

HANCOCK JOHN FINANCIAL SERVICES INC
Form SC 13D
September 17, 2001

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13D
(Rule 13d-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO RULE
13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
RULE 13d-2(a)

Fresh America Corp.
(Name of Issuer)

Warrants (exercisable into common stock)
(Title of Class of Securities)

35803R 6# 7
(CUSIP Number)

Marcia A. Casey
Senior Counsel
John Hancock Financial Services, Inc.
T-30-12
Post Office Box 111
Boston, Massachusetts 02117
(617) 572-9183

(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications)

September 5, 2001
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box. .

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

(Continued on following pages)

(Page 1 of 10 pages)

* The remainder of this cover page shall be filled out for a reporting person's

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initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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1 NAME OF REPORTING PERSON
 S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

 John Hancock Financial Services, Inc.
 I.R.S. No. 04-3483032

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*

3 SEC USE ONLY

4 SOURCE OF FUNDS*

See Item 3

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(f)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 SOLE VOTING POWER

NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH
REPORTING
PERSON

45,414,529: 38,602,350 through its direct, wholly-owned subs
6,812,179 through its indirect, wholly-owned subsidiary John
Life Insurance Company

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WITH

8	SHARED VOTING POWER	-0-
9	SOLE DISPOSITIVE POWER	45,414,529: 38,602,350 through its direct, wholly-owned subs 6,812,179 through its indirect, wholly-owned subsidiary John Life Insurance Company
10	SHARED DISPOSITIVE POWER	-0-

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

See Rows 7 and 9.

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

84.4% as described in Rows 7 and 9.

14 TYPE OF REPORTING PERSON*

HC

*SEE INSTRUCTIONS BEFORE FILLING OUT!

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

John Hancock Life Insurance Company

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I.R.S. No. 04-1414660

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*

3 SEC USE ONLY

4 SOURCE OF FUNDS*

See Item 3

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(f)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Massachusetts

	7	SOLE VOTING POWER
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		38,602,350 directly and 6,812,179 through its indirect, wholly owned subsidiary John Hancock Variable Life Insurance Company

8 SHARED VOTING POWER

0

9 SOLE DISPOSITIVE POWER

38,602,350 directly and 6,812,179 through its indirect, wholly owned subsidiary John Hancock Variable Life Insurance Company

10 SHARED DISPOSITIVE POWER

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,602,350

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12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

84.4% See Item 4

14 TYPE OF REPORTING PERSON*

IC, IA

*SEE INSTRUCTIONS BEFORE FILLING OUT!

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

John Hancock Variable Life Insurance Company
I.R.S. No. 04-2664016

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*

3 SEC USE ONLY

4 SOURCE OF FUNDS*

See Item 3

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(f)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Massachusetts

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7 SOLE VOTING POWER
NUMBER OF
SHARES
BENEFICIALLY
OWNED BY
EACH
REPORTING
PERSON
WITH
6,812,179

8 SHARED VOTING POWER
-0-

9 SOLE DISPOSITIVE POWER
6,812,179

10 SHARED DISPOSITIVE POWER
-0-

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
6,812,179

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
44.8% See Item 4

14 TYPE OF REPORTING PERSON*
IC, IA

*SEE INSTRUCTIONS BEFORE FILLING OUT!

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Item 1. Security and Issuer.

This statement relates to Warrants to purchase Common Stock (the "Warrants"), \$.01 par value per share (provided however that par value is expected to change to \$.001 per share upon the approval and filing of the Amended and Restated Articles of Incorporation of the Issuer as described in Item 4), of Fresh America Corp. (the "Issuer"). The principal executive offices of the Issuer are located at 6600 LBJ Freeway, Suite 180, Dallas, Texas 75240.

Item 2. Identity and Background

The persons filing this statement are John Hancock Financial Services, Inc., a Delaware corporation ("JHFS"), its direct, wholly-owned subsidiary, John Hancock Life Insurance Company, a Massachusetts corporation, ("JHLICO"), and JHLICO's direct, wholly-owned subsidiary John Hancock Variable Life Insurance Company ("JHVLICO"), a Massachusetts corporation, (collectively, the "Reporting Persons").

JHFS's principal business is diversified financial services. JHLICO's and JHVLICO's principal business is life insurance. The principal office and business address for the Reporting Persons is located at John Hancock Place, P.O. Box 111, Boston, Massachusetts 02117.

The name, residence or business address and principal occupation or employment of each of the executive officers and directors of the Reporting Persons are set forth in Attachments A, B, and C, respectively. Except as otherwise noted in Attachments A, B, or C, each is a citizen of the United States of America and neither the Reporting Persons nor any such person has, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors), or been party to any civil proceeding which resulted in a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration

JHLICO obtained 29,519,444 Warrants and JHLICO also has direct beneficial ownership of the 4,541,453 Warrants issued to Signature 1A (Cayman), Ltd. ("Cayman") and the 4,541,453 Warrants issued to Signature 3 Limited ("Signature 3"). Cayman and Signature 3 are advisory accounts of JHLICO. JHVLICO obtained 6,812,179 Warrants.

In addition to the Warrants noted above, JHLICO, JHVLICO and Investors Partner Life Insurance Company ("Investors") obtained 27,000 shares of Series D Cumulative Redeemable Preferred Stock (the "Series D Preferred Stock"), \$1.00 par value per share, of the Issuer pursuant to an exchange and cancellation of (a) \$20,000,000 in aggregate principal amount of the Issuer's 12% Senior Subordinated Notes due May 1, 2007; (b) an aggregate of 155,483 Series A Warrants to purchase Common Stock of the Issuer, (c) an aggregate of 420,651 Series B Warrants to purchase Common Stock of the Issuer, and (d) an aggregate of 50,000 shares of Series C Cumulative Redeemable Preferred Stock of the Issuer, all previously held by JHLICO, JHVLICO, Cayman, Signature 3 and Investors (collectively, the "Hancock Entities").

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The securities listed in clauses (a), (b), (c) and (d) of this Item 3 were previously acquired by JHLICO, JHVLICO, Cayman and Investors pursuant to (i) a Securities Purchase Agreement dated as of May 4, 1998, by and among the

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Issuer, JHLICO, JHVLICO and Cayman; (ii) a Securities Purchase Agreement dated as of April 15, 2000, by and among the Issuer, JHLICO, JHVLICO and Investors and (iii) a Warrant Agreement dated as of May 4, 1998, amended by the Amended and Restated Warrant Agreement dated as of April 15, 2000, among the Issuer, JHLICO, JHVLICO and Cayman.

Item 4. Purpose of Transaction

On August 14, 2001, the Hancock Entities, the Issuer and North Texas Opportunity Fund ("NTOF") executed a Securities Exchange and Purchase Agreement ("Purchase Agreement") whereby the Hancock Entities exchanged, on September 5, 2001, the securities listed in clauses (a), (b), (c) and (d) of Item 3 for the Warrants and the Series D Preferred Stock. A copy of the Purchase Agreement is attached hereto as Exhibit A. Upon exercise, the Warrants shall account for approximately 27% of the Issuer's Common Stock determined on a fully diluted basis. (Pursuant to the Purchase Agreement, NTOF was issued 84,100,980 Warrants which, upon exercise, will account for approximately 50% of the Issuer's Common Stock on a fully diluted basis. The 84.4% referred to in Item #13 reflects the collective percentage of the Reporting Persons and Signature 3 without giving effect to the warrants owned by NTOF.) The transactions contemplated by the Purchase Agreement were effective as of September 5, 2001, subject to certain post-closing conditions. Although the Warrants are immediately exercisable, the Issuer currently does not have a sufficient number of authorized shares of Common Stock to issue upon exercise of the Warrants. Therefore, before the Warrants may be exercised by the Reporting Persons, shareholder approval, which is beyond the control of the Reporting Persons, must be obtained to, among other things, approve an amendment to the Issuer's Articles of Incorporation to increase the number of authorized shares of Common Stock and decrease the stated par value of the Common Stock. A copy of the JHLICO Warrant is attached hereto as Exhibit B; the JHVLICO Warrant is attached hereto as Exhibit C; the Cayman Warrant is attached hereto as Exhibit D; and the Signature 3 Warrant is attached hereto as Exhibit F. The Certificate of Designation, attached hereto as Exhibit G, sets forth the voting powers, rights and preferences of the Series D Preferred Stock of the Issuer.

The Hancock Entities, the Issuer and NTOF also executed a Shareholders Agreement ("Shareholders Agreement") on August 14, 2001 which, among other things, provides that for so long as any Hancock Entity owns any capital stock of the Issuer, the Hancock Entities shall have the right, upon written notice to NTOF, to designate one of the five directors of the Issuer. At all times prior to the Hancock Entities giving such written notice to NTOF, NTOF shall have the right to designate an additional director thereby providing NTOF with the ability to designate four directors. The Shareholders Agreement also contains a voting agreement whereby the Hancock Entities and certain other shareholders have agreed to vote all shares owned or later acquired by such shareholders so that at all times the persons designated to serve as members of the Board of Directors pursuant to the provisions of the Shareholders Agreement will be elected and remain members of the Board of Directors. A copy of the Shareholders Agreement is attached hereto as Exhibit G.

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Item 5. Interest in Securities of the Issuer

JHLICO obtained 29,519,444 Warrants and JHLICO also has direct beneficial ownership of the 4,541,453 Warrants issued to Signature 1A (Cayman), Ltd. ("Cayman") and the 4,541,453 Warrants issued to Signature 3 Limited

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("Signature 3"). Cayman and Signature 3 are advisory accounts of JHLICO. JHVLICO obtained 6,812,179 Warrants.

(a) (i) The Reporting Persons, including the Cayman and Signature 3 Warrants, are the beneficial owners of Warrants to purchase 45,414,529 shares of Common Stock of the Issuer.

If shareholder approval is obtained as described in Item 4, then the holdings of the Reporting Persons Cayman and Signature 3, collectively, will represent approximately 27% of the total of 168,201,960 (such number determined on a fully diluted basis) shares of Common Stock that will be outstanding (according to information provided to the Reporting Persons by the Issuer) upon the shareholder approval discussed in Item 4; (ii) certain of the Hancock Entities (JHLICO, JHVLICO and Investors) are also the beneficial owners of 27,000 shares of Series D Preferred Stock of the Issuer, representing approximately 35% of the 77,000 shares of Series D Preferred Stock outstanding.

(b) (i) There are certain voting powers associated with the Common Stock and the Series D Preferred Stock and each of the Hancock Entities has the right to vote or to direct the vote of the Series D Preferred Stock and the Warrants that are owned by such Hancock Entity; (ii) each of the Hancock Entities has right to dispose or direct the disposition of the Warrants and the Series D Preferred Stock owned by such Hancock Entity.

(c) Except as disclosed above in response to Item 3, there have been no transactions in shares of Common Stock by the Reporting Persons.

(d) No.

(e) Not Applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

See Item 4 above.

Item 7. Material to Be Filed as Exhibits

Exhibit No.	Description
-------------	-------------

A.	Securities Exchange and Purchase Agreement, dated August 14, 2001, by and among Fresh America Corp., North Texas Opportunity Fund LP and each of John Hancock Financial Services, Inc., John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company, Signature 1A (Cayman), Ltd., Signature 3 Limited and Investors Partner Life Insurance Company
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B. John Hancock Life Insurance Company Warrant to purchase 29,519,444 shares of common stock of Fresh America Corp.

C. John Hancock Variable Life Insurance Company Warrant to purchase 6,812,179 shares of common stock of Fresh America

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Corp.

- D. Signature 1A (Cayman), Ltd. Warrant to purchase
4,541,453 shares of common stock of Fresh America Corp.
- E. Signature 3 Limited Warrant to purchase
4,541,453 shares of common stock of Fresh America Corp.
- F. Certificate of Designation
- G. Shareholders Agreement, dated August 14, 2001, by and
among Fresh America Corp., North Texas Opportunity Fund
LP and each of John Hancock Financial Services, Inc.
John Hancock Life Insurance Company, John
Hancock Variable Life Insurance Company, Signature 1A
(Cayman), Ltd., Signature 3 Limited and Investors Partner
Life Insurance Company

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SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I
certify that the information set forth in this statement is true, complete and
current.

September 17, 2001

John Hancock Financial Services, Inc.

By: /s/Barry J. Rubenstein

Name: Barry J. Rubenstein
Title: Vice President, Counsel & Secretary

John Hancock Life Insurance Company

By: /s/Roger G. Nastou

Name: Roger G. Nastou
Title: Vice President

John Hancock Variable Life Insurance Company

By: /s/Michele G. Van Leer

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Name: Michele G. Van Leer
Title: President

Investors Partner Life Insurance Company

By: /s/Michele G. Van Leer

Name: Michele G. Van Leer
Title: President

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EXHIBIT INDEX

Exhibit No. -----	Description -----
A.	Securities Exchange and Purchase Agreement
B.	John Hancock Life Insurance Company Warrant
C.	John Hancock Variable Life Insurance Company Warrant
D.	Signature 1A (Cayman) Ltd. Warrant
E.	Signature 3 Limited Warrant
F.	Certificate of Designation
G.	Shareholders Agreement

ATTACHMENT A

JOHN HANCOCK FINANCIAL SERVICES, INC.

DIRECTORS AND EXECUTIVE OFFICERS (as of 9/14/01)

Name	Business or Residential Address	Positions with JHFS and Principal Occupation
I. MacAllister Booth	68 Barnes Hill Road Concord, MA 01742	Director - JHFS
Wayne A. Budd	John Hancock Place P.O. Box 111 Boston, MA 02117	Director - Executive Vi General Counsel - JHFS
John M. Connors, Jr.	200 Clarendon Street Boston, MA 02116	Director - JHFS; CEO an Hill, Holiday, Connors,

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David F. D'Alessandro	John Hancock Place P.O. Box 111 Boston, MA 02117	Director, Chairman and Officer - JHFS
Robert E. Fast, Esq.	60 State Street Boston, MA 02109	Director - JHFS; Senior and Dorr
Dr. Kathleen Foley Feldstein	147 Clifton Street Belmont, MA 02178	Director - JHFS; Presid Studies, Inc.
Nelson S. Gifford	75 Federal Street Suite 1100 Boston, MA 02110-1911	Director - JHFS; Princi Capital
Thomas P. Glynn	800 Boylston Street Boston, MA 02199	Director - JHFS; Chief Officer, Partners Health
Michael C. Hawley	P.O. Box 111 Boston, MA 02117	Director - JHFS
Edward H. Linde	800 Boylston Street Boston, MA 02199	Director - JHFS; Presid Boston Properties, Inc.
Judith A. McHale	7700 Wisconsin Avenue Bethesda, MD 20814	Director - JHFS; Presid Operating Officer of Di Communications, Inc.
R. Robert Popeo, Esq.	One Financial Center Boston, MA 02111	Director - JHFS; Chairm Cohn, Ferris, Glovsky a
Richard F. Syron	81 Wyman Street Waltham, MA 02454	Director - JHFS; Chairm CEO of Thermo Electron
Robert J. Tarr, Jr.	200 Wheeler Road Burlington, MA 01803	Director - JHFS; Chairm CEO of HomeRuns.com

ATTACHMENT B

JOHN HANCOCK LIFE INSURANCE COMPANY

DIRECTORS AND EXECUTIVE OFFICERS (as of 9/14/01)

Name	Business or Residential Address	Positions with JHLICO a Principal Occupation
Foster L. Aborn	John Hancock Place P.O. Box 111 Boston, MA 02117	Director - JHLICO
I. MacAllister Booth	68 Barnes Hill Road Concord, MA 01742	Director - JHLICO
Wayne A. Budd	John Hancock Place P.O. Box 111	Director - Executive Vi General Counsel - JHLI

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	Boston, MA 02117	
John M. Connors, Jr.	200 Clarendon Street Boston, MA 02116	Director - JHLICO; CEO Hill, Holiday, Connors,
David F. D'Alessandro	John Hancock Place P.O. Box 111 Boston, MA 02117	Director, Chairman and Officer - JHLICO
John M. DeCiccio	John Hancock Place P.O. Box 111 Boston, MA 02117	Director - JHLICO; Exec President and Chief Inv JHLICO
Robert E. Fast, Esq.	60 State Street Boston, MA 02109	Director - JHLICO; Seni Hale and Dorr
Dr. Kathleen Foley Feldstein	147 Clifton Street Belmont, MA 02178	Director - JHLICO; Pres Economics Studies, Inc.
Nelson S. Gifford	75 Federal Street Suite 1100 Boston, MA 02110-1911	Director - JHLICO; Prin Capital
Thomas P. Glynn	800 Boylston Street Boston, MA 02199	Director - JHLICO; Chie Officer, Partners Healt
Michael C. Hawley	John Hancock Place P.O. Box 111 Boston, MA 02117	Director - JHLICO
Edward H. Linde	800 Boylston Street Boston, MA 02199	Director - JHLICO; Pres Boston Properties, Inc.
Judith A. McHale	7700 Wisconsin Avenue Bethesda, MD 20814	Director - JHLICO; Pres Operating Officer of Di Communications, Inc.
R. Robert Popeo, Esq.	One Financial Center Boston, MA 02111	Director - JHLICO; Chai Levin, Cohn, Ferris, GL P.C.
Richard F. Syron	81 Wyman Street Waltham, MA 02454	Director - JHLICO; Chai and CEO of Thermo Elect
Robert J. Tarr, Jr.	200 Wheeler Road Burlington, MA 01803	Director - JHLICO; Chai and CEO of HomeRuns.com

ATTACHMENT C

JOHN HANCOCK VARIABLE LIFE INSURANCE COMPANY

Directors as of September 14, 2001

Name	Business or	Positions with JHFS and Pr
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	Residential Address	Occupation
Ronald J. Bocage	John Hancock Place P. O. Box 111 Boston, MA 02117	Director - Vice President Counsel
David F. D'Alessandro	John Hancock Place P. O. Box 111 Boston, MA 02117	Director - Chairman
Bruce M. Jones	197 Clarendon Street Boston, MA 02117	Director - Vice President
Barbara L. Luddy	200 Berkeley Street Boston, MA 02117 Actuary	Director - Vice President
Robert S. Paster	John Hancock Place P. O. Box 111 Boston, MA 02117	Director - Vice President
Robert R. Reitano	John Hancock Place P. O. Box 111 Boston, MA 02117	Director - Vice President Investment Officer
Paul J. Strong	197 Clarendon Street Boston, MA 02117	Director - Vice President
Michele G. Van Leer	197 Clarendon Street Boston, MA 02117	Director - Vice Chairman a President

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SECURITIES EXCHANGE AND PURCHASE AGREEMENT

by and among

FRESH AMERICA CORP.,

NORTH TEXAS OPPORTUNITY FUND LP

and each of

JOHN HANCOCK LIFE INSURANCE COMPANY,

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JOHN HANCOCK VARIABLE LIFE INSURANCE COMPANY,
SIGNATURE 1A (Cayman), LTD.,
SIGNATURE 3 LIMITED
and
INVESTORS PARTNER LIFE INSURANCE COMPANY

August 14, 2001

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SECURITIES EXCHANGE AND PURCHASE AGREEMENT

This SECURITIES EXCHANGE AND PURCHASE AGREEMENT (this "Agreement") is made as of August 14, 2001, by and among FRESH AMERICA CORP., a Texas corporation (the "Company"), NORTH TEXAS OPPORTUNITY FUND LP, a Texas limited partnership ("NTOF"), and each of JOHN HANCOCK LIFE INSURANCE COMPANY ("JH Life"), JOHN HANCOCK VARIABLE LIFE INSURANCE COMPANY ("JH Variable"), SIGNATURE 1A (CAYMAN), LTD. ("Cayman"), SIGNATURE 3 LIMITED ("Signature 3") and INVESTORS PARTNER LIFE INSURANCE COMPANY ("Investors" and, together with JH Life, JH Variable, Cayman and Signature 3, individually a "Hancock Entity" and collectively, the "Hancock Entities"). NTOF and the Hancock Entities are at times herein referred to individually as a "Purchaser" and collectively as the "Purchasers".

W I T N E S S E T H:

WHEREAS, pursuant to that certain Securities Purchase Agreement dated as of May 4, 1998 (as amended from time to time, the "Initial Securities Purchase Agreement"), the Company sold to JH Life, JH Variable and Cayman (i) an aggregate of 155,483 warrants to purchase Common Stock (the "Initial Warrants") and (ii) twenty million dollars (\$20,000,000) in aggregate principal amount of the Company's 12% Senior Subordinated Notes due May 1, 2003 (the "Initial Notes");

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WHEREAS, pursuant to that certain Amended and Restated Warrant Agreement With Respect to Warrant Agreement dated as of May 4, 1998, dated as of April 15, 2000 (the "Amended and Restated Warrant Agreement"), the Company and JH Life, JH Variable, Cayman and Investors agreed, among other things, to amend and to restate the terms and conditions of the Initial Warrants, to re-designate such Initial Warrants as Series A Warrants (as so designated, the "Series A Warrants") and to specify the rights attendant to the Series B Warrants to purchase common Stock (the "Series B Warrants");

WHEREAS, pursuant to that certain Amended and Restated Note Agreement dated as of April 15, 2000 (the "Amended and Restated Note Agreement"), the Company, JH Life, JH Variable and Cayman agreed, among other things, to amend and to restate the terms and conditions of the Initial Notes (as so amended and restated, the "Notes") and to extend the maturity date of the Initial Notes to May 1, 2007;

WHEREAS, pursuant to that certain Securities Purchase Agreement dated as of April 15, 2000 (the "Additional Securities Purchase Agreement"), the Company sold to JH Life, JH Variable and Investors (i) an aggregate of 420,651 Series B Warrants and (ii) an aggregate of 50,000 shares of Series C Cumulative Redeemable Preferred Stock (the "Series C Preferred Stock");

WHEREAS, the Hancock Entities desire to exchange with the Company, and the Company desires to exchange with the Hancock Entities, all of the issued and outstanding Series A Warrants, Series B Warrants, Series C Preferred Stock and Notes (including, in each case, any and all accrued and unpaid dividends, fees (excluding any and all fees which constitute Hancock Closing Expenses (as hereinafter defined)) or interest related thereto) owned by them for an

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aggregate of twenty-seven thousand (27,000) shares of Series D Preferred Stock (as defined below) and warrants to purchase, subject to adjustment pursuant to the terms of this Agreement, an aggregate of forty-five million four hundred fourteen thousand five hundred twenty-nine (45,414,529) shares of Common Stock (all such warrants issued to any Hancock Entity shall be referred to herein, collectively, as the "Hancock Warrants"), in each case on the terms and conditions set forth herein;

WHEREAS, the Company also desires to sell to NTOF, and NTOF desires to purchase from the Company, an aggregate of fifty thousand (50,000) shares of Series D Preferred Stock and a warrant (the "NTOF Warrant" and, together with the Hancock Warrants, the "Series C Warrants") to purchase, subject to adjustment pursuant to the terms of this Agreement, an aggregate of eighty-four million one hundred thousand nine hundred eighty (84,100,980) shares of Common Stock, in each case on the terms and conditions set forth herein; and

WHEREAS, the Series D Preferred Stock will have the rights, preferences and designations set forth herein and in the Certificate of Designation;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Purchasers, intending to be legally bound, hereby agree as follows:

Article I
Definitions

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As used in this Agreement, the following terms have the meanings indicated:

Accelerated Put Event. This term is defined in Section 5.01.

Additional Securities Purchase Agreement. This term is defined in the recitals.

Affiliate. With respect to any Person, (a) a Person (other than in the case of the Company, a Purchaser) that, directly or indirectly or through one or more intermediaries, controls, is controlled by, or is under common control with, such Person; (b) any Person of which such Person or such Person's spouse is an officer, director, security holder, partner, or, in the case of a trust, the beneficiary or trustee, and (c) any Person that is an officer, director, security holder, partner, or, in the case of a trust, the beneficiary or trustee of such Person. The term "control" as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. Except as otherwise provided herein, the term "Affiliate" shall include any and all members of a Person's immediate family.

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Agreement. This term is defined in the preamble and includes all amendments, modifications and restatements thereof.

Amended and Restated Articles. The Amended and Restated Articles of Incorporation of the Company, in the form attached hereto as Annex A, to be filed by the Company with the Secretary of State of Texas in connection with the transactions contemplated hereby upon receipt of requisite shareholder approval.

Amended and Restated Note Agreement. This term is defined in the recitals.

Amended and Restated Warrant Agreement. This term is defined in the recitals.

Appraised Value. The value determined in accordance with the following procedures. For a period of thirty (30) days after the date of a Valuation Event (the "Negotiation Period"), each party to this Agreement agrees to negotiate in good faith to reach agreement upon the Appraised Value of the securities or property at issue, as of the date of the Valuation Event, which will be the fair market value of such securities or property, without premium for control or discount for minority interests, illiquidity, or restrictions on transfer. If the parties are unable to agree upon the Appraised Value of such securities or other property by the end of the Negotiation Period, then the Appraised Value of such securities or property will be determined for purposes of this Agreement by a recognized appraisal or investment banking firm (an "Appraiser") mutually agreeable to the Holders and the Company. If the Holders and the Company cannot agree on an Appraiser within fifteen (15) days after the end of the Negotiation Period, then the Company, on the one hand, and the Holders, on the other hand, shall each select an Appraiser within twenty-one (21) days after the end of

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the Negotiation Period and those two Appraisers shall select within twenty-five (25) days after the end of the Negotiation Period an independent Appraiser to determine the fair market value of such securities or property, without premium for control or discount for minority interests, illiquidity or minority restrictions on transfer. Such independent Appraiser shall be directed to determine fair market value of such securities or property as soon as practicable, but in no event later than thirty (30) days from the date of its selection. The determination by an Appraiser of the fair market value will be conclusive and binding on all parties to this Agreement. The Appraised Value of each share of Common Stock at a time when (a) the Company is not a reporting company under the Exchange Act and (b) the Common Stock is not traded in the organized securities markets, will, in all cases, be calculated by determining the Appraised Value of the entire Company taken as a whole, and dividing that value by the sum of (x) the number of shares of Common Stock then outstanding, plus (y) the number of

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shares of Common Stock Equivalents, without premium for control or discount for minority interests, illiquidity, or restrictions on transfer. The costs of the Appraiser or Appraisers, as the case may be, will be borne solely by the Company. In no event will the Appraised Value of the Common Stock or Other Securities be less than the per share consideration received or receivable with respect to the Common Stock or securities or property of the same class as the Other Securities, as the case may be, in connection with a pending transaction involving a sale, merger, recapitalization, reorganization or consolidation of, or share exchange involving, the Company, a dissolution of the Company, a sale or transfer of all or a majority of its assets or revenue or income generating capacity, or any similar transaction. The prevailing market prices for any security or property will not be dispositive of the Appraised Value thereof.

Appraiser. This term is defined in the definition of Appraised Value.

Average Market Value. The average of the Closing Prices for the security in question for the thirty (30) trading days immediately preceding the date of determination.

Benefit Arrangement. Each material employment, severance or other similar contract, arrangement or policy (written or oral) and each plan or arrangement (written or oral) providing for severance benefits, insurance coverage (including any self-insured arrangements), workers' compensation, disability benefits, supplemental unemployment benefits, vacation benefits, retirement benefits or for deferred compensation, profit-sharing, bonuses, stock options, stock appreciation rights or other forms of incentive compensation or post-retirement insurance, compensation or benefits, in each case that (a) is not an Employee Plan and (b) covers any employee or former employee of the Company.

Board of Directors. The board of directors of the Company. Unless the context requires otherwise, the term "Board of Directors" includes any and all committees of such Board of Directors.

Business Day. Each day of the week except Saturdays, Sundays and days on which banking institutions are authorized by law to close in the State of Texas.

Capital Stock. As to any Person, its common stock and any membership interests, general or limited partnership interests, units or common or preference stock or other capital stock of such Person authorized from time to time, and any other units, shares, options, interests, participations, or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, units, common stock, options, warrants, preferred stock, phantom stock, stock appreciation rights, convertible notes or debentures, stock purchase rights, and all agreements, instruments, documents, and securities convertible, exercisable, or exchangeable, in whole or in part, into any one or more of the foregoing.

Cayman. This term is defined in the preamble.

Certificate of Designation. The Series D Preferred Stock Certificate of Designation of the Company (a) dated of even date herewith, (b) to be filed by the Company with the Secretary of State of Texas on or before the Closing Date, (c) setting forth the rights and preferences of Series D Preferred Stock and (d) in substantially the form attached hereto as Annex B.

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Change in Control. The occurrence of either of the following: (a) the Holders shall cease to have the ability to elect, directly, a majority of the members of the Board of Directors; or (b) the Holders shall cease to own and to control, directly or indirectly, at least seventy-five percent (75%) of the issued and outstanding shares of Capital Stock of the Company (in either case, other than as a result of a transaction approved by the Holders or solely as a result of the voluntary sale by any Holder of all or any part of its Capital Stock; provided, however, that, upon the consummation of any such sale, the percentage of Capital Stock of the Company set forth in clause (b) above shall be automatically reduced by the percentage of Capital Stock of the Company so transferred).

Closing. This term is defined in Article IV.

Closing Date. This term is defined in Article IV.

Closing Fee. This term is defined in Section 10.10(b).

Closing Price. For any given trading day:

(a) If the primary market for the security in question is a national securities exchange registered under the Exchange Act, the National Association of Securities Dealers Automated Quotation System -- National Market System, or other market or quotation system in which last sale transactions are reported on a contemporaneous basis, then the last reported sales price, regular way, of such security for such day, or, if there has not been a sale on such trading day, then the highest closing or last bid quotation therefor on such trading day (excluding, in any case, any price that is not the result of bona fide

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arm's length trading); or

(b) If the primary market for such security is not an exchange or quotation system in which last sale transactions are contemporaneously reported, then the highest closing or last bona fide bid or asked quotation by disinterested Persons in the over-the-counter market on such trading day as reported by the National Association of Securities Dealers through its Automated Quotation System or its successor or such other generally accepted source of publicly reported bid quotations as the Holders designate.

Code. The Internal Revenue Code of 1986, as amended and in effect from time to time, and all regulations promulgated thereunder.

Comfort Letter. This term is defined in Section 6.05(h).

Commission. The Securities and Exchange Commission and any successor federal agency having similar powers.

Common Stock. The common stock, \$.01 par value per share, of the Company; provided, however, that upon the approval and filing of the Amended and Restated Articles, the par value of the Common Stock shall be reduced to \$.0001 per share.

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Common Stock Equivalent. Any option, warrant, right or similar security exercisable into, exchangeable for, or convertible to Common Stock.

Company. This term is defined in the preamble and includes any successor or assign of the Company. Unless the context requires otherwise, the term "Company" includes any and all Subsidiaries.

Contracts. This term is defined in Section 7.01(1).

Employee Plan. Each "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) that (a) is subject to any provision of ERISA and (b) is maintained or contributed to by the Company or any ERISA Affiliate of the Company.

Employment Agreements. The Employment Agreements and/or Consulting Agreements by and between the Company and each Management Employee, in each case (a) dated as of the Closing Date, (b) in form and substance satisfactory to each of the Purchasers (in each such Purchaser's sole and absolute discretion) and (c) as amended, modified or restated from time to time after the Closing Date in accordance with the provisions hereof.

ERISA. The Employee Retirement Income Security Act of 1974, as amended.

ERISA Affiliate. With respect to any Person, any other Person that, together with such Person, would be treated as a single employer under Section 414 of the Code.

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Exchange Act. The Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

Exchange Common Stock. This term is defined in Section 6.12.

Exchange Company. This term is defined in Section 6.12.

Exchange Notice. This term is defined in Section 6.12.

Exercise Price. The price per share specified in Section 3.04 as adjusted from time to time pursuant to the provisions of this Agreement.

Fair Market Value.

(a) As to securities regularly traded in the organized securities markets, the Average Market Value; and

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(b) as to all securities not regularly traded in the securities markets and other property, the fair market value of such securities or property as determined in good faith by the Board of Directors, without premium for control or discount for minority interests, illiquidity, or restrictions on transfer, at the time it authorizes the transaction (a "Valuation Event") requiring a determination of Fair Market Value under this Agreement; provided, however, that, at the election of the Holders, the Fair Market Value of such securities and other property will be the Appraised Value.

Financial Statements. This term is defined in Section 7.01(s).

GAAP. The generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board and/or their respective successors and that are applicable in the circumstances as of the date in question; provided, however, that the Company may not change the use or application of any material accounting method, practice or principle without the prior written consent of the Holders. Accounting principles are applied on a "consistent basis" when the accounting principles observed in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

Governmental Entity. This term is defined in Section 7.01(i).

Hancock Entities. This term is defined in the preamble and includes any successors or assigns of each such Hancock Entity.

Hancock Closing Expenses. This term is defined in Section 10.10(d).

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Hancock Expense Deposit. This term is defined in Section 10.10(d).

Hancock Warrants. This term is defined in the recitals.

Holder Representatives. This term is defined in Article I of the Shareholders Agreement.

Holder. The Purchasers, and all other Persons holding Registrable Securities, except that neither the Company (nor any Affiliate of the Company) will at any time be a Holder. Unless otherwise provided in this Agreement, in each instance that the Holders are required to request, approve or consent in concert to an action, the Holders will be deemed to have requested, approved or consented to such action if the Holders of a majority-in-interest of the Registrable Securities so request or consent.

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Indebtedness. For any Person: (a) all indebtedness, whether or not represented by bonds, debentures, notes, securities, or other evidences of indebtedness, for the repayment of money borrowed, (b) all indebtedness representing deferred payment of the purchase price of property or assets, (c) all indebtedness under any lease that, in conformity with GAAP, is required to be capitalized for balance sheet purposes and leases of property or assets made as a part of any sale and lease-back transaction if required to be capitalized, (d) all indebtedness under guaranties, endorsements, assumptions, or other contractual obligations, including any letters of credit, or the obligations in respect of, or to purchase or otherwise acquire, indebtedness of others, (e) all indebtedness secured by a Lien existing on property owned, subject to such Lien, whether or not the indebtedness secured thereby shall have been assumed by the owner thereof, (f) trade accounts payable more than ninety (90) days past due, (g) all amendments, renewals, extensions, modifications and refinancings of any indebtedness or obligations referred to in clauses (a), (b), (c), (d), (e) or (f) above.

Indemnified Party. This term is defined in Section 10.01.

Initial Holders. The Purchasers and any Affiliate of the Purchasers to which any of the Series D Preferred Stock or Warrants or any part of or interest in the Series D Preferred Stock or Warrants is assigned.

Initial Notes. This term is defined in the recitals.

Initial Securities Purchase Agreement. This term is defined in the recitals.

Initial Warrants. This term is defined in the recitals.

Intellectual Property. This term is defined in Section 7.01(f).

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Investors. This term is defined in the preamble.

Issuable Warrant Shares. Shares of Common Stock or Other Securities issuable on exercise of the Warrants.

Issued Warrant Shares. Shares of Common Stock or Other Securities issued upon exercise of the Warrants.

JH Life. This term is defined in the preamble.

JH Variable. This term is defined in the preamble.

Key Employee. Any employee of the Company holding the position of Vice President or higher.

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Lien. Any lien, mortgage, security interest, tax lien, pledge, encumbrance, financing statement, or conditional sale or title retention agreement, or any other interest in property designed to secure the repayment of Indebtedness or any other obligation, whether arising by agreement, operation of law, or otherwise.

Management Employee. Each of Cheryl Taylor, Larry Martin, Gary Weiner, Steve Finberg and Colon Washburn.

Martin Purchase Agreement. That certain Stock Purchase Agreement among the Company, Hereford Haven, Inc. and Larry Martin dated December 19, 1997, as amended and in effect on the Closing Date, and otherwise in form and substance satisfactory to each of the Purchasers (in each Purchaser's sole and absolute discretion).

Material Adverse Effect. Any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on (a) the business, assets, financial condition or results of operations of the Company and its Subsidiaries taken as a whole, (b) the ability of the Company to perform its obligations under this Agreement and the Other Agreements, or (c) the validity or enforceability of (i) this Agreement or any of the Other Agreements or (ii) the rights and remedies of the Purchasers under this Agreement or any of the Other Agreements, in each case as compared to that existing as of the Closing Date and (if applicable) as represented herein or therein.

Monitoring Agreement. That certain Monitoring Agreement by and between the Company and North Texas Investment Advisors LLC, a Delaware limited liability company, (a) dated as of the Closing Date, (b) in the form attached hereto as Annex C and (c) as the same may be modified or amended from time to time in accordance with the terms hereof.

Negotiation Period. This term is defined in the definition of Appraised Value.

Notes. This term is defined in the recitals.

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NTOF. This term is defined in the preamble.

NTOF Warrants. This term is defined in the recitals.

Original Issue Price of a share of Series D Preferred Stock. One hundred dollars (\$100).

Other Agreements. Each of (a) the Shareholders Agreement, (b) the Certificate of Designation, (c) the Employment Agreements, (d) the Martin Purchase Agreement, (e) the Monitoring Agreement and (f) all other agreements, instruments and documents (including, without limitation, powers of attorney, consents, assignments, contracts, notices and all other written matter), and all renewals, modifications and extensions thereof, whether heretofore, now or hereafter executed by or on behalf of the Company and delivered to and for the benefit of the Purchasers or any Person participating with the Purchasers with respect to this Agreement or any of the transactions contemplated by this Agreement.

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Other Securities. Any stock, membership interests, other securities, property, or other property or rights (other than Common Stock) that the Holders become entitled to receive upon exercise of the Warrants.

Permits. This term is defined in Section 7.01(i).

Permitted Acquisitions. This term is defined in Section 2.04 of the Shareholders Agreement.

Permitted Stock. The aggregate of (a) any and all Common Stock issued to, or reserved for issuance for, any Person in connection with the exercise of any options or warrants to acquire Common Stock (other than the Warrant Shares) that are outstanding as of the Closing Date and set forth on Schedule 7.01(d), plus (b) any and all Warrant Shares, plus (c) Common Stock, or options or warrants to acquire Common Stock, constituting, in the aggregate, 29,513,560 shares of Common Stock of the Company (including any Common Stock deemed outstanding pursuant to Section 3.09(d)), issued to, or reserved for issuance for, the present and future employees and management of the Company pursuant to an Employee Plan or other Benefit Arrangement approved by the Board of Directors. Unless otherwise agreed to by all Holders, the number of shares of Permitted Stock issued or reserved for issuance under clauses (a) and (c) above shall not exceed, in the aggregate, 30,276,353 shares.

Person. This term will be interpreted broadly to include any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, company, limited liability company, institution, entity, party, or government (whether national, federal, state, county, city, municipal, or otherwise, including, without limitation, any instrumentality, division, agency, body, or department of any of the foregoing).

Property. Property or assets of all kinds, real, personal or mixed,

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tangible or intangible (including, without limitation, all rights relating thereto), whether owned or acquired on or after the Closing Date.

Proxy Statement. This term is defined in Section 8.21(a).

Purchaser and Purchasers. These terms are defined in the preamble.

Put Option. This term is defined in Section 5.01.

Put Option Closing. This term is defined in Section 5.05.

Put Option Period. This term is defined in Section 5.01.

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Put Price. This term is defined in Section 5.02.

Put Shares. The Series D Preferred Stock and any other shares of Capital Stock owned from time to time by a Holder as a result of such Holder's ownership of Series D Preferred Stock. Notwithstanding anything contained or implied herein to the contrary, the term "Put Shares" shall not include the Warrant Shares.

Qualified Private Financing. Any private equity offering (excluding any issuance of Permitted Stock) in which the Company receives at least twenty million dollars (\$20,000,000) in net cash proceeds.

Qualified Public Offering. A firm underwritten public offering of the Company's Common Stock under the Securities Act completed by the Company and resulting in gross cash proceeds (before underwriting discounts and commissions) of at least twenty million dollars (\$20,000,000).

Register, registered, and registration refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

Registrable Securities. (a) The Issuable Warrant Shares, (b) the Issued Warrant Shares and (c) any other Capital Stock owned from time to time by a Holder that have not been previously sold to the public (including, without limitation, the Series D Preferred Stock).

Requisite Shareholder Approval. This term is defined in Section 1 of the Certificate of Designation.

SEC Documents. This term is defined in Section 7.01(w).

Senior Loan Documents. That certain Restated Business Loan Agreement dated February 2, 1998, among the Company, Bank of America, N.A. and the other parties named therein, as amended, extended, renewed or

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restated from time to time, including, without limitation, as amended by the Thirteenth Amendment.

Series A Warrants. This term is defined in the recitals.

Series B Warrants. This term is defined in the recitals.

Series C Preferred Stock. This term is defined in the recitals.

Series C Warrants. This term is defined in the recitals.

Series D Preferred Stock. The Series D Cumulative Redeemable Preferred Stock, \$1.00 par value per share, of the Company.

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Series D Preferred Stock Dilution Fee. This term is defined in Section 2.06.

Securities Act. The Securities Act of 1933, as amended, and the rules and regulations thereunder.

Shareholders Agreement. The Shareholders Agreement by and among the Company and the Purchasers (a) dated as of the date hereof, (b) in the form attached hereto as Annex D and (c) as amended, modified or restated from time to time.

Shareholders Meeting. This term is defined in Section 8.21(b).

Signature 3. This term is defined in the preamble.

Subsidiary. Each Person of which or in which the Company or its other Subsidiaries own directly or indirectly fifty-one percent (51%) or more of (a) the combined voting power of all classes of securities having general voting power under ordinary circumstances to elect a majority of the board of directors or equivalent body of such Person, if it is a corporation or similar person; (b) the capital interest or profits interest of such Person, if it is a partnership, limited liability company, joint venture, or similar entity; or (c) the beneficial interest of such Person, if it is a trust, association, or other unincorporated organization.

Supplemental Disclosure Schedules. This term is defined in Section 8.19.

TBCA. The Texas Business Corporation Act, as amended from time to time.

Termination Fee. This term is defined in Section 10.10(c).

Thirteenth Amendment. That certain Thirteenth Amendment to Restated Business Loan Agreement by and among the Company, Bank of America, N.A.

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and the other parties named therein and dated as of the Closing Date.

Transaction Fees. This term is defined in Section 10.10(a).

Valuation Event. This term is defined in the definition of Fair Market Value.

Warrants. The Series C Warrants, dated as of the Closing Date and issued to the Initial Holders, and all Warrants issued upon the transfer or division of, or in substitution for, such Warrants.

Warrant Shares. The Issued Warrant Shares and the Issuable Warrant Shares, collectively.

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Article II
The Series D Preferred Stock

2.01 Sale of Series D Preferred Stock to NTOF.

(a) Sale of Series D Preferred Stock. On the Closing Date, NTOF agrees to purchase from the Company, and the Company agrees to issue to NTOF, the aggregate number of shares of Series D Preferred Stock set forth beneath NTOF's name on the signature page of this Agreement, all subject to and in accordance with the terms and conditions of this Agreement. The Series D Preferred Stock issued to NTOF pursuant to the terms hereof shall have the rights, restrictions, privileges and preferences set forth in the Certificate of Designation.

(b) Purchase Price. In consideration of the Company's issuance of the Series D Preferred Stock to NTOF, NTOF shall pay to the Company, on the Closing Date, the aggregate purchase price set forth beneath NTOF's name on the signature page to this Agreement, all subject to and in accordance with the terms and conditions of this Agreement.

2.02 Exchange of Series C Preferred Stock for Series D Preferred Stock by Hancock Entities. On the Closing Date and subject to the terms and conditions of this Agreement, JH Life, Investors and JH Variable agree to deliver to the Company, and the Company agrees to accept from such Hancock Entities, an aggregate of 50,000 shares of Series C Preferred Stock, and, in exchange therefor and for any and all accrued and unpaid dividends, fees (excluding any and all fees which constitute Hancock Closing Expenses) or interest related thereto, the Company agrees to issue to JH Life, Investors and JH Variable, and each such Hancock Entity hereby agrees to accept from the Company, the number of shares of Series D Preferred Stock set beneath each such Hancock Entity's name on the signature page of this Agreement. The Series D Preferred Stock issued to JH Life, Investors and JH Variable pursuant to the terms hereof shall have the rights, restrictions, privileges and preferences set forth in the Certificate of Designation.

2.03 Legend. The Company will deliver to each Purchaser on the Closing Date one or more certificates representing the Series D Preferred Stock to be issued to such Purchaser in such denominations as such Purchaser requests. Such certificates will be issued in each Purchaser's name or in the name or names of its designee or designees, as the case may be. It is understood and agreed that all of the certificates evidencing the Series D Preferred Stock will bear the

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following legend:

"THE SHARES REPRESENTED BY THIS CERTIFICATE (A) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF REGISTRATION UNDER OR EXEMPTION FROM SUCH ACT AND ALL APPLICABLE STATE SECURITIES LAWS, AND (B) ARE SUBJECT TO THE TERMS OF AND PROVISIONS OF (I) A SECURITIES EXCHANGE AND PURCHASE AGREEMENT, DATED AS OF AUGUST 14, 2001, BY AND AMONG FRESH AMERICA CORP. (THE "COMPANY") AND THE PURCHASERS NAMED THEREIN AND (II) A SHAREHOLDERS AGREEMENT, DATED AS OF AUGUST 14, 2001, BY AND AMONG THE COMPANY AND THE PURCHASERS NAMED THEREIN (AS SUCH AGREEMENTS MAY BE SUPPLEMENTED, MODIFIED, AMENDED, OR RESTATED FROM TIME TO TIME, THE "AGREEMENTS"). COPIES OF THE AGREEMENTS ARE AVAILABLE AT THE OFFICES OF THE COMPANY."

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2.04 Transfer and Exchange. Subject to the terms of Section 10.07 and the Shareholders Agreement, the Series D Preferred Stock is transferable, as to all or any part of the Series D Preferred Stock, by the Holders of the Series D Preferred Stock, in person or by duly authorized attorney, on the books of the Company upon surrender of certificates representing the Series D Preferred Stock at the principal offices of the Company, together with a transfer authorization duly executed, provided, in each case, that the applicable transferee first represents and warrants, pursuant to a written instrument in form and substance reasonably satisfactory to the Company, as to the matters set forth in Section 7.02. Absent any such transfer, the Company may deem and treat the registered Holders of the Series D Preferred Stock at any time as the absolute owners of the Series D Preferred Stock for all purposes and will not be affected by any notice to the contrary. If any Series D Preferred Stock is transferred in part, then the Company will, at the time of surrender of certificates representing the Series D Preferred Stock, issue to the transferee certificates representing the Series D Preferred Stock transferred and to the transferor certificates representing the Series D Preferred Stock not transferred.

2.05 Lost, Stolen, Mutilated or Destroyed Certificate. If any certificate representing the Series D Preferred Stock is lost, stolen, mutilated or destroyed, then the Company will issue a new certificate of like denomination, tenor and date as the certificate so lost, stolen, mutilated or destroyed upon its receipt of an affidavit including notice of ownership from the Holder of the lost, stolen, mutilated or destroyed Series D Preferred Stock certificate.

2.06 Series D Preferred Stock Dilution Fee. If, while any Holder beneficially owns any Series D Preferred Stock, Common Stock or Other Securities, the Company pays any dividend or makes any distribution to any holder of any class of its Capital Stock with respect to such Capital Stock (other than (a) a distribution of Common Stock or Other Securities made to the Purchasers upon exercise of the Warrants or (b) a dividend or other distribution made pursuant to a transaction approved by the Holders), then each Holder will be entitled to receive in respect of such Series D Preferred Stock, Common Stock or Other Securities a dilution fee in cash (the "Series D Preferred Stock Dilution Fee") on the date of payment of such dividend or distribution, which Series D Preferred Stock Dilution Fee will be equal to (a) the product of (i) the highest amount per share paid to any class of Capital Stock of the Company multiplied by (ii) the aggregate number of shares of Series D Preferred Stock, Common Stock and/or Other Securities of the Company then owned by such Holder, less (b) the amount of such dividend or distribution otherwise paid to such

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Holder as a result of its ownership of any Series D Preferred Stock, Common Stock and/or Other Securities of the Company.

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Article III The Warrants

3.01 Sale of Series C Warrants to NTOF. -----

(a) Sale of Series C Warrants. On the Closing Date, NTOF agrees to purchase from the Company, and the Company agrees to issue to NTOF, Warrants, in each case in substantially the form attached to this Agreement as Annex E and incorporated in this Agreement by reference, to purchase the aggregate number of shares of Common Stock set forth beneath NTOF's name on the signature page of this Agreement, all subject to and in accordance with the terms and conditions of this Agreement.

(b) Purchase Price. In consideration for the Company's issuance of the Warrants to NTOF, NTOF shall pay to the Company, on the Closing Date, the aggregate purchase price set forth beneath NTOF's name on the signature page to this Agreement, all subject to and in accordance with the terms and conditions of this Agreement.

3.02 Exchange of Series A Warrants, Series B Warrants and Notes for Series C Warrants by Hancock Entities. On the Closing Date, each of the Hancock Entities agrees to deliver to the Company, and the Company agrees to accept from the Hancock Entities, all of the issued and outstanding Series A Warrants, Series B Warrants and Notes owned by each such Hancock Entity and, in exchange therefor and for any and all accrued and unpaid dividends, fees (excluding any and all fees which constitute Hancock Closing Expenses) or interest related thereto, the Company agrees to issue to each such Hancock Entity, and each such Hancock Entity hereby agrees to accept from the Company, Warrants, in each case in substantially the form attached to this Agreement as Annex E and incorporated in this Agreement by reference, to purchase the aggregate number of shares of Common Stock set forth beneath such Hancock Entity's name on the signature pages of this Agreement, all subject to and in accordance with the terms and conditions of this Agreement

3.03 Legend. The Company will deliver to each Purchaser on the Closing Date one or more certificates representing the Warrants to be issued to such Purchaser in such denominations as such Purchaser requests. Such certificates will be issued in each Purchaser's name or in the name or names of its designee or designees, as the case may be. It is understood and agreed that all of the certificates evidencing the Warrants will bear the following legend:

"THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF (A) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF REGISTRATION UNDER OR EXEMPTION FROM SUCH ACT AND ALL APPLICABLE STATE SECURITIES LAWS, AND (B) ARE SUBJECT TO THE TERMS AND PROVISIONS OF (I) A

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SECURITIES EXCHANGE AND PURCHASE AGREEMENT, DATED AS OF AUGUST 14, 2001, BY AND AMONG FRESH AMERICA CORP. (THE "COMPANY") AND THE PURCHASERS NAMED THEREIN AND (II) A SHAREHOLDERS AGREEMENT, DATED AS OF AUGUST 14, 2001, BY AND AMONG THE COMPANY AND THE PURCHASERS NAMED THEREIN (AS SUCH AGREEMENTS MAY BE SUPPLEMENTED, MODIFIED, AMENDED, OR RESTATED FROM TIME TO TIME, THE "AGREEMENTS"). COPIES OF THE AGREEMENTS ARE AVAILABLE AT THE OFFICES OF THE COMPANY."

3.04 Exercise Price. The Exercise Price per share will be \$0.0001 for each share of Common Stock represented by the Warrants; provided, however, that in no event will the aggregate Exercise Price for all of the shares of Common Stock covered by all Warrants owned by a particular Holder exceed one hundred dollars (\$100) per Holder, whether as a result of any change in the par value of the Common Stock or Other Securities, as a result of any change in the number of shares purchasable as provided in this Article III, or otherwise; provided, further, that such limitation of the aggregate Exercise Price will have no effect whatsoever upon the amount or number of Warrant Shares for which the Warrants may be exercised.

3.05 Exercise.

(a) Subject to the provisions of Article V, each of the Warrants may be exercised by the applicable Purchaser, or such Purchaser's successor Holders, at any time or from time to time after the Closing Date and prior to 12:00 p.m. midnight (Dallas, Texas time) on the tenth (10th) anniversary of the Closing Date; provided, however, that as a condition to the expiration of any Warrant exercise rights, the Company shall be required to give each Holder not more than ninety (90) and not less than sixty (60) days' prior written notice of such expiration. Each of the Warrants may be exercised on any day that is a Business Day, for all or any part of the number of Issuable Warrant Shares purchasable upon its exercise. In order to exercise any Warrant, in whole or in part, the Holder will deliver to the Company at the address designated by the Company pursuant to Section 10.06, (i) a written notice of such Holder's election to exercise its Warrant, which notice will specify the number of Issuable Warrant Shares to be purchased pursuant to such exercise, (ii) payment of the Exercise Price, in an amount equal to the aggregate purchase price for all Issuable Warrant Shares to be purchased pursuant to such exercise, and (iii) the Warrant. Such notice will be substantially in the form of the Subscription Form appearing at the end of the Warrants. Upon the receipt of such notice, the Company will, as promptly as practicable, and in any event within three (3) Business Days, execute, or cause to be executed, and deliver to such Holder a certificate or certificates representing the aggregate number of full shares of Common Stock and

Other Securities issuable upon such exercise, as provided in this Agreement. The certificate or certificates so delivered will be in such denominations as may be specified in such notice or by such Holder and will be registered in the name of such Holder, or such other name as designated in such notice or by such Holder. A Warrant will be deemed to have been exercised, such certificate or certificates will be deemed to have been issued, and such Holder or any other Person so designated or named in such notice will be deemed to have become a holder of record of shares for all purposes, as of the date that payment of the

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Exercise Price and the applicable Warrant are received by the Company. If the Warrant has been exercised in part, then the Company will, at the time of delivery of such certificate or certificates, deliver to such Holder a new Warrant evidencing the rights of such Holder to purchase a number of Issuable Warrant Shares with respect to which the Warrant has not been exercised, which new Warrant will, in all other respects, be identical with the Warrants, or, with the consent of such Holder, appropriate notation may be made on the Warrant and the Warrant returned to such Holder.

(b) Payment of the Exercise Price will be made, at the option of the Holder, (i) in cash, (ii) by certified or official bank check, (iii) by cancellation of any debt owed by the Company to the Holder or (iv) by cancellation of Warrant Shares, valued at Fair Market Value. If the Holder surrenders a combination of cash or cancellation of any debt owed by the Company to the Holder or Warrant Shares, then the Holder will specify the respective number of shares of Common Stock to be purchased with each form of consideration, and the foregoing provisions will be applied to each form of consideration with the same effect as if the Warrant were being separately exercised with respect to each form of consideration; provided, however, that a Holder may designate that any cash to be remitted to a Holder in payment of debt be applied, together with other monies, to the exercise of the portion of the Warrant being exercised for cash.

3.06 Taxes. The issuance of any Common Stock or Other Securities upon the exercise of the Warrants will be made without charge to any Holder for any tax, other than income taxes assessed against such Holder, in respect of such issuance.

3.07 Warrant Register. The Company will, at all times while any of the Warrants remain outstanding and exercisable, keep and maintain at its principal office a register in which the registration, transfer, and exchange of the Warrants will be evidenced. The Company will not at any time, except upon the dissolution, liquidation, or winding up of the Company, close such register so as to result in preventing or delaying the exercise or transfer of any Warrant.

3.08 Transfer and Exchange. Subject to the terms of Section 10.07 and the Shareholders Agreement, the Warrants and all options and rights under the Warrants are transferable, as to all or any part of the Issuable Warrant Shares purchasable upon the exercise thereof, by the Holders of the Warrants, in person or by duly authorized attorney, on the books of the Company upon surrender of the Warrants at the principal offices of the Company, together with the form of transfer authorization attached to the Warrants duly executed. Absent any such transfer and subject to the Shareholders Agreement, the Company may deem and treat the registered Holders of the Warrants at any time as the absolute owners of the Warrants for all purposes and will not be affected by any notice to the contrary. If any Warrant is transferred in part, then the Company will, at the time of surrender of such Warrant, issue to the transferee a Warrant covering the number of Issuable Warrant Shares transferred and to the transferor a Warrant covering the number of Issuable Warrant Shares not transferred.

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3.09 Adjustments to Number of Shares of Common Stock Purchasable.

(a) The Warrants will be exercisable for the number of shares of Common Stock in such manner that, following the complete and full

exercise of the Warrant of each Holder, the amount of Common Stock issued to all Holders will equal the aggregate number of shares of Common Stock set forth beneath the name of the Purchasers on the signature pages of this Agreement, as adjusted, to the extent necessary, to give effect to the following events:

(i) In case at any time or from time to time, the holders of any class of Common Stock or Common Stock Equivalent have received, or (on or after the record date fixed for the determination of shareholders eligible to receive) have become entitled to receive, without payment therefor:

(A) consideration (other than cash) by way of dividend or distribution; or

(B) consideration (including cash) by way of spin-off, split-up, reclassification (including any reclassification in connection with a consolidation or merger in which the Company is the surviving corporation), recapitalization, combination of shares into a smaller number of shares, or similar corporate restructuring;

other than Common Stock issued as a stock dividend or in a stock split (adjustments in respect of which are provided for in Sections 3.09(a)(ii) and (iii)), then, and in each such case, each Holder, upon the exercise of any Warrants held thereby, will be entitled to receive, for each Issuable Warrant Share to which such Holder is entitled as of the record date fixed for such distribution, the greatest per share amount of consideration received by any holder of any class of Common Stock or Common Stock Equivalent or to which such holder is entitled. All such consideration receivable upon exercise of the Warrant with respect to such a distribution will be deemed to be outstanding and owned by such Holder for purposes of determining the amount of consideration to which such Holder is entitled upon exercise of the Warrant with respect to any subsequent distribution.

(ii) If at any time there occurs any stock split, stock dividend, reverse stock split, or other subdivision of the Common Stock, then the number of shares of Common Stock to be received by the Holder of the Warrant and the Exercise Price, subject to the limitations set forth in this Agreement, will be proportionately adjusted.

(iii) Upon any reclassification or change of outstanding shares of any class of Common Stock or Common Stock Equivalent (other than a change in par value, or from par value to no par value, or from no par value to par value), or upon any consolidation of the Company with, or merger or share exchange of the Company with or into, another Person, or in the case of any sale of all or a majority of the property, assets, business, income or revenue generating capacity, or goodwill of the Company (other than a Permitted Acquisition), the Company, or such successor or other Person, as the case

may be, will provide in writing that the Holder of the Warrant will thereafter be entitled to receive the highest per share kind and amount of consideration received or receivable (including cash) upon such reclassification, change, consolidation, merger, share exchange, or sale by any holder of any class of Common Stock or Common Stock Equivalent that the Warrant entitles the Holder to receive immediately prior to such reclassification, change, consolidation, merger, share exchange, or sale (as adjusted pursuant to this Agreement). Any such successor Person will thereafter be deemed to be the Company for purposes of the Warrants and will provide for adjustments that are as nearly equivalent as may be possible to the adjustments provided for by this Section 3.09.

(iv) If at any time the Company issues or sells any shares of Common Stock (other than Permitted Stock or pursuant to a Permitted Acquisition) or any Common Stock Equivalent at a per unit or share consideration (which consideration will include the price paid upon issuance plus the minimum amount of any exercise, conversion, or similar payment made upon exercise or conversion of any Common Stock Equivalent) less than the then current Fair Market Value per share of Common Stock immediately prior to the time such Common Stock or Common Stock Equivalent is issued or sold, then:

(A) the Exercise Price will be reduced to the lower of the prices calculated by:

(I) dividing (x) an amount equal to the sum of (1) the number of shares of Common Stock outstanding on a fully diluted basis immediately prior to such issuance or sale multiplied by the then existing Exercise Price, plus (2) the aggregate consideration, if any, received by the Company upon such issuance or sale, by (y) the total number of shares of Common Stock outstanding immediately after such issuance or sale on a fully diluted basis; and

(II) multiplying the then existing Exercise Price by a fraction, the numerator of which is (x) the sum of (1) the number of shares of Common Stock outstanding on a fully diluted basis immediately prior to such issuance or sale, multiplied by the Fair Market Value per share of Common Stock immediately prior to such issuance or sale, plus (2) the aggregate consideration received by the Company upon such issuance or sale, divided by (y) the total number of shares of Common Stock outstanding on a fully diluted basis immediately after such issuance or sale, and the denominator of

Common Stock immediately prior to such issuance or sale (for purposes of this subsection (II), the date as of which the Fair Market Value per share of Common Stock will be computed will be the earlier of the date upon which the Company (aa) enters into a firm contract for the issuance of such shares, or (bb) issues such shares); and

(B) the number of shares of Common Stock for which any of the Warrants may be exercised at the Exercise Price resulting from the adjustment described in subsection (A) above will be equal to the product of the number of shares of Common Stock purchasable under such Warrants immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Exercise Price in effect immediately prior to such adjustment and the denominator of which is the Exercise Price resulting from such adjustment.

(v) If any event occurs as to which the preceding Sections 3.09(a)(i) through (iv) are not strictly applicable, but as to which the failure to make any adjustment would not fairly protect the purchase rights represented by the Warrants in accordance with the essential intent and principles of this Agreement, then, in each such case, the Holder may appoint an independent investment bank or firm of independent public accountants, which will give its opinion as to the adjustment, if any, on a basis consistent with the essential intent and principles established in this Agreement, necessary to preserve the purchase rights represented by the Warrants. Upon receipt of such opinion, the Company will promptly deliver a copy of such opinion to the Holder and will make the adjustments described in such opinion. The fees and expenses of such investment bank or independent public accountants will be borne by the Company.

(b) The Company will not by any action, including, without limitation, amending, or permitting the amendment of, the charter documents, bylaws, or similar instruments of the Company or through any reorganization, reclassification, transfer of assets, consolidation, merger, share exchange, dissolution, issue or sale of securities, or any other similar voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Agreement or the Warrants, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holders against impairment or dilution. Without limiting the generality of the foregoing, the Company will (i) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock and Other Securities, free and clear of all liens, encumbrances, equities, and claims, and (ii) use its best efforts to obtain all such authorizations, exemptions, or consents from any public regulatory body having jurisdiction as may be necessary to enable the Company to perform its obligations under the Warrants. Without limiting the generality of the foregoing, the Company represents and warrants that the Board of Directors has agreed that the Exercise Price will be adequate and has determined the issuance of the Warrants to be in the best interests of the Company.

(c) Any calculation under this Section 3.09 will be made to the nearest one ten-thousandth of a share and the number of Issuable Warrant Shares resulting from such calculation will be rounded up to the next whole share of Common Stock or Other Securities comprising Issuable Warrant Shares.

(d) For purposes of the computations to be made pursuant to (i) this Section 3.09 and (ii) the definition of "Permitted Stock", there shall be deemed to be outstanding the maximum number of shares of Common Stock issuable upon exercise or conversion of all Common Stock Equivalents then outstanding.

(e) Except as otherwise contemplated by this Agreement or the Other Agreements, the Company will not, and will not permit any Subsidiary to, issue any Capital Stock other than (i) Common Stock or Common Stock Equivalents or (ii) with respect to the Company, the Series D Preferred Stock to be issued to Purchasers on the Closing Date.

3.10 Lost, Stolen, Mutilated or Destroyed Warrants. If any Warrant is lost, stolen, mutilated, or destroyed, then the Company will issue a new Warrant of like denomination, tenor and date as the Warrant so lost, stolen, mutilated or destroyed upon the receipt by the Company of an affidavit and notice of ownership from the Holder of the lost, stolen, mutilated or destroyed Warrant. Any such new Warrant will constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant is at any time enforceable by any Person; provided, however, that the Company shall not honor any original Warrant if it has received an affidavit of loss from any Holder as contemplated herein and has issued to such Holder a new Warrant as contemplated herein.

3.11 Legend. The Warrants and the Warrant Shares have not been registered under the Securities Act or qualified under applicable state securities laws. Accordingly, unless there is an effective registration statement and qualification respecting the Warrants and the Warrant Shares under the Securities Act or under applicable state securities laws at the time of exercise of a Warrant, any stock certificate issued pursuant to the exercise of a Warrant will bear the following legend:

"THE SHARES REPRESENTED BY THIS CERTIFICATE (A) HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, TRANSFERRED, OR OTHERWISE DISPOSED OF IN THE ABSENCE OF REGISTRATION UNDER OR EXEMPTION FROM SUCH ACT AND ALL APPLICABLE STATE SECURITIES LAWS AND (B) ARE SUBJECT TO THE TERMS OF AND PROVISIONS OF (I) A SECURITIES EXCHANGE AND PURCHASE AGREEMENT, DATED AS OF AUGUST 14, 2001, BY AND AMONG FRESH AMERICA CORP. (THE "COMPANY") and the purchasers named therein AND (II) A SHAREHOLDERS AGREEMENT, DATED AS OF AUGUST 14, 2001, BY AND AMONG THE COMPANY AND THE PURCHASERS NAMED THEREIN (AS SUCH AGREEMENTS MAY BE SUPPLEMENTED, MODIFIED, AMENDED, OR RESTATED FROM TIME TO TIME, THE "AGREEMENTS"). COPIES OF THE AGREEMENTS ARE AVAILABLE AT THE OFFICES OF THE COMPANY."

Article IV
Closing

The closing of the transactions contemplated hereby shall take place at 10:00 a.m., Dallas, Texas time on a date to be specified by the parties, which date (the "Closing Date") shall be (i) no earlier than ten (10) Business Days after the date hereof and (ii) no later than three (3) Business Days after the waiver or satisfaction of all of the conditions precedent set forth in Article IX, at the offices of Patton Boggs LLP, 2001 Ross Avenue, Suite 3000, Dallas, Texas 75201, or at such other time and/or place as the parties hereto shall agree (the "Closing"). At the Closing, each of the parties hereto shall execute and deliver each of the Other Agreements to which it is a party (other than the Shareholders Agreement, which shall be executed and delivered by each of the parties thereto simultaneously with the execution and delivery of this Agreement) and shall have otherwise satisfied or fulfilled all conditions precedent to the consummation of the transactions contemplated hereby and thereby. At the Closing, the Company shall issue and deliver to each Purchaser one or more stock certificates or warrants, in each case in definitive form and registered in the name of such Purchaser (or such other party as such Purchaser may designate), representing the shares of Series D Preferred Stock and the Warrants being purchased by it. As payment in full for the shares of Series D Preferred Stock and the Warrants being purchased by NTOF at the Closing, and against delivery of the stock certificates or warrants therefor, NTOF shall deliver to the Company by certified check or by wire transfer of immediately available funds the aggregate purchase price set forth beneath NTOF's name on the signature page to this Agreement. As payment in full for the shares of Series D Preferred Stock and the Warrants being purchased by the Hancock Entities at the Closing, and against delivery of the stock certificates or warrants therefor, the Hancock Entities shall deliver to the Company all shares of Series C Preferred Stock and all Series A Warrants, Series B Warrants and Notes.

Article V
Put Option

5.01 Grant of Option. Subject to the provisions of Section 5.03, the Company hereby grants to each Holder an option to sell to the Company, and the Company is obligated to purchase from each Holder under such option (the "Put Option"), all (or such portion as is designated by any such Holder pursuant to Section 5.03 below) of the Put Shares held by such Holder. The Put Option will be effective at any time or times after the earlier to occur of (i) the third (3rd) anniversary of the date of this Agreement or (ii) at any time or times after the occurrence of any of the events listed in any of clauses (a), (b), (c), (d) or (e) below (each, an "Accelerated Put Event") (the "Put Option Period"):

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(a) any failure of the Company in any material respect to perform any of its obligations under the Amended and Restated Articles (other than the failure of the Company to pay any dividends when due with respect to the Series D Preferred Stock); provided, however, that the Put Option Period will continue with respect to any such failure, even after the same has been cured, if notice of exercise of the Put Option by such Holder is provided pursuant to this Article V during the continuance of any such failure; provided, further, that any such Put Option Period will cease to continue with respect to any such failure if all Initial Holders have waived in writing such failure;

(b) any failure of the Company in any material respect to perform any of its obligations under this Agreement or the Shareholders Agreement; provided, however, that the Put Option Period will continue with respect to any such failure, even after the same has been cured, if notice of exercise of the Put Option by such Holder is provided pursuant to this Article V during the continuance of any such failure; provided, further, that any such Put Option Period will cease to continue with respect to any such failure if all Initial Holders have waived in writing such failure;

(c) (i) a merger, consolidation, share exchange or similar transaction involving the Company and one or more Persons in which the Company is not the surviving or resulting Person, (ii) a merger, consolidation, share exchange or similar transaction involving the Company and one or more Persons in which the Company is the surviving or resulting Person in such transaction but as a result of which the beneficial owners of the shares of Capital Stock of the Company immediately prior to such transaction will, immediately after such transaction, beneficially own less than a majority of the shares of Capital Stock of the Company, (iii) a sale in one or more related transactions of all or substantially all of the assets, business, or revenue or income generating operations of the Company or (iv) any substantial change in the type of business conducted by the Company;

(d) a Change in Control; or

(e) the consummation of either a Qualified Public Offering or a Qualified Private Financing.

5.02 Put Price. Subject to the provisions of Section 5.06, if any Holder exercises the Put Option, then the price to be paid to each such Holder pursuant to this Agreement will be the aggregate price determined in accordance with the following provisions (collectively, the "Put Price"):

(a) With respect to any shares of Series D Preferred Stock included within the Put Shares, the price to be paid to each such Holder pursuant to this Agreement will be cash (denominated in U.S. Dollars) in an amount equal to the product of (i) the number of shares of Series D Preferred Stock for which the Put Option is being exercised by such Holder, times (ii) the sum of (A) the Original Issue Price of a share of Series D Preferred Stock, plus (B) any and all accrued and unpaid dividends with respect to such share of Series D Preferred Stock (whether or not declared and computed to the date payment thereof is made available), plus (C) any and all accrued interest payable with respect to any such accrued and unpaid dividends.

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(b) With respect to any Capital Stock of the Company (other than Series D Preferred Stock) included within the Put Shares, the price to be paid to each such Holder pursuant to this Agreement will be cash (denominated in U.S. Dollars) in an amount equal to the product of (i) the Fair Market Value per share of such Capital Stock as of the end of the month immediately preceding the date notice is given of the exercise of the Put Option pursuant to Section 5.03, multiplied by (ii) the number of shares of Capital Stock of the Company (other than Series D Preferred Stock) for which the Put Option is being exercised by such Holder.

(c) If, upon any exercise of the Put Option, the assets of the Company

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shall be insufficient to permit the payment in full to the applicable Holders of the Put Price or if all or any portion of the Put Price is not permitted to be paid to one or more of the applicable Holders pursuant to the provisions of the TBCA or the Senior Loan Documents, then the full amount of the Put Price that is permitted to be paid shall be distributed ratably among the Holders exercising the applicable Put Option.

5.03 Exercise of Put Option. The Put Option may be exercised during the Put Option Period with respect to all or any portion of the Put Shares by such Holder giving notice to the Company and each other Holder during the Put Option Period of the Holder's election to exercise the Put Option, and the date of the Put Option Closing, which will be not less than fifteen (15) nor more than thirty (30) days after the date of such notice. The Company will provide each Holder desiring to exercise its Put Option the name and address of each other Holder. Notwithstanding the foregoing, if a Holder receives such notice of another Holder's exercise of such other Holder's Put Option, then the Holder receiving such notice may elect to exercise its Put Option and designate a Put Option Closing simultaneous and pari passu with that of such other Holder. Notwithstanding anything contained or implied herein to the contrary, no Holder shall have the right to exercise its Put Option unless and until such exercise has been approved by all Initial Holders; provided, however, that any Holder shall have the individual right, in its sole and absolute discretion, to exec