

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
SOUTHERN FOODS GROUPS, LLC, <i>et al.</i> ,)	Case No. 19-36313 (DRJ)
)	
Debtors. ¹)	Jointly Administered
)	
)	

**MOTION OF DEBTORS FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING
PROCEDURES FOR SALE OF DEBTORS' ASSETS, (B) APPROVING THE
DESIGNATION OF DAIRY FARMERS OF AMERICA, INC. AS THE STALKING
HORSE BIDDER FOR SUBSTANTIALLY ALL OF DEBTORS' ASSETS,
(C) AUTHORIZING AND APPROVING ENTRY INTO THE STALKING HORSE
ASSET PURCHASE AGREEMENT, (D) APPROVING BID PROTECTIONS,
(E) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF
DEBTORS' ASSETS, (F) APPROVING FORM AND MANNER OF NOTICES OF SALE,
AUCTION, AND SALE HEARING, (G) APPROVING ASSUMPTION AND
ASSIGNMENT PROCEDURES, AND (H) GRANTING RELATED RELIEF AND
(II)(A) APPROVING SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES,
AND (C) GRANTING RELATED RELIEF**

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly's Ice Cream Holdings Corp. (7609); Friendly's Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah's Pride, LLC (2858); Steve's Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt's Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors' mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON MARCH 12, 2020 AT 2:00 P.M. (CT) IN COURTROOM 400, 515 RUSK STREET, HOUSTON, TEXAS 77002, BEFORE THE HONORABLE DAVID R. JONES. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN 21 DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Southern Foods Group, LLC, Dean Foods Company, and certain of their debtor affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Motion of Debtors for Entry of Orders (I)(a) Approving Bidding Procedures for Sale of Debtors’ Assets, (b) Approving the Designation of Dairy Farmers of America, Inc. as the Stalking Horse Bidder for Substantially All of Debtors’ Assets, (c) Authorizing and Approving Entry into the Stalking Horse Asset Purchase Agreement, (d) Approving Bid Protections, (e) Scheduling Auction for, and Hearing To Approve, Sale of Debtors’ Assets, (f) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (g) Approving Assumption and Assignment Procedures, and (h) Granting Related Relief and (II)(a) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (c) Granting Related Relief* (this “**Motion**”). This Motion is supported by (i) the *Declaration of Anthony Magro in Support of the Motion of Debtors for Entry of Orders (I)(a) Approving Bidding Procedures for Sale of Debtors’ Assets, (b) Approving the Designation of Dairy Farmers of America, Inc. as the Stalking Horse Bidder for Substantially All of Debtors’ Assets, (c) Authorizing and Approving Entry into the Stalking Horse Asset Purchase Agreement, (d) Approving Bid Protections, (e) Scheduling Auction for, and Hearing To Approve, Sale of Debtors’ Assets, (f) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (g) Approving Assumption and Assignment Procedures, and*

(h) Granting Related Relief and (II)(a) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (c) Granting Related Relief (the “**Magro Declaration**”), which is attached hereto and incorporated by reference herein, and (ii) the entire record of the Chapter 11 Cases. In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors request entry of the following:

- a. an order, substantially in the form attached hereto (the “**Bidding Procedures Order**”),
 - i. authorizing and approving the bidding procedures, substantially in the form attached to the Bidding Procedures Order (the “**Bidding Procedures**”), in connection with the sale of the Bid Assets (as defined herein)² (the “**Sale Transaction**”³);
 - ii. authorizing and approving the Debtors' entry into the Stalking Horse Agreement (as defined herein) with Dairy Farmers of America, Inc., a copy of which is attached hereto;
 - iii. approving certain Bid Protections in favor of the Stalking Horse Bidder (as defined below) in connection with the Stalking Horse Agreement and in accordance with the terms and conditions set forth in the Bidding Procedures;

² Notwithstanding the Debtors' request for authorization and approval of the Bidding Procedures, the Debtors reserve the right to seek by separate motion, in the exercise of their sound business judgment and fiduciary duties (in consultation with the Consultation Parties (as defined herein)), the authority to sell assets of the Debtors' estates (that do not constitute all or substantially all of the Debtors' assets) pursuant to section 363 of the Bankruptcy Code.

³ As described below, the Bidding Procedures provide that there may be one or several Sale Transactions. To the extent that this Motion refers to the Sale Transaction, or terms related thereto, in the singular it shall include the plural, and vice versa.

- iv. scheduling an auction of the Bid Assets (the “**Auction**”) to be held on April 20, 2020 at 10:00 a.m. (prevailing Eastern Time);
 - v. scheduling a hearing (the “**Sale Hearing**”) to consider approval of the proposed Sale Transaction to be held on April [27], 2020 at [·]:00 [·].m. (prevailing Central Time)⁴;
 - vi. authorizing and approving the (A) notice of the sale of the Bid Assets, the Potential Bidder Deadline, the Bid Deadline, and the Auction and Sale Hearing (each as defined herein), substantially in the form attached to the Bidding Procedures Order (the “**Sale Notice**”), (B) notice to each relevant non-Debtor counterparty (each, a “**Counterparty**”) to an executory contract or unexpired lease listed on the Potential Assumed Contracts Schedule (as defined below) (collectively, the “**Contracts and Leases**” and each an “**Assumed Contract**” or “**Assumed Lease**”) regarding the Debtors’ potential assumption and assignment of such Counterparty’s Assumed Contracts or Assumed Leases (collectively, the “**Potential Assumed Contracts**”) and the amount necessary to cure any defaults thereunder (the “**Cure Costs**”), substantially in the form attached to the Bidding Procedures Order (the “**Potential Assumption and Assignment Notice**”), and (C) notice to each Counterparty listed on the Proposed Assumed Contracts Schedule (as defined herein), substantially in the form attached to the Bidding Procedures Order (the “**Proposed Assumption and Assignment Notice**”);
 - vii. authorizing and approving procedures for the assumption and assignment of the Contracts and Leases and the determination of Cure Costs with respect thereto (collectively, the “**Assumption and Assignment Procedures**”); and
 - viii. granting related relief.
- b. an order (the “**Sale Order**”) authorizing and approving the following:
- i. the sale of the Bid Assets free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Bid Assets;
 - ii. the assumption and assignment of the proposed Assumed Contracts and Assumed Leases (collectively, the “**Proposed Assumed Contracts**”) in connection with the proposed Sale Transaction; and

⁴ This date remains subject to Court approval.

- iii. granting related relief.

Jurisdiction, Venue, and Authority

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.).

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). In addition, the Debtors confirm their consent, pursuant to Bankruptcy Rule 7008 and Rule 7008-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the “**Local Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

4. On November 12, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On November 22, 2019, the Office of the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the “**Committee**”). *See Notice of Appointment of Committee of Unsecured Creditors* [D.I. 288].

6. No request has been made for the appointment of a trustee or examiner in the Chapter 11 Cases.

7. Additional information about the Debtors' businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the *Declaration of Gary Rahlfs in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* [D.I. 46] (the "**Rahlfs Declaration**"), which is incorporated herein by reference.

8. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [D.I. 9] entered by the Court on November 12, 2019 in each of the Chapter 11 Cases.

The Bid Assets⁵

9. The Debtors are a leading public food and beverage company and the largest processor and direct-to-store distributor of fresh fluid milk and other dairy and dairy case products in the United States. The Debtors manufacture, market, and distribute a wide variety of branded and private label dairy and dairy case products, including fluid milk, ice cream, cultured dairy products, creamers, ice cream mix, and other dairy products to retailers, distributors, foodservice outlets, educational institutions, and governmental entities across the United States.

10. As described more fully in the Rahlfs Declaration, the Debtors sell their products under national, regional, or local proprietary or licensed brands. Products not sold under these brands are sold under a variety of private labels. The Debtors' brands include *DairyPure*®, the country's largest fresh, white milk national brand, and *TruMoo*®, the leading national flavored milk brand. As of December 31, 2019, the Debtors' national, local, and regional proprietary and licensed brands included the following:

⁵ The assets and operations described in this section are referred to collectively as the "**Bid Assets**" herein.

Alta Dena®	Jilbert™	Pog® (licensed brand)
Arctic Splash®	Knudsen® (licensed brand)	Price's™
Barber's Dairy®	LAND O LAKES® (licensed brand)	Purity™
Berkeley Farms®	Land-O-Sun & design®	ReadyLeaf®
Broughton™	Lehigh Valley Dairy Farms®	Reiter™
Brown Cow®	Louis Trauth Dairy Inc.®	Robinson™
Brown's Dairy®	Mayfield®	Schepps®
Chug®	McArthur®	Sonora™
Country Fresh™	Meadow Brook®	Steve's®
Country Love®	Meadow Gold®	Stroh's®
Creamland™	Model Dairy®	Swiss Dairy™
DairyPure®	Morning Glory®	Swiss Premium™
Dean's®	Nature's Pride®	TruMoo®
Fieldcrest®	Nurture®	T.G. Lee®
Friendly's®	Nutty Buddy®	Turtle Tracks®
Fruit Rush®	Oak Farms®	Tuscan®
Gandy's™	Orchard Pure®	Uncle Matt's Organic®
Garelick Farms®	Organic Valley® (licensed by joint venture)	Viva®
Good Karma®	Over the Moon®	
Hygeia®	PET® (licensed brand)	

11. The Debtors currently operate 57 manufacturing facilities (each a “**Facility**”) in 29 states located largely based on customer needs and other market factors, with distribution capabilities across all 50 states. Due to the perishable nature of the Debtors’ products, they deliver the majority of their products directly to their customers’ locations in a fleet of approximately 5,000 refrigerated trucks or trailers that they own or lease. This form of delivery is called a “direct-to-store delivery” or “DSD” system. The Debtors have one of the most extensive refrigerated DSD systems in the United States.

Marketing and Sale Process

12. Evercore Group L.L.C. (“**Evercore**”) has been engaged as investment banker to the Debtors since February 2019. The Debtors initially retained Evercore to assist with a broad evaluation of potential strategic alternatives, including a sale of the enterprise, strategic business combinations, the disposition of certain assets, the formation of new joint ventures, and

other options to re-energize the Debtors' stand-alone business. It was ultimately determined that these options could not be pursued for a variety of reasons, including the existence of potential contingent liabilities that the Debtors faced related to the underfunded status of certain multi-employer pension plans in which the Debtors participated. Such potential liabilities significantly impaired the Debtors' ability to pursue any strategic transactions with third parties outside of a bankruptcy proceeding.

13. By early October 2019, the Debtors saw a sharp decline in their third quarter 2019 results and realized that they faced a financial outlook that was deteriorating more rapidly than prior forecasts. Evercore explored a variety of potential out-of-court financing transactions, which led to discussions with a number of potential lenders, including certain holders of the Debtors' prepetition senior unsecured notes. Ultimately, however, the Debtors concluded, in consultation with Evercore and other advisors, that such an out-of-court transaction was not actionable under the circumstances. Accordingly, the Debtors commenced the Chapter 11 Cases in order to manage liquidity, prevent potentially ruinous customer and vendor fights, and pursue the consummation of one or more sale transactions or a plan of reorganization through a court-supervised process.

14. To finance the Debtors' businesses as they pursue such transactions, the Debtors sought and obtained senior secured superpriority post-petition financing in the amount of \$425 million and an amendment and restatement of the receivables securitization facility in the amount of \$425 million. After considering a wide-range of potential strategic alternatives and negotiating with all relevant stakeholders and counterparties, Evercore and the Debtors ultimately determined that a sale of all or substantially all of the Debtors' assets would be a potential path to maximize and preserve value for the benefit of the Debtors' stakeholders.

15. To that end, in October 2019, Evercore and the Debtors engaged in negotiations and discussions with Dairy Farmers of America, Inc. (“DFA”). As the Debtors’ long-time commercial partner and raw milk vendor, DFA was considered likely to be able to contribute significant value to the Debtors’ businesses and negotiate and reach a sale agreement with the Debtors prior to the Petition Date. Although the Debtors and DFA did not enter into a stalking horse agreement by the Petition Date, the discussions were significantly advanced such that the Debtors were able to publicly announce on November 12, 2019 that they were engaged in advanced discussions with DFA with regard to its role as a potential stalking horse bidder for the purchase of substantially all of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code.

16. After the Petition Date, Evercore considerably expanded the marketing process for the Bid Assets. Evercore began communicating with additional potential strategic and financial buyers while it continued to engage with DFA to explore a sale of the Bid Assets through the Chapter 11 Cases.

17. Over the course of approximately three months, Evercore contacted and/or received inbound interests from nearly 100 entities, including 55 potential strategic buyers (among which were 18 regional dairy companies) and 44 potential financial buyers. Based on discussions with these entities, Evercore provided approximately 38 parties with confidential information regarding the Debtors’ businesses after such parties executed non-disclosure agreements with the Debtors. Several of these parties, including the Stalking Horse Bidder (as defined below), expressed interest in considering a transaction with the Debtors and were granted access to a data room containing additional confidential information regarding the Bid Assets. Evercore provided additional details to these parties, including access to confidential diligence

materials. At the same time, the Debtors and their advisors have been working extensively with the ad hoc group of noteholders and their advisors regarding a possible plan or reorganization.

18. Following a competitive process and arm's length negotiations, the Debtors secured a bid (the "**Stalking Horse Bid**") from DFA, pursuant to which DFA will serve as the stalking horse bidder (hereinafter, the "**Stalking Horse Bidder**") in a transaction to purchase substantially all of the Bid Assets for an aggregate purchase price (subject to certain adjustments) of \$425 million along with the assumption of certain liabilities (such group of Bid Assets, the "**Stalking Horse Assets**") on the terms and conditions set forth in the Asset Purchase Agreement, dated as of February 16, 2020, by and among the Debtors and the Stalking Horse Bidder (the "**Stalking Horse Agreement**"). The Stalking Horse Assets consist of (a) 44 of the Debtors' 57 manufacturing facilities, including real estate, inventory, equipment and all other assets necessary to operate such facilities, (b) all fluid and frozen assets associated with such facilities, (c) certain real estate and equipment relating to one previously closed manufacturing facility, (d) certain intangible assets, and (e) ownership interest in certain joint ventures, each, as further specified in the Stalking Horse Agreement.

19. The Stalking Horse Agreement is the product of the extensive marketing efforts of the Debtors and their advisors, in consultation with the Committee⁶ and the Agents (as defined below), which efforts are more fully described above and in the Magro Declaration. Given the exigencies of the Debtors' financial condition, and specifically, the Debtors' distressed liquidity situation, the Debtors believe that the timely sale of the Stalking Horse Assets in accordance with the sale process outlined in this Motion is the best way to maximize value for the benefit of their

⁶ Although the Debtors consulted with the Agents and the Committee prior to filing this Motion, the Agents and the Committee are still analyzing the transaction contemplated by the Stalking Horse Agreement, this Motion, and the Bidding Procedures, and reserve all rights in connection therewith.

estates and stakeholders.

20. To ensure that the Stalking Horse Bid is in fact the highest or otherwise best offer for the purchase of the Stalking Horse Assets, and to provide for the potential sale of additional Bid Assets that are not included in the Stalking Horse Assets, the Debtors have developed Bidding Procedures to govern the sale of the Stalking Horse Assets and all other Bid Assets. The Bidding Procedures allow interested parties to submit bids for (a) all of the Bid Assets or (b) particular lots of individual Bid Assets or combinations thereof as specified in the Bidding Procedures, in each case, subject to the terms and provisions of the Bidding Procedures. The Stalking Horse Agreement, therefore, sets a floor for the sale of the Stalking Horse Assets in a competitive bidding process, which will benefit all of the Debtors' stakeholders by helping to ensure the highest or otherwise best offer for the Stalking Horse Assets.

21. The Debtors have carefully evaluated a number of qualitative and quantitative factors in designing a process that they believe will maximize the value of their estates and produce maximum recoveries. This process includes both entry into the Stalking Horse Agreement and approval of the Bidding Procedures, which are designed to (a) promote active bidding from interested parties and (b) to elicit the highest or otherwise best offers available for the Stalking Horse Assets and all other Bid Assets for the benefit of stakeholders. Moreover, the Bidding Procedures provide the Debtors with the flexibility to consider bids in the form of chapter 11 plans of reorganization.

22. The Debtors, in consultation with the Debtors' advisors, believe that the process and time periods set forth in the Bidding Procedures are reasonable and will provide parties with sufficient time and information necessary to formulate bids to purchase the Bid Assets. In formulating the Bidding Procedures and time periods contained therein, the Debtors balanced the

need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to efficiently sell the Bid Assets to maximize realizable value, all the while preventing the disclosure of confidential information to competitors that could be damaging to the business going forward. As described above and more fully in the Magro Declaration, the Bid Assets have been extensively marketed by Evercore over approximately three months to a broad group of strategic and financial buyers, who have been provided with substantial information regarding the Bid Assets. Moreover, speed is critical in light of the Debtors' obligations under the Senior Secured Superpriority Debtor-In-Possession Credit Agreement, dated as of November 14, 2019 (as may be amended, supplemented, or otherwise modified from time to time, the "**DIP Credit Agreement**"), and the need to ensure the Debtors maximize and preserve value for all stakeholders.⁷

23. Completion of the sale process in a timely manner will maximize the value of the Bid Assets. The time periods set forth in the Bidding Procedures are prudent and consistent with the case milestones set forth in the DIP Credit Agreement (which were negotiated and agreed to among the advisors to the Debtors, the DIP Lenders⁸, and the Committee), and failure to adhere to such time periods could jeopardize the closing of a Sale Transaction. Thus, the Debtors have determined that pursuing a Sale Transaction in the manner and within the time periods prescribed

⁷ The DIP Credit Agreement contains a milestone obligating the Debtors to file this Motion within 90 days after the Petition Date, or February 10, 2020. See DIP Credit Agreement ¶ 5.14(d). The February 10, 2020 milestone has been extended to February 24, 2020.

⁸ The "**DIP Lenders**" shall have the meaning ascribed to such term in the *Emergency Motion of Debtors for Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, 507 and 552 (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Post-Petition Financing, and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [D.I. 72] (the "**DIP Motion**").

in the Bidding Procedures is in the best interest of the Debtors' estates and will provide interested parties with sufficient opportunity to participate.

24. Accordingly, the Debtors believe that the Bidding Procedures, entry into the Stalking Horse Agreement, and the related relief requested in this Motion will allow the Debtors to efficiently accomplish a restructuring that is in the best interests of the Debtors' estates and their stakeholders. Therefore, the Debtors respectfully request that the Court grant the relief requested herein.

The Proposed Sale and Bidding Procedures

A. Summary of Key Terms of the Stalking Horse Bid

25. The Stalking Horse Agreement represents a binding bid to purchase the Stalking Horse Assets. By this Motion, the Debtors request authority to provide the Stalking Horse Bidder with standard stalking horse protections, in particular (a) the payment of a break-up fee in an amount equal to \$15,000,000.00 (the "**Break-up Fee**") and (b) reimbursement of up to \$8,000,000.00 for reasonable and documented costs and expenses incurred by the Stalking Horse bidder in connection with the negotiation and execution of, and the carrying out of its obligations under, the Stalking Horse Agreement (other than such costs or expenses that the Stalking Horse Bidder has agreed to pay thereunder) (the "**Expense Reimbursement**" and, together with the Break-up Fee, the "**Bid Protections**").

26. The Stalking Horse Agreement includes various customary representations, warranties, and covenants by and from the Debtors and the Stalking Horse Bidder. In addition, the Stalking Horse Agreement includes certain conditions to closing the contemplated Sale Transaction and rights of termination related to the Chapter 11 Cases.

27. The pertinent terms of the proposed Stalking Horse Bid are summarized in the following table.⁹

Term	Summary Description
Purchase Price	<p>The aggregate consideration for the Stalking Horse Assets shall be approximately \$425 million, which shall consist of the following:</p> <ul style="list-style-type: none"> i. cash consideration in the amount of \$322 million; and ii. payment of cure costs associated with the Assumed DFA Milk Contracts in the amount of \$103 million and pro rata reduction in Administrative Claims held by DFA up to \$62.5 million. <p>Portions of the purchase price equal to (x) \$35 million to secure Debtors' indemnification obligations with respect to certain customer claims and (y) \$20 million to secure the parties' obligations in respect of a purchase price adjustment, if any, to the extent the Acquired Assets' target working capital deviates from its closing date working capital will, in each case, be held in escrow subject to release upon the terms and conditions set forth in the Stalking Horse Agreement.</p>
Acquired Assets; Transferred Employees	<p>The Acquired Assets shall include:</p> <ul style="list-style-type: none"> i. 44 of the Debtors' 57 fluid and frozen facilities, including real estate, inventory, equipment, and all other assets necessary to operate such facilities and real estate, equipment and assets relating to one previously closed manufacturing facility (the "DFA-Acquired Facilities"); ii. certain intangible assets; iii. those of Debtors' executory contracts that DFA elects to assume; and iv. ownership interest in the Organic Valley joint venture and Mexican subsidiaries. <p>DFA agrees to make employment offers to all of the Debtors' employees whose primary work location is a DFA-Acquired Facility or who otherwise provide services primarily in support of the Acquired Assets.</p>
Excluded Assets	The Excluded Assets shall include:

⁹ This summary is provided for the convenience of the Court and parties in interest. To the extent that there is any conflict between this summary and the Stalking Horse Agreement, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Stalking Horse Agreement.

Term	Summary Description
	<ul style="list-style-type: none"> i. accounts receivable held in bankruptcy-remote entity; ii. 13 manufacturing facilities and operations at four branch locations; iii. all assets exclusively used by non-DFA-Acquired Facilities; iv. all vendor accounts receivable/rebates, insurance claims, excess equipment (<i>e.g.</i>, leased equipment); v. all causes of action against any director or officer related to any pre-closing period; vi. other non-core assets (as further specified in the Stalking Horse Agreement); and vii. Uncle Matt's Business and ownership in Good Karma Foods, Inc.
Assumed Liabilities	<p>The Assumed Liabilities shall include:</p> <ul style="list-style-type: none"> i. select employee liabilities, including accrued payroll, employment benefits, and incentive compensation; ii. utility payables and customer rebates for the DFA-Acquired Facilities; and iii. environmental costs for the DFA-Acquired Facilities to the extent required by law.
Bid Protections	<p>The Bid Protections shall include:</p> <ul style="list-style-type: none"> i. Break-up Fee in the amount of \$15 million; and ii. Expense Reimbursement in the amount of \$8 million.

B. The Bidding Procedures

28. The Bidding Procedures are designed to promote a competitive and efficient sale process to (a) confirm that the Stalking Horse Bid is, indeed, the highest or otherwise best offer for the Stalking Horse Assets or to identify one or more alternative bids (if any) that are collectively higher or otherwise better with respect to the sale of the Stalking Horse Assets, and (b) identify one or more additional bids (if any) for Bid Assets that are not included in the Stalking Horse Assets to maximize the value of such Bid Assets. If approved, the Bidding Procedures will allow the Debtors, in consultation with the Consultation Parties, to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Bid

Assets on a schedule consistent with the deadlines under the Stalking Horse Agreement, the Bidding Procedures, the milestones in the DIP Credit Agreement, and the Debtors' strategy for maximizing value for their stakeholders.

29. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not herein restated in their entirety. Certain of the key terms of the Bidding Procedures are highlighted in the chart below.¹⁰

MATERIAL TERMS OF THE BIDDING PROCEDURES	
Consultation Rights	<p>Throughout the sale process, the Debtors and their advisors will regularly and timely consult with the following parties (collectively, the "Consultation Parties"): Coöperatieve Rabobank U.A., as agent, and its advisors (including White & Case LLP and FTI Consulting), and the Committee and its advisors, including Akin Gump Strauss Hauer & Feld LLP.</p> <p>For the avoidance of doubt, unless approved by the Court or otherwise provided in the Bidding Procedures, no amendment or other modification to the Bidding Procedures (including the extension of any deadlines set forth therein) shall be made by the Debtors without the consent of the Consultation Parties.</p> <p>The Debtors shall not consult with or provide copies of bids regarding any assets to any insider or affiliate of the Debtors pursuant to the terms of the Bidding Procedures if such party has a bid for the Bid Assets pending, or expressed any interest (written or verbal) in bidding for any of the Debtors' assets; <i>provided, however</i>, that if such insider or affiliate of the Debtors chooses not to submit any bid, then such party may receive copies of all bids following expiration of the latest possible Bid Deadline (as such Bid Deadline may be extended under the Bidding Procedures). Notwithstanding the foregoing, if a member of the Committee submits a Qualified Bid (as defined in the Bidding Procedures), the Committee will maintain its consultation rights as a Consultation Party; provided that the Committee shall exclude such member from any discussions or deliberations regarding a transaction involving the applicable Bid Assets and shall not provide any confidential information regarding the Bid Assets or a transaction involving the Bid Assets to the bidding Committee member.</p>
Provisions Governing Qualification of Bidders and Qualified Bids	<p>Parts 1 and 2 of the Bidding Procedures set forth the Qualified Bid and Qualified Bidder requirements.</p> <p>A party may participate in the bidding process by submitting a bid for (a) all or substantially all of the Bid Assets and/or (b) one or more, or any combination of, Bid Assets as that party may desire.</p> <p>The Bidding Procedures also provide that the Debtors, in consultation with the</p>

¹⁰ To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

MATERIAL TERMS OF THE BIDDING PROCEDURES

Consultation Parties, may also consider competing bids in the form of a chapter 11 plan of reorganization, subject to the requirements set forth in the Bidding Procedures (a “**Chapter 11 Plan Bid**”).

A. Indications of Interest.

1. Required Information. Interested Parties must deliver the following items to Evercore so as to be received no later than 3:00 p.m. (prevailing Central Time) on March 31, 2020:
 - a. an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, in consultation with the Consultation Parties;
 - b. a statement and other factual support demonstrating, to the Debtors’ satisfaction, in consultation with the Consultation Parties, that the Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets;
 - c. a description of the nature and extent of any due diligence the Interested Party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and
 - d. sufficient information, as defined by the Debtors, in consultation with the Consultation Parties, to allow the Debtors, in consultation with the Consultation Parties, to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal, or other authorizations to close the sale transaction, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in consultation with the Consultation Parties) or, if the Interested Party is an entity formed for the purpose of acquiring some or all of the Bid Assets, (i) current audited financial statements of the equity holder(s) (the “**Sponsor(s)**”) of the Interested Party or such other form of financial disclosure acceptable to the Debtors in consultation with the Consultation Parties, (ii) a written commitment acceptable to the Debtors and their advisors, in consultation with the Consultation Parties, that the Sponsor(s) are responsible for the Interested Party’s obligations in connection with the Bidding Process, and (iii) copies of any documents evidencing any financing commitments necessary to consummate the transaction.

If the Debtors determine, in consultation with the Consultation Parties, after receipt of the items identified above, that an Interested Party has (i) a *bona fide* interest in purchasing any or all of the Bid Assets, (ii) the financial wherewithal to execute such purchase, and (iii) reasonable due diligence requirements, such Interested Party will be deemed a “**Potential Bidder**” and the Debtors will deliver to such Potential Bidder (a) an electronic copy of the Stalking Horse Agreement and (b) access to the Debtors’ confidential electronic data room concerning the Bid Assets (the “**Data Room**”), which shall include a form of Sale Order.

- B. **Due Diligence**. In addition to Data Room access, Debtors may, in consultation with the Consultation Parties, grant additional due diligence access reasonably requested by Potential Bidders. Unless otherwise determined by the Debtors, the availability of due diligence to a Potential Bidder will cease if the Potential Bidder does not become a Qualified Bidder or the Bidding Process is terminated in accordance with its terms.

MATERIAL TERMS OF THE BIDDING PROCEDURES

C. Bid Deadline – April 13, 2020 at 3:00 p.m. (prevailing Central Time)

D. Qualified Bid Requirements.

1. Required Bid Documents. A Qualified Bid (other than the Stalking Horse Bid, with respect to which the deposit requirements will be governed by the Stalking Horse Agreement) must be accompanied by the following documents:
 - a. a letter stating that the bidder's offer is irrevocable until consummation of a transaction involving the Bid Assets (or lot thereof) identified in such offer;
 - b. other than for any Chapter 11 Plan Bid, a duly authorized and executed asset purchase agreement, which purchase agreement must be based on the form of the Stalking Horse Agreement, marked to show any revisions, including, among other things, the purchase price for the Bid Assets (or lot thereof, as applicable), together with all exhibits and schedules, in each case marked against the Stalking Horse Agreement and any proposed revisions to the proposed form of Sale Order;
 - c. each Chapter 11 Plan Bid must be accompanied by an executed investment agreement, signed by an authorized representative of such bidder, pursuant to which the bidder proposes to effectuate a non-taxable recapitalization transaction effectuated pursuant to a chapter 11 plan of reorganization, and must provide for a fully-committed investment of capital in exchange for substantially all of the equity of the reorganized Debtors;
 - d. written evidence acceptable to the Debtors in consultation with the Consultation Parties demonstrating financial wherewithal, operational ability, and corporate authorization to consummate the proposed transaction; and
 - e. written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, that is satisfactory to the Debtors in consultation with the Consultation Parties.
2. Identity of Purchaser. Full disclosure of the legal identity of the purchaser and related parties participating in the Auction.
3. Bid Assets; Consideration.
 - a. Other than for a Chapter 11 Plan Bid, identification of Bid Assets (or lot thereof) to be purchased and the Contracts and Leases to be assumed, and the consideration therefor (the "**Bid Consideration**").
 - b. If the bid seeks to purchase all or substantially all of the Stalking Horse Assets (and not a lot thereof), such Bid provides for a purchase price payable in cash at Closing in an amount at least equal to \$453 million, which is the sum of (i) \$425 million (*i.e.* the purchase price under the Stalking Horse Agreement); *plus* (ii) the aggregate amount of the Bid Protections; *plus* (iii) \$5 million (the "**Minimum Overbid**").
 - c. Other than for a Chapter 11 Plan Bid, clearly states which liabilities of the Debtors or the Bid Assets will be assumed.
 - d. Includes a statement of proposed terms for employees, including with respect to the Debtors' affected collective bargaining agreements and affected labor unions.

MATERIAL TERMS OF THE BIDDING PROCEDURES

- e. Clearly allocates the Bid Consideration among the Bid Assets and Contracts and Leases to be assumed on a per Facility basis.
 4. No Financing/Diligence Contingency. No condition on the obtainment of financing or on the outcome of unperformed due diligence.
 5. Regulatory Approvals. Includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of the ability to obtain such approvals or consents as soon as reasonably practicable, and in no event later than June 1, 2020, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents.
 6. Alternate Bidder. Must expressly state that the bidder agrees to serve as an Alternate Bidder if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid (as hereinafter defined) with respect to the applicable Bid Assets.
 7. Good Faith Deposit. Except with respect to the Stalking Horse Bidder (whose deposit shall be governed by the Stalking Horse Agreement), delivery of a cash deposit by wire transfer to a Deposit Agent in an amount equal to ten percent of the proposed purchase price.
 8. Authorized Representatives. A list setting forth the representatives authorized to appear and act for the bidder in connection with the proposed transaction.
 9. No Bid Protections. Statement that the bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment.
 10. Adequate Assurance. Evidence supporting the bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including the provision of adequate assurance of such bidder's ability to perform under any Contracts and Leases to be assumed by the bidder in connection with the proposed transaction.
- E. Designation of Qualified Bids; Cure of Non-Qualifying Bids.** The Debtors, in consultation with the Consultation Parties, shall have the right to deem a bid a Qualified Bid. If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may provide the bidder with the opportunity to remedy any deficiencies following the Bid Deadline. If any bid is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bid, and the applicable bidder fails to remedy such bid in accordance with the Bidding Procedures, the Debtors shall promptly instruct the Deposit Agent to return such bidder's Good Faith Deposit. Within one day of the Debtors' receipt of any bid for any or all of the Stalking Horse Assets, the Debtors shall provide such bid to the Stalking Horse Bidder and the Consultation Parties; *provided* that such bid may be withheld from members of the Committee or redacted to the extent that the Debtors determine, in their reasonable business judgment and in consultation with the advisors to the Committee, that sharing such bid would be likely to have a negative impact on potential bidding or otherwise be contrary to goal of maximizing value for the Debtors' estates from the sale process.
- F. Deemed Acknowledgments and Representations.** Each Qualified Bidder shall be

MATERIAL TERMS OF THE BIDDING PROCEDURES	
	<p>deemed to acknowledge and represent that such bidder:</p> <ol style="list-style-type: none"> 1. had an opportunity to conduct any and all due diligence regarding the Bid Assets that are the subject of the Auction prior to making any such bid; 2. relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its bid; and 3. did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Bid Assets (or lot thereof), or the completeness of any information provided in connection therewith, except as expressly stated in the Bidding Procedures or, as to the Stalking Horse Bidder, the Stalking Horse Agreement, or, as to any other Successful Bidder(s) (as defined below), the purchase agreement(s) with such Successful Bidder(s).
Provisions Providing Bid Protections to Stalking Horse Bidder	<p>Part 3 of the Bidding Procedures outlines the terms of the Bid Protections being provided to the Stalking Horse Bidder</p> <p>If the Stalking Horse Bidder is not the Successful Bidder, or if the Debtors withdraw the motion prior to the entry of a Sale Order approving the Sale Transaction relating to the Stalking Horse Assets, the Debtors will, in certain circumstances, pay to the Stalking Horse Bidder a Break-Up Fee and the Expense Reimbursement. The payment of the Break-Up Fee and the Expense Reimbursement will be governed by the provisions of the Stalking Horse Agreement and the Bidding Procedures Order. The Break-Up Fee is \$15,000,000.00 and the Expense Reimbursement shall not exceed \$8,000,000.00.</p>
Provisions Governing Credit Bidding	<p>Part 4 of the Bidding Procedures sets forth the provisions governing Credit Bidding¹¹</p> <p>Subject to the terms and conditions set forth in the DIP Order, the DIP Agent, with the consent of the Required Lenders, shall have the right (on behalf of the DIP Lenders) to credit bid the amounts of the DIP Obligations (other than, prior to the Challenge Period Termination Date, the DIP Roll-Up Loans) in connection with any sale of all or substantially all of the Debtors' assets and property.</p> <p>If the DIP Agent submits a credit bid in accordance with the foregoing, and such bid is received by the Bid Deadline, such bidder shall be deemed to be a Qualified Bidder and any such credit bid shall be deemed to be a Qualified Bid.</p>
Provisions Governing the Auction and Permitting the Modification of Bidding and	<p>Part 5 of the Bidding Procedures sets forth the procedures governing the Auction.</p> <p>A. Date, Time, and Location. The Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 on April 20, 2020 at 10:00 a.m. (prevailing Eastern Time) or such later time on such day or such other place as the Debtors shall notify all Qualified Bidders (including</p>

¹¹ Capitalized terms used in this subsection but not otherwise defined shall have the meanings ascribed to them in the *Final Order Pursuant to Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, 507, and 522 and Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Post-Petition Financing, and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [D.I. 133] (the “DIP Order”).

MATERIAL TERMS OF THE BIDDING PROCEDURES	
Auction Procedures	<p>the Stalking Horse Bidder).</p> <p>B. Participants and Attendees.</p> <ol style="list-style-type: none"> Attendance will be limited to the representatives or agents (including legal and financial advisors) of (a) the Debtors, (b) any Qualified Bidder that has submitted a Qualified Bid, (c) the Agents, and (d) the Committee. Each Qualified Bidder must confirm on record that it (a) has not engaged in any collusion with respect to the bidding or the sale of any of the Bid Assets, (b) has reviewed, understands, and accepts the Bidding Procedures, (c) has consented to the jurisdiction of the Court, and (d) intends to consummate its Qualified Bid if it is selected as the Successful Bid. <p>C. Auction Procedures.</p> <ol style="list-style-type: none"> <u>Notice of Qualification.</u> Prior to the Auction, the Debtors will (a) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (b) provide all Qualified Bidders with (i) copies of the Qualified Bid or combination of Qualified Bids that the Debtors, in consultation with the Consultation Parties, believe is the highest or otherwise best offer (the “Starting Bid”), (ii) an explanation of how the Debtors value the Starting Bid, and (iii) a list identifying all of the Qualified Bidders and their respective Qualified Bids. <u>Starting Bid.</u> The first round of bidding at the Auction shall commence at the Starting Bid. For the avoidance of doubt, the Starting Bid may be comprised of multiple Qualified Bids if the aggregate consideration in such Qualified Bids is higher and better than the Stalking Horse Bid. <u>Subsequent Bids.</u> Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding in the presence of all parties at the Auction, so long as during each round at least one subsequent bid (a “Subsequent Bid”) is submitted by a Qualified Bidder that (a) improves upon such Qualified Bidder’s immediately prior Qualified Bid and (b) the Debtors determine in consultation with the Consultation Parties that such Subsequent Bid is (i) with respect to the first round, a higher or otherwise better offer than the Starting Bid and (ii) with respect to subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below), in each case taking into account other Qualified Bids for other Bid Assets; <i>provided, however</i>, that with respect to each round of bidding with respect to all or substantially all of the Stalking Horse Assets, any Qualified Bid or Subsequent Bid must provide consideration at least equal to the Minimum Overbid. The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid (or in valuing such bids) at any time during the Auction. For the avoidance of doubt, in any subsequent round of bidding with respect to all or substantially all of the Stalking Horse Assets, the Stalking Horse Bidder will be entitled to a “credit” in the amount of the Bid Protections to be counted toward its bid in such round. In each subsequent round after the first round, the Debtors, in consultation with the Consultation Parties, may determine appropriate minimum bid increments or requirements for each round of bidding. <u>Minimum Bid Increments.</u> In each subsequent round after the first round, the Debtors, in consultation with the Consultation Parties, may determine appropriate minimum bid increments or requirements for each round of bidding.

MATERIAL TERMS OF THE BIDDING PROCEDURES

5. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, as applicable, the Debtors will determine in their discretion, in consultation with the Consultation Parties, and announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (the “**Leading Bid**”). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided, however*, that the value for such non-cash consideration shall be determined by the Debtors in consultation with the Consultation Parties.
6. Partial Bids. If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all of the Bid Assets (each such bid, a “**Partial Bid**”), the Debtors may conduct separate auctions at the Auction for each lot of assets (each, an “**Auction Lot**”) subject to a Partial Bid. The Debtors may, in consultation with the Consultation Parties, combine Partial Bids into an Auction Lot to compete against the Stalking Horse Bid. The Debtors may designate each Auction Lot at any time prior to the Auction.
7. Recording. The bidding at the Auction will be transcribed or videotaped.
8. Modification of Bidding and Auction Procedures: The Debtors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules for conducting the Auction (*e.g.*, the amount of time allotted to submit Subsequent Bids), *provided, however*, that such rules shall (a) not be inconsistent with the Bankruptcy Code, the Bidding Procedures Order, or any other order of the Court entered in connection herewith and (b) be disclosed to all Qualified Bidders.

Part 6 of the Bidding Procedures sets forth procedures by which the Debtors shall select the Successful Bid(s) and Alternate Bid(s).

- A. Selection of Successful Bids.** Prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction, (ii) determine and identify the highest or otherwise best offer or collection of offers (the “**Successful Bid(s)**”), (iii) determine and identify the next highest or otherwise best offer or collection of offers (the “**Alternate Bid(s)**”), and (iv) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of (A) the identity of the party or parties that submitted the Successful Bid(s) (the “**Successful Bidder(s)**”), (B) the amount and other material terms of the Successful Bid(s), (C) the identity of the party or parties that submitted the Alternate Bid(s) (the “**Alternate Bidder(s)**”), and (D) the amount and other material terms of the Alternate Bid(s).

Each Qualified Bidder shall agree and be deemed to agree to be the Alternate Bidder if so designated. Notwithstanding the foregoing sentence or anything in the Bidding Procedures to the contrary, any Qualified Bid submitted by the Stalking Horse Bidder or the DIP Agent (as defined in the DIP Order) shall not be required to serve as an Alternate Bid absent consent of the Stalking Horse Bidder or DIP Agent, respectively.

- B. Execution of Definitive Documentation.** As soon as reasonably practicable after the completion of the Auction, the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments, and other documents necessary to consummate the applicable sale or other transaction(s) contemplated by the applicable Successful Bid(s). Promptly following the selection of the Successful

MATERIAL TERMS OF THE BIDDING PROCEDURES	
	Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) with the Court, together with a proposed Sale Order.
Provisions Regarding Sale Hearing and Closing with Successful Bidders and Alternative Bidders	<p>Part 7 of the Bidding Procedures sets forth procedures regarding closing with Successful Bidder(s) or Alternative Bidder(s).</p> <p>The Sale Hearing will be held on April [27], 2020 at: [-]:00 [-].m. (prevailing Central time)¹² before the Honorable Judge David R. Jones, in the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk St., Houston, Texas 77002. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties, by an announcement of the adjourned date at a hearing before the Bankruptcy Court or by filing a notice on the Bankruptcy Court's docket. At the Sale Hearing, the Debtors will seek the Bankruptcy Court's approval of the Successful Bid(s) and, at the Debtors' election, the Alternate Bid(s).</p> <p>The Debtors' presentation to the Court of the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors' acceptance of such bid(s), which acceptance will only occur upon approval of such bid(s) by the Court. Following the Court's entry of the Sale Order, the Debtors and the Successful Bidder(s) shall proceed to consummate the transaction(s) contemplated by the Successful Bid(s). If the Debtors and the Successful Bidder(s) fail to consummate the proposed transaction(s), then the Debtors shall file a notice with the Court advising of such failure. Upon the filing of such notice with the Court, the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate the transaction(s) with the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Court.</p>

C. Key Dates and Deadlines

30. Consistent with the Debtors' need to consummate a sale of the Bid Assets as efficiently as practicable, the Debtors propose the following key dates and deadlines for the sale process, certain of which dates and deadlines may be subject to extension in accordance with the Bidding Procedures:

March 12, 2020 at 2:00 p.m. (prevailing Central Time)	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order
March 16, 2020	Target date for the Debtors to file Potential Assumed Contracts Schedule
March 31, 2020 at 3:00 p.m. (prevailing Central Time)	Potential Bidder deadline
April 6, 2020 at 4:00 p.m.	Cure Objection Deadline

¹² This date remains subject to Court approval.

(prevailing Central Time)	
April 13, 2020 at 3:00 p.m. (prevailing Central Time)	Bid Deadline
April 20, 2020 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any) to be held at the offices of Davis Polk & Wardwell LLP
April 21, 2020	Target date for the Debtors to file with the Court the Notice of Auction Results
April 22, 2020 at 4:00 p.m. (prevailing Central Time)	Deadline to object to the Sale Transaction to the Successful Bidder; and the Assumption and Assignment Objection Deadline
April [27], 2020 at [·]:00 [·].m. (prevailing Central Time) ¹³	Hearing to consider approval of the Sale Transaction(s) and entry of the Sale Order(s)

D. Noticing Procedures

31. The Debtors propose the following “**Noticing Procedures**”:

- a. **Sale Notice and Publication.** As soon as reasonably practicable after entry of the Bidding Procedures Order, but not later than three business days after entry of the Bidding Procedures Order, the Debtors shall serve the Sale Notice, the Bidding Procedures Order (including the Bidding Procedures attached to the Bidding Procedures Order) by first class or overnight mail upon the following: (i) the U.S. Trustee; (ii) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Committee; (iii) White & Case LLP, as counsel to Coöperatieve Rabobank U.A., New York Branch, the administrative agent under Debtors’ prepetition receivables purchase agreement, administrative agent under the Debtors’ prepetition secured revolving credit facility, administrative agent under the Debtors’ securitization facility, and administrative agent under the Debtors’ post-petition financing facility (collectively, the “**Agents**”); (iv) indenture trustee under the Debtors’ prepetition unsecured bond indenture; (v) Counterparties to Contracts and Leases; (vi) the Securities and Exchange Commission; (vii) the Internal Revenue Service; (viii) the U.S. Environmental Protection Agency; (ix) the United States Attorney’s Office for the Southern District of Texas; (x) the United States Attorney General/Antitrust Division of the Department of Justice; (xi) the state attorneys general for states in which the Debtors conduct business; (xii) all other parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (xiii) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors’ assets; (xiv) all other known parties with any interest in the Bid Assets; (xv) all known creditors of the Debtors; and (xvi) any party that has requested notice pursuant to

¹³ This date remains subject to Court approval.

Bankruptcy Rule 2002 (collectively, the “**Sale Notice Parties**”). The Debtors will publish the Sale Notice once in *USA Today* national edition as soon as practicable following entry of the Bidding Procedures Order. This publication notice will provide notice of the sale to any other interested parties whose identities are unknown to the Debtors.

- b. **Notice of Determination of Qualified Bids.** The Debtors, in consultation with the Consultation Parties, will make a determination regarding which bids qualify as a Qualified Bid. Prior to the Auction, the Debtors will (i) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (ii) provide all Qualified Bidders with (A) a copy of the Starting Bid, (B) an explanation of how the Debtors value the Starting Bid, and (C) a list identifying all of the Qualified Bidders and their respective Qualified Bids.
- c. **Notice of Hearing if Auction Not Held.** If (a) no Qualified Bids for the Stalking Horse Assets are submitted by the Bid Deadline other than the Stalking Horse Bid or (b) only one or more Partial Bids are submitted by the Bid Deadline for non-overlapping lots of the Bid Assets, the Debtors may, in their discretion, in consultation with the Consultation Parties, elect to cancel the Auction, seek approval of the transactions contemplated in the Stalking Horse Bid, the Qualified Bid which is not the Stalking Horse Bid, or the transactions in respect of such Partial Bids, at the Sale Hearing. If no Auction is to be conducted, the Debtors will file with the Court, serve on the Sale Notice Parties, and cause to be published on the Debtors’ case information website located at <https://dm.epiq11.com/SouthernFoods> (the “**Case Information Website**”) a notice (x) indicating that the Auction for the Bid Assets has been canceled, (y) indicating that the Stalking Horse Bid, or Partial Bid(s) (as applicable) is or are the Successful Bid with respect to the Bid Assets, and (z) setting forth the date and time of the Sale Hearing.

In no event shall the Consultation Parties have fewer than five days before the Sale Hearing to object to the Partial Bid or Successful Bid, or to the Stalking Horse Bid, absent consent of the Consultation Parties.

- d. **Notice of Auction Results.** Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) (the “**Notice of Auction Results**”) with the Court and cause the Notice of Auction Results to be published on the Case Information Website.

32. The Noticing Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process, including, among other things, the objection deadline, the Bid Deadline, and the times and locations of the Auction and Sale Hearing. Accordingly, the

Debtors request that the Court find that the Noticing Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and Local Rule 6004(a).

Assumption and Assignment Procedures

33. In connection with the Sale Transaction, the Debtors anticipate that they will assume and assign to the Successful Bidder (or its designated assignee(s)) all or certain of the Assumed Contracts and Assumed Leases pursuant to section 365(b) of the Bankruptcy Code. Accordingly, the Debtors hereby also seek approval of the proposed Assumption and Assignment Procedures set forth herein, which are designed to, among other things, (a) outline the process by which the Debtors will serve notice to all Counterparties regarding the potential assumption and assignment, related Cure Costs, if any, and information regarding the Successful Bidder's adequate assurance of future performance and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of the Assumed Contracts and Assumed Leases. Specifically, the Assumption and Assignment Procedures are as follows:

- a. **Potential Assumed Contracts Schedule.** As soon as reasonably practicable following entry of the Bidding Procedures Order, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and a list of the Potential Assumed Contracts (the "**Potential Assumed Contracts Schedule**") that specifies (i) each of the Contracts and Leases that potentially could be assumed and assigned in connection with the sale of the Bid Assets, including the name of each Counterparty and (ii) the proposed Cure Cost with respect to each Potential Assumed Contract.
- b. **Potential Assumption and Assignment Notice.** The Debtors shall, as soon as reasonably practicable after entry of the Bidding Procedures Order (but in any event, so as to provide sufficient notice such that any required responses from any Counterparties are due prior to the scheduled date of the Auction as specified in the Bidding Procedures), serve on each relevant Counterparty the Potential Assumption and Assignment Notice, which shall (i) identify the Potential Assumed Contracts, (ii) list the Debtors'

good faith calculation of the Cure Costs with respect to the Potential Assumed Contracts identified on the Potential Assumption and Assignment Notice, (iii) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (iv) prominently display the deadline to file an Assumption and Assignment Objection (as defined herein), and (v) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Potential Assumption and Assignment Notice, without the Potential Assumed Contracts Schedule, which will include instructions regarding how to view the Potential Assumed Contracts Schedule on the Case Information Website.

- c. **Proposed Assumption and Assignment Notice.** The Debtors shall, in conjunction with the filing of the Notice of Auction Results, file and serve on each relevant Counterparty the Proposed Assumption and Assignment Notice, which shall (i) identify the Proposed Assumed Contracts, (ii) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (iii) prominently display the deadline to file an Assumption and Assignment Objection, and (iv) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Proposed Assumption and Assignment Notice, without the schedule of Proposed Assumed Contracts (the “**Proposed Assumed Contracts Schedule**”), which will include instructions regarding how to view the Proposed Assumed Contracts Schedule on the Case Information Website.

- d. **Assumption and Assignment Objections.**

- i. **Objection Deadlines.** Any Counterparty may object to the potential or proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors’ proposed Cure Costs, if any, or the ability of a Successful Bidder to provide adequate assurance of future performance (an “**Assumption and Assignment Objection**”). All Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (D) (1) for objections relating to proposed Cure Costs, be filed no later than **April 6, 2020 at 4:00 p.m. (prevailing Central Time)** (the “**Cure Objection Deadline**”) and (2) for all other objections, **April 22, 2020 at 4:00 p.m. (prevailing Central Time)** (the “**Assumption**

and Assignment Objection Deadline”), and (E) be served on (1) counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, Nate Sokol, and Daniel E. Meyer and (z) Norton Rose Fulbright US LLP, 1301 McKinney Street, Suite 5100, Houston, Texas 77010, Attn: William Greendyke, Jason L. Boland, Robert B. Bruner, and Julie Harrison, (2) (y) counsel to the Agents, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Scott Greissman, Philip Abelson, and Elizabeth Feld and (z) Gray Reed, 1300 Post Oak Blvd, Suite 2000, Houston, TX 77056, Attn: Jason S. Brookner, (3) counsel to the Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip Dublin and Meredith Lahaie, and (4) the U.S. Trustee (collectively, the **“Assumption and Assignment Objection Notice Parties”**).

- ii. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing or such later date that the Debtors, in consultation with the Successful Bidder, shall determine in their discretion (in consultation with the Consultation Parties and subject to the Court’s calendar). If such objection has not been resolved prior to the closing of the Sale Transaction (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder(s) may elect, in their sole and absolute discretion, one of the following options: (A) treat such Counterparty’s contract or lease as property excluded from the Bid Assets (an **“Excluded Contract”** or **“Excluded Lease”**, respectively); or (B) temporarily treat the Proposed Assumed Contract as an Excluded Contract or Excluded Lease, as applicable (a **“Designated Agreement”**), proceed to the closing of the Sale Transaction with respect to all other Bid Assets, and determine whether to treat the Designated Agreement as an Assumed Contract or Assumed Lease, as applicable, or an Excluded Contract or Excluded Lease, as applicable, within ten business days after resolution of such objection (whether by the Court’s order or by agreement of the Counterparty, the Debtors, and the Successful Bidder).
- iii. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Assumed Contract or Assumed Lease. Notwithstanding anything to the contrary in the Assumed Contract or Assumed Lease, or any other document, the Cure Costs

set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice (as defined herein) shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, due or to become due, accrued, absolute, contingent, or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Assumed Contract or Assumed Lease against the Debtors, the Successful Bidder, or the property of any of them.

e. **Modification of Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule.**

- i. In addition to the rights of the Successful Bidder described above with respect to an Assumption and Assignment Objection at or prior to the closing of the Sale Transaction, the Successful Bidder (including the Stalking Horse Bidder) may elect, in its sole and absolute discretion, to (A) exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (B) include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable.
- ii. If the Debtors or the Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may, in its sole and absolute discretion, elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Assumption and Assignment Procedures.
- iii. Following the conclusion of the Auction, if any, and the selection of the Successful Bidder(s), the Debtors reserve the right, at any time before the closing of the Sale Transaction, to modify the previously-stated Cure Costs associated with any Proposed

Assumed Contract, subject to notice requirements in the Assumption and Assignment Procedures.

- iv. In the event that any contract or lease is added to the Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the Stalking Horse Agreement or the procedures set forth in this Motion, the Debtors will promptly serve a supplemental assumption and assignment notice, by first class mail, on the applicable Counterparty (each, a **“Supplemental Assumption and Assignment Notice”**). Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Assumed Contract or Assumed Lease as is required to be included in the Potential Assumption and Assignment Notice.
- v. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose contract or lease is proposed to be assumed and assigned may object to the proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors’ proposed Cure Costs (to the extent modified from the previously-stated amount), or the ability of the Successful Bidder to provide adequate assurance of future performance (a **“Supplemental Assumption and Assignment Objection”**). All Supplemental Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, and (D) **no later than 14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (1) be filed with the Court and (2) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.
- f. **Reservation of Rights.** The inclusion of an Assumed Contract, Assumed Lease, or Cure Costs with respect thereto on a Potential Assumption and Assignment Notice, a Proposed Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, the Proposed Assumed Contracts Schedule, or a Supplemental Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder(s) (including the Stalking Horse Bidder), or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each

Assumed Contract and Assumed Lease listed on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, and the Proposed Assumed Contracts Schedule. The Debtors' inclusion of any Assumed Contract or Assumed Lease on the Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, and/or the Proposed Assumed Contracts Schedule shall not be a guarantee that such Assumed Contract or Assumed Lease ultimately will be assumed or assumed and assigned.

**Approval of the Relief Requested is Warranted
and in the Best Interests of the Debtors and Their Stakeholders**

A. The Bidding Procedures are Fair and Appropriate and Should Be Approved

34. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor's estate: maximizing the value of sale proceeds received by the estate. *See In re Johnson*, 433 B.R. 626, 638 (Bankr. S.D. Tex. 2010) (citing *Cheng v. K&S Diversified Invs. (In re Cheng)*, 308 B.R. 448, 455 (B.A.P. 9th Cir. 2004)) ("The debtor in possession performing the duties of the trustee is the representative of the estate and is saddled with the same fiduciary duty as a trustee to maximize the value of the estate available to pay creditors."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established to enhance competitive bidding are consistent with the fundamental goal of maximizing value of a debtor's estate. *See In re ASARCO, L.L.C.*, 650 F.3d 593, 603 (5th Cir. 2011) (affirming bankruptcy court's approval of bid procedures designed to maximize the value of the debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures "encourage bidding and . . . maximize the value of the debtor's assets").

35. The Bidding Procedures provide for an orderly, uniform, and appropriately competitive process through which interested parties may submit offers to purchase the Bid Assets. Given the time constraints, the Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best offer reasonably available for the Bid Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale Transaction.

36. Courts in this district have approved procedures similar to the proposed Bidding Procedures in connection with chapter 11 asset sales. *See, e.g., In re Alta Mesa Res., Inc.*, Case No. 19-35133 (Bankr. S.D. Tex. 2019) [D.I. 317]; *In re Geokinetics Inc.*, Case No. 18-33410 (Bankr. S.D. Tex. 2018) [D.I. 110 & 154]; *In re Francis Drilling Fluids, Ltd.*, Case No. 18-35441 (Bankr. S.D. Tex. 2018) [D.I. 236]; *In re Cobalt Int'l Energy, Inc.*, [D.I. 299]; *In re EMAS CHiyoda Subsea Ltd.*, Case No. 17-31146 (Bankr. S.D. Tex. 2017) [D.I. 317]; *In re Vanguard Nat. Res., LLC*, Case No. 17-30560 (Bankr. S.D. Tex. 2017) [D.I. 583]. Accordingly, the Bidding Procedures should be approved because, under the circumstances, they are reasonable, appropriate, and in the best interests of the Debtors, their estates, and all parties in interest.

B. The Selection of the Stalking Horse Bidder and the Bid Protections Have Sound Business Purposes and Should Be Approved

37. As noted above, the Stalking Horse Agreement provides for a Break-Up Fee in an amount equal to \$15,000,000.00 to be paid to the Stalking Horse Bidder upon entry of an order approving, or the consummation of, an Alternative Transaction. In addition, the Stalking Horse Agreement provides for an Expense Reimbursement of up to \$8,000,000.00 to be paid upon the occurrence of certain events typical and customary for transactions of this kind. The Debtors

believe that the Bid Protections are necessary for the Stalking Horse Bidder to enter into the Stalking Horse Agreement. In addition, the Debtors believe that the presence of a stalking horse bidder will set a floor for the value of the Stalking Horse Assets and attract other potential buyers to bid for such assets, thereby maximizing the realizable value of the Stalking Horse Assets for the benefit of the Debtors' estates, their creditors, and all other parties in interest.¹⁴

38. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. The Fifth Circuit has held that bid protections should be approved in chapter 11 cases so long as (a) there was no "self-dealing or manipulation among the parties who negotiated" the bid protections, (b) the bid protections "facilitated, not hindered, the auction process," and (c) the bid protections are "reasonable in comparison to the size of" the transaction. *In re ASARCO LLC*, 650 F.3d at 603.

¹⁴ For the avoidance of doubt, notwithstanding entry of the Bidding Procedures Order, the Bid Protections shall (a) remain subject to the terms and conditions of the Stalking Horse Agreement and (b) will not be binding on the Debtors until entry of the Sale Order.

39. Here, the Bid Protections squarely satisfy the *ASARCO* factors. First, as demonstrated by the Magro Declaration, the Bid Protections are the product of good faith, arm's length negotiations between the Debtors and the Stalking Horse Bidder. *See* Magro Decl. ¶ 15. Further, the Stalking Horse Agreement provisions relating to the Bid Protections (along with other provisions of the Stalking Horse Agreement) were (a) scrutinized by the Debtors' professionals, (b) reviewed with outside advisors, including the advisors of the Consultation Parties,¹⁵ through the marketing process, and (c) approved by the Debtors' board of directors. *See* Magro Decl. ¶ 19.

40. Second, the Debtors believe, based on their business judgment, that the Break-Up Fee and the Expense Reimbursement will allow them to maximize the realizable value of the Stalking Horse Assets without chilling bidding. The Bid Protections were a material inducement for, and a condition of, the Stalking Horse Bidder's agreement to enter into the Stalking Horse Agreement.¹⁶ Indeed, the Debtors believe that their ability to offer the Bid Protections to the Stalking Horse Bidder is necessary to help ensure an adequate floor for the value of the Stalking Horse Assets and to insist that competing bids be materially higher or otherwise better than the Stalking Horse Bid, thereby providing the upside opportunity that the Debtors could potentially realize a higher or otherwise better offer at any auction for the Stalking Horse Assets which, absent such a bid floor, might otherwise never have been realized—a clear benefit to the Debtors' estates. *See In re ASARCO LLC*, 650 F.3d at 602 n.9 (5th Cir. 2011) (citation, quotation marks, and internal modifications omitted) (“In the context of bankruptcy auction sales, break-up fees are sometimes authorized because they provide an incentive for an initial

¹⁵ *See supra* note 6.

¹⁶ Moreover, the Stalking Horse Bidder would not have agreed to act as a stalking horse without the Bid Protections. *See* Magro Decl. ¶¶ 16–17.

bidder to serve as a so-called ‘stalking horse,’ whose initial research, due diligence, and subsequent bid may encourage later bidders.”); *see also In re Demay Int’l LLC*, 471 B.R. 510, 517 n.10 (S.D. Tex. 2012) (“In an effort to maximize recovery of value from an asset sale in bankruptcy, before the court-supervised auction the debtor chooses a buyer, the ‘stalking horse,’ from a pool of bidders to make a first bid that establishes a framework for competitive bidding, a floor, so that other bidders cannot low-ball the purchase price.”). Without the Court authorizing the Debtors to offer the Bid Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Stalking Horse Assets and would certainly lose the downside protection that could be afforded by the existence of a Stalking Horse Bidder. Furthermore, without the benefit of the Stalking Horse Bidder, the bids received at the Auction for the Stalking Horse Assets could be substantially lower than the one offered by the Stalking Horse Bidder.

41. Third, and finally, the Break-Up Fee and Expense Reimbursement are reasonable and appropriate in light of the size, nature, and complexity of the transaction and the efforts that will necessarily have been expended by the Stalking Horse Bidder. Moreover, the Break-up Fee and the Expense Reimbursement are actually necessary to preserve the value of the Debtors’ estates. As set forth in the Magro Declaration, the Break-Up Fee represents only 3.5% of the Purchase Price to be paid by the Stalking Horse Bidder. *See* Magro Decl. ¶ 18. Additionally, both the Break-Up Fee and the Expense Reimbursement were negotiated in good faith, and both were necessary to secure the Stalking Horse Bidder’s commitment under the Stalking Horse Agreement. In sum, the Debtors’ ability to offer the Bid Protections enables them to ensure the sale of the Stalking Horse Assets at a price they believe to be fair, while, at the same time,

providing the Debtors with the potential of achieving an even greater benefit to the Debtors' estates in the form of a higher or otherwise better offer for the Stalking Horse Assets.

42. Courts in this District have approved protections similar to the proposed Break-Up Fee and Expense Reimbursement as reasonable, and consistent with the type and range of bidding protections typically approved, and also have granted administrative expense status to break-up fees that become due under the terms of a stalking horse purchase agreement. *See, e.g., In re Alta Mesa Res., Inc.*, Case No. 19-35133 (Bankr. S.D. Tex. 2019) [D.I. 317]; *In re Geokinetics Inc.*, Case No. 18-33410 (Bankr. S.D. Tex. 2018) [D.I. 110 & 154]; *In re Francis Drilling Fluids, Ltd.*, Case No. 18-35441 (Bankr. S.D. Tex. 2018) [D.I. 236]; *In re Cobalt Int'l Energy, Inc.*, [D.I. 299]; *In re EMAS CHiyODA Subsea Ltd.*, Case No. 17-31146 (Bankr. S.D. Tex. 2017) [D.I. 317]; *In re Vanguard Nat. Res., LLC*, Case No. 17-30560 (Bankr. S.D. Tex. 2017) [D.I. 583].

43. Accordingly, the Debtors submit that the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should be approved. *See* Magro Decl. ¶¶ 18–19.

C. The Proposed Sale Transactions Satisfy the Requirements of Section 363 of the Bankruptcy Code

44. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See, e.g., Inst’l Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business

justification for using, selling, or leasing the property outside the ordinary course of business.”); *In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale”); *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *38 (Bankr. S.D. Tex. Mar. 21, 2014); *In re St. Marie Clinic PA*, No. 10-70802, 2013 WL 5221055, at *9 (Bankr. S.D. Tex. Sept. 17, 2013); *In re Particle Drilling Techs., Inc.*, No. 09-33744, 2009 WL 2382030, at *2 (Bankr. S.D. Tex. July 29, 2009); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988).

45. Courts emphasize that the business judgment rule is not an onerous standard and that it “is flexible and encourages discretion.” *In re ASARCO, L.L.C.*, 650 F.3d at 601. “Great judicial deference is given to the [debtor’s] exercise of business judgment.” *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp., Ltd.)*, 331 B.R. 251, 254 (N.D. Tex. 2005). A sound business justification for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (recognizing the paramount goal of any proposed sale of property of estate is to maximize value). As long as a transaction “appears to enhance a debtor’s estate, court approval of a debtor in possession’s decision to [enter into the transaction] should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the Bankruptcy Code.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (citation and internal quotation marks omitted).

46. Moreover, section 105(a) of the Bankruptcy Code confers a bankruptcy court with broad equitable powers to confer relief in alignment with bankruptcy policies. *See U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (holding that section 105(a) of the Bankruptcy Code authorizes bankruptcy courts to fashion equitable remedies “in a manner consistent with the provisions of the Bankruptcy Code”); *see also In re Young*, 416 F. App’x 392, 398 (5th Cir. 2011) (recognizing that “[s]ection 105(a) of Title 11 permits the bankruptcy court to exercise broad authority”); *In re Trevino*, 599 B.R. 526, 542–43 (Bankr. S.D. Tex. 2019) (noting that the bankruptcy court has “broad authority” under section 105(a) of the Bankruptcy Code); *In re Padilla*, 379 B.R. 643, 667 (Bankr. S.D. Tex. 2007) (citations omitted) (“Section 105(a) gives bankruptcy courts broad authority to take actions necessary and appropriate for administering and enforcing the Bankruptcy Code and . . . ‘authorizes a bankruptcy court to fashion such orders as are necessary to further the purposes of the substantive provisions of the Bankruptcy Code.’”).

1. *The Debtors Have Demonstrated a Sound Business Justification for the Potential Sale Transaction*

47. As set forth above and in the Magro Declaration, a strong business justification exists for the sale of the Bid Assets as described herein. An orderly but expeditious sale of the Bid Assets is critical to maximizing the value of the Debtors’ estates and recoveries for the Debtors’ economic stakeholders. Additionally, the Debtors believe that a consummated Sale Transaction will produce fair and reasonable purchase prices for the Bid Assets. The Stalking Horse Bid is an offer to purchase the Stalking Horse Assets for a price that the Debtors, with the advice of their advisors, already have determined to be fair and reasonable.

48. In addition, the Bidding Procedures were carefully designed to facilitate a flexible, robust, and competitive bidding process. The Debtors are poised to capitalize on the progress made during the prepetition and post-petition phases of their sale process (*e.g.*, the

communication by Evercore with nearly 100 strategic and financial parties and the dissemination of confidential diligence information to 38 of those parties) to maximize the value of the Bid Assets sold at the Auction. The Bidding Procedures provide an appropriate framework for the Debtors to review, analyze, and compare all bids received to determine which bids are in the best interests of the Debtors' estates and their economic stakeholders. Sale Transactions governed by the Bidding Procedures undoubtedly will serve the important objectives of obtaining not only a fair and reasonable purchase price for the Bid Assets, but also the highest or otherwise best value for the Bid Assets, which will inure to the benefit of all parties in interest in the Chapter 11 Cases.

49. Finally, nothing in the Bidding Procedures require the Debtors' board of directors to take any action, or to refrain from taking any action, with respect to the Bidding Procedures, to the extent that the Debtors' board of directors determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary duties under applicable law, thereby allowing the Debtors to pivot to an alternative transaction, including a plan of reorganization.

50. For the foregoing reasons, the Debtors submit that a strong business justification exists for approving the Sale Transactions and related relief requested herein.

2. *The Noticing Procedures Are Reasonable and Appropriate*

51. “[A] sale of assets under § 363 requires notice and a hearing and is subject to court approval.” *In re Moore*, 608 F.3d 253, 262 (5th Cir. 2010). The Noticing Procedures described above are reasonably calculated to provide all of the Debtors' known creditors and all other parties in interest with adequate, timely notice of, among other things, the proposed Sale Transaction, Bidding Procedures, Auction, and Sale Hearing.

D. The Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

52. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code states the following:

The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). “The purpose of § 363(m)’s stay requirement is in furtherance of the policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.” *In re TMT Procurement Corp.*, 764 F.3d 512, 521 (5th Cir. 2014) (citation and internal quotation marks omitted). “Section 363(m) patently protects, from later modifications on appeal, an authorized sale where the purchaser acted in good faith and the sale was not stayed pending appeal.” *Matter of Gilchrist*, 891 F.2d 559, 560 (5th Cir. 1990).

53. Although the Bankruptcy Code does not define “good faith,” the Fifth Circuit has defined the term in two ways in the context of section 363(m) of the Bankruptcy Code. First, it has “defined a ‘good faith purchaser’ as ‘one who purchases the assets for value, in good faith, and without notice of adverse claims.’” *TMT Procurement Corp.*, 764 F.3d at 521 (citations omitted). Second, the Fifth Circuit has “noted that ‘the misconduct that would destroy a purchaser’s good faith status . . . involves fraud, collusion between the purchaser and other bidders of the trustee, or an attempt to take grossly unfair advantage of other bidders.’” *Id.* (citations omitted).

54. The Debtors submit that the Successful Bidder is or would be a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. The Debtors and the Stalking Horse Bidder have entered into the Stalking Horse Agreement without collusion, in good faith, and through extensive arm’s length negotiations. *See* Magro Dec’l ¶¶ 14–17. Indeed, the Stalking Horse Bidder and the Debtors have engaged separate counsel and other professional advisors to represent their respective interests in the negotiation of the Stalking Horse Agreement and with respect to the sale process generally. To the best of the Debtors’ knowledge, information, and belief, no party has engaged in any conduct that would cause or permit a Sale Transaction, including the Stalking Horse Agreement, to be set aside under section 363(m) of the Bankruptcy Code.

55. Further, as set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or the sale of any of the Bid Assets. *See* Bidding Procedures § 5. Any asset purchase agreement with a Successful Bidder executed by the Debtors will be negotiated at arm’s length and in good faith. Accordingly, the Debtors seek a finding that any Successful Bidder under the Bidding Procedures is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

56. Based on the foregoing, the Debtors submit that the Debtors’ entrance into a Sale Transaction pursuant to the Bidding Procedures is a sound exercise of the Debtors’ business judgment and should be approved as a good faith transaction.

E. The Bid Assets Should Be Sold Free and Clear of Liens, Claims, Interests, and Encumbrances Under Section 363(f) of the Bankruptcy Code

57. In the interest of attracting the best offers, the Bid Assets should be sold free and clear of any and all liens, claims, interests, and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the applicable sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances of an entity other than the estate if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Patriot Place, Ltd.*, 486 B.R. 773, 814 (Bankr. W.D. Tex. 2013) (“Section 363(f) of the Bankruptcy Code sets forth five alternative conditions that must be satisfied by the Court to authorize a debtor . . . to sell its property . . . free and clear of interests of a third party.”).

58. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free

and clear of claims] is within the court's equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].").

59. The Debtors submit that the sale of the Bid Assets free and clear of liens, claims, interests, and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. For example, to the extent a party objects to the Sale Transaction on the basis that it holds a prepetition lien or encumbrance on the Bid Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims, under section 363(f)(5) of the Bankruptcy Code, or that such lien is in bona fide dispute, under section 363(f)(4) of the Bankruptcy Code.

60. Moreover, the Debtors have sent or will send the Sale Notice to any purported prepetition lienholders. If such lienholders (other than the Prepetition Secured Parties) do not object to the proposed Sale Transaction, then their consent should be presumed. Accordingly, the Debtors request that, unless a party asserting a prepetition lien, claim, interest, or encumbrance on any of the Bid Assets (other than with respect to any Assumed Liabilities and Permitted Encumbrances (as such terms are defined in the Stalking Horse Agreement)) timely objects to this Motion, such party shall be deemed to have consented to any Sale Transaction approved at the Sale Hearing. *See Hargave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein).

61. The purpose of a sale order purporting to authorize the transfer of assets free and clear of all claims, liens, interests, and encumbrances would be defeated if claimants could thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller's pre-sale conduct. Moreover, without such assurances, potential bidders may choose not to

participate in the Auction or the Stalking Horse Bidder would not have submitted the Stalking Horse Bid, to the detriment of the Debtors' economic stakeholders. Accordingly, the Debtors request that the Court authorize the sale of the Bid Assets free and clear of any liens, claims, interests, and encumbrances (with the exception of Permitted Encumbrances and Assumed Liabilities) in accordance with section 363(f) of the Bankruptcy Code, subject to such liens, claims, interests, and encumbrances (including, without limitation, all DIP Liens, DIP Superpriority Claims, Receivables Superpriority Claims, the Prepetition Obligations, and the Prepetition Liens (as each is defined in the DIP Order)) attaching to the proceeds thereof in the same order of relative priority and with the same validity, force, and effect as prior to such sale.

F. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized

62. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The decision to assume or reject an unexpired lease is a matter within the "business judgment" of the debtor. *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989). "As long as assumption of a lease appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." *Richmond Leasing Co.*, 762 F.2d at 1309 (citation and internal quotation marks omitted).

63. Any assumption of the Proposed Assumed Contracts is an exercise of the Debtors' sound business judgment because the transfer of such Contracts and Leases is necessary to the Debtors' ability to obtain the best value for their Bid Assets. The assumption and assignment of Proposed Assumed Contracts is a critical component of the Stalking Horse

Agreement and the value of the Bid Assets. Given that consummation of the Sale Transaction is critical to the Debtors' efforts to maximize value for their estates and stakeholders, the Debtors' assumption of Proposed Assumed Contracts is an exercise of sound business judgment and, therefore, should be approved.

64. The consummation of any Sale Transaction involving the assignment of a Proposed Assumed Contract will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Contracts and Leases to be assumed be cured and that the Debtors provide adequate assurance that such defaults will be promptly cured. The Debtors' assumption and assignment of Proposed Assumed Contracts will be contingent upon payment of the Cure Costs and effective only upon the closing of an applicable Sale Transaction or any later applicable effective date. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty a Potential Assumption and Assignment Notice, which will set forth the Debtors' good faith calculations of Cure Costs with respect to each Contract and Lease listed on such Potential Assumption and Assignment Notice and Proposed Assumption and Assignment Notice. As a result, Counterparties will have a meaningful opportunity to raise any objections to the proposed assumption of their respective Contracts and Leases in advance of the applicable Sale Hearing.

65. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if "adequate assurance of future performance by the assignee of such contract or lease is provided." The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *In re Texas Health Enters., Inc.*, 246 B.R. 832, 834 (Bankr. E.D. Tex. 2000) (citation and

internal quotation marks omitted). “Assurance of future performance is adequate if performance is likely (i.e. more probable than not) and the degree of assurance necessary to be deemed adequate falls considerably short of an absolute guaranty.” *In re PRK Enters., Inc.*, 235 B.R. 597, 603 (Bankr. E.D. Tex. 1999). “Some helpful factors include ‘whether the debtor’s financial data indicated its ability to generate an income stream sufficient to meet its obligations, the general economic outlook in the debtor’s industry, and the presence of a guarantee.’” *In re Texas Health Enters. Inc.*, 72 Fed. App’x 122, 126 (5th Cir. 2003) (citation omitted).

66. As set forth above and in the Bidding Procedures, for a bid to qualify as a Qualified Bid, a Potential Bidder must include with its bid information regarding its ability (and the ability of its designated assignee, if applicable) to perform under applicable Proposed Assumed Contracts. Each affected Counterparty will have an opportunity to object to the ability of the Successful Bidder (including the Stalking Horse Bidder) to provide adequate assurance as provided in the Bidding Procedures Order. In addition, the Stalking Horse Bidder submits that it is able to provide adequate assurance of its ability to perform under the applicable Proposed Assumed Contracts. Further, the Debtors propose to file with the Court a Proposed Assumption and Assignment Notice, which will set forth a list of the Proposed Assumed Contracts, in advance of the Sale Hearing. To the extent necessary, the Debtors will present facts at the Sale Hearing to show the financial wherewithal, willingness, and ability of the Successful Bidder (including the Stalking Horse Bidder) to perform under the Proposed Assumed Contracts.

67. In addition, to facilitate the assumption and assignment of Proposed Assumed Contracts, the Debtors further request that the Court find that all anti-assignment provisions contained therein, whether such provisions expressly prohibit or have the effect of restricting or

limiting assignment of such Assumed Contract or Assumed Lease, are unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.¹⁷

Waiver of Bankruptcy Rules 6004(a), 6004(h), and 6006(d)

68. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtors further request that the Court waive the stay imposed by Bankruptcy Rule 6006(d), which provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under section 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

69. The proposed Sale Transaction should be consummated as soon as practicable to allow the Debtors to maximize value for their estates and stakeholders. Accordingly, the Debtors request that the Bidding Procedures Order, the Sale Order, and any order authorizing the assumption and assignment of a Proposed Assumed Contract in connection with a Sale Transaction be effective immediately upon entry and that the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) be waived.

¹⁷ Section 365(f)(1) of the Bankruptcy Code provides in part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease” 11 U.S.C. § 365(f)(1). Section 365(f)(3) of the Bankruptcy Code further provides that, “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3)

Notice

70. Notice of this Motion has been provided by telecopy, email, overnight courier, and/or hand delivery to (a) the U.S. Trustee, (b) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Committee, (c) White & Case LLP, as counsel to the Agents, (d) indenture trustee under the Debtors' prepetition unsecured bond indenture, (e) Paul, Weiss, Rifkind, Wharton & Garrison LLP, as counsel to an ad hoc group of prepetition unsecured noteholders, (f) the Securities and Exchange Commission, (g) the Internal Revenue Service, (h) the United States Attorney's Office for the Southern District of Texas, (i) the state attorneys general for states in which the Debtors conduct business, (j) all other parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors, and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. A copy of this Motion and any Order approving it will also be made available on the Debtors' case information website located at <https://dm.epiq11.com/SouthernFoods>. The Debtors submit that, under the circumstances, the forgoing notice constitutes due, sufficient, and appropriate notice and complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rule 2002, 4001(b) and (c), 6004(a), and 9014, the Local Rules, and the Complex Case Rules and no other or further notice is required.

WHEREFORE the Debtors respectfully request that the Court enter the Bidding Procedures Order and, after the Sale Hearing, the Sale Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: February 17, 2020
Houston, Texas

Respectfully submitted,

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Counsel to the Debtors and Debtors in Possession

Magro Declaration

**I IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<hr/>)	
In re:	)	Chapter 11
)	
SOUTHERN FOODS GROUPS, LLC, <i>et al.</i>,	)	Case No. 19-36313 (DRJ)
)	
Debtors. ¹	)	Jointly Administered
)	
<hr/>)	

**DECLARATION OF ANTHONY MAGRO IN SUPPORT OF MOTION OF DEBTORS
FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE
OF DEBTORS' ASSETS, (B) APPROVING THE DESIGNATION OF DAIRY FARMERS
OF AMERICA, INC. AS THE STALKING HORSE BIDDER FOR SUBSTANTIALLY
ALL OF DEBTORS' ASSETS, (C) AUTHORIZING AND APPROVING ENTRY INTO
THE STALKING HORSE ASSET PURCHASE AGREEMENT, (D) APPROVING BID
PROTECTIONS, (E) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE,
SALE OF DEBTORS' ASSETS, (F) APPROVING FORM AND MANNER OF NOTICES
OF SALE, AUCTION, AND SALE HEARING, (G) APPROVING ASSUMPTION AND
ASSIGNMENT PROCEDURES, AND (H) GRANTING RELATED RELIEF AND
(II)(A) APPROVING SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES,
AND (C) GRANTING RELATED RELIEF**

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly's Ice Cream Holdings Corp. (7609); Friendly's Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah's Pride, LLC (2858); Steve's Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt's Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors' mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

I, Anthony Magro, declare as follows:

1. I am a Senior Managing Director at Evercore Group L.L.C. (“**Evercore**”), an investment banking advisory and investment management firm. Evercore has extensive experience in providing high quality investment banking services in financially distressed situations, including advising debtors, creditors, and other constituents in chapter 11 cases and out-of-court restructurings. Evercore is the investment banker to the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”).

2. I submit this declaration (this “**Declaration**”) in support of the *Motion of Debtors for Entry of Orders (I)(a) Approving Bidding Procedures for Sale of Debtors’ Assets, (b) Approving the Designation of Dairy Farmers of America, Inc. as the Stalking Horse Bidder for Substantially All of Debtors’ Assets, (c) Authorizing and Approving Entry into the Stalking Horse Asset Purchase Agreement, (d) Approving Bid Protections, (e) Scheduling Auction for, and Hearing To Approve, Sale of Debtors’ Assets, (f) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (g) Approving Assumption and Assignment Procedures, and (h) Granting Related Relief and (II)(a) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (c) Granting Related Relief* (the “**Motion**”).²

In particular, I submit this Declaration as evidence supporting my opinion that the Debtors’ sale and marketing process is sufficient to identify all potential bidders for the Bid Assets (as defined below), and that entry into a transaction pursuant to the Bidding Procedures presents the best means to maximize the value of the Debtors’ estates.

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

3. The statements in this declaration are, except where specifically noted, based on my personal knowledge or opinion, on information that I have received from the Debtors' employees or advisors or professionals of Evercore working directly with me or under my supervision, direction, or control, or from the Debtors' books and records maintained in the ordinary course of their businesses.

4. I am not being specifically compensated for this testimony other than through payments received by Evercore as a professional retained by the Debtors. I am over the age of 18 years and authorized to submit this Declaration on behalf of the Debtors. If I were called upon to testify, I could and would competently testify to the facts set forth herein.

Background and Qualifications

5. I joined Evercore in 2011 and have nearly 40 years of experience in mergers and acquisitions advisory and corporate finance. Prior to joining Evercore, I held positions at Dillon, Read & Co. Inc., Kidder, Peabody & Co, Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC, and Bank of America Merrill Lynch. I have a Bachelor of Arts degree from Dartmouth College (1976).

6. Evercore is a leading independent investment banking advisory and investment management firm established in 1996. Evercore's investment banking business includes its advisory business, which provides a range of investment banking services to multinational corporations on mergers and acquisitions, divestitures, special committee assignments, recapitalizations, restructurings, and other strategic transactions.

7. Evercore has been involved in many large and complex restructuring cases in this and other districts around the United States, including *In re Murray Energy Holdings Co.*, No. 19-56885 (Bankr. S.D. Ohio, Dec. 11, 2019); *In re EP Energy Corporation*, Case No. 19-

35654 (Bankr. S.D. Tex. Oct. 4, 2019); *In re Jones Energy, Inc.*, Case No. 19-32112 (Bankr. S.D. Tex. Apr. 14, 2019); *In re Sheridan Holding Company II, LLC*, Case No. 19-35198 (Bankr. S.D. Tex. Sept. 15, 2019); *In re Southcross Energy Partners, L.P.*, Case No. 19-10702 (Bankr. D. Del. Apr. 2, 2019); *In re David's Bridal, Inc.*, Case No. 18-12635 (Bankr. D. Del. Nov. 19, 2018); *In re New MACH Gen, LLC*, Case No. 18-11369 (Bankr. D. Del. Jun. 11, 2018); *In re Enduro Resource Partners LLC*, Case No. 18-11174 (Bankr. D. Del. May 15, 2018); *In re Tops Holding II Corp.*, Case No. 18-22279 (Bankr. S.D.N.Y. Mar. 22, 2018); *In re Fieldwood Energy LLC*, Case No. 18-30648 (Bankr. S.D. Tex. Mar. 8, 2018); *In re Pac. Drilling S.A.*, Case No. 17-131393 (Bankr. S.D.N.Y. Jan. 26, 2018); *In re Orchard Acquisition Co., LLC (J.G. Wentworth)*, Case No. 17-12914 (Bankr. D. Del. Jan. 5, 2018); *In re Castex Energy Partners, L.P.*, Case No. 17-35835 (Bankr. S.D. Tex. Dec. 4, 2017); *In re GulfMark Offshore, Inc.*, Case No. 17-11125 (Bankr. D. Del. June 15, 2017); *In re Vanguard Nat. Res., LLC*, Case No. 17-30560 (Bankr. S.D. Tex. Mar. 20, 2017); *In re Azure Midstream Partners, LP*, Case No. 17-30461 (Bankr. S.D. Tex. Mar. 10, 2017); *In re Chaparral Energy, Inc.*, Case No. 16-11144 (Bankr. D. Del. May 9, 2016); *In re Midstates Petroleum Company, Inc.*, Case No. 16-32237 (Bankr. S.D. Tex. May 1, 2016); *In re Energy & Exp. Partners, Inc.*, Case No. 15-44931 (Bankr. N.D. Tex. Feb. 8, 2016); *In re Parallel Energy LP*, Case No. 15-12263 (Bankr. D. Del. Dec. 16, 2015); *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 15-23007 (Bankr. S.D.N.Y. Aug. 11, 2015); *In re Altegrity, Inc.*, Case No. 15-10226 (Bankr. D. Del. March 16, 2015); *In re Mineral Park, Inc.*, Case No. 14-11996 (Bankr. D. Del. Sept. 23, 2014 & Oct. 2, 2014); and *In re Energy Future Holdings Corp.*, Case No. 14-10979 (Bankr. D. Del. Sept. 16, 2014).

The Marketing of the Bid Assets

8. Evercore has been engaged as investment banker to the Debtors since February 2019. The Debtors initially retained Evercore to assist with a broad evaluation of potential strategic alternatives, including a sale of the enterprise, strategic business combinations, the disposition of certain assets, the formation of new joint ventures, and other options to re-energize the Debtors' stand-alone business. It was ultimately determined that these options could not be pursued for a variety of reasons, including the existence of potential contingent liabilities that the Debtors faced related to the underfunded status of certain multi-employer pension plans in which the Debtors participated. Such potential liabilities significantly impaired the Debtors' ability to pursue any strategic transactions with third parties outside of a bankruptcy proceeding.

9. By early October 2019, the Debtors saw a sharp decline in their third quarter 2019 results and realized that they faced a financial outlook that was deteriorating more rapidly than prior forecasts. Evercore explored a variety of potential out-of-court financing transactions, which led to discussions with a number of potential lenders, including certain holders of the Debtors' prepetition senior unsecured notes. Ultimately, however, the Debtors concluded, in consultation with Evercore and other advisors, that such an out-of-court transaction was not actionable under the circumstances. Accordingly, the Debtors commenced the Chapter 11 Cases in order to manage liquidity, prevent potentially ruinous customer and vendor fights, and pursue the consummation of one or more sale transactions or a plan of reorganization through a court-supervised process.

10. To finance the Debtors' businesses as they pursue such transactions, the Debtors sought and obtained senior secured superpriority post-petition financing in the amount of \$425 million and an amendment and restatement of the receivables securitization facility in the

amount of \$425 million. After considering a wide-range of potential strategic alternatives and negotiating with all relevant stakeholders and counterparties, Evercore and the Debtors ultimately determined that a sale of all or substantially all of the Debtors' assets would be a potential path to maximize and preserve value for the benefit of the Debtors' stakeholders.

11. To that end, in October, 2019, Evercore and the Debtors engaged in negotiations and discussions with Dairy Farmers of America, Inc. ("**DFA**"). As the Debtors' long-time commercial partner and raw milk vendor, DFA was considered likely to be able to contribute significant value to the Debtors' businesses and negotiate and reach a sale agreement with the Debtors prior to the Petition Date. Although the Debtors and DFA did not enter into a stalking horse agreement by the Petition Date, the discussions were significantly advanced such that the Debtors were able to publicly announce on November 12, 2019 that they were engaged in advanced discussions with DFA with regard to its role as a potential stalking horse bidder for the purchase of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code.

12. After the Petition Date, Evercore considerably expanded the marketing process for the Bid Assets. Evercore began communicating with additional potential strategic and financial buyers while it continued to engage with DFA to explore a sale of the Bid Assets through the Chapter 11 Cases.

13. Over the course of approximately three months, Evercore contacted and/or received inbound interest from nearly 100 entities, including 55 potential strategic buyers (among which were 18 regional dairy companies) and 44 potential financial buyers. Based on discussions with these entities, Evercore provided approximately 38 parties with confidential information regarding the Company's business after such parties executed non-disclosure

agreements with the Debtors. Several of these parties, including the Stalking Horse Bidder, expressed interest in considering a transaction with the Company and were granted access to a data room containing additional confidential information regarding the Bid Assets. Evercore provided additional details to these parties, including access to confidential diligence materials. At the same time, the Debtors and their advisors have been working extensively with the ad hoc group of noteholders and their advisors regarding a possible plan or reorganization.

14. Between October 2019 and February 2020, the Debtors, Evercore and the Debtors' other advisors engaged in extensive discussions with DFA and its advisors over the terms of a potential stalking horse bid for the sale of substantially all of the Debtors' assets. On December 27, 2019, DFA submitted a proposal to the Debtors to purchase substantially all of Debtors' assets. Over the course of several weeks, the Debtors and DFA exchanged several drafts of an asset purchase agreement and engaged in numerous negotiations over high level issues. After further discussions between the Debtors, DFA and their respective advisors, on February 5, 2020, DFA submitted a revised offer (the "**Stalking Horse Bid**") for substantially all of the Debtors' assets and, on February 6, 2020, DFA submitted a revised asset purchase agreement to the Debtors.

15. After extensive deliberations with their advisors, analysis of the benefits of the Stalking Horse Bid for the Debtors' creditors, employees, vendors, and other stakeholders, assessment of potential alternative bids that could emerge from parties other than the Stalking Horse Bidder, several rounds of negotiations with the Stalking Horse Bidder, and consultation

with the Agents, the Debtors determined that the Stalking Horse Bid presented by the Stalking Horse Bidder was the best option available to the Debtors at that time.³

16. Following the approval of the proposed Bidding Procedures, the Debtors, with the aid of Evercore, will continue to market the Bid Assets to potential buyers, including, without limitation, those potential buyers approached by Evercore and/or that expressed inbound interest earlier in the marketing process, by (a) engaging potential buyers and investors that may have an interest in bidding for the Bid Assets or a portion thereof, (b) delivering updated materials to interested parties, (c) providing access to a data room of confidential information on the Bid Assets to interested parties, and (d) providing customized information packets to potential purchasers as appropriate. In this way, the Debtors, with the assistance of Evercore, intend to maximize the number of participants that may participate as buyers at the Auction and, thereby, maximize the value of the Bid Assets to be achieved through the sale process.

The Stalking Horse Agreement

17. It is my opinion that the Stalking Horse Agreement was negotiated at arm's length and is the product of good faith negotiations, without collusion. I am not aware of any indication of fraud, collusion between the Stalking Horse Bidder and other bidders, or any similar conduct that would taint the sale process. The Stalking Horse Agreement does not contain special treatment for the Debtors' affiliates or insiders. The Stalking Horse Bidder's offer will be subject to higher or otherwise better bids, and thus, ultimately, the successful bidder will have submitted the highest and best bid. Moreover, the Stalking Horse Bidder is able to provide adequate

³ Although the Debtors consulted with the Agents and the Committee prior to filing this Motion, the Agents and the Committee are still analyzing the transaction contemplated by the Stalking Horse Agreement, this Motion, and the Bidding Procedures, and reserve all rights in connection therewith.

assurance of performance under the Proposed Assumed Contracts as required under section 365 of the Bankruptcy Code.

The Reasonableness of the Proposed Break-Up Fee and Expense Reimbursement

18. The Break-Up Fee and Expense Reimbursement are reasonable and appropriate in light of the size and nature of the transaction and the efforts that have been and will be expended by the Stalking Horse Bidder. Moreover, the Break-Up Fee and Expense Reimbursement are actually necessary to preserve the value of the Debtors' estates. First, the Break-Up Fee represents approximately 3.5% of the Purchase Price that will be paid by the Stalking Horse Bidder. Additionally, both the Break-Up Fee and Expense Reimbursement were negotiated in good faith, and both were necessary to secure the Stalking Horse Bidder's commitment under the Stalking Horse Agreement. In sum, the Debtors' ability to offer the Break-Up Fee and Expense Reimbursement enables them to ensure realization of value for the Stalking Horse Assets, while, at the same time, providing them with the opportunity to achieve a higher or otherwise better offer for such assets to the benefit to their estates. Moreover, the payment of the Break-Up Fee and Expense Reimbursement will not diminish the Debtors' estates. The Debtors do not intend to terminate the Stalking Horse Agreement, if doing so would incur an obligation to pay the Break-Up Fee and Expense Reimbursement, unless the Debtors either (a) accept an alternative bid that provides for consideration that is greater than the consideration offered by the Stalking Horse Bidder by an amount sufficient to pay the Break-Up Fee and Expense Reimbursement or (b) exercise their fiduciary duties to pursue a transaction (*e.g.*, a plan of reorganization) that otherwise maximizes value for the benefit of the Debtors' stakeholders.

19. In light of these circumstances, the Break-Up Fee and Expense Reimbursement are (a) commensurate to the real and substantial benefits conferred upon the Debtors' estates by

the Stalking Horse Bidder, (b) reasonable and appropriate in light of the size and nature of the proposed Sale Transaction and comparable transactions, the commitments that have been made, the condition of the Stalking Horse Assets, and the efforts that have been and will be expended by the Stalking Horse Bidder, and (c) necessary to induce the Stalking Horse Bidder to pursue the Sale Transaction and to continue to be bound by the Stalking Horse Agreement. Further, the Stalking Horse Agreement provisions relating to the Bid Protections (along with other provisions of the Stalking Horse Agreement) were (x) scrutinized by the Debtors' professionals, (y) reviewed with outside advisors, including the advisors of the Consultation Parties,⁴ through the marketing process, and (z) approved by the Debtors' board of directors.

The Reasonableness of the Bidding Procedures

20. The proposed Bidding Procedures are designed to maximize the value received for the Bid Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids within a time frame that will allow the Debtors to consummate a sale transaction prior to exhausting their liquidity. The Bidding Procedures provide for an orderly, uniform, and appropriately competitive process through which interested parties may submit offers to purchase the Bid Assets. Given the time constraints, the Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best offers reasonably available for the Bid Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair and transparent manner that

⁴ Although the Debtors consulted with the Agents and the Committee prior to filing this Motion, the Agents and the Committee are still analyzing the transaction contemplated by the Stalking Horse Agreement, this Motion and the Bidding Procedures, and reserve all rights in connection therewith.

will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale Transaction.

21. The proposed Bid Deadline requires bids for the purchase of the Bid Assets to be delivered no later than 3:00 p.m. (prevailing Central Time) on April 13, 2020, which will ensure that the Sale Transaction is completed in a timely manner. The Bid Deadline provides parties with sufficient time to obtain information and formulate and submit a timely and informed bid to purchase the Bid Assets, taking into account the time that a number of the most likely interested parties have already invested in due diligence earlier in the process.

22. As described above, the Bid Assets are being extensively marketed to a broad group of strategic, financial, and regional buyers and substantial information regarding the Debtors' businesses has been made available during the marketing process. In particular, many of the approximately 38 interested parties who have executed non-disclosure agreements with the Debtors have had access to the Debtors' data room for several weeks or more. Accordingly, numerous parties that may have an interest in bidding at the Auction have an existing base of knowledge and familiarity with the Bid Assets, and in many cases have already conducted significant due diligence that will assist them in formulating potential bids. Given the length and breadth of the Debtors' marketing process, it is my opinion that the proposed sale process is unlikely to have a negative impact on the Debtors' ability to achieve a value-maximizing transaction.

23. In addition, potential bidders will have access to updated information prepared by the Debtors and Evercore and a substantial body of information, inclusive of historical and projected financial information, operational data, and an extensive data room, including information gathered specifically based upon the due diligence requests of potential buyers.

24. Accordingly, based on the extensive marketing efforts of the Debtors and their advisors, including Evercore, and the level of preparedness at the outset of the marketing process, the time contained in the Bidding Procedures for the Debtors to further market the Bid Assets is reasonable.

25. In my opinion, there is a strong business justification for the sale of the Bid Assets pursuant to the proposed Bidding Procedures. The Bidding Procedures are designed to effect an orderly but expeditious sale of the Bid Assets, and the terms, conditions, and procedures set forth therein are fair and reasonable and will help ensure that the Debtors will receive the highest or otherwise best offer for the Bid Assets.

26. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 17, 2020

/s/ Anthony Magro
Anthony Magro
Senior Managing Director
Evercore Group L.L.C.

Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
	)	Chapter 11
)	
SOUTHERN FOODS GROUPS, LLC, <i>et al.</i>,	)	Case No. 19-36313 (DRJ)
)	
Debtors. ¹	)	Jointly Administered
)	
)	

**ORDER (I) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS’
ASSETS, (II) APPROVING THE DESIGNATION OF DAIRY FARMERS OF
AMERICA, INC. AS THE STALKING HORSE BIDDER FOR SUBSTANTIALLY ALL
OF DEBTORS’ ASSETS, (III) AUTHORIZING AND APPROVING ENTRY INTO THE
STALKING HORSE ASSET PURCHASE AGREEMENT, (IV) APPROVING BID
PROTECTIONS, (V) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE,
SALE OF DEBTORS’ ASSETS, (VI) APPROVING FORM AND MANNER OF
NOTICES OF SALE, AUCTION, AND SALE HEARING, (VII) APPROVING
ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (VIII) GRANTING
RELATED RELIEF
[RELATES TO DKT. NO. ____]**

Upon the motion (the “**Motion**”) ² of Southern Foods Group, LLC, Dean Foods Company, and their debtor affiliates (collectively, the “**Debtors**”) in the above-captioned chapter

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly’s Ice Cream Holdings Corp. (7609); Friendly’s Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah’s Pride, LLC (2858); Steve’s Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt’s Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors’ mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

11 cases (the “**Chapter 11 Cases**”) for entry of an order, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, (I)(a) approving Bidding Procedures for the sale of the Debtors’ assets, (b) approving the designation of Dairy Farmers of America, Inc. as the Stalking Horse Bidder for substantially all of Debtors’ assets, (c) authorizing and approving entry into the Stalking Horse Agreement, (d) approving Bid Protections, (e) scheduling an Auction for, and a hearing to approve, the sale of the Debtors’ assets, (f) approving the Noticing Procedures, (g) approving the Assumption and Assignment Procedures, and (h) granting related relief, and (II)(a) approving the sale of the Debtors’ assets free and clear of liens, claims, interests, and encumbrances, (b) authorizing the assumption and assignment of certain Contracts and Leases, and (c) granting related relief, in each case, as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.); and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due, proper, and adequate notice of the Motion under Bankruptcy Rule 6004(a) and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Magro Declaration; and the Court having held a hearing on the Motion, as it pertains to the Bidding Procedures (the “**Bidding Procedures Hearing**”); and the Court having found that the

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

legal and factual bases set forth in the Motion and the Magro Declaration and at the Bidding Procedures Hearing establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion, as it pertains to the Bidding Procedures, being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Debtors' proposed notice of the Motion, the Bidding Procedures, the Bidding Procedures Hearing, and the proposed entry of the Bidding Procedures Order is (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iii) adequate and sufficient under the circumstances of the Chapter 11 Cases, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion, as it pertains to the Bidding Procedures and Bid Protections, has been afforded to all interested persons and entities, including, but not limited to, the Notice Parties.

C. The Bidding Procedures in the form attached hereto are fair, reasonable, and appropriate, are designed to maximize recoveries from a sale of the Bid Assets, and permit the

Debtors to comply with their obligations under the DIP Credit Agreement and DIP Order (as each is defined in the Motion).

D. The Bidding Procedures were negotiated in good faith and at arm's length among the Debtors, in consultation with the Consultation Parties, and the Stalking Horse Bidder, and the Stalking Horse Agreement was negotiated in good faith and at arm's length among the Debtors and the Stalking Horse Bidder. The Stalking Horse Agreement represents the highest or otherwise best offer that the Debtors have received to date to purchase the Stalking Horse Assets. The process for selection of the Stalking Horse Bidder was fair and appropriate under the circumstances and in the best interests of the Debtors' estates and their stakeholders.

E. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Order and, thereby, (i) approve the Bidding Procedures, (ii) approve the designation of the Stalking Horse Bidder, (iii) authorize and approve entry into the Stalking Horse Agreement, (iv) approve the Bid Protections under the terms and conditions set forth in the Stalking Horse Agreement and the Bidding Procedures, (v) set the dates of the Bid Deadline, Auction (if needed), Sale Hearing, and other deadlines set forth in the Bidding Procedures, (vi) approve the Noticing Procedures and the forms of notice, and (vii) approve the Assumption and Assignment Procedures and the forms of relevant notice. Such compelling and sound business justification, which was set forth in the Motion and on the record at the Bidding Procedures Hearing, are incorporated herein by reference and, among other things, forms the basis for the findings of fact and conclusions of law set forth herein.

F. The Bid Protections, as approved by this Order, are fair and reasonable and provide a benefit to the Debtors' estates and stakeholders.

G. If triggered in accordance with the terms of the Stalking Horse Agreement, the payment of the Bid Protections, under this Order and upon the terms and conditions set forth in the Stalking Horse Agreement and the Bidding Procedures, is (i) an actual and necessary cost of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) reasonably tailored to encourage, rather than hamper, bidding for the Stalking Horse Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Stalking Horse Assets, (iii) of substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (iv) reasonable and appropriate, (v) a material inducement for, and condition necessary to, ensure that the Stalking Horse Bidder will continue to pursue its proposed agreement to purchase the Stalking Horse Assets, and (vi) reasonable in relation to the Stalking Horse Bidder's efforts, the magnitude of the Sale Transaction, and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction. Without the Bid Protections, the Stalking Horse Bidder is unwilling to be bound under the Stalking Horse Agreement (including, without limitation, the obligation to maintain its committed offer while such offer is subject to higher or better offers, as contemplated by the Bidding Procedures).

H. The Stalking Horse Bidder is a third party purchaser and is unrelated to any of the Debtors. Neither the Stalking Horse Bidder, nor any of its affiliates, subsidiaries, officers, directors, members, partners, or principals, or any of their respective representatives, successors, or assigns is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

I. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors and their estates, creditors, interest holders, and all other parties in interest herein.

J. The form and manner of notice to be delivered pursuant to the Noticing Procedures and the Assumption and Assignment Procedures (including the Sale Notice attached hereto, the Potential Assumption and Assignment Notice attached hereto, and the Proposed Assumption and Assignment Notice attached hereto) are reasonably calculated to provide each Counterparty to the Potential Assumed Contracts and the Proposed Assumed Contracts with proper notice of (i) the potential assumption and assignment of such Potential Assumed Contracts and Proposed Assumed Contracts by the Successful Bidder(s) (including the Stalking Horse Bidder) or any of their known proposed assignees (if different from the Successful Bidder) and (ii) the requirement that each such Counterparty assert any objection to the proposed Cure Costs by the Cure Objection Deadline or otherwise be barred from asserting claims arising from events occurring prior to the effective date of the assumption and assignment of such Proposed Assumed Contracts or any later applicable effective date following assumption and assignment of such Proposed Assumed Contracts.

ORDERED, ADJUDGED, AND DECREED THAT:

1. Any objections to the Motion or the relief requested therein, as it pertains to the Bidding Procedures and Bid Protections, that have not been adjourned, withdrawn, or resolved are overruled in all respects on the merits.

2. The Bidding Procedures, in substantially the form attached hereto, are approved and fully incorporated into this Order and the Debtors are authorized, but not directed, to act in accordance therewith. The failure to specifically include a reference to any particular provision

of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

3. The Stalking Horse Bidder is deemed a Qualified Bidder for all purposes, and the Stalking Horse Bid as set forth in the Stalking Horse Agreement is deemed a Qualified Bid. In the event that no other Qualified Bids are submitted, the Debtors shall deem the Stalking Horse Bidder to be the Successful Bidder, in accordance with the terms and conditions of this Order (including the Bidding Procedures).

4. The Debtors are hereby authorized to enter into the Stalking Horse Agreement, and the Stalking Horse Agreement, and all other ancillary documents and all terms and conditions thereof, are hereby approved, subject to the terms and conditions of this Order (including the Bidding Procedures) and the entry of the Sale Order.

5. Nothing herein shall prejudice the rights of the Debtors to seek by separate motion, in the exercise of their sound business judgment and fiduciary duties, in consultation with the Consultation Parties, the authority to sell assets of the Debtors' estates pursuant to section 363 of the Bankruptcy Code.

6. Bid Deadline. As further described in the Bidding Procedures, the Bid Deadline shall be at **3:00 p.m. (prevailing Central Time) on April 13, 2020.**

7. Auction. In the event the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the Stalking Horse Bid, an Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017 at **10:00 a.m. (prevailing Eastern Time) on April 20, 2020** or such later time on such day or such other place as the Debtors (after consultation with the Consultation Parties) shall notify all

Qualified Bidders (including the Stalking Horse Bidder). The Debtors are authorized to conduct the Auction in accordance with the Bidding Procedures.

8. If (a) no Qualified Bids are submitted by the Bid Deadline other than the Stalking Horse Bid or (b) only one or more Partial Bids are submitted by the Bid Deadline for non-overlapping lots of the Bid Assets, the Debtors may, in consultation with the Consultation Parties, elect to cancel the Auction and seek approval of the transactions contemplated in the Stalking Horse Bid or the transactions in respect of the such Partial Bids at the Sale Hearing. In no event shall the Consultation Parties have fewer than five days before the Sale Hearing to object to the Partial Bid or Successful Bid, or to the Stalking Horse Bid, absent consent of the Consultation Parties.

9. The form of Sale Notice attached hereto is hereby approved.

10. As soon as reasonably practicable after entry of this Order, the Debtors shall serve the Sale Notice by first class or overnight mail upon the following: (a) the U.S. Trustee; (b) Akin Gump Strauss Hauer & Feld LLP, as counsel to the Committee; (c) White & Case LLP, as counsel to the Agents; (d) indenture trustee under the Debtors' prepetition unsecured bond indenture; (e) Counterparties to Contracts and Leases; (f) the Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the U.S. Environmental Protection Agency; (i) the United States Attorney's Office for the Southern District of Texas; (j) the United States Attorney General/Antitrust Division of the Department of Justice; (k) the state attorneys general for states in which the Debtors conduct business; (l) all other parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (m) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially

acquiring the Debtors' assets; (n) all other known parties with any interest in the Bid Assets; (o) all known creditors of the Debtors; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Sale Notice Parties**"). The Debtors will publish the Sale Notice once in *USA Today* national edition as soon as practicable following entry of the Bidding Procedures Order.

11. Service of the Sale Notice on the Sale Notice Parties in the manner described in this Order constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

12. Promptly after the conclusion of the Auction and the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file and post on the Case Information Website a notice identifying such Successful Bid(s) and Alternate Bid(s) with the Court.

13. Sale Objections. Objections to the relief sought in the Sale Order must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, (d) be filed with the Court no later than **4:00 p.m. (prevailing Central Time) on April 22, 2020** and (e) be served on (1) counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, Nate Sokol, and Daniel E. Meyer and (z) Norton Rose Fulbright US LLP, 1301 McKinney Street, Suite 5100, Houston, Texas 77010, Attn: William Greendyke, Jason L. Boland, Robert B. Bruner, and Julie Harrison, (2) (y) counsel to the Agents, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Scott Greissman, Philip Abelson, and Elizabeth Feld and (z) Gray Reed, 1300 Post Oak Blvd, Suite 2000, Houston, TX 77056, Attn: Jason S. Brookner, (3) counsel to the Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip Dublin

and Meredith Lahaie, and (4) the U.S. Trustee (collectively, the “**Objection Notice Parties**”). If a timely objection is filed and served in accordance with this paragraph, the terms of any Sale Transaction shall not be approved until the objection is resolved either consensually or by order of the Court.

14. Sale Hearing. The Sale Hearing shall be held in the United States Bankruptcy Court for the Southern District of Texas, Houston, Texas 77002, on **April [27], 2020 at [·]:00 [·].m. (prevailing Central Time)**³ or such other date and time that the Court may later direct; *provided, however*, that the Sale Hearing may be adjourned by the Debtors (in consultation with the Consultation Parties) by announcement of the adjournment in open court or on the Court’s docket.

15. As soon as reasonably practicable after the completion of the Auction, the Debtors shall file a final form of order approving the Sale Transaction(s) as agreed upon between the Debtors (in consultation with the Consultation Parties) and the Successful Bidder(s).

16. Bid Protections. Pursuant to sections 105, 363, 364, 503, and 507 of the Bankruptcy Code, the Debtors are hereby authorized and directed to pay the Break-Up Fee and Expense Reimbursement to the Stalking Horse Bidder in accordance with the terms and conditions set forth in the Bidding Procedures and the Stalking Horse Agreement without further order of this Court. The dollar amounts of the Break-Up Fee and Expense Reimbursement are hereby approved. The Stalking Horse Bidder shall be entitled to receive the Bid Protections in accordance with the terms and conditions of the Stalking Horse Agreement and the Bidding Procedures. The Debtors’ obligation to pay the Bid Protections shall be the joint and several obligations of the Debtors and shall survive termination of the Stalking Horse Agreement,

³ This date remains subject to Court approval.

dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation. The Break-Up Fee and Expense Reimbursement shall be allowed as administrative expense claims in the Chapter 11 Cases under sections 503(b) and 507(a)(2) of the Bankruptcy Code; *provided, however*, that such claims shall be subject to the Carve-Out (as defined in the DIP Order), and shall be junior in all respects to the claims of the DIP Secured Parties, the Prepetition Secured Parties, and the Secured Parties⁴.

17. Assumption and Assignment Procedures. The assumption and assignment procedures set forth in the Motion (the “**Assumption and Assignment Procedures**”) are hereby approved.

18. As soon as reasonably practicable following entry of this Order, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and a list of the Potential Assumed Contracts (the “**Potential Assumed Contracts Schedule**”) that specifies (a) each of the Contracts and Leases that potentially could be assumed and assigned in connection with the sale of the Bid Assets, including the name of each Counterparty and (b) the proposed Cure Cost with respect to each Potential Assumed Contract.

19. Potential Assumption and Assignment Notice. The Debtors shall, as soon as reasonably practicable after entry of this Order (but in any event, so as to provide sufficient notice such that any required responses from any Counterparties are due prior to the scheduled date of the Auction as specified in the Bidding Procedures), serve on each relevant Counterparty

⁴ The term “**Secured Parties**” shall have the meaning ascribed to it in the *Final Order Pursuant to 11 U.S.C. §§ 105, 362, 363, 364, 365, 503(b), 507(b) and Rules 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (I) Authorizing Certain Debtors to Continue Selling Receivables and Related Rights Pursuant to a Securitization Facility, (II) Modifying the Automatic Stay, and (III) Granting Related Relief* [D.I. 75] (the “**Securitization Order**”).

the Potential Assumption and Assignment Notice, which shall (a) identify the Potential Assumed Contracts, (b) list the Debtors' good faith calculation of the Cure Costs with respect to the Potential Assumed Contracts identified on the Potential Assumption and Assignment Notice, (c) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (d) prominently display the deadline to file an Assumption and Assignment Objection (as hereinafter defined), and (e) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Potential Assumption and Assignment Notice, without the Potential Assumed Contracts Schedule, which will include instructions regarding how to view the Potential Assumed Contracts Schedule on the Case Information Website.

20. Proposed Assumption and Assignment Notice. The Debtors shall, in conjunction with the filing of the Notice of Auction Results, file and serve on each relevant Counterparty the Proposed Assumption and Assignment Notice, which shall (a) identify the Proposed Assumed Contracts, (b) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (c) prominently display the deadline to file an Assumption and Assignment Objection, and (d) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Proposed Assumption and Assignment Notice, without the schedule of Proposed Assumed Contracts (the “**Proposed Assumed Contracts Schedule**”), which will include instructions regarding how to view the Proposed Assumed Contracts Schedule on the Case Information Website.

21. Objection Deadlines. Any Counterparty may object to the potential or proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors' proposed Cure Costs, if any, or the ability of the Successful Bidder to provide adequate assurance of future performance (an "**Assumption and Assignment Objection**"). All Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) (1) for objections relating to proposed Cure Costs, be filed with the Court no later than **April 6, 2020 at 4:00 p.m. (prevailing Central Time)** (the "**Cure Objection Deadline**") and (2) for all other objections, **April 22, 2020 at 4:00 p.m. (prevailing Central Time)** (the "**Assumption and Assignment Objection Deadline**"), and (e) be served on the Objection Notice Parties. If following the Auction, the Stalking Horse Bidder is not selected by the Debtors as the Successful Bidder, then the Debtors shall serve the Notice of Auction Results on each Counterparty that received a Potential Assumption and Assignment Notice at the same time as such Notice of Auction Results is filed with the Court and published on the Case Management Website. Objections of any Counterparty related solely to the identify of and adequate assurance of future performance provided by the Successful Bidder must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, (d) be filed no later than April 22, 2020 at 4:00 p.m. (prevailing Central Time) and (e) served on the Assumption and Assignment Objection Notice Parties.

22. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing

or such later date that the Debtors determine in consultation with the Successful Bidder, the Consultation Parties, and subject to the Court's calendar. If such objection has not been resolved prior to the closing of the Sale Transaction (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder may elect, in its sole and absolute discretion, one of the following options: (a) treat such Counterparty's contract or lease as property excluded from the Bid Assets (an "**Excluded Contract**" or "**Excluded Lease**", respectively); or (b) temporarily treat the Proposed Assumed Contract as an Excluded Contract or Excluded Lease, as applicable (a "**Designated Agreement**"), proceed to the closing of the Sale Transaction with respect to all other Bid Assets, and determine whether to treat the Designated Agreement as an Assumed Contract or Assumed Lease, as applicable, or an Excluded Contract or Excluded Lease, as applicable, within ten business days after resolution of such objection (whether by order of the Court or by agreement of the Successful Bidder (which may be the Stalking Horse Bidder), the Counterparty, and the Debtors).

23. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Assumed Contract or Assumed Lease. Notwithstanding anything to the contrary in the Assumed Contract or Assumed Lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice (as defined below) shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale

Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, due or to become due, accrued, absolute, contingent, or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Assumed Contract or Assumed Lease against the Debtors, the Successful Bidder (including the Stalking Horse Bidder), or the property of any of them.

24. Modification of Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule. In addition to a Successful Bidder's rights described above with respect to an Assumption and Assignment Objection, at or prior to the closing of the Sale Transaction, the Successful Bidder may elect, in its sole and absolute discretion, to (a) exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (b) include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable.

25. If the Debtors or any Successful Bidder identifies during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Bidding Procedures.

26. Following the conclusion of the Auction, if any, and the selection of the Successful Bidder(s), the Debtors reserve the right, at any time before the closing of the Sale

Transaction, to modify the previously-stated Cure Costs associated with any Proposed Assumed Contract, subject to notice requirements in the Assumption and Assignment Procedures.

27. In the event that any contract or lease is added to the Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the Stalking Horse Agreement or the Assumption and Assignment Procedures, the Debtors will promptly serve a supplemental assumption and assignment notice, by first class mail, on the applicable Counterparty (each, a “**Supplemental Assumption and Assignment Notice**”), and otherwise timely notify the Agents and the Committee. Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Assumed Contract or Assumed Lease as is required to be included in the Potential Assumption and Assignment Notice.

28. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose contract or lease is proposed to be assumed and assigned may object to the proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors’ proposed Cure Costs (to the extent modified from the previously-stated amount), or the ability of the Successful Bidder to provide adequate assurance of future performance (a “**Supplemental Assumption and Assignment Objection**”). All Supplemental Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) no later than **14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (i) be filed with the Court and (ii) be served on the Assumption and Assignment Objection Notice Parties. Each

Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.

29. Reservation of Rights. The inclusion of an Assumed Contract, Assumed Lease, or Cure Costs with respect thereto on a Potential Assumption and Assignment Notice, a Proposed Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, the Proposed Assumed Contracts Schedule, or a Supplemental Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder(s) (including the Stalking Horse Bidder), or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Assumed Contract and Assumed Lease listed on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, and the Proposed Assumed Contracts Schedule. The Debtors' inclusion of any Assumed Contract or Assumed Lease on the Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, Potential Assumed Contracts Schedule, and/or Proposed Assumed Contracts Schedule shall not be a guarantee that such Assumed Contract or Assumed Lease ultimately will be assumed or assumed and assigned.

30. For the avoidance of doubt and notwithstanding anything herein to the contrary, nothing in this Order, the Bidding Procedures, or the Motion shall be construed to, in any way amend, impair, prejudice, alter, or otherwise modify the terms of the Stalking Horse Agreement or the Stalking Horse Bidder's rights thereunder. The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, the sale of the Stalking Horse Assets

and related matters, including the right to object to the sale of the Stalking Horse Assets or any portion thereof (including the conduct of the Auction and interpretation of the Bidding Procedures).

31. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

32. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

33. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(a), 6004(h), 6006(d), or 9014) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

34. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

35. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to (a) deliver any notice provided for in the Stalking Horse Agreement, including, without limitation, a notice terminating the Stalking Horse Agreement, and (b) take any and all actions permitted under the Stalking Horse Agreement in accordance with the terms and conditions thereof.

36. To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

37. Notwithstanding anything to the contrary herein, nothing in this Order is intended to or shall restrict, modify, or impair the rights of (a) the DIP Secured Parties and/or the

Prepetition Secured Parties under the DIP Order, the DIP Documents (as defined in the DIP Order), or the Prepetition Loan Documents (as defined in the DIP Order), or (b) the Secured Parties under the Securitization Order and the Securitization Documents.

38. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or relating to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2020
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Proposed Bidding Procedures

BIDDING PROCEDURES¹

The bidding procedures set forth below (these “**Bidding Procedures**”) detail the process by which Dean Foods Company (“**Dean Foods**”) and its affiliated debtors (collectively with Dean Foods, the “**Debtors**”) are authorized by the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) to conduct a sale of all, substantially all, or any combination of the Debtors’ assets in one or more lots (collectively, the “**Bid Assets**”).² A party may participate in the bidding process by submitting a bid for (a) all or substantially all of the Bid Assets and/or (b) one or more, or any combination of, Bid Assets as that party may desire. These Bidding Procedures also provide that the Debtors, in consultation with the Consultation Parties (as defined herein), may also consider competing bids in the form of a chapter 11 plan of reorganization, subject to the requirements set forth herein (a “**Chapter 11 Plan Bid**”).

The Debtors, in consultation with the Consultation Parties, shall determine the highest or otherwise best offer(s) for the sale(s) of one or more categories of the Bid Assets, or any other combination thereof.

Any interested bidder should contact, as soon as practicable:

EVERCORE GROUP L.L.C.³

55 East 52nd Street
New York, NY 10055
Attn.: John Kimm
john.kimm@evercore.com
(tel.) +1 (212) 849-3436

These Bidding Procedures describe, among other things, (i) the Bid Assets offered for sale, (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), respectively, (iii) the conduct of the Auction (as defined below), if necessary, (iv) the selection of the Successful Bidder(s) (as defined below), and (v) the approval by the Bankruptcy Court of the sale of the Bid Assets to the Successful Bidder(s).

Throughout the sale process, the Debtors and their advisors will regularly and timely consult with the following parties (collectively, the “**Consultation Parties**”): Coöperatieve

¹ To the extent the Bidding Procedures require the Debtors to consult with the Consultation Parties in connection with making a determination or taking any action, the Debtors shall do so in a regular and timely manner prior to making such determination or taking such action (to the extent practicable). For the avoidance of doubt, unless approved by the Bankruptcy Court, no amendment or other modification to these Bidding Procedures (or otherwise provided herein) shall be made by the Debtors without the consent of the Consultation Parties.

² These bidding procedures were approved by the Bankruptcy Court on [·], 2020 [D.I. [·]] (the “**Bidding Procedures Order**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order or the DIP Order (as defined below), as applicable.

³ Evercore Group, L.L.C., in its capacity as financial advisor the Debtors, is referred to herein as “**Evercore**.”

Rabobank U.A., as agent, and its advisors (including White & Case LLP and FTI Consulting), and the Committee and its advisors, including Akin Gump Strauss Hauer & Feld LLP.

The Debtors shall not consult with or provide copies of bids regarding any assets to any insider or affiliate of the Debtors pursuant to the terms of these Bidding Procedures if such party has a bid for the Bid Assets pending, or expressed any interest (written or verbal) in bidding for any of the Debtors' assets; *provided, however*, that if such insider or affiliate of the Debtors chooses not to submit any bid, then such party may receive copies of all bids following expiration of the latest possible Bid Deadline (as such Bid Deadline may be extended hereunder). Notwithstanding the foregoing, if a member of the Committee submits a Qualified Bid (as hereinafter defined), the Committee will maintain its consultation rights as a Consultation Party; provided that the Committee shall exclude such member from any discussions or deliberations regarding a transaction involving the applicable Bid Assets and shall not provide any confidential information regarding the Bid Assets or a transaction involving the Bid Assets to the bidding Committee member.

1. PARTICIPATION REQUIREMENTS

(a) Interested Parties

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the bidding process described herein (the "**Bidding Process**"), each interested person or entity (each, an "**Interested Party**") must deliver the following items (unless previously delivered) to Evercore so as to be received no later than 3:00 p.m. (prevailing Central Time) on March 31, 2020:

- i. an executed confidentiality agreement in form and substance satisfactory to the Debtors in consultation with the Consultation Parties;
- ii. a statement and other factual support demonstrating, to the Debtors' satisfaction, in consultation with the Consultation Parties, that the Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets;
- iii. a description of the nature and extent of any due diligence the Interested Party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and
- iv. sufficient information, as defined by the Debtors, in consultation with the Consultation Parties, to allow the Debtors, in consultation with the Consultation Parties, to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal, or other authorizations to close a sale transaction pursuant to these Bidding Procedures, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure

acceptable to the Debtors in consultation with the Consultation Parties) or, if the Interested Party is an entity formed for the purpose of acquiring some or all of the Bid Assets, (A) current audited financial statements of the equity holder(s) (the “**Sponsor(s)**”) of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in consultation with the Consultation Parties), (B) a written commitment acceptable to the Debtors and their advisors, in consultation with the Consultation Parties, that the Sponsor(s) are responsible for the Interested Party’s obligations in connection with the Bidding Process, and (C) copies of any documents evidencing any financing commitments necessary to consummate the transaction.

If the Debtors, in consultation with the Consultation Parties, determine, after receipt of the items identified above, that an Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets, such Interested Party will be deemed a “**Potential Bidder**” and the Debtors will deliver to such Potential Bidder (a) an electronic copy of the Stalking Horse Agreement and (b) access to the Debtors’ confidential electronic data room concerning the Bid Assets (the “**Data Room**”), which shall include a form of Sale Order (as defined below).

(b) Due Diligence

Until the Bid Deadline, in addition to granting access to the Data Room, the Debtors will provide Potential Bidders with due diligence access and additional information, as may be requested by a Potential Bidder, to the extent that the Debtors determine, in consultation with the Consultation Parties, that such requests are reasonable and appropriate under the circumstances. All due diligence requests shall be directed to Evercore. The Debtors, with the assistance of Evercore, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders.

Unless otherwise determined by the Debtors, the availability of due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder or (ii) the Bidding Process is terminated in accordance with its terms.

2. QUALIFIED BIDS

Each offer, solicitation, or proposal by a Potential Bidder must satisfy each of the following conditions in order for such offer, solicitation, or proposal to be deemed a “**Qualified Bid**” and for such Potential Bidder to be deemed a “**Qualified Bidder**,” unless any such conditions that are not satisfied are waived by the Debtors in consultation with the Consultation Parties:

(a) Bid Deadline

A Potential Bidder who desires to be deemed a Qualified Bidder must deliver to Evercore, with copies to Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attn: Brian M. Resnick, Steven Z. Szanzer, Nate Sokol, and Daniel E. Meyer), the

Required Bid Documents (as defined below) so as to be received no later than 3:00 p.m. (prevailing Central Time) on April 13, 2020 (the “**Bid Deadline**”). The Debtors, in consultation with the Consultation Parties, without the need for further Bankruptcy Court approval, may extend the Bid Deadline by a reasonable period of time if the Debtors believe that such extension would further the goal of attaining the highest or otherwise best offer for the Bid Assets. If the Debtors extend the Bid Deadline, the Debtors will promptly notify all Potential Bidders of such extension.

(b) **Bid Requirements**

All bids (other than the Stalking Horse Bid, with respect to which the deposit requirements will be governed by the Stalking Horse Agreement) must include the following items (collectively, the “**Required Bid Documents**”):

- a letter stating that the bidder’s offer is irrevocable until consummation of a transaction involving the Bid Assets (or lot thereof) identified in such offer;
- other than for any Chapter 11 Plan Bid, a duly authorized and executed purchase agreement satisfactory to the Debtors, based on the form of the Stalking Horse Agreement, marked to show any revisions, including, among other things, the purchase price for the Bid Assets (or lot thereof, as applicable), together with all exhibits and schedules, in each case marked to show those amendments and modifications to the Stalking Horse Agreement and the proposed Sale Order;
- each Chapter 11 Plan Bid must be accompanied by an executed investment agreement, signed by an authorized representative of such bidder, pursuant to which the bidder proposes to effectuate a non-taxable recapitalization transaction effectuated pursuant to a chapter 11 plan of reorganization, and must provide for a fully-committed investment of capital in exchange for substantially all of the equity of the reorganized Debtors;
- written evidence acceptable to the Debtors, in consultation with the Consultation Parties, demonstrating financial wherewithal, operational ability, and corporate authorization to consummate the proposed transaction; and
- written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, in either case which is satisfactory to the Debtors, in consultation with the Consultation Parties.

A bid will be considered only if the bid:

- identifies the legal name of the purchaser (including any Sponsor(s), if the purchaser is an entity formed for the purpose of consummating the proposed transaction);
- other than for a Chapter 11 Plan Bid, identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed;
- other than for a Chapter 11 Plan Bid, identifies the liabilities of the Debtors or the Bid Assets (or lot thereof) to be assumed;
- includes a statement of proposed terms for employees, including with respect to the Debtors' affected collective bargaining agreements and affected labor unions;
- sets forth the consideration for the Bid Assets (or lot thereof) to be purchased and the Contracts and Leases to be assumed (the “**Bid Consideration**”); *provided, however*, that if the bid seeks to purchase all or substantially all of the Stalking Horse Assets (and not a lot thereof), the consideration for such Bid provides for a purchase price payable in cash at Closing in an amount at least equal to \$453 million, which is the sum of (i) \$425 million (*i.e.* the purchase price under the Stalking Horse Agreement); *plus* (ii) the aggregate amount of the Bid Protections; *plus* (iii) the minimum bid increment of \$5 million (the “**Minimum Overbid**”);
- allocates the Bid Consideration among the Bid Assets and Contracts and Leases to be assumed on a per Facility basis;
- is not conditioned on (i) obtaining financing or (ii) the outcome of unperformed due diligence;
- includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of the ability to obtain such approvals or consents as soon as reasonably practicable, and in no event later than June 1, 2020, as well as a description of any material contingencies or other

conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents;

- expressly states that the bidder agrees to serve as an Alternate Bidder (as defined below) if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid (as hereinafter defined) with respect to the applicable Bid Assets;
- is accompanied by a cash deposit by wire transfer to an escrow agent selected by the Debtors (the "**Deposit Agent**") in an amount equal to ten percent of the cash consideration set forth in connection with such bid (except for the Stalking Horse Bidder, whose cash deposit shall be governed by the Stalking Horse Agreement) (any such deposit, a "**Good Faith Deposit**");
- sets forth the representatives that are authorized to appear and act on behalf of the bidder in connection with the proposed transaction;
- indicates that the bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment;
- includes evidence of the bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the bidder, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such contracts and leases;
- indicates whether or not the bidder will assume all cure costs associated with any Contracts and Leases it intends to assume; and
- is received on or before the Bid Deadline (as such deadline may be extended in accordance with these Bidding Procedures).

A bid received from a Potential Bidder will constitute a Qualified Bid only if it includes all of the Required Bid Documents and meets all of the above requirements (other than a credit bid described in Section 3 below). Within one day of the Debtors' receipt of any bid for any or all of the Stalking Horse Assets, the Debtors shall provide such bid to the Stalking Horse Bidder

and the Consultation Parties; *provided* that such bid may be withheld from members of the Committee or redacted to the extent that the Debtors determine, in their reasonable business judgment and in consultation with the advisors to the Committee, that sharing such bid would be likely to have a negative impact on potential bidding or otherwise be contrary to goal of maximizing value for the Debtors' estates from the sale process. The Debtors, in consultation with the Consultation Parties, shall have the right to deem a bid a Qualified Bid even if such bid does not conform to one or more of the requirements above or does not include one or more Required Bid Documents. If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may provide the bidder with the opportunity to remedy any deficiencies following the Bid Deadline. If any bid is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bid, and the applicable bidder fails to remedy such bid in accordance with these Bidding Procedures, the Debtors shall promptly instruct the Deposit Agent to return such bidder's Good Faith Deposit. Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder and the Stalking Horse Agreement shall be deemed a Qualified Bid for all purposes in connection with these Bidding Procedures (including with respect to any Partial Bids), and the Stalking Horse Bidder shall, without any further action, be entitled to participate in any Auction.

All Qualified Bids will be considered by the Debtors; bids other than Qualified Bids will not be considered. Notwithstanding any other provision of these Bidding Procedures, the Debtors, in consultation with the Consultation Parties, may evaluate bids on any grounds, including, but not limited to, (i) the amount of the purchase price, including non-cash consideration, set forth in the bid, (ii) the value to be provided to the Debtors under the bid, including the net economic effect upon the Debtors' estates, (iii) any benefit to the Debtors' estates from any assumption of liabilities or waiver of liabilities, including the release or replacement of letters of credit, (iv) the transaction structure and execution risk, including conditions to and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approvals, (v) the anticipated timing to closing and whether such timing is consistent with the Debtors' adherence to the Approved Budget (as defined in the DIP Credit Agreement), (vi) the impact on employees and employee claims against the Debtors, (vii) the presence of any governmental, licensing, regulatory, or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents, (viii) the impact on trade and other creditors, and (ix) any other factors the Debtors may reasonably deem relevant consistent with their fiduciary duties (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel). For the avoidance of doubt, the presence of any governmental, licensing, regulatory, or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents, may be grounds for the Debtors, in consultation with the Consultation Parties, to determine that such bid (i) is not a Qualified Bid or (ii) is not higher or otherwise better than any other Qualified Bid.

By submission of its bid, each Qualified Bidder shall be deemed to acknowledge and represent that it (i) has had an opportunity to conduct any and all due diligence regarding the Bid Assets that are the subject of the Auction prior to making any such bid, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or

otherwise, regarding the Bid Assets (or lots thereof), or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Stalking Horse Bidder, the Stalking Horse Agreement, or, as to any other Successful Bidder(s), the Asset Purchase Agreement(s) with such Successful Bidder(s). Without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not amend, modify, or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable.

3. BID PROTECTIONS

Recognizing the Stalking Horse Bidder's expenditure of time, energy and resources in connection with the proposed transaction set forth in the Stalking Horse Agreement, and the benefit that those efforts provided to all Interested Parties, the Debtors have agreed that, among other circumstances set forth in the Stalking Horse Agreement, if the Stalking Horse Bidder is not the Successful Bidder or if the Debtors withdraw the motion prior to the entry of a Sale Order approving the Sale Transaction relating to the Stalking Horse Assets, the Debtors will pay to the Stalking Horse Bidder a Break-Up Fee and an Expense Reimbursement. The payment of the Break-Up Fee, which is \$15,000,000.00, and Expense Reimbursement, which shall not exceed \$8,000,000.00, will be governed by the provisions of the Stalking Horse Agreement and the Bidding Procedures Order.

4. CREDIT BID

Subject to the terms and conditions set forth in the DIP Order, the DIP Agent, with the consent of the Required Lenders, shall have the right (on behalf of the DIP Lenders) to credit bid the amounts of the DIP Obligations (other than, prior to the Challenge Period Termination Date, the DIP Roll-Up Loans) in connection with any sale of all or substantially all of the Debtors' assets and property. If the DIP Agent submits a credit bid in accordance with the foregoing, and such bid is received by the Bid Deadline, such bidder shall be deemed to be a Qualified Bidder and any such credit bid shall be deemed to be a Qualified Bid.

5. AUCTION

In the event that the Debtors receive more than one Qualified Bid for Bid Assets, the Debtors shall conduct an auction (the "**Auction**") for such Bid Assets. The Auction shall be in accordance with these Bidding Procedures and upon notice to all Qualified Bidders that have submitted Qualified Bids. The Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 on April 20, 2020 at 10:00 a.m. (prevailing Eastern Time) or such later time on such day or such other place as the Debtors (in consultation with the Consultation Parties) shall notify all Qualified Bidders (including the Stalking Horse Bidder). If (a) no Qualified Bids for the Stalking Horse Assets are submitted by the Bid Deadline other than the Stalking Horse Bid or (b) only one or more Partial Bids (as defined below) are submitted by the Bid Deadline for non-overlapping lots of the Bid Assets, the Debtors, in consultation with the Consultation Parties, may elect to cancel the Auction, seek approval of the transactions contemplated in the Stalking Horse Bid or the transactions in respect of the such Partial Bids at the Sale Hearing (as defined below).

If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all of the Debtors' assets (each such bid, a **"Partial Bid"**), the Debtors (in consultation with the Consultation Parties) may conduct separate auctions at the Auction for each lot of assets (each, an **"Auction Lot"**) subject to a Partial Bid. The Debtors may, in consultation with the Consultation Parties, combine multiple Partial Bids into an Auction Lot to compete against the Stalking Horse Bid. The Debtors may designate each Auction Lot at any time prior to the Auction.

Only representatives or agents of the Debtors, the Consultation Parties, and Qualified Bidders (and the legal and financial advisors to each of the foregoing) will be entitled to attend the Auction, and only Qualified Bidders will be entitled to make any Subsequent Bids at the Auction. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or the sale of any of the Bid Assets as described herein, (b) has reviewed, understands, and accepts these Bidding Procedures, (c) has consented to the jurisdiction of the Bankruptcy Court, and (d) intends to consummate its Qualified Bid if it is selected as the Successful Bid.

Prior to the Auction, the Debtors will (a) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (b) provide all Qualified Bidders with (i) copies of the Qualified Bid or combination of Qualified Bids that the Debtors believe, in consultation with the Consultation Parties, is the highest or otherwise best offer (the **"Starting Bid"**), (ii) an explanation of how the Debtors value the Starting Bid, and (iii) a list identifying all of the Qualified Bidders. For the avoidance of doubt, the Starting Bid may be comprised of multiple Qualified Bids if the aggregate consideration of such Qualified Bids is higher and better than the Stalking Horse Bid. The Debtors shall also provide copies of such Starting Bid (if applicable, marked against the Stalking Horse Bid) to all of the Qualified Bidders (including the Stalking Horse Bidder) and the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules for conducting the Auction (*e.g.*, the amount of time allotted to submit Subsequent Bids), *provided, however*, that such rules shall (a) not be inconsistent with the Bankruptcy Code, the Bidding Procedures Order, or any other order of the Bankruptcy Court entered in connection herewith and (b) be disclosed to all Qualified Bidders.

Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding in the presence of all parties at the Auction, so long as during each round at least one subsequent bid (a **"Subsequent Bid"**) is submitted by a Qualified Bidder that (a) improves upon such Qualified Bidder's immediately prior Qualified Bid and (b) the Debtors, in consultation with the Consultation Parties, determine that such Subsequent Bid is (i) with respect to the first round, a higher or otherwise better offer than the Starting Bid and (ii) with respect to subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below), in each case taking into account other Qualified Bids for other Bid Assets; *provided, however*, that with respect to each round of bidding with respect to all or substantially all of the Stalking Horse Assets, any Qualified Bid or Subsequent Bid must provide consideration at least equal to the Minimum Overbid. The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid (or in valuing such bids) at any time during the Auction. For the avoidance of doubt, in any subsequent round

of bidding with respect to all or substantially all of the Stalking Horse Assets, the Stalking Horse Bidder will be entitled to a “credit” in the amount of the Bid Protections to be counted toward its bid in such round. In each subsequent round after the first round, the Debtors, in consultation with the Consultation Parties, may determine appropriate minimum bid increments or requirements for each round of bidding.

After the first round of bidding and between each subsequent round of bidding, as applicable, the Debtors, in consultation with the Consultation Parties, will determine and announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (the “**Leading Bid**”). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided, however*, that the value for such non-cash consideration shall be determined by the Debtors, in consultation with the Consultation Parties.

A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge and written confirmation of the Leading Bid.

For the purpose of evaluating Subsequent Bids, the Debtors may require a Qualified Bidder (other than the Stalking Horse Bidder) submitting a Subsequent Bid to submit, as part of its Subsequent Bid, additional evidence (in the form of financial disclosure or credit-quality support information or enhancement acceptable to the Debtors, in consultation with the Consultation Parties) demonstrating such Qualified Bidder’s ability to close the proposed transaction.

The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid(s), all Subsequent Bid(s), the Leading Bid(s), the Alternative Bid(s) (as defined below), and the Successful Bid(s).

If a Qualified Bidder increases its bid at the Auction and is the Successful Bidder or Alternate Bidder (as defined below), such bidder must increase its Good Faith Deposit to an amount equal to ten percent of the proposed purchase price submitted at the Auction within two days after the Auction.

6. SELECTION OF SUCCESSFUL BID(S) AND ALTERNATE BID(S)

Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, shall (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction, (b) determine and identify the highest or otherwise best offer or collection of offers (the “**Successful Bid(s)**”), (c) determine and identify the next highest or otherwise best offer or collection of offers (the “**Alternate Bid(s)**”), and (d) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of (i) the identity of the party or parties that submitted the Successful Bid(s) (the “**Successful Bidder(s)**”), (ii) the amount and other material terms of the Successful Bid(s), (iii) the identity of the party or parties that submitted the Alternate Bid(s) (the “**Alternate Bidder(s)**”), and (iv) the amount and other material terms of the Alternate

Bid(s). Each Qualified Bidder shall agree and be deemed to agree to be the Alternate Bidder if so designated. Notwithstanding the foregoing sentence or anything in the Bidding Procedures to the contrary, any Qualified Bid submitted by the Stalking Horse Bidder or DIP Agent shall not be required to serve as an Alternate Bid absent consent of the Stalking Horse Bidder or DIP Agent, respectively. As soon as reasonably practicable after the completion of the Auction, the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments, and other documents necessary to consummate the applicable sale or other transaction(s) contemplated by the applicable Successful Bid(s). Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) with the Bankruptcy Court, together with a proposed order approving the transaction(s) contemplated therein (the “**Sale Order**”).

7. **THE SALE HEARING**

The hearing to consider the proposed Sale Order (the “**Sale Hearing**”) will be held on April [27], 2020 at: [-]:00 [-].m. (prevailing Central time)⁴ before the Honorable Judge David R. Jones, in the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk St., Houston, Texas 77002. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties, by an announcement of the adjourned date at a hearing before the Bankruptcy Court or by filing a notice on the Bankruptcy Court’s docket. At the Sale Hearing, the Debtors will seek the Bankruptcy Court’s approval of the Successful Bid(s) and, at the Debtors’ election, the Alternate Bid(s).

The Debtors’ presentation to the Bankruptcy Court of the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors’ acceptance of such bid(s), which acceptance will only occur upon approval of such bid(s) by the Bankruptcy Court. Following the Bankruptcy Court’s entry of the Sale Order, the Debtors and the Successful Bidder(s) shall proceed to consummate the transaction(s) contemplated by the Successful Bid(s). If the Debtors and the Successful Bidder(s) fail to consummate the proposed transaction(s), then the Debtors shall file a notice with the Bankruptcy Court advising of such failure. Upon the filing of such notice with the Bankruptcy Court, the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate the transaction(s) with the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Bankruptcy Court. If the failure to consummate the transaction(s) contemplated by the Successful Bid(s) is the result of a breach by the Successful Bidder(s) (the “**Breaching Bidder(s)**”) of its (their) asset purchase agreement(s), the Debtors reserve the right to seek all available remedies from such Breaching Bidder(s), subject to the terms of the applicable asset purchase agreement.

8. **RETURN OF GOOD FAITH DEPOSIT**

The Good Faith Deposits of all Qualified Bidders will be held in escrow by the Deposit Agent and will not become property of the Debtors’ bankruptcy estates unless released to the Debtors from escrow pursuant to terms of the applicable escrow agreement or pursuant to further

⁴ This date remains subject to Court approval.

order of the Bankruptcy Court. The Deposit Agent will retain the Good Faith Deposits of the Successful Bidder(s) and the Alternate Bidder(s) until the consummation of the transaction(s) contemplated by the Successful Bid(s) or the Alternate Bid(s), as applicable, in accordance with Section 6 above, except as otherwise ordered by the Bankruptcy Court. The Good Faith Deposits (and all interest accrued thereon) of the other Qualified Bidders will be returned within four business days after the entry of the Sale Order. At the closing of the transaction contemplated by the Successful Bid(s), the Successful Bidder(s) will receive a credit in the amount of its Good Faith Deposit (plus all interest accrued thereon). All remaining Good Faith Deposits of the Alternate Bidders (and all interest accrued thereon) held by the Deposit Agent will be released by the Deposit Agent four business days after the consummation of the transaction(s) contemplated by the Successful Bid(s); *provided, however*, that the Deposit Agent will retain the Good Faith Deposit of a Breaching Bidder pending a ruling by the Bankruptcy Court as to the amount of damages owed, if any, by such Breaching Bidder to the Debtors.

Notwithstanding anything herein to the contrary, the terms under which the Stalking Horse Bidder provided a Good Faith Deposit and the terms of its use, release, and return to the Stalking Horse Bidder will be governed by the Stalking Horse Agreement.

9. AS IS, WHERE IS

The sale of the Bid Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents, or their estates, except as provided in a purchase agreement, as approved by the Bankruptcy Court.

10. FREE AND CLEAR OF ANY AND ALL INTERESTS

Except as otherwise provided in the Stalking Horse Agreement or another Successful Bidder(s)’s purchase agreement, all of the Debtors’ right, title and interest in and to the Bid Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon (collectively, the “**Interests**”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Bid Assets with the same validity and priority as such Interests applied against the Bid Assets.

11. RESERVATION OF RIGHTS

Except as otherwise provided in these Bidding Procedures or the Bidding Procedures Order, the Debtors reserve the right in their discretion (in consultation with the Consultation Parties) to:

- determine which Interested Parties are Potential Bidders;
- determine which bidders are Qualified Bidders;
- determine which bids are Qualified Bids;
- determine which Qualified Bid is the Starting Bid;

- determine which Qualified Bid is the highest or otherwise best offer for the Bid Assets and which is the next highest or otherwise best offer;
- reject any bid that the Debtors deem to be (a) inadequate or insufficient, (b) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, or (c) contrary to the best interests of the Debtors and their estates;
- impose additional terms and conditions with respect to all Potential Bidders;
- designate a Stalking Horse Bidder;
- cancel the Auction;
- extend the deadlines set forth herein; and
- modify these Bidding Procedures and implement additional procedural rules that the Debtors determine, in consultation with the Consultation Parties, will better promote the goals of the Bidding Process and discharge the Debtors' fiduciary duties, in each case, to the extent not materially inconsistent with these Bidding Procedures and the Bidding Order.

Nothing in these Bidding Procedures shall require the Debtors' board of directors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent that the Debtors' board of directors determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel). Accordingly, at any time prior to the Bankruptcy Court's entry of a Sale Order, the Debtors may withdraw the Motion and pursue an alternative transaction, including a plan of reorganization.

Subject to consent and consultation rights of the Consultation Parties set forth herein, all parties reserve their rights to seek Bankruptcy Court relief with regard to the Auction, the Bidding Procedures, and any related items. All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an expedited basis if they disagree with any actions or decision made by the Debtors as part of these Bidding Procedures. The rights of all Consultation Parties with respect to the outcome of the Auction are reserved.

12. RELEVANT DATES

March 12, 2020 at 2:00 p.m. (prevailing Central Time)	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order
March 16, 2020	Target date for the Debtors to file Potential Assumed Contracts Schedule
March 31, 2020 at 3:00 p.m. (prevailing Central Time)	Potential Bidder deadline
April 6, 2020 at 4:00 p.m. (prevailing Central Time)	Cure Objection Deadline
April 13, 2020 at 3:00 p.m. (prevailing Central Time)	Bid Deadline
April 20, 2020 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any) to be held at the offices of Davis Polk & Wardwell LLP
April 21, 2020	Target date for the Debtors to file with the Court the Notice of Auction Results
April 22, 2020 at 4:00 p.m. (prevailing Central Time)	Deadline to object to the Sale Transaction to the Successful Bidder; and the Assumption and Assignment Objection Deadline
April [27], 2020 at [·]:00 [·].m. (prevailing Central Time)⁵	Hearing to consider approval of the Sale Transaction(s) and entry of the Sale Order(s)

⁵ This date remains subject to Court approval.

Form of Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
	)	Chapter 11
SOUTHERN FOODS GROUPS, LLC, <i>et al.</i>,	)	Case No. 19-36313 (DRJ)
)	
Debtors. ¹	)	Jointly Administered
)	
)	

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) on November 12, 2019.

PLEASE TAKE FURTHER NOTICE that, on February 17, 2020, in connection with the proposed sale (the “**Sale Transaction**”) of all, substantially all, or a portion of Debtors’ assets (collectively, the “**Bid Assets**”) to Dairy Farmers of America, Inc. (the “**Stalking Horse Bidder**”) or any other successful bidder (a “**Successful Bidder**”) subject to an auction process (the “**Auction**”) for the Bid Assets, the Debtors filed a motion (the “**Bidding Procedures Motion**”)² with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the Sale Transaction and the Auction (the “**Bidding**

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly’s Ice Cream Holdings Corp. (7609); Friendly’s Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah’s Pride, LLC (2858); Steve’s Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt’s Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors’ mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

Procedures”), (b) payment of the Bid Protections to the Stalking Horse Bidder in accordance with the terms and conditions set forth in the Stalking Horse Agreement, (c) the form and manner of notice related to the Sale Transaction, and (d) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction.

PLEASE TAKE FURTHER NOTICE that, on [·], 2020, the Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction and the Auction, and the Debtors’ entry into the Stalking Horse Agreement. All parties interested in bidding should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.³

Contact Persons for Parties Interest in Submitting a Bid

The Bidding Procedures set forth the requirements for submitting a Qualified Bid, and any person interested in making an offer to purchase the Bid Assets must comply strictly with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

Any interested bidder should contact, as soon as practicable:

EVERCORE GROUP L.L.C.⁴

55 East 52nd Street
New York, NY 10055
Attn.: John Kimm
john.kimm@evercore.com
(tel.) +1 (212) 849-3436

Obtaining Additional Information

Copies of the Bidding Procedures Motion and the Bidding Procedures Order, as well as all related exhibits (including the Stalking Horse Agreement and the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors’ case information website, located at <https://dm.epiq11.com/SouthernFoods> or can be requested by email at DeanInfo@epiqglobal.com.

Important Dates and Deadlines⁵

1. **Potential Bidder Deadline.** The deadline for interested parties to furnish information to

³ To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

⁴ Evercore Group L.L.C., in its capacity as financial advisor the Debtors, is referred to herein as “**Evercore**.”

⁵ The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

Evercore to be considered a Potential Bidder in accordance with the Bidding Procedures is **March 31, 2020 at 3:00 p.m. (prevailing Central Time)**.

2. **Bid Deadline.** The deadline to submit a Qualified Bid is **April 13, 2020 at 3:00 p.m. (prevailing Central Time)**.
3. **Auction.** In the event that the Debtors timely receive more than one Qualified Bid for Bid Assets, and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Bid Assets. The Auction, if one is held, will commence on **April 20, 2020 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.
4. **Auction and Sale Objections Deadline.** The deadline to file an objection with the Court to the Sale Order, the conduct of the Auction, or the Sale Transaction (including objections relating to the Stalking Horse Bidder) (collectively, the “**Sale Objections**”) is **April 22, 2020 at 4:00 pm. (prevailing Central Time)** (the “**Sale Objection Deadline**”).
5. **Sale Hearing.** A hearing (the “**Sale Hearing**”) to consider the proposed Sale Transaction will be held before the Court on **April [27], 2020 at [·]:00 [·].m. (prevailing Central Time)**⁶ or such other date as determined by the Court, at 515 Rusk St., Houston, Texas 77002.

Filing Objections

Sale Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (d) be filed with the Court no later than the Sale Objection Deadline, and (e) no later than the Sale Objection deadline, be served on (1) counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, Nate Sokol, and Daniel E. Meyer and (z) Norton Rose Fulbright US LLP, 1301 McKinney Street, Suite 5100, Houston, Texas 77010, Attn: William Greendyke, Jason L. Boland, Robert B. Bruner, and Julie Harrison, (2) (y) counsel to the DIP Agent and the Prepetition Agent, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Scott Greissman, Philip Abelson, and Elizabeth Feld and (z) Gray Reed, 1300 Post Oak Blvd, Suite 2000, Houston, TX 77056, Attn: Jason S. Brookner, (3) counsel to the Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip Dublin and Meredith Lahaie, and (4) the U.S. Trustee.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any party or entity who fails to timely make an objection to the Sale Transaction on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any objection to the Sale Transaction, including

⁶ This date remains subject to Court approval.

with respect to the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests.

NO SUCCESSOR LIABILITY

The Debtors are a leading public food and beverage company and the largest processor and direct-to-store distributor of fresh fluid milk and other dairy and dairy case products in the United States. The Debtors manufacture, market, and distribute a wide variety of branded and private label dairy and dairy case products, including fluid milk, ice cream, cultured dairy products, creamers, ice cream mix, and other dairy products to retailers, distributors, foodservice outlets, educational institutions, and governmental entities across the United States. For more information on the Debtors' businesses or their products, refer to the Declaration of Gary Rahlfs in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings [D.I. 46]. The assets sold in the Sale Transaction will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale Transaction, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale Transaction. Accordingly, as a result of the Sale Transaction, the Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Successful Bidder will have no liability, except as expressly provided a definitive agreement reached between the Debtors and the Successful Bidder, for any liens, claims, encumbrances, and other interests against or in any of the Debtors under any theory of law, including successor liability theories.

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Dated: [·], 2020
Houston, Texas

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ Draft

William R. Greendyke (SBT 08390450)
Jason L. Boland (SBT 24040542)
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-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (admitted *pro hac vice*)
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Counsel to the Debtors and Debtors in Possession

Form of Potential Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
	)	Chapter 11
)	
SOUTHERN FOODS GROUPS, LLC, <i>et al.</i>,	)	Case No. 19-36313 (DRJ)
)	
Debtors. ¹	)	Jointly Administered
)	
)	

**NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNT**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) on November 12, 2019.

PLEASE TAKE FURTHER NOTICE that, on February 17, 2020, in connection with the proposed sale (the “**Sale Transaction**”) of all, substantially all, or a portion of Debtors’ assets (collectively, the “**Bid Assets**”) to Dairy Farmers of America, Inc. (the “**Stalking Horse Bidder**”) or any other successful bidder (a “**Successful Bidder**”) subject to an auction process (the “**Auction**”) for the Bid Assets, the Debtors filed a motion (the “**Bidding Procedures Motion**”)² with the Court seeking entry of orders, among other things, approving (a) procedures

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly’s Ice Cream Holdings Corp. (7609); Friendly’s Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah’s Pride, LLC (2858); Steve’s Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt’s Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors’ mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

for the solicitation of bids in connection with the Sale Transaction and the Auction (the “**Bidding Procedures**”), (b) payment of the Bid Protections to the Stalking Horse Bidder in certain instances defined in the Stalking Horse Agreement, (c) the form and manner of notice related to the Sale Transaction, and (d) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction (the “**Assumption and Assignment Procedures**”).

PLEASE TAKE FURTHER NOTICE that, on [·], 2020, the Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction, the Auction, and the Assumption and Assignment Procedures.

PLEASE TAKE FURTHER NOTICE that, upon the closing of the Sale Transaction, the Debtors intend to assume and assign to the Successful Bidder(s) the Potential Assumed Contracts. A schedule listing the Potential Assumed Contracts (the “**Potential Assumed Contracts Schedule**”) is attached hereto and may also be accessed free of charge on the Debtors’ case information website, located at <https://dm.epiq11.com/SouthernFoods> or can be requested by email at DeanInfo@epiqglobal.com. In addition, the “**Cure Costs**,” if any, necessary for the assumption and assignment of the Potential Assumed Contracts are set forth on the Potential Assumed Contracts Schedule. *Each Cure Cost listed on the Potential Assumed Contracts Schedule represents all liabilities of any nature of the Debtors arising under an Assumed Contract or Assumed Lease prior to the closing of the Sale Transaction, or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.*

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A POTENTIAL ASSUMED CONTRACT. Under the terms of the Assumption and Assignment Procedures, (a) at or prior to the closing of the Sale Transaction, a Successful Bidder (including the Stalking Horse Bidder) may elect, in its sole and absolute discretion, (i) to exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (ii) to include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable, (b) if the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Bidding Procedures, and (c) following the Auction, the Debtors may, in accordance with the Stalking Horse Agreement or the applicable purchase agreement, or as otherwise agreed by the Debtors and the

Successful Bidder(s), at any time before the closing of the Sale Transaction, modify the previously stated Cure Costs associated with any Proposed Assumed Contract. The Assumption and Assignment Procedures further provide that any Counterparty whose previously-stated Cure Cost is modified will receive notice thereof and an opportunity to file a Supplemental Assignment Objection. **The assumption and assignment of the Contracts and Leases on the Potential Assumed Contracts Schedule is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove an Assumed Contract or Assumed Lease from the Potential Assumed Contracts Schedule and Proposed Assumed Contracts Schedule.**

Obtaining Additional Information

Copies of the Bidding Procedures Motion and the Bidding Procedures Order, as well as all related exhibits (including the Stalking Horse Agreement and the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://dm.epiq11.com/SouthernFoods> or can be requested by email at DeanInfo@epiqglobal.com.

Filing Assumption and Assignment Objections

Pursuant to the Assumption and Assignment Procedures, objections to the potential assumption and assignment of an Assumed Contract or Assumed Lease (an “**Assumption and Assignment Objection**”) with respect to the ability of a Successful Bidder to provide adequate assurance of future performance, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) by no later than **April 22, 2020 at 4:00 p.m. (prevailing Central Time)** (the “**Assumption and Assignment Objection Deadline**”), (i) be filed with the Court and (ii) be served on (1) counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, Nate Sokol, and Daniel E. Meyer and (z) Norton Rose Fulbright US LLP, 1301 McKinney Street, Suite 5100, Houston, Texas 77010, Attn: William Greendyke, Jason L. Boland, Robert B. Bruner, and Julie Harrison, (2) (y) counsel to the DIP Agent and the Prepetition Agent, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Scott Greissman, Philip Abelson, and Elizabeth Feld and (z) Gray Reed, 1300 Post Oak Blvd, Suite 2000, Houston, TX 77056, Attn: Jason S. Brookner, (3) counsel to the Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip Dublin and Meredith Lahaie, and (4) the U.S. Trustee (collectively, the “**Objection Notice Parties**”).

Pursuant to the Assumption and Assignment Procedures, an Assumption and Assignment Objection relating to proposed Cure Cost (a “**Cure Objection**”), must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, and (d) by no later than **April 6, 2020 at 4:00 p.m.** (the “**Cure Objection Deadline**”), (1) be filed with the Court and (2) be served on the Objection Notice Parties.

Pursuant to the Assumption and Assignment Procedures, objections to the potential assumption and assignment of an Assumed Contract or Assumed Lease by a party whose contract or lease is listed on a Supplemental Assumption and Assignment Notice (a **“Supplemental Assumption and Assignment Objection”**) with respect to the ability of a Successful Bidder to provide adequate assurance of future performance or relating to the Cure Costs (to the extent modified from the previously-stated amount) must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) by no later than **14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (1) be filed with the Court and (2) be served on the Objection Notice Parties.

Objections to the Sale Order, the conduct of the Auction or the Sale Transaction (collectively, the **“Sale Objections”**), must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (d) **April 22, 2020 at 4:00 p.m. (prevailing Central Time)** by (the **“Sale Objection Deadline”**) be (1) filed with the Court and (2) served on the Objection Notice Parties.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any Counterparty to a contract or lease who fails to timely make an objection to the potential assumption and assignment of such contract or lease on or before the Assumption and Assignment Objection Deadline in accordance with the Assumption and Assignment Procedures, the Bidding Procedures Order, and this Notice (or in the case of a Supplemental Assumption and Assignment Objection, by 14 days from the date of service of such Supplemental Assumption and Assignment Notice) shall be deemed to have consented to the assumption and assignment of such contract or lease, including the Cure Costs (if any), set forth in the Potential Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice, and shall be forever barred from asserting any objection or claims against the Debtors, the Successful Bidder (including the Stalking Horse Bidder), or the property of any such parties, relating to the assumption and assignment of such contract or lease, including asserting additional Cure Costs with respect to such contract or lease. Notwithstanding anything to the contrary in such contract or lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.

Other Important Dates and Deadlines³

In addition to the dates and deadlines described above with respect to filing Assumption and Assignment Objections, Cure Objections, and Supplemental Assumption and Assignment Objections, note the following important dates and deadlines:

1. **Auction.** In the event that the Debtors timely receive more than one Qualified Bid for Bid Assets, and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Bid Assets. The Auction, if one is held, will commence on **April 20, 2020 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.
2. **Sale Hearing.** A hearing (the “**Sale Hearing**”) to consider the proposed Sale Transaction will be held before the Court on **April [27], 2020 at [·]:00 a.m. (prevailing Central Time)**⁴ or such other date as determined by the Court at 515 Rusk St., Houston, Texas 77002.

[Remainder of This Page Intentionally Left Blank]

³ The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

⁴ This date remains subject to Court approval.

Dated: [·], 2020
Houston, Texas

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ Draft

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Counsel to the Debtors and Debtors in Possession

Form of Proposed Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
	)	Chapter 11
)	
SOUTHERN FOODS GROUPS, LLC, <i>et al.</i>,	)	Case No. 19-36313 (DRJ)
)	
Debtors. ¹	)	Jointly Administered
)	
)	

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNT**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) on November 12, 2019.

PLEASE TAKE FURTHER NOTICE that, on February 17, 2020, in connection with the proposed sale (the “**Sale Transaction**”) of all, substantially all, or a portion of Debtors’ assets (collectively, the “**Bid Assets**”) to Dairy Farmers of America, Inc. (the “**Stalking Horse Bidder**”) or any other successful bidder (a “**Successful Bidder**”) subject to an auction process (the “**Auction**”) for the Bid Assets, the Debtors filed a motion (the “**Bidding Procedures Motion**”)² with the Court seeking entry of orders, among other things, approving (a) procedures

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly’s Ice Cream Holdings Corp. (7609); Friendly’s Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah’s Pride, LLC (2858); Steve’s Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt’s Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors’ mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

for the solicitation of bids in connection with the Sale Transaction and the Auction (the “**Bidding Procedures**”), (b) payment of the Bid Protections to the Stalking Horse Bidder in certain instances as set forth in the Stalking Horse Agreement, (c) the form and manner of notice related to the Sale Transaction, and (d) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction (the “**Assumption and Assignment Procedures**”).

PLEASE TAKE FURTHER NOTICE that, on [·], 2020 the Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction, the Auction, and the Assumption and Assignment Procedures.

PLEASE TAKE FURTHER NOTICE that, on **April 20, 2020 at 10:00 a.m. (prevailing Eastern Time)**, the Debtors held an Auction at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.

PLEASE TAKE FURTHER NOTICE that, upon the closing of the Sale Transaction, the Debtors intend to assume and assign to the Successful Bidder(s) the Proposed Assumed Contracts. A schedule listing the Proposed Assumed Contracts (the “**Proposed Assumed Contracts Schedule**”) is attached hereto and may also be accessed free of charge on the Debtors’ case information website, located at <https://dm.epiq11.com/SouthernFoods> or can be requested by e-mail at DeanInfo@epiqglobal.com. In addition, the “**Cure Costs**,” if any, necessary for the assumption and assignment of the Proposed Assumed Contracts are set forth on the Proposed Assumed Contracts Schedule. *Each Cure Cost listed on the Proposed Assumed Contracts Schedule represents all liabilities of any nature of the Debtors arising under an Assumed Contract or Assumed Lease prior to the closing of the Sale Transaction, or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.*

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A PROPOSED ASSUMED CONTRACT. Under the terms of the Assumption and Assignment Procedures, (a) at or prior to the closing of the Sale Transaction, the Successful Bidder(s) (including the Stalking Horse Bidder) may elect, in its sole and absolute discretion, (i) to exclude any contract or lease on the Proposed Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (ii) to include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable (b) if the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and

assign such Assumed Contract or Assumed Lease in accordance with the Bidding Procedures, and (c) following the Auction, the Debtors may, in accordance with the Stalking Horse Agreement or the applicable purchase agreement, or as otherwise agreed by the Debtors and the Successful Bidder(s), at any time before the closing of the Sale Transaction, modify the previously-stated Cure Costs associated with any Proposed Assumed Contract. The Assumption and Assignment Procedures further provide that any Counterparty whose previously-stated Cure Cost is modified will receive notice thereof and an opportunity to file a Supplemental Assumption and Assignment Objection. **The assumption and assignment of the Contracts and Leases on the Proposed Assumed Contracts Schedule is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove an Assumed Contract or Assumed Lease from the Proposed Assumed Contracts Schedule.**

Obtaining Additional Information

Copies of the Bidding Procedures Motion and the Bidding Procedures Order, as well as all related exhibits (including the Stalking Horse Agreement and the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://dm.epiq11.com/SouthernFoods> or can be requested by e-mail at DeanInfo@epiqglobal.com.

Filing Assumption and Assignment Objections

Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of an Assumed Contract or Assumed Lease (an "**Assumption and Assignment Objection**") with respect to the ability of the Successful Bidder to provide adequate assurance of future performance, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) by no later than **April 22, 2020 at 4:00 p.m. (prevailing Central Time)** (the "**Assumption and Assignment Objection Deadline**"), (i) be filed with the Court and (ii) be served on (1) counsel to the Debtors, (w) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, Nate Sokol, and Daniel E. Meyer and (x) Norton Rose Fulbright US LLP, 1301 McKinney Street, Suite 5100, Houston, Texas 77010, Attn: William Greendyke, Jason L. Boland, Robert B. Bruner, and Julie Harrison, (2) (y) counsel to the DIP Agent and the Prepetition Agent, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Scott Greissman, Philip Abelson, and Elizabeth Feld and (z) Gray Reed, 1300 Post Oak Blvd, Suite 2000, Houston, TX 77056, Attn: Jason S. Brookner, (3) counsel to the Committee, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip Dublin and Meredith Lahaie, and (4) the U.S. Trustee (collectively, the "**Objection Notice Parties**").

Sale Objections (as defined below), if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (d) by **April 22, 2020 at 4:00 p.m. (prevailing Central Time)** (the "**Sale Objection Deadline**") (1) be filed with the Court and (2) be served on the Objection Notice Parties.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any Counterparty to an Assumed Contract or Assumed Lease who fails to timely make an objection to the proposed assumption and assignment of such contract or lease on or before the Assumption and Assignment Objection Deadline in accordance with the Assumption and Assignment Procedures, the Bidding Procedures Order and this Notice shall be deemed to have consented with respect to the ability of a Successful Bidder to provide adequate assurance of future performance (and the Debtors' proposed Cure Costs, to the extent modified from the previously-stated amount) and shall be forever barred from asserting any objection or claims against the Debtors, the Successful Bidder (including the Stalking Horse Bidder), or the property of any such parties, relating to the assumption and assignment of such contract or lease, (including asserting additional Cure Costs with respect to such contract or lease). Notwithstanding anything to the contrary in such contract or lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, or Supplemental Assumption and Assignment Notice (as applicable), shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.

Other Important Dates and Deadlines³

In addition to the dates and deadlines described above with respect to filing Assumption and Assignment Objections, note the following important dates and deadlines:

1. **Auction and Sale Objections Deadline.** The deadline to file an objection with the Court to the Sale Order, the conduct of the Auction or the Sale Transaction (including objections relating to the Stalking Horse Bidder or the Proposed Assumed Contracts Schedule) (collectively, the "Sale Objections") is the **Sale Objection Deadline**.
2. **Sale Hearing.** A hearing (the "Sale Hearing") to consider the proposed Sale Transaction will be held before the Court on, **April [27], 2020 at [·]:00 [·].m. (prevailing Central Time)**⁴ or such other date as determined by the Court at 515 Rusk St., Houston, Texas 77002.

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³ The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

⁴ This date remains subject to Court approval.

Dated: [·], 2020
Houston, Texas

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ Draft

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