

Below is an Order of the Court.



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PETER C. MCKITTRICK  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re

Sunshine Dairy Foods Management, LLC,  
and  
Karamanos Holdings, Inc.

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Debtors-in-Possession.

Bankruptcy Case Nos.:

18-31644-pcm11 (Lead Case)

18-31646-pcm11

ORDER AUTHORIZING SALE OF  
ASSETS FREE AND CLEAR OF  
LIENS (Alpenrose Dairy, Inc.)

THIS MATTER, having come before the Court on June 6, 2018 on the Debtor-in-Possession, Sunshine Dairy Foods Management, LLC's ("Debtor") Amended Notice of Intent to Sell Real Estate or Personal Property and Motion for Authority to Sell Property Free and Clear of Liens (Dkt. No. 37) (the "Sale Motion"),

The Court, having reviewed the Sale Motion, the Declaration of Michael Anderson, and the Declaration of Daniel Boverman; and the files and records herein, and having considered the presentations of counsel at the June 6, 2018 hearing, and deeming itself fully advised, finds and concludes as follows:

A. As evidenced by the Declaration of Nonreceipt of Objections previously filed with the Court, the Debtor provided proper, timely, adequate and sufficient notice of the Sale Motion, the hearing on the Sale Motion, the transactions contemplated under the Asset Purchase Agreement (attached hereto as **Exhibit A** without its referenced Exhibits) of the Debtor's Customer Lists and to the extent transferable, all of the Debtor's customer agreements (the "Assets") in accordance with 11 U.S.C. §, 363 and Fed. R. Bankr. P. 2002 and 6004, to: (i) the Office of the United States Trustee; (ii) Chairman of Official Unsecured Creditors' Committee and counsel for the Official Unsecured Creditors' Committee; (iii) all entities known to have asserted any interests in or upon the acquired assets; (iv) all federal state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Sale Motion, and (v) the official service list in this case. Such notice was good and sufficient, and afforded parties sent notice a reasonable opportunity to object or be heard with respect to the matters that are the subject of this Order, and no other or further notice is required. Also attached hereto as **Exhibit B** to this Order is an Addendum to the Asset Purchase Agreement. The Asset Purchase Agreement and Addendum to Asset Purchase Agreement shall be collectively referred to "APA."

#### **Summary of Successful Bid and No Additional Bids**

B. **Alpenrose Dairy, Inc.** The final Alpenrose Dairy, Inc. ("Alpenrose") bid for the Assets was as outlined in the APA.

C. As set forth in the Declaration of Daniel Boverman, no other bids were received before the May 25, 2018 deadline and no other bids were received after said deadline.

### **The Debtors' Determination of Alpenrose as the Successful Bidder.**

D. After the bid deadline expired, the Debtor was required to determine the successful bid. After submission of the Alpenrose bid, there were no further bids.

E. In determining the successful bid, the Debtor, in consultation with Debtor's professionals, was required to determine whether the bid constituted the "highest and/or best offer for the acquired assets."

F. At the conclusion of bidding, in the Debtor's best business judgment, the likelihood that the Alpenrose sale would close was considered very high. Given the Debtor's precarious cash position, Debtor asserts that a failure of the Alpenrose sale to close, regardless of any extension for bidding, would leave the Debtor without the ability to continue operating the West Plant, leaving nominal recovery for creditors.

### **Debtor Proceeded to Move Towards Closing the Alpenrose Sale Subject to Court Approval.**

G. As indicated in the Sale Motion, the Debtor and Alpenrose reached an agreement on the terms in the form of the Asset Purchase Agreement, and the Debtor now seeks approval of the APA in the form attached hereto as **Exhibits A and B**. The APA provides for sale of Assets. Moreover, after the expiration of the bid deadline, Debtor and Alpenrose reached agreement on the Addendum to the Purchase and Sale Agreement, which allowed for the exchange of information on a confidential basis, eliminated the mutual right to terminate provision and increased the time for required payment the purchase price (increasing the value of sale).

H. The Debtor believes that the offer submitted by Alpenrose represents the highest and best offer for the acquired Assets.

I. The Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Venue of this case and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

J. The statutory predicates for the relief sought in the Sale Motion are Bankruptcy Code § 363 and Fed. R. Bankr. P. 2002, 6004, and 9014.

K. The Debtor asserts that it marketed its assets and conducted the sale process in full compliance with the Sale Motion and applicable law and rules.

L. Approval of the APA and consummation of the sale at this time are in the best interests of the Debtor, its creditors, its estate, and other parties in interest.

M. The Debtor has demonstrated both (i) good, sufficient, and sound business purpose and justification, and (ii) compelling circumstances for the sale pursuant to 11 U.S.C. § 363(b) prior to, and outside of, a plan of reorganization. The Debtor diligently and in good faith marketed the acquired Assets to secure the highest and best offer therefore.

N. The terms and conditions set forth in the APA, and the sale to Alpenrose represent a fair and reasonable purchase price and constitute the highest and best offer for the acquired Assets.

O. Debtor asserts that the APA was entered into by the Debtor and Alpenrose without collusion or fraud, in good faith, and from arm's-length bargaining positions.

P. The transfer of the acquired Assets to Alpenrose will be a legal, valid, and effective transfer of the acquired Assets, will vest Alpenrose with all right, title, and interest of the Debtor to the acquired Assets free and clear of all interests in such property of a person or entity other than the Debtor of (i) all liens of any kind or nature whatsoever arising under or out of, or in connection with, or in any way relating to the operation of the Debtor's

business prior to the closing, or any acts of the Debtor, and (ii) all claims as defined in 11 U.S.C. § 101(5) (collectively, "Interests"); and the Court being otherwise fully advised, it is

ORDERED as follows:

1. The Sale Motion is granted in its entirety, as further described herein and pursuant to the terms and conditions of this Order. The Response to the Sale Motion filed by Multnomah County is overruled.

2. The APA and all of the terms and conditions thereof, are hereby approved in all respects. Pursuant to 11 U.S.C. § 363, the Debtor is authorized and directed to consummate the Sale, pursuant to and in accordance with the terms and conditions of the APA and this Order.

3. The Debtor is authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, and to take all further actions as may be reasonably requested by Alpenrose for the purpose of assigning, transferring, granting, conveying and conferring to APA or reducing to its possession, the acquired Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the APA.

4. As of the closing, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release such creditor's Interests in the acquired Assets, if any, as such Interests may have been recorded or may otherwise exist.

5. Pursuant to 11 U.S.C. § 363(f), the acquired Assets shall be transferred at closing to Alpenrose, or its assigns, free and clear of all interests with all such interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity,

force and effect which they now have as against the acquired Assets, subject to any claims and defenses the Debtor may possess with respect thereto.

6. Pursuant to Bankruptcy Rules 6004(h), the closing on the sale of the Assets is authorized to take place immediately upon entry of this Order.

7. Except as expressly permitted, contractually assumed, or otherwise specifically provided by the APA or this Order, all persons and entities holding claims and/or Interests against or in the Debtor or the acquired Assets, including but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, landlords, trade and other unsecured creditors (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) in any way relating to the Debtor, the acquired Assets, the operation of the business of the Debtor prior to the closing, or the transfer of the acquired Assets to Alpenrose, hereby are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' Interests against or in the Debtor or the acquired Assets against Alpenrose, its successors or assigns, its property or interests or the acquired Assets.

8. Alpenrose shall not be liable or responsible for any liability or other obligation of the Debtor arising under or related to the acquired Assets, except as expressly provided for in the APA and this Order. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the APA, Alpenrose shall not be liable for any claims against the Debtor of any of its predecessors or affiliates, or as the transferee of the acquired Assets, and Alpenrose shall have no successor or vicarious liabilities of any kind or character whether known or unknown as of the closing, now existing or hereafter arising or accruing, whether fixed or contingent, with respect to the Debtor of any obligations of the Debtor arising prior to the closing, including, without limitation, liabilities resulting from or

relating to (i) errors or omissions claims, or (ii) taxes, in either case, arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtor's business or the sale of the acquired Assets.

9. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

10. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and the APA, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the acquired Assets to the Buyer, (b) resolve any disputes arising under or related to the APA, except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Order, and (d) protect Alpenrose against (i) any of the liabilities not expressly assumed and assigned, or (ii) any Interests in the Debtor or the acquired Assets, of any kind or nature whatsoever, attaching to the proceeds of the sale.

11. The terms and provisions of the APA and this sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, and its creditors, Alpenrose, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting Interests in the acquired Assets to be sold to Alpenrose pursuant to the Asset Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding. In no circumstance shall the APA be subject to rejection or avoidance.

12. Neither the Debtor nor Alpenrose is required to make any filing with or give any notice to, or to obtain any approval, consent, ratification, permission, waiver or

authorization from, any person or any governmental authority in connection with the execution and delivery of the APA of the consummation of the transactions contemplated therein (other than with respect to governmental licenses which do not constitute acquired Assets), and the Debtor does not need to seek or obtain shareholder consent to consummate the transactions contemplated by the APA.

13. The failure specifically to include any particular provisions of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

###

I certify that I have complied with the requirements of LBR 9021-1(a)(2)(A).

PRESENTED BY:

VANDEN BOS & CHAPMAN, LLP

By: /s/Douglas R. Ricks  
Douglas R. Ricks, OSB #044026  
Of Attorneys for Debtors-in-Possession

**First Class Mail:**

Sunshine Dairy Foods Management, LLC  
Attn: Norman Davidson, III  
801 NE 21st Ave.  
Portland, OR 97232

Karamanos Holdings, Inc.  
Attn: Norman Davidson, III  
801 NE 21st Ave.  
Portland, OR 97232

Sorrento Lactalis, Inc.  
c/o Phillips Lytle LLP  
Attn: Angela Z. Miller  
125 Main Street  
Buffalo, NY 14203

Valley Falls Farm, LLC  
c/o Bryan P. Coluccio, Chairperson –  
V.P. and General Counsel Keystone-Pacific, LLC  
18555 SW Teton Avenue  
Tualatin, OR 97062

**Electronic Mail:**

The foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system.

**AGREEMENT FOR SALE AND PURCHASE OF ASSETS  
OF  
SUNSHINE DAIRY FOODS MANAGEMENT, LLC**

This AGREEMENT FOR SALE AND PURCHASE OF ASSETS ("Agreement"), dated as of May 9, 2018, is between SUNSHINE DAIRY FOODS MANAGEMENT, LLC (the "Seller"), an Oregon limited liability company, and ALPENROSE DAIRY, INC. (the "Buyer"), an Oregon corporation.

**RECITALS**

- A. Seller is in the business of manufacturing, packaging, and distributing dairy, non-dairy, and other related food products throughout the United States of America for, to, and in connection with various customers.
- B. In connection with such customers, the Seller proposes to sell to the Buyer, and the Buyer desires to purchase, certain assets of the Seller as further described below.
- C. Seller intends to file for protection under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and Buyer acknowledges that such sale of assets is conditioned upon approval of the United States Bankruptcy Court for the District of Oregon.

**AGREEMENT**

The parties agree as follows:

**SECTION 1 ASSETS PURCHASED; LIABILITIES ASSUMED**

**1.1 Assets Purchased.** Subject to court approval and the terms and conditions set forth in this Agreement, the Seller agrees to sell to the Buyer and the Buyer agrees to purchase from the Seller the following assets (the "Assets") owned by the Seller:

(a) The customer list(s) set forth on **Exhibit A** attached hereto and the related know-how, proprietary delivery information, billing data, order history, contact lists, and all other information related to the servicing and business relationships with the customers described on **Exhibit A**. Provided, however, Buyer retains the right, in its sole discretion, to continue, modify, or terminate services to the customers described on **Exhibit A** after the Closing (defined below).

(b) To the extent transferable, all of the Seller's rights in the customer agreements and all accepted purchase orders described on **Exhibit B** attached hereto, including the Sellers rights to disavow, extend or cancel any such agreement.

**1.2 Liabilities Not Assumed.** The Buyer will not assume and will not be liable for any liabilities of the Seller, known or unknown, contingent or absolute, accrued or other, and, subject to Court approval, the Assets will be free of all liabilities, obligations, liens, and

encumbrances. Buyer may, within 30 days of the Closing, assume those liabilities of Seller which Buyer so elects upon giving Seller written notice.

**1.3 Excluded Assets.** All assets of the Seller not specifically enumerated in Section 1.1 above are excluded and not sold to the Buyer, including, without limitation, cash, accounts receivable, prepaids and deposits, equipment, legal claims and inventory.

## **SECTION 2 PURCHASE PRICE**

**2.1 Calculation of Purchase Price.** The purchase price for the Assets shall be calculated based on Two Percent (2%) of the gross revenue received by the Buyer on account of sales to the customers identified on Exhibits A & B (the "Transferred Customers") over a four-year period beginning on the date of the Closing (the "Purchase Price").

**2.2 Payment of the Purchase Price.** The Purchase Price shall be paid to the Seller in monthly installments beginning 20 days after end of the calendar month following the Closing based on the gross revenue received by the Buyer from the Transferred Customers during the prior calendar month with subsequent monthly installments on the same day of each subsequent month (based on the prior calendar month's gross receipts) for the requisite four-year period identified above. Buyer shall provide to the Seller a report of the gross revenues received from the Transferred Customers during the prior month at the same time as each monthly installment is paid.

**2.3 Acknowledgment of Potential Objections.** The Buyer acknowledges and is aware that the sale contemplated by this Agreement is subject to objections by creditors and other parties in interest.

## **SECTION 3 OTHER AGREEMENTS**

At the Closing, the parties will execute the following additional agreements (the "Related Agreements"):

- (a) The Bill of Sale, substantially in the form attached as Exhibit C; and
- (b) Such other agreements as the parties shall reasonably require.

## **SECTION 4 SELLER'S REPRESENTATIONS AND WARRANTIES**

**4.1 Power and Authority.** The Seller has the full power and authority to execute, deliver, and perform its obligations under this Agreement, subject to the approval of the Court as described above. Upon entry by the Court of an order authorizing and approving this Agreement, all documents contemplated by this Agreement shall be executed by, and be binding on, the Seller.

**4.2 No Transfer of Assets.** The Seller has not disposed of, transferred or otherwise agreed to transfer any of the assets described herein.

**4.3 No Other Warranties by Seller/Release and Waiver by Buyer.** The Seller is selling the Assets on an "AS IS, WHERE IS" basis, with all defects, apparent and not apparent, with no representations or warranties of any kind, express or implied, either oral or written, with respect to the physical condition or value of the Assets. Upon the Closing, the Buyer shall assume all risk, responsibility, liability and obligation for the physical condition, quality, performance and status of the Assets. The Buyer assumes the entire cost of all necessary servicing or repair should defects appear. The Seller has made no warranty or representation whatsoever regarding the fitness for a particular purpose, quality or merchantability of the Assets. THE SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE ASSETS. ACKNOWLEDGING THAT THIS IS AN "AS IS" TRANSACTION, TO THE FULLEST EXTENT ALLOWED BY LAW, THE BUYER HEREBY RELEASES AND WAIVES ANY AND ALL CLAIMS, WHENEVER ARISING OR ACCRUING, WHETHER KNOWN OR UNKNOWN, RELATING TO OR ARISING FROM THE CONDITION, QUALITY, PERFORMANCE OR STATUS OF THE ASSETS AT ANY TIME, AGAINST THE SELLER.

## **SECTION 5 REPRESENTATIONS OF BUYER**

The Buyer represents and warrants to the Seller as follows:

**5.1 Sufficient Funds.** The Buyer has sufficient funds on hand to close the transaction contemplated by this Agreement and is willing, authorized, and capable of unconditionally performing all obligations under this Agreement in the event that it is approved by the Court.

**5.2 Power and Authority.** The Buyer has all requisite power and authority to enter into this Agreement and carry out all of its obligations under this Agreement and the Related Agreements. The officer or officers of the Buyer who shall execute and deliver this Agreement and the Related Agreements have been duly authorized to do so by all requisite actions on part of the Buyer and no further consents are required. Upon entry by the Court of an order authorizing and approving this Agreement and the Related Agreements, all documents contemplated by this Agreement and the Related Agreements shall be executed by, and be binding on, the Buyer.

**5.3 No Conflict with Other Instruments or Agreements.** The execution, delivery, and performance by the Buyer of this Agreement and the Related Agreements will not result in a breach or violation of, or constitute a default under, the Buyer's Articles of Incorporation or Bylaws or any material agreement to which the Buyer is a party or by which the Buyer is bound.

## **SECTION 6 COVENANTS OF SELLER**

The Seller agrees that between the date of this Agreement and the Closing, the Seller will:

- (a) Not assign, sell, lease, or otherwise transfer or dispose of any of the Assets used in the performance of its business; and
- (b) At reasonable times before the Closing, the Seller will provide the Buyer and its representatives with reasonable access during business hours to the assets, titles,

contracts, and records of the Seller and will furnish such additional information concerning the Seller's business as the Buyer from time to time may reasonably request.

## **SECTION 7 COVENANTS OF BUYER**

The Buyer will use its best efforts to effectuate the transactions contemplated by this Agreement and the Related Agreements and to fulfill all the conditions of the Buyer's obligations under this Agreement and the Related Agreements and will do all acts and things as may be required to carry out the Buyer's obligations and to consummate this Agreement and the Related Agreements.

## **SECTION 8 CONDITIONS PRECEDENT TO CLOSING**

**8.1 Court Approval.** The Court shall have entered an order approving the Seller's motion for approval of this Agreement and the Related Agreements and authorizing the Seller to transfer the Assets to the Buyer free and clear of all liens, claims, encumbrances, and other interests, except as otherwise provided herein. Prior to such a hearing on any motion for approval of this Agreement, either Seller or Buyer may elect to terminate this Agreement by providing notice of the same to the other party.

**8.2 Representations, Warranties, and Covenants of Seller and Buyer.** All representations and warranties made in this Agreement by the Seller and the Buyer will be true in all material respects through the Closing and neither party will have not violated or will have performed in accordance with any covenant contained in this Agreement or the Related Agreements.

**8.3 Executed Documents.** Buyer and Seller shall have executed and delivered the Agreement and the Related Agreements at Closing.

## **SECTION 9 BUYER'S ACCEPTANCE**

The Buyer represents and acknowledges that it has entered into this Agreement on the basis of its own examination, personal knowledge, and opinion of the value of the business. The Buyer has not relied on any representations made by the Seller other than those specified in this Agreement. The Buyer further acknowledges that the Seller has made no agreement or promise to repair or improve any of the Assets being sold to the Buyer under this Agreement and that the Buyer takes all such property in an "as is" condition, except as otherwise provided in this Agreement.

## **SECTION 10 RISK OF LOSS**

The risk of loss, damage, or destruction to any of the Assets will be borne by the Seller before the Closing. In the event of such loss, damage, or destruction, the Seller will replace the lost property or will repair or cause to repair the damaged property to its condition before the damage.

## SECTION 11 CLOSING

**11.1 Time and Place.** This Agreement will be closed at the offices of Vanden Bos & Chapman, LLP, at 319 SW Washington St., Suite 520, Portland, Oregon, seven (7) days after the entry of the Court order approving this Agreement or at such other time as the parties may agree in writing (the "Closing").

**11.2 Obligations of Seller at Closing.** At the Closing, the Seller will deliver to the Buyer the following:

- (a) Bills of sale, assignments, properly endorsed certificates of title, and other instruments of transfer, in form and substance reasonably satisfactory to counsel for the Buyer, necessary to transfer and convey all of the Assets to the Buyer; and
- (b) Such other certificates and documents as may be called for by the provisions of this Agreement.

**11.3 Buyer's Obligations at Closing.** At the Closing, the Buyer will deliver to the Seller the following:

- (a) Written confirmation that all conditions precedent to the Closing have been satisfied; and
- (b) Such other certificates and documents as may be called for by the provisions of this Agreement.

## SECTION 12 DEFAULT

**12.1 Remedies on Default.** If the Buyer fails to perform any of the terms, covenants, conditions, or obligations of this Agreement, time of payment and performance being of the essence, then the Seller may have any or all remedies available under Oregon law.

**12.2 Notice of Default.** The Buyer will not be deemed in default for failure to perform the terms, covenants, and conditions of this Agreement, until notice of the default has been given to the Buyer and the Buyer has failed to remedy the default within five (5) days after the notice.

## SECTION 13 EXPENSES

Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

## SECTION 14 NOTICES

All notices, consents, waivers, requests and other communications hereunder shall be in writing and shall be delivered by courier or other means of personal service (including by means of a nationally recognized courier service or a professional messenger service), or mailed first

class, postage prepaid, by certified mail, return receipt requested, in all cases, addressed as follows:

if to the Buyer:

Alpenrose Dairy, Inc.  
c/o Carl H. Cadonau  
6149 SW Shattuck Rd.  
Portland, OR 97221

With copies to:

Cary R. Cadonau  
Brownstein Rask, LLP  
1200 SW Main St.  
Portland, OR 97205

if to the Seller:

Sunshine Dairy Foods Management, LLC  
c/o President/CEO  
801 NE 21st Ave.  
Portland OR, 97232

With a copy to:

Douglas R. Ricks  
Vanden Bos & Chapman, LLP  
319 SW Washington St., Suite 520  
Portland OR 97204

All notices, requests and other communications shall be deemed given on the date of actual receipt or delivery as evidenced by written receipt, acknowledgment or other evidence of actual receipt or delivery to the address. Either party hereto may from time to time by notice in writing served as set forth above designate a different address or a different or additional person to which all such notices or communications thereafter are to be given.

## **SECTION 15    GENERAL TERMS**

**15.1    Severability** If any term or other provision of this Agreement or the Related Agreements is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement and the Related Agreements shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement or the Related

Agreements so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

**15.2 Entire Agreement.** This Agreement and the Related Agreements constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, between the Buyer and Seller with respect to the subject matter hereof and thereof.

**15.3 Assignment.** This Agreement and the Related Agreements may not be assigned by operation of law or otherwise without the express written consent of the Seller and the Buyer (which consent may not be unreasonably withheld); provided, however, that the Buyer may assign this Agreement and the Related Agreements or any of its rights and obligations hereunder to one or more Affiliates of the Buyer without the consent of the Seller.

**15.4 Amendment.** Neither this Agreement nor the Related Agreements may be amended or modified except by an instrument in writing signed by, or on behalf of, the Seller and the Buyer.

**15.5 Waiver.** Either party to this Agreement and the Related Agreements may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto or (c) waive compliance with any of the agreements of the other party or conditions to such party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of either party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement and the Related Agreements are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**15.6 No Third Party Beneficiaries.** Agreement and the Related Agreements shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any union or any employee or former employee of the Seller, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement and the Related Agreements.

**15.7 Governing Law.** This Agreement and the Related Agreements shall be governed by, and construed in accordance with, the laws of the State of Oregon applicable to contracts executed in and to be performed in that State. All Actions arising out of or relating to this Agreement and the Related Agreements shall be heard and determined exclusively in any Oregon state court sitting in Portland, Oregon. Consistent with the preceding sentence, the parties hereto hereby (a) submit to the exclusive jurisdiction of Multnomah County Circuit Court sitting in Portland, Oregon, for the purpose of any action arising out of or relating to this

Agreement and the Related Agreements brought by any party hereto and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this Agreement and the Related Agreements or the transactions contemplated by this Agreement and the Related Agreements may not be enforced in or by any of the above-named courts.

**15.8 Jury Trial Waiver.** EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED BY THEREBY. EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE RELATED AGREEMENTS, AND THE TRANSACTIONS CONTEMPLATED BY THEREBY.

**15.9 Currency.** Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars.

**15.10 Counterparts.** This Agreement and the Related Agreements may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

The parties enter into this Agreement as of the date first written above.

**SELLER:**

SUNSHINE DAIRY FOODS  
MANAGEMENT, LLC

By: Michael D. Anderson  
Name: MICHAEL D. ANDERSON  
Title: President & CEO

**BUYER:**

ALPENROSE DAIRY, INC.

By: Rod Buhlman  
Name: CO - Pres  
Title: Carl Cadonau Jr.  
Co. Pres.

## ADDENDUM NO. 1

### AGREEMENT FOR SALE AND PURCHASE OF ASSETS OF SUNSHINE DAIRY FOODS MANAGEMENT, LLC

This ADDENDUM NO. 1 to that certain AGREEMENT FOR SALE AND PURCHASE OF ASSETS ("Addendum"), dated as of JUNE 1, 2018, is between SUNSHINE DAIRY FOODS MANAGEMENT, LLC (the "Seller"), an Oregon limited liability company, and ALPENROSE DAIRY, INC. (the "Buyer"), an Oregon corporation.

#### RECITALS

- A. Seller and Buyer entered into an Agreement for Sale and Purchase of Assets on May 8, 2018 ("Agreement"). Said Agreement is currently pending approval by the United States Bankruptcy Court for the District of Oregon.
- B. Seller and Buyer desire to enter this Addendum to provide additional terms to the Agreement with such additional terms are conditioned upon approval of the United States Bankruptcy Court for the District of Oregon.

#### AGREEMENT

The parties agree as follows:

1. Section 2.1 of the Agreement is deleted in its entirety and replaced with the following: "**Calculation of Purchase Price.** The purchase price for the Assets shall be calculated based on Two Percent (2%) of the gross revenue received by the Buyer on account of sales to the customers identified on **Exhibits A & B** (the "Transferred Customers") over a four-year period beginning on the date of the Closing plus any such sales from the date of execution of the Agreement up to the date of the Closing (the "Purchase Price")."
2. Add the following to the end of Section 7 of the Agreement: "The information, customer data, product descriptions, and all data contained in **Exhibits A & B** along with any records provided pursuant to Section 6(b) of this Agreement are confidential between the parties and shall not be disclosed to anyone else, except as shall be necessary to comply with any court order issued by a court of competent jurisdiction related to this Agreement. Any disclosure in violation of this section shall be deemed a material breach of this Agreement."
3. Section 8.1 is revised to delete the last sentence of such section so that it now reads as follows: "**Court Approval.** The Court shall have entered an order, in form mutually approved by Seller and Buyer, approving the Seller's motion for approval of this

Agreement and the Related Agreements and authorizing the Seller to transfer the Assets to the Buyer free and clear of all liens, claims, encumbrances, and other interests, except as otherwise provided herein.”

4. Section 1.1(b) of the Agreement is amended to add the following language: “It is in the sole discretion of Buyer to either assume or reject such customer agreements and purchase orders and it is expressly understood and agreed between Seller and Buyer, that Buyer shall have no liability under such customer agreements or purchase orders unless and until Buyer has executed an assumption agreement on terms acceptable to, and approved by, Buyer, in its sole and absolute discretion.

The parties enter into this Addendum as of the date first written above.

**SELLER:**

**BUYER:**

SUNSHINE DAIRY FOODS  
MANAGEMENT, LLC

ALPENROSE DAIRY, INC.

By: Michael D. Anderson  
Name: MICHAEL D. ANDERSON  
Title: President & CEO

By: Carl Radman Jr.  
Name: \_\_\_\_\_  
Title: Co-Pres.