

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Ray C. Schrock, P.C.
Sunny Singh

*Proposed Attorneys for Debtors
and Debtors in Possession*

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

| | |
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| -----X | |
| In re | : |
| | : |
| | : |
| FAIRWAY GROUP HOLDINGS | : |
| CORP., et al., | : |
| | : |
| Debtors.¹ | : |
| -----X | |

Chapter 11

Case No. 20-[_____] (____)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR
AUTHORITY TO (I) MAINTAIN AND ADMINISTER
PREPETITION CUSTOMER PROGRAMS, PROMOTIONS AND
PRACTICES AND (II) PAY AND HONOR RELATED PREPETITION OBLIGATIONS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Fairway Group Holdings Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

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.

Background

1. On the date hereof (the “**Commencement Date**”), the Debtors each commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. The Debtors commenced these chapter 11 cases with the support of an ad hoc group of Prepetition Lenders (the “**Ad Hoc Group**”) holding over 91% of all outstanding obligations of the Debtors under the Prepetition Credit Agreement (and in excess of 66.67% of each tranche of debt thereunder). On January 22, 2020, the Debtors executed a restructuring support agreement (the “**RSA**”) with members of the Ad Hoc Group, pursuant to which the members of the Ad Hoc Group agreed to support a chapter 11 plan. The Ad Hoc Group also supports the Debtors’ marketing and sale process for all or substantially all of their assets, and has committed to provide the Debtors with up to \$25 million of debtor-in-possession financing to finance these chapter 11 cases and the sale process.

4. Information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the declarations of Michael Nowlan and Abel Porter pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York, each sworn to on the date hereof (together, the “**First**

Day Declarations)², which have been filed with the Court contemporaneously herewith and are incorporated by reference herein.

Jurisdiction

5. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

6. By this Motion, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, the Debtors request authority to, in the ordinary course of business and consistent with past practice, (i) maintain and administer customer programs, promotions, and practices; and (ii) 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, in each case subject to the terms of the Debtors' debtor-in-possession financing facility and any interim and final orders with respect thereto (the "**DIP Orders**").

7. A proposed form of order granting the relief requested herein on an interim basis is annexed hereto as **Exhibit A** (the "**Proposed Interim Order**").

The Debtors' Customer Programs

8. The Debtors' businesses depend upon the loyalty of its customers. To maximize customer loyalty, the Debtors have maintained and followed, in the ordinary course of business, the practices and programs described herein and others (collectively, the "**Customer Programs**") to reward and provide incentives to existing customers and to attract new customers

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the First Day Declarations.

to the Debtors' stores. Customer programs are standard in the retail food business. Without the ability to continue the Customer Programs and to satisfy prepetition obligations in connection therewith, the Debtors risk losing market share and value of its businesses. The Customer Programs are as follows:

A. Return and Exchange Policies

9. Consistent with industry practice and to accommodate customers' needs, the Debtors maintain return, refund, exchange, price-guarantee, and rain-check policies with respect to both cash and credit purchases (collectively, the "**Return and Exchange Policies**"). The Return and Exchange Policies assure the Debtors' customers that they will be "made whole" if merchandise is inadequate, damaged or defective, incorrectly processed, or unavailable. By this Motion, the Debtors seek authorization to honor the Return and Exchange Policies with respect to merchandise purchased prior to the Commencement Date.

B. Sale Promotions

10. From time to time, the Debtors conduct sales promotions at its stores (the "**Sales Promotions**"). The Debtors typically advertise their Sales Promotions by sending out mass flyers and electronic mailings notifying its customers of current deals available for redemption at the Debtors' stores. Examples of the Debtors' Sale Promotions include "buy-one-get-one-free" deals on select merchandise, offering customers 10% off of a purchase of \$100.00 or more, \$10 off a purchase of \$50 or more, and free pre-selected merchandise items if customers meet certain spend thresholds, typically \$50 or \$60. By this Motion, the Debtors seek authorization to honor the Sales Promotions.

C. Coupon Program

11. The Debtors maintain a coupon redemption program pursuant to which they honor (a) certain third-party coupons distributed to the Debtors' customers and (b) the Debtors'

own coupons that are included in advertising circulars or distributed in the Debtors' stores (collectively, the "**Coupons**"). When a customer redeems a valid third-party Coupon in one of the Debtors' stores, the Debtors deduct the amount of the Coupon (or such other deduction as may be advertised) from the relevant item's purchase price. Third-party Coupons are then processed and remitted to a third-party intermediary, who in turn collects the amounts from the various vendors and pays the Debtors the value of the Coupons collected. To preserve the goodwill of the Debtors' customer base, the Debtors seek authorization to honor the Coupons issued prior to the Commencement Date in a manner consistent with their ordinary business practices.

D. Gift Certificate Program

12. The Debtors maintain a program by which its customers can purchase gift cards from the Debtors' stores and online that can be redeemed for merchandise at any of the Debtors' store locations at a later date (the "**Purchased Gift Cards**"). From time to time, the Debtors also conduct promotional contests pursuant to which gift cards redeemable at any of the Debtors' store locations are given away as prizes (the "**Giveaway Gift Cards**" and collectively with the Purchased Gift Cards, the "**Gift Certificate Program**"). As of the Commencement Date, the Debtors estimate that the aggregate amount outstanding for issued gift cards is approximately \$925,000. The Debtors believe that any customer claims arising under the Gift Certificate Program are entitled to priority over other general unsecured claims pursuant to section 507(a)(7) of the Bankruptcy Code up to the statutory amount. By this Motion, the Debtors seek authorization to maintain the Gift Certificate Program and to honor all gift cards purchased or given away to customers prior to the Commencement Date.

E. Promotional Programs

13. From time to time, the Debtors conduct promotional contests for marketing and customer awareness purposes (the "**Promotional Contests**") pursuant to which various prizes

are awarded, including without limitation, Giveaway Gift Cards, plane tickets, gift baskets, foodstuff, kitchen-wares and prepaid gift cards from third party retailers (the “**Giveaway Prizes**”). Most of the Giveaway Prizes are supplied free of charge by Debtors’ vendors, but some Giveaway Prizes are paid for directly by the Debtors. By this Motion, the Debtors seek authorization to maintain the ongoing Promotional Contests and continue awarding the Giveaway Prizes as provided for therein.

F. Bottle Deposit Program

14. Many of the Debtors’ stores are located in jurisdictions that require large retail establishments to accept empty beverage containers through reverse vending machines or in person at the customer desk. In compliance with state environmental and container deposit laws, the Debtors maintain reverse vending machines in certain of the Debtors’ stores where the Debtors may deposit bottles presented by customers (the “**Bottle Deposit Program**”), and for which the Debtors pay cash to such customers at the checkout register (the “**Bottle Deposit Proceeds**”). The Debtors pay the Environmental Products Corporation (“**Envipco**”) handling and pick-up fees and other service fees (collectively, the “**Envipco Fees**”) for each machine installed at its stores. On a monthly basis, Envipco reimburses the Debtors for the Bottle Deposit Proceeds and pays certain other amounts owed to the Debtors under the Envipco Agreement (less any amounts owed on account of the Envipco Fees). By this Motion, the Debtors seek authorization to offer the Bottle Deposit Program to their customers in the ordinary course of business.³

³ The Debtors seek to honor their obligations to Envipco and regulatory authorities in connection with the Bottle Deposit Program as set forth in the *Motion Of Debtors For (I) Authority to (A) Maintain Certain Trust Fund Programs, (B) Release Certain Funds Held in Trust, (C) Continue to Perform and Honor Related Obligations; and (II) Related Relief,*

G. Discount Programs

15. The Debtors currently administer a discount program for customers that are 60 years of age or older (the “**6% For Sixty Program**”), pursuant to which Fairway issues 6% For Sixty discount cards to eligible customers who enroll in the 6% For Sixty Program. By presenting the discount card at the time of purchase, participating customers receive 6% off eligible purchases made at any Fairway Market store on Tuesdays and Wednesdays. The discount cards also afford participating customers 10% off of all catering orders placed in the store.

16. The Debtors also offer some of their other customers an opportunity to receive certain benefits and discounts. For example, the Debtors maintain a discount program for students, service members, and member of the police and fire department. The program allows these individuals to receive an instant discount on items throughout the store. The Debtors do not typically accrue a liability on account of these programs, rather, they deduct any customer savings provided through these programs from revenue otherwise generated at the point of sale. By this Motion, the Debtors seek to honor their commitments under their discount programs.

H. Charitable Programs

17. From time to time, the Debtors make donations of items like gift cards, gift baskets, and food to certain charitable organizations or otherwise supports community organizations to build brand awareness and strengthen local community ties (collectively, the “**Charitable Programs**”).

18. The Debtors currently administer a Charitable Program called “Community Partner Group” (the “**CPG Program**”), pursuant to which the Debtors issue “Fairway” store cards to parent-teacher associations (“**PTAs**”) at local schools. Such store cards may be used at the Debtors’ stores to track the cardholders’ store purchases. On a quarterly basis, PTAs receive 3% cash-back rebate for the first \$100,000 spent by their cardholders in the quarter and 4% on dollars

spent by such cardholders in excess of \$100,000. By this Motion, the Debtors seek to honor their commitments under the CPG Program and under all other Charitable Programs.

I. Customer Delivery Program

19. The Debtors currently operate a customer delivery program (the “**Customer Delivery Program**”) through XPO Logistics, Inc. (“**XPO**”). XPO provides the Debtors with end-to-end logistical support, picking up individual customer orders at the Debtors’ stores and delivering them to the customer’s home or place of business. The services offered by the Customer Delivery Program cost approximately \$30,000 per week. The continuance of the Customer Delivery Program is critical to the Debtors servicing of their customers, as the Debtors’ customers rely on its convenience and efficiency. By this Motion, the Debtors seek authorization to continue the Customer Delivery Program.

The Relief Requested Should Be Granted

A. Ample Authority Exists to Support Payment of the Obligations Arising under Customer Obligations

20. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363 of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims if a sound business purpose exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that there must be a sound business justification to justify payment of prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims of suppliers). The business judgment rule is satisfied where “the directors of a

corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citations omitted). Courts in this District consistently have declined to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and have upheld a board’s decisions as long as such decisions are attributable to any “rational business purpose.” *Integrated*, 147 B.R. at 656 (quoting *CRTF Corp. v. Federated Dep’t Stores*, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)).

21. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of the debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 233 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”). Section 105(a) of the

Bankruptcy Code empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105.

22. The Court may also authorize the payment of prepetition claims under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor’s business. *See, e.g., In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991); *CoServ*, 273 B.R. at 497 (“[I]t is only logical that the bankruptcy court be able to use Section 105(a) of the Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for payment of prepetition claims under doctrine of necessity and noting that the bankruptcy court has “power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”).

23. Allowing a debtor to honor prepetition obligations under this authority is appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Sav. Assoc. v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999).

24. Courts in this and other districts specifically have authorized debtors to honor prepetition obligations arising from customer programs substantially similar to those discussed herein in comparable chapter 11 proceedings. *See, e.g., In re Tops Holding II Corp.*, Case No. 18-22279 (Bankr. S.D.N.Y. Mar. 22, 2018) (ECF No. 185) (authorizing approximately \$10,000,000 worth of prepetition customer programs expenses); *Fairway Group Holdings Corp.*, Case No. 16-11241 (Bankr. S.D.N.Y. June 6, 2016) (ECF No. 124); *In re The Great Atl. & Pac. Tea Co.*,

Case No. 15-23007 (Bankr. S.D.N.Y. Aug. 11, 2015) (ECF No. 499); *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 10-24549 (Bankr. S.D.N.Y. Jan. 13, 2011) (ECF No. 498) (authorizing approximately \$11,140,000 of prepetition customer programs expenses); *In re AWI Delaware, Inc.*, Case No. 14-12092 (Bankr. D.Del. Sept. 10, 2014) (ECF No. 54) (approving \$120,000 worth of prepetition customer programs expenses); *In re Bruno's, Inc.*, Case No. 09-00634 (Bankr. N.D. Ala. Feb. 17, 2009) (ECF. 144) (approving \$900,000 worth of prepetition customer programs expenses); *In re Sbarro LLC*, Case No. 14-10557 (Bankr. S.D.N.Y. Apr. 7, 2014) (ECF No. 129) (approving \$87,500 worth of prepetition customer program expenses).

B. Continuing the Customer Programs and Honoring the Customer Obligations Is in the Best Interests of the Debtors' Businesses and Estates

25. The ability to continue administering the Customer Programs without interruption is absolutely critical to the Debtors' valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors' stakeholders. If the Debtors are unable to continue the Customer Programs postpetition or honor obligations thereunder, the Debtors risk alienating certain customer constituencies (who then could form relationships with the Debtors' competitors) and could suffer corresponding losses in customer loyalty and goodwill that will harm their prospects for maximizing recoveries to their creditors.

26. The Debtors' Customer Programs also are essential marketing strategies for attracting new customers. Failure to continue the Customer Programs and offer even basic programs such as the Return and Exchange Policy will place the Debtors at a significant—and potentially insurmountable—competitive disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from these chapter 11 filings. Such uncertainty could erode the Debtors' hard-earned reputation and brand loyalty, which, in turn, could adversely impact their ability to successfully administer their chapter 11 cases and maximize

recoveries to stakeholders. The relief requested herein will pay dividends with respect to their businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the commencement of these chapter 11 cases.

27. Honoring obligations under the Customer Programs will not prejudice other stakeholders. For example, the Debtors are reimbursed for honoring third-party Coupons. Under these circumstances, the benefits of continuing to honor the Customer Programs far outweigh the relatively minimal costs associated therewith. Accordingly, the Debtors have shown cause sufficient to warrant the authority to continue administering the Customer Programs and to honor any customer obligations relating thereto.

28. Further, pursuant to section 507(a)(7) of the Bankruptcy Code, up to \$3,025 in claims arising from a consumer's prepetition deposit "of money for the purchase of property or services for personal, family or household use" to the extent that such property or services were not delivered, have priority over other general unsecured claims. *See* 11 U.S.C. § 507(a)(7). This provision was added to the Bankruptcy Code in 1984 to "protect consumers who had deposited money for goods and services with a business that subsequently filed for bankruptcy" and has since been adjusted to increase the priority amount. *In re River Vill. Assocs.*, 161 B.R. 127, 133 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995). The obligations that arise in connection with the Gift Certificate Program are priority claims under section 507(a)(7) of the Bankruptcy Code.

Reservation of Rights

29. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement,

contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Debtors Have Satisfied Bankruptcy Rule 6003(b)

30. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a Bankruptcy Court may issue an order granting "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" before twenty-one (21) days after filing of the petition. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

31. As described above, the Customer Programs are integral to the Debtors' continued operations because they are necessary to maintain the confidence and goodwill of the Debtors' customer base. The Debtors are at a critical juncture at which they must make every effort to retain customer support, drive revenues, and maximize cash flow. The Debtors' inability to continue the Customer Programs could materially—and perhaps fatally—impair their efforts and thwart the Debtors' chapter 11 cases before they have had a chance to begin. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003(b) is satisfied.

Bankruptcy Rules 6004(a) and (h)

32. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declarations, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

Notice

33. Notice of this Motion has been provided to (i) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Greg Zipes, Esq. and Paul Schwartzberg, Esq.); (ii) the holders of the forty (40) largest unsecured claims against the Debtors (on a consolidated basis); (iii) counsel to the Consenting Creditors and proposed DIP Lenders, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: W. Austin Jowers, Esq., Michael Rupe, Esq., and Michael R. Handler, Esq.); (iv) counsel to Ankura Trust Company, LLC, as the Prepetition Agent under the Prepetition Credit Agreement, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Christian Fischer, Esq.); (v) the Internal Revenue Service; and (vi) the United States Attorney's Office for the Southern District of New York (collectively, the "**Notice Parties**"). The Debtors respectfully submit that no further notice is required.

34. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of interim and final orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: January 23, 2020
New York, New York

/s/ Sunny Singh
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Ray C. Schrock, P.C.
Sunny Singh

*Proposed Attorneys for Debtors
and Debtors in Possession*

Exhibit A

Proposed Interim Order

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

-----X
In re :
: **Chapter 11**
FAIRWAY GROUP HOLDINGS :
CORP., et al., : **Case No. 20-[_____] (____)**
: **(Jointly Administered)**
Debtors.¹ :
-----X

**INTERIM ORDER AUTHORIZING DEBTORS
TO (I) MAINTAIN AND ADMINISTER PREPETITION
CUSTOMER PROGRAMS, PROMOTIONS, AND PRACTICES;
AND (II) PAY AND HONOR RELATED PREPETITION OBLIGATIONS**

Upon the motion (the “**Motion**”)² of Fairway Group Holdings Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105(a), 363(b), and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of interim and final orders authorizing the Debtors, in the ordinary course of business and consistent with past practice, to: (i) maintain and administer their Customer Programs, promotions, and practices, and (ii) 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, and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28

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.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and such notice having been adequate and appropriate under the circumstances, and it appearing that no other notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declarations, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to maintain and administer the Customer Programs and honor any related prepetition obligations in the ordinary course of business and consistent with past practice, provided that the Debtors are authorized, but not directed, to pay or honor only amounts or obligations that are or become due and payable as of the Commencement Date or between the Commencement Date and the date that a final order on the Motion is entered, unless otherwise ordered by the Court;

3. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the hearing to consider the relief requested in the Motion on a final basis (the “**Final Hearing**”).

4. Notwithstanding anything to the contrary contained herein, any payments made or to be made by the Debtors under this Interim Order, and any authorization contained in this Interim Order, shall be in compliance with, and shall be subject to the DIP Orders approving the Debtors’ debtor-in-possession financing facility and/or use of cash collateral, and the documentation in respect of any such debtor-in-possession financing facility, including, without limitation, the Budget under, and as defined in, the DIP Orders.

5. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

6. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

7. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

8. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

9. This Interim Order is effective only from the date of entry through the Court's disposition of the Motion on a final basis; provided that the Court's ultimate disposition of the Motion on a final basis shall not impair or otherwise affect any action taken pursuant to this Interim Order.

10. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

11. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

12. The Final Hearing shall be held on _____, **2020**, at _____ (**Prevailing Eastern Time**) and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (i) the proposed attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Ray C. Schrock, P.C. and Sunny Singh, Esq.); (ii) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Greg Zipes, Esq. and Paul Schwartzberg, Esq.); (iii) counsel to the Consenting Creditors and proposed DIP Lenders, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: W. Austin Jowers, Esq., Michael Rupe, Esq., and Michael R. Handler, Esq.); and (iv) counsel to Ankura Trust Company, LLC, as the Prepetition Agent under the Prepetition Credit Agreement, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Christian Fischer, Esq.), in each case, so as to be received no later than **4:00 p.m. (Prevailing Eastern Time) on _____, 2020.**

Dated: _____, 2020
New York, New York

UNITED STATES BANKRUPTCY JUDGE