

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among (i) the United States of America, acting through the United States Attorney’s Office for the Northern District of New York and on behalf of the United States Small Business Administration (“SBA”) (collectively the “United States”); (ii) Feast American Diners LLC (“Feast American Diners” or “Defendant”); (iii) Dawood “David” Beshay (“Beshay”); and (iv) GNGH2 Inc. (“Relator”), through their authorized representatives. Collectively, all of the above will be referred to as “the Parties.”

### RECITALS

A. Congress enacted the American Rescue Plan Act, Pub. L. 117-2 (“Act”) in March 2021 as a continuation of the federal government’s efforts to provide relief to American individuals and businesses suffering the economic and public health effects of the COVID-19 pandemic. The Act allocated \$28.6 billion toward a Restaurant Revitalization Fund (“RRF”), to be administered by SBA, that could grant qualifying restaurants and other “eligible entities” money awards equal to revenue losses caused by the pandemic. Any restaurant that owned or operated more than 20 locations as of March 13, 2020, was not an “eligible entity.” 15 U.S.C. § 9009c(a)(4)(C)(i)(II).

B. In April 2021, SBA released official guidelines for completing RRF applications. The guidance reiterated that an entity was not an “eligible entity” if it owned or operated more than 20 locations as of March 13, 2020. At various points in the guidance, SBA explained that a restaurant was in “operation” if it was “making sales.”

C. To obtain an RRF grant, an eligible entity submitted an application to SBA, signed by an authorized representative. The application required the entity –


through its authorized representative – to acknowledge program rules and make certain affirmative certifications regarding its eligibility to obtain the grant. Among other things, the authorized representative had to acknowledge that the information in the application was true and accurate in all material respects, and that “I understand that knowingly making a false statement to obtain a grant from SBA is punishable under the law.”

D. On March 13, 2020, Feast American Diners owned 21 Denny’s franchised restaurant locations in Arizona and New York, including seven in the Northern District of New York (*i.e.*, three in Syracuse, and one each in Auburn, Camillus, Cicero, and Watertown). On March 13, 2020 through May 3, 2021, Beshay served as Managing Member and part owner of Feast American Diners.

E. On May 3, 2021, Beshay applied for an RRF grant on behalf of Feast American Diners, in the amount of \$928,554. In response to question 1.b on the RRF grant application, which asked whether Feast American Diners owned or operated more than 20 locations as of March 13, 2020, Feast American Diners responded “no.” That same question, reproduced below, indicates that an applicant who responded “yes” would not be eligible for the grant:

As of March 13, 2020, owns or operates (together with any affiliated business) more than 20 locations, regardless of whether those locations do business under the same or multiple names.  
 No     Yes (if Yes, the Applicant is not eligible)

F. Later in the application, Beshay affixed his initials next to the following certification:

 The Applicant, together with its affiliates, does not own or operate more than 20 locations, regardless of whether those locations do business under the same or different names.

G. On March 13, 2020, all 21 Denny's locations owned by Feast American Diners made sales. By March 20, 2020, one location in New York had closed due to the pandemic and had stopped making sales, and by March 22, 2020, the remaining 14 locations in New York had closed due to the pandemic and had stopped making sales. Of these New York locations, two eventually reopened. By March 26, 2020, all but one of Feast American Diners' Arizona locations had closed due to the pandemic and had stopped making sales. Of the Arizona locations that had closed, all eventually reopened.

H. Feast American Diners and Beshay admit, acknowledge, and accept responsibility for the facts set forth above, in Paragraphs A-G, as well as the following: (1) Feast American Diners owned 21 Denny's locations as of March 13, 2020; (2) Beshay should have known that Feast American Diners owned 21 Denny's locations as of March 13, 2020; (3) all 21 Feast American Diners locations made sales on March 13, 2020; (4) Beshay should have known that all 21 Feast American Diners locations made sales on March 13, 2020; and (5) Beshay did not discuss with or otherwise consult any other current or former Feast American Diners owner about the entity's eligibility for an RRF grant prior to August 2, 2023, when he learned of the United States' investigation into Feast American Diners' RRF grant.

I. The United States contends that the admitted facts establish that Beshay knowingly caused false claims to be made to SBA, and knowingly made false statements material to false claims paid by SBA, by certifying falsely that Feast American Diners did not own or operate more than 20 locations as of March 13, 2020 when he knew or should have known that the company both owned and operated 21 Denny's locations as

of that date. This Paragraph, together with the admitted facts set forth above in Paragraphs A-H, constitutes the “Covered Conduct.”

J. On December 12, 2022, GNGH2 Inc. filed a *qui tam* action against Feast American Diners in the United States District Court for the Northern District of New York captioned *United States ex rel. GNGH2 Inc. v. Feast American Diners LLC*, No. 5:22-cv-1331, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleges that Feast American Diners violated the False Claims Act by falsely certifying its eligibility for the RRF program. The United States intervened in the Civil Action on October 31, 2023.

K. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Defendant or Beshay shall pay the United States the sum of \$2,000,000 (Settlement Amount), of which \$928,554 is restitution, plus interest at a rate of 9.5% per annum on the outstanding principal from October 31, 2023 until and including the day that final payment is made under this Agreement, per the terms set forth in Paragraphs 1(a)-(d). Defendant and Beshay are jointly and severally liable for the Settlement Amount and interest.

- a. By November 30, 2023, Defendant or Beshay will make payment to the United States of \$500,000.
- b. Defendant or Beshay will pay the remaining \$1,500,000 plus interest at the rate identified in Paragraph 1, pursuant to the following schedule (the Payments Over Time), in four installments by no later than the following dates: (i) \$375,000 by February 15, 2024, (ii) \$375,000 by May 15, 2024, (iii) \$375,000 by August 15, 2024, and (iv) \$375,000 plus all accrued interest at the rate identified in Paragraph 1 by November 29, 2024. The Payments Over Time shall be secured pursuant to a Consent Judgment, in the form of Exhibit A.
- c. If Defendant or any of its affiliates is sold, merged, or transferred, or a significant portion of the assets of Defendant or of any of its affiliates is sold, merged, or transferred into another non-affiliated entity, Defendant shall promptly notify the United States, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.
- d. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

2. Conditioned upon the United States receiving the Settlement Amount payments, the United States agrees that it shall pay to Relator by electronic funds transfer 10 percent of each such payment received under the Settlement Agreement (Relator's Share) as soon as feasible after receipt of the payment.

3. Within 90 days of the Effective Date, Defendant will pay to Relator, through Relator's counsel, \$2,202.00 in full and complete satisfaction of any claim Relator has or could have asserted for attorney's fees, costs, and expenses arising out of, relating to, or in connection with the Civil Action.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims), Paragraph 13 (concerning default), and Paragraph 14 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Defendant, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, and Beshay, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 (concerning reserved claims), Paragraph 13 (concerning default), and Paragraph 14 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for itself and for its shareholder, and for its and its shareholder's successors, attorneys, agents, and assigns, releases Feast American Diners and Beshay from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals, other than Beshay.

7. Relator for itself, its shareholder, heirs, successors, attorneys, agents, and assigns, shall not object to this Agreement but agrees and confirms that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and its shareholder, heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for itself, its shareholder, heirs, successors, attorneys, agents, and assigns, releases Feast American Diners, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. Defendant and Beshay waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. Defendant and Beshay fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant and/or Beshay have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

11. Defendant and Beshay fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendant and/or Beshay have asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

12. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendant,



and its present or former officers, directors, employees, shareholders, agents, and/or Beshay in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Defendant's and Beshay's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendant and/or Beshay make to the United States pursuant to this Agreement and any payments that Defendant may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Defendant and Beshay, and they shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for

Payment: Within 90 days of the Effective Date of this Agreement, Defendant and Beshay

shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendant or any of its subsidiaries or affiliates from the United States. Defendant and Beshay agree that the United States, at a minimum, shall be entitled to recoup from them any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Defendant's books and records and to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendant, or the effect of any such Unallowable Costs on the amount of such payments.

13. Default: a. In the event that Defendant or Beshay fail to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Defendant and Beshay shall be in Default of their payment obligations (Default). The United States will provide a written Notice of Default, and Defendant and Beshay shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Eric R. Breslin / Melissa Geller, Esq., Duane Morris, LLP, or to such other representative as Defendant and Beshay shall designate in advance in writing. If Defendant and Beshay fail to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (Uncured Default), the

remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Defendant and Beshay agree to entry of the Consent Judgment in the amount of the unpaid principal and interest balance and that the United States, in its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Defendant and Beshay for the claims that would otherwise be covered by the releases provided in Paragraph 4 above, with any recovery reduced by the amount of any payments previously made by Defendant and Beshay to the United States under this Agreement; (ii) take any action to execute and collect on the Consent Judgment; (iii) file an action for specific performance of the Agreement; (iv) offset the remaining unpaid balance from any amounts due and owing to Defendant or Beshay and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (v) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Defendant and Beshay agree immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the

United States opts to rescind this Agreement pursuant to this paragraph, Defendant and Beshay waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Defendant or Beshay within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on December 12, 2022. Defendant and Beshay agree not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

14. In exchange for valuable consideration provided in this Agreement, Defendant, Beshay, and Relator acknowledge the following:

a. Defendant and Beshay have reviewed their financial situations and warrant that each is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendant and Beshay, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Defendant and Beshay was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If any of Defendant's or Beshay's payments or obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Defendant and Beshay or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Defendant or Beshay's debts, or to adjudicate Defendant or Beshay as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant and Beshay or for all or any substantial part of Defendant and Beshay's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Defendant and Beshay for the claims that would otherwise be covered by the releases provided in Paragraph 4 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendant and Beshay in the amount of \$2,812,680, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such

payments are not otherwise avoided and recovered from the United States by a receiver, trustee, creditor, custodian, or similar official;

(iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 2 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 of this Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

f. Defendant and Beshay agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 14(e) is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Defendant and Beshay shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Defendant and Beshay waive and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to

Defendant and Beshay that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on December 12, 2022.

15. This Agreement is intended to be for the benefit of the Parties only.

16. Upon receipt of the payment described in Paragraph 1, above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

17. Except as provided in Paragraph 3, above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

19. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Northern District of New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

23. This Agreement is binding on Defendant and Beshay's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

25. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.



**THE UNITED STATES OF AMERICA**

CARLA B. FREEDMAN  
United States Attorney



October 30, 2023

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Adam J. Katz  
Assistant United States Attorney

**FEAST AMERICAN DINERS AND  
DAWOOD "DAVID" BESHAY**

Duane Morris LLP

October \_\_\_\_, 2023

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Eric R. Breslin  
Melissa S. Geller

October \_\_\_\_, 2023

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Dawood "David" Beshay

**RELATOR GNGH2 INC.**

October \_\_\_\_, 2023

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David Abrams, Esq.

**THE UNITED STATES OF AMERICA**

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United States Attorney

October \_\_\_\_, 2023

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Eric R. Breslin  
Melissa S. Geller

October 30<sup>th</sup>, 2023



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**RELATOR GNGH2 INC.**

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David Abrams, Esq.

**THE UNITED STATES OF AMERICA**

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**RELATOR GNGH2 INC.**

October <sup>30</sup> \_\_\_\_, 2023



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David Abrams, Esq.