **Exhibit A** (i) granting the relief requested in the Motion, and (ii) such other and further relief as may be just and proper.

**THAMES | MARKEY**

*/s/ Richard R. Thames*

By \_\_\_\_\_

Richard R. Thames  
Bradley R. Markey

Florida Bar No. 0718459  
Florida Bar No. 0984213  
50 N. Laura Street, Suite 1600  
Jacksonville, Florida 32202  
(904) 358-4000  
(904) 358-4001 Facsimile  
[rrt@thamesmarkey.law](mailto:rrt@thamesmarkey.law)  
[brm@thamesmarkey.law](mailto:brm@thamesmarkey.law)

Attorneys for the Debtors

# **EXHIBIT “A”**

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In re	)	Case Nos. 3:24-bk-1122-BAJ and 3:24-bk-1128-BAJ
TIJUANA FLATS RESTAURANTS, LLC,	)	Chapter 11
<i>et al.</i> <sup>1</sup>	)	
Debtors.	)	Jointly Administered Under Case No. 3:24-bk-1128-BAJ
_____	)	

**ORDER GRANTING DEBTORS'  
MOTION FOR APPROVAL OF POSTPETITION  
CREDIT AGREEMENT WITH US FOODS, INC.**

These administratively consolidated Chapter 11 cases came before the Court upon the Debtors' Motion for Approval of Postpetition Credit Agreement with US Foods, Inc. (the "Motion") [Docket No. \_\_\_\_\_]. A preliminary hearing on the Motion was held July \_\_\_\_\_, 2024. Upon consideration thereof, it is ORDERED:

1. The Motion is granted.
2. US Foods is entitled to a § 503(b)(9) administrative expense claim of \$1,503,691.54 for products delivered to the Debtors within twenty (20) days of the

<sup>1</sup> The Federal Employer Identification Number of Tijuana Flats Restaurants, LLC is 47-4472442. The principal address of the Debtor is 2300 Maitland Center Parkway, Suite 306, Maitland, Florida 32751.

Petition Date (“US Foods’ Administrative Expense Claim”).

3. US Foods is further entitled to a “PACA” claim of \$235,588.04 for perishable agricultural products delivered to the Debtors prior to the Petition Date (“US Foods’ PACA Claim”). US Foods’ PACA Claim has priority in payment over all other creditors of the estate pursuant to 7 U.S.C. § 499e(c)(2).

4. US Foods is authorized and directed to apply the \$895,914.28 in postpetition payments which it received from the Debtors via ACH debits towards satisfaction of US Foods’ PACA Claim, with the balance being applied to US Foods’ Administrative Expense Claim.

5. US Foods is authorized and directed to apply the \$15,155.18 Recall Credit to US Foods Administrative Expense Claim.

6. The balance of US Foods’ Administrative Expense Claim shall be paid in twelve (12) monthly installments of \$69,017.51 each until satisfied or sooner paid in connection with the confirmation of a plan of reorganization or assumption of the Distribution Agreement, with the first instalment due September 15, 2024.

7. Upon entry of this Order, US Foods is authorized and directed to release the \$282,569.69 in administrative fees which it is holding to the Debtors.

8. Debtors are authorized to incur indebtedness on 30-day credit terms with US Foods for food and other products routinely purchased by the Debtors. US Foods shall be entitled to a § 503(b)(1) administrative expense claim for all postpetition credit which it provides to the Debtor.

9. This Order is effective immediately upon entry notwithstanding the provisions of Fed. R. Bankr. P. 6004(h).

Stretto, Inc. is directed to serve a copy of this Order on the “Short List” of interested parties who are non-CM/ECF users and file a proof of service within three days of entry of the Order.