

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

SUSTAINABLE AQUACULTURE  
INITIATIVE, LLC

Case No. 17-21251-EPK

Chapter 11

EIN#46-4381218

Debtor. \_\_\_\_\_/

**EMERGENCY MOTION FOR APPROVAL OF  
BIDDING AND AUCTION PROCEDURES FOR THE SALE OF  
SUBSTANTIALLY ALL ASSETS OF DEBTOR PURSUANT TO 11 U.S.C. § 363**

**Expedited Hearing Requested**

**Exigency**

Debtor requests an emergency hearing as several interested parties have expressed interest in purchasing the Debtor's assets, but no formal offers have been made. Debtor must establish bidding deadlines and an auction process immediately in order to preserve going concern value, as monthly income does not cover monthly expenses. (Debtor's counsel requests an interim hearing of 15 minutes in duration by Thursday September 7, 2017.)

**COMES NOW, DEBTOR, SUSTAINABLE AQUACULTURE INITIATIVE, LLC** by and through the undersigned Counsel, and files this Emergency Motion for Approval of Bidding and Auction Procedures for the Sale of Substantially All Assets of Debtor Pursuant to 11 U.S.C. § 363 and as grounds therefor states:

1. The Debtor filed for chapter 11 bankruptcy relief on September 1, 2017 ("Petition Date"). Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor remains as a Debtor-in-Possession.
2. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334 and § 363

of the Bankruptcy Code. This is a core proceeding under 28 U.S.C. § 157(b)(2).

3. The Debtor is research facility for brood stock and a hatchery serving an organic shrimp farm, Florida Organic Aquaculture LLC (“FOA”), with its principal assets located at 15369 County Road 512, Fellsmere, FL 32948.

4. FOA is also a chapter 11 debtor (case no. 17-15012-EPK). FOA is an equity holder of subsidiary, Sustainable Aquaculture Initiative LLC (“SAI”). FOA has been supporting the expenses of SAI throughout this case.

5. As of the Petition Date, the Debtor employed approximately 7 employees.

6. FOA and the Debtor’s operations are intertwined, conceptually and physically. In particular, FOA’s operation is dependent upon a saltwater well that is located a parcel of land leased by SAI. The leases for both entities are contiguous, and FOA has guaranteed the performance obligations of SAI under the SAI leases.

7. Because of the substantial debt and continuing capital needs for operations, for which both Debtors currently lack funding sources, the Debtors have decided that it is in the best business judgment and the best interests of the Debtors’ estate to establish procedures to sell substantially all of the assets of the Debtors, in the event that funding is not imminently secured. Should funding be secured prior to an auction, the Debtors will take appropriate action to approve funding and cancel the pending auction. Any stalking horse bid procedures that are approved by the Court will include a contingency for break up of the stalking horse bid in the event that financing is secured after a stalking horse bidder is established.

8. SAI and FOA have filed ex parte motions to jointly administer the related chapter 11 cases, which motions are currently pending.

9. On July 19, 2017, the FOA filed an Emergency Motion to Approve Employment of Financing and Sales Broker, Equity Partners HG LLC (“Equity Partners”) [ECF#45, Case No. 17-15012-EPK]. Said Motion was approved on July 28, 2017 [ECF#59, Case No. 17-15012-EPK].

EPK]. Equity Partners has been marketing the Debtors' businesses on a national level since the Motion to Employ was filed. Equity Partners seeks to sell the assets of SAI along with the assets of FOA, to maximize the value for each. Equity Partners does not seek any additional fee, and will treat the sales as one package, with their fee to come from the closing per the terms approved by the Court in the Order at ECF#59 in the FOA case.

10. FOA has received numerous inquiries to purchase its assets and many parties have expressed interest, but no formal offers have been made or accepted. The buyers have expressed interest in SAI's assets as a package deal. SAI filed chapter 11 for the sole purpose of being able to sell all assets in a bundle with the FOA asset sale.

11. The Debtors and Equity Partners believe that an auction will generate the most interest and highest price.

12. Upon information and belief, the Debtor's primary creditor, US Bank, Serviced by Stonehenge Capital Company LLC has not yet consented to these terms, but the propose sale is conditioned upon approval from the primary creditor.

### **Bidding Procedures**

13. The Debtor seeks approval of the bidding process for the sale of its assets set forth in the Sales Procedures attached **Exhibit A**, to be tracked along with the sale of the assets of FOA, for which a motion to approve these same procedures is currently pending. A summary of the proposal follows:

- a. **Notice of the Sale Procedures.** Equity Partners will serve a notice of the Sale Procedures on all parties who have previously expressed, to Seller or Equity Partners, an interest in acquiring all or any portion of the Assets, including, without limitation all parties who expressed an interest in acquiring certain of the Assets that will be listed in the Florida Organic Aquaculture LLC and Sustainable Aquaculture, LLC chapter 11 bankruptcy cases. Buyers are encouraged to bid for the assets of both entities combined, and must specifically delegate if they wish to bid on assets for only one entity.
- b. **Bid Proposals.** All bid proposal for the acquisition of the Assets (each, a "Bod

Proposal”) must conform to the following requirements in order to be deemed a “Qualified Bid”:

- i. Each Bid Propose must be in writing and contain the material terms and conditions regarding a propose sale of the Assets, which may include the assignment of executory contracts and unexpired leases<sup>1</sup>. No Bid Proposal may contain a financing contingency.
- ii. Each Bid Proposal must fully disclose the identity of each person or entity bidding for or purchasing the Assets or otherwise participating in such Bid Proposal and the complete terms of any such participation, including any agreement, arrangement or understanding concerning a collaborative or joint bid or any other combination concerning the proposed Bid Proposal.
- iii. Each Bid Proposal must identify the consideration to be paid for the Assets.
- iv. Each Bid Proposal must be submitted substantially in the form of an asset purchase agreement acceptable to the Seller, in consultation with Equity Partners (the "Form Asset Purchase Agreement")<sup>2</sup>.
- v. Each bidder submitting a Bid Proposal must deliver to Equity Partners,<sup>3</sup> by the Proposal Deadline (as defined below) the following: (A) copies of financial statements, letters of credit, and any other documents evidencing the prospective purchaser's ability to consummate the contemplated transaction; (B) information and satisfactory assurances that there is no regulatory issue that would prevent the prospective purchaser from fulfilling the terms, conditions, and obligations under the proposed sale transaction; and (C) the Bid Proposal. Equity Partners, in consultation with the Seller, shall have the right to determine the adequacy of the foregoing information and documents.
- vi. Each bidder submitting a Bid Proposal must also tender to Equity Partners a good faith deposit (the "Good Faith Deposit"). The Good Faith Deposit must be in cash in an amount equal to the greater of (A) \$100,000 or (B) ten percent (10%) of the consideration specified in the Bid Proposal. Equity Partners will maintain the deposits (including any additional deposit(s) required under Section J below) in a segregated, non-interest bearing account. Only one deposit shall be required to bid on the assets of both related entities.

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<sup>1</sup> The assignment of executory contracts and unexpired leases relating to the Assets will be subject to the applicable constraints of state law.

<sup>2</sup> Copies of the Form Asset Purchase Agreement will be available upon request from the Equity Partners.

<sup>3</sup> Equity Partners promptly will forward copies of these documents to the Seller and counsel for Seller.

- vii. All Bid Proposals must be delivered to Equity Partners at the following address

Equity Partners HG, LLC  
Attn: Hank Waida  
16 N. Washington St., Suite 102,  
Easton, MD 21601

- viii. Equity Partners will provide copies of all Bid Proposals to the Seller at the following address:

Sustainable Aquaculture Initiative, LLC  
930 W. Indiantown Road, Suite 204  
Jupiter, FL 33458

- ix. The Equity Partners will also provide copies of all Bid Proposals to counsel for the Seller at the following addresses:

Markarian & Hayes  
Attn: Malinda L. Hayes, Esq.  
2925 PGA Blvd., Suite 204  
Palm Beach Gardens, FL 33410

- x. No letter of intent or other written or oral proposal submitted to Equity Partners prior to service of the notice of Sale Procedures detailed above in connection with the acquisition of the Assets, or any portion of combination thereof, shall be considered a Bid Proposal for purposes of these Sale Procedures.
- c. Deadline for Submission of Bid Proposals. Each bidder submitting a Bid Proposal must deliver such Bid Proposal so that it is actually received by Equity Partners on or before September 29, 2017 at 5:00 p.m. prevailing Eastern time (the "Proposal Deadline"). Each Bid Proposal shall be irrevocable. The determination of whether a Bid Proposal constitutes a Qualified Bid shall be made by the Seller, in its sole discretion, in consultation with Equity Partners. The Proposal Deadline may be extended in the sole discretion of Seller, in consultation with Equity Partners.
  - d. Credit Bidding: All rights to credit bidding shall be preserved as permitted by 11 U.S.C. § 363(k). Secured creditors wishing to credit bid must bid at the auction in accordance with the bidding procedures established by Equity Partners, including the requirement that all credit bidders register prior to placing bids. In the event a secured creditor is the highest bidder for any Asset(s), at closing such creditor shall

be required to pay Equity Partners the purchase price (offset by the amount of such creditor's claim against the Asset(s) purchased), plus such creditor's pro rata share of expenses pursuant to Equity Partners' engagement, unless otherwise agreed by Equity Partners or otherwise ordered by this Court.

- e. The Auction. In the event that at least one Qualified Bid is submitted, as determined by the Seller in its sole discretion, in consultation with the Equity Partners, then the Equity Partners will conduct an auction (if necessary) on October 3, 2017 at 10:00 a.m. prevailing Eastern time (the "Auction") at the U.S. Bankruptcy Court, Flagler Waterview Building, 1515 N. Flagler Dr., Room 801, Courtroom B, West Palm Beach, FL 33401 or such other location to be noticed by the Equity Partners 14 days prior to the auction.<sup>4</sup> **ONLY BIDDERS THAT SUBMIT A QUALIFIED BID FOR THE ASSETS WILL BE ALLOWED TO PARTICIPATE IN THE AUCTION.** The Auction shall be conducted as follows:
  - i. At the commencement of the Auction, Equity Partners will announce the highest or otherwise best Bid Proposal;
  - ii. Equity Partners shall then commence the Auction recorded stenographically, calling for incremental bids from bidders who submitted Bid Proposals, with minimum overbid increments initially of \$25,000, but which may be reduced to smaller increments at the Equity Partners' discretion;
  - iii. Equity Partners will open and close bidding and may, in its sole discretion, re- open bidding;
  - iv. Bidders shall be allowed to caucus privately among themselves (but not with other bidders) at any time; provided, that Equity Partners may impose uniform reasonable time restrictions on such caucuses so that the Auction may continue and be completed in an orderly and timely manner; and
  - v. Equity Partners may, with the Seller's prior approval, adopt such other rules for the Auction (including changes to bid increments and rules that may depart from those set forth herein) that it anticipates will result in the highest or otherwise best value for the Assets; provided, that any changed or additional rules for the Auction are not materially inconsistent with the Sale Procedures and are communicated to all persons who have submitted a Qualified Bid at or before the Auction.
- f. Selection of the Highest and Best Offers. The Seller, in consultation with Equity Partners, will determine which Bid Proposal (if any) is the highest and best offer

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<sup>4</sup> If no Qualified Bid is submitted, the marketing process will be concluded.

for the sale or other transfer of the Assets from a bidder (the "Prevailing Bidder") and the next highest or otherwise best bid (the "Back-Up Bid") from a bidder (the "Back-Up Bidder").<sup>5</sup> The following non-exclusive factors will influence the Seller's determination of the Prevailing Bid and Back-Up Bid: (i) the consideration offered to be paid; (ii) the potential purchaser's financial strength and ability to timely close on the proposed transaction; (iii) any consent issues surrounding assignment of executory contracts and unexpired leases; (iv) any regulatory issues implicated by the proposed sale transaction; (v) modifications to the Form Asset Purchase Agreement; and (vi) the best way to maximize the value received for the Assets. The Seller, in consultation with Equity Partners, shall have the right to waive any technical violation of, or deviation from, the Sale Procedures consistent with the goal of maximizing the sale price for the Assets.

- g. Deposit(s). Within two business days after conclusion of the Auction, the proponent of the Prevailing Bid must tender to the Equity Partners an additional cash deposit so that the total deposit for its Prevailing Bid equals 15% of the proposed consideration to be paid under such Prevailing Bid. Such deposit (including such proponent's Good Faith Deposit) shall not be refundable unless such Prevailing Bid fails to close solely as a result of a breach by the Seller under the applicable asset purchase agreement. In the event the transaction embodied in such Prevailing Bid fails to close and the Seller elects to close the transaction described in the Back-Up Bid, then the provisions of this paragraph shall apply to the party who submitted the Back-Up Bid. Any deposit received under these Sale Procedures shall be returned within forty-eight hours after the auction, except for deposits submitted in connection with Prevailing Bids and Back-Up Bids.
- h. Sale Consummation. The sale of the Assets in accordance with the Prevailing Bid must be consummated on or before the 15<sup>th</sup> calendar day following the Court Approval. In the event that the sale of Assets in accordance with the Prevailing Bid is not closed by the applicable Closing Date as a result of breach by the Prevailing Bidder, then the Prevailing Bidder's deposit will be forfeited and the Back-Up Bidder will be notified. The sale of Assets in accordance with a Back-Up Bid must be consummated on or before the 30<sup>th</sup> calendar day following such notification (each such date, a "Back-Up Closing Date"). In the event that the sale of Assets in accordance with a Back-Up Bid is not closed by the applicable Back-Up Closing Date, then such Back-Up Bidder's deposit will be forfeited.

14. Pursuant to 11 U.S.C. § 363(f), this sale by the Debtor shall be free and clear of all mortgages, liens, pledges, hypothecations, security interests, charges, encumbrances, claims and interests. To the extent that the mortgages, liens, pledges, hypothecations, security interests, charges, encumbrances, claims and interests are valid and not avoidable, they will follow the

proceeds of said sale.

15. The Debtor believes this sale is in the best interests of the Chapter 11 estate and its creditors, is proposed in good faith and is supported by a substantial business justification.

16. The Debtor has solicited or is soliciting interest from other parties, to whom copies of this Motion and the Notice of Hearing will be sent.

17. The Debtor asserts that its efforts to date, coupled with the bidding procedures detailed in this Motion, will garner the best and highest price for the Assets.

18. The Debtor therefore requests that it be authorized to complete and to conduct the proposed auction pursuant to § 363(b) of the Bankruptcy Code, which permits sale of the property of the estate, other than in the ordinary course of business, after notice and hearing.

**WHEREFORE**, Debtor respectfully requests an Order from this Court authorizing the Debtor to conduct a sale of all of the Debtor's assets pursuant to 11 U.S.C. § 363(f) upon the terms set forth herein, an Order that the final sale hearing be set on or about October 4, 2017 to approve the winning bidder and set closing within thirty days of the final sale hearing, the sale be free and clear of all mortgages, liens, pledges, hypothecations, security interests, charges, encumbrances, claims and interests with any such mortgages, liens, pledges, hypothecations, security interests, charges, encumbrances, claims and interests attached to the sale of the proceeds of the sale, notwithstanding said free and clear sale, Debtor shall pay all taxes that are due and owing, notwithstanding said free and clear sale, the Debtor must obtain the consent of United Bank through Stonehenge Capital Management LLC and granting such other and further relief as the Court deems just and proper.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local rule 2090-1(A).



Dated: September 5, 2017

MARKARIAN & HAYES  
Attorneys for Debtor  
2925 PGA Blvd., Suite #204  
Palm Beach Gardens, FL 33410  
(561) 626-4700

By: /s/ Malinda L. Hayes, Esq  
MALINDA L. HAYES, ESQ.  
Florida Bar No. 0073503

**SERVICE LIST**

**Notice provided by electronic mail to:**

Malinda L Hayes, Esq. on behalf of Debtor Sustainable Aquaculture Initiative LLC  
[malinda@businessmindedlawfirm.com](mailto:malinda@businessmindedlawfirm.com), [mlhbnk@gmail.com](mailto:mlhbnk@gmail.com)

Office of the US Trustee  
[USTPRegion21.MM.ECF@usdoj.gov](mailto:USTPRegion21.MM.ECF@usdoj.gov)

ATTORNEY MALINDA L. HAYES SHALL MAIL A COPY OF THIS MOTION IMMEDIATELY UPON RECEIPT OF THE NOTICE OF EMERGENCY HEARING TO ALL CREDITORS AND FILE A CERTIFICATE OF SERVICE. ALL NON-ELECTRONICALLY NOTICED CREDITORS WILL BE PROVIDED REGULAR MAIL NOTICE OF THIS MATTER AND THE HEARING THEREON. BASED ON THE POSSIBILITY THAT THEY WILL NOT RECEIVE SUCH NOTICE IN ADVANCE OF THE HEARING, DEBTOR WILL REQUEST AN ORDER WITH APPROPRIATE LANGUAGE PROVIDING AN ADDITIONAL PERIOD TO OBJECT.

### Sale Procedures

These procedures (the “Sale Procedures”) will govern the marketing and sale of Florida Organic Aquaculture LLC and Sustainable Aquaculture, LLC (the “Seller”) with its principal assets located at 15369 County Road 512, Fellsmere, FL 32948 and related assets described on **Exhibit A** (collectively, the “Assets”), by Equity Partners HG, LLC (together, the “Broker”).

- A. Notice of the Sale Procedures. The Broker will serve a notice of the Sale Procedures on all parties who have previously expressed, to Seller or Broker, an interest in acquiring all or any portion of the Assets.
- B. Bid Proposals. All bid proposals for the acquisition of the Assets (each, a “Bid Proposal”) must conform to the following requirements in order to be deemed a “Qualified Bid”:
1. Each Bid Proposal must be in writing and contain the material terms and conditions regarding a proposed sale of the Assets, which may include the assignment of executory contracts and unexpired leases.<sup>1</sup> No Bid Proposal may contain a financing contingency.
  2. Each Bid Proposal must fully disclose the identity of each person or entity bidding for or purchasing the Assets or otherwise participating in such Bid Proposal and the complete terms of any such participation, including any agreement, arrangement or understanding concerning a collaborative or joint bid or any other combination concerning the proposed Bid Proposal.
  3. Each Bid Proposal must identify the consideration to be paid for the Assets.
  4. Each Bid Proposal must be submitted substantially in the form of an asset purchase agreement acceptable to the Seller, in consultation with the Broker (the “Form Asset Purchase Agreement”),<sup>2</sup> or, if applicable, a Stalking Horse Agreement (as defined below).
  5. Each bidder submitting a Bid Proposal must deliver to the Broker,<sup>3</sup> by the Proposal Deadline (as defined below) the following: (A) copies of financial statements, letters of credit, and or any other documents evidencing the prospective purchaser’s ability to consummate the contemplated transaction; (B) information and satisfactory assurances that there is no regulatory issue that would prevent the prospective purchaser from fulfilling the terms, conditions, and obligations under the proposed sale transaction; and (C) the Bid Proposal. The Broker, in consultation with the Seller, shall have the right to determine the adequacy of the foregoing information and documents.

<sup>1</sup> The assignment of executory contracts and unexpired leases relating to the Assets will be subject to the applicable constraints of state law.

<sup>2</sup> Copies of the Form Asset Purchase Agreement will be available upon request from the Broker.

<sup>3</sup> The Broker promptly will forward copies of these documents to the Seller and counsel for Seller.



6. Each bidder submitting a Bid Proposal must also tender to the Broker a good faith deposit (the "Good Faith Deposit"). The Good Faith Deposit must be in cash in an amount equal to the greater of (A) \$100,000 or (B) ten percent (10%) of the consideration specified in the Bid Proposal. The Broker will maintain the deposits in a segregated, non-interest bearing account. **Only one deposit shall be required to bid on the assets of both related entities.**
  7. All Bid Proposals must be delivered to the Broker via email to [hwaida@equitypartnershg.com](mailto:hwaida@equitypartnershg.com), or the following address:  
  
Equity Partners HG, LLC  
Attn: Hank Waida  
16 N. Washington St., Suite 102,  
Easton, MD 21601
  8. The Broker will provide copies of all Bid Proposals to the Seller at the following email addresses:
  9. The Broker will also provide copies of all Bid Proposals to counsel for the Seller at the following email addresses:
  10. No letter of intent or other written or oral proposal submitted to the Broker prior to service of the notice of Sale Procedures in accordance with Section A above in connection with the acquisition of the Assets, or any portion of combination thereof, shall be considered a Bid Proposal for purposes of these Sale Procedures.
- C. Due Diligence Materials. To assist prospective purchasers in their evaluation of the Assets, the Broker will provide access to information and documentation related to the Assets in an online virtual data room created by and maintained by the Broker in consultation with Seller (collectively, the "Due Diligence Materials"). ***The Due Diligence Materials will be provided without any representation or warranty of any kind as to the accuracy or correctness of any information contained therein.*** Only those parties who sign a confidentiality agreement in a form acceptable to the Broker and the Seller will be provided with access to the Due Diligence Materials. All contacts and requests regarding the Due Diligence Materials by potential purchasers should be directed to the Broker. Physical inspections of the Assets will be made available by the Seller.
- D. Deadline for Submission of Bid Proposals. Each bidder submitting a Bid Proposal must deliver such Bid Proposal so that it is actually received by the Broker on or before **September 29, 2017** at 5:00 p.m. prevailing Eastern time (the "Proposal Deadline"). Each Bid Proposal shall be irrevocable. The determination of whether a Bid Proposal constitutes a Qualified Bid shall be made by the Seller, in its sole discretion, in consultation with Broker. The Proposal Deadline may be extended in the sole discretion of Seller, in consultation with Broker.

- E. Stalking Horse Bids. Any bidder wishing for its Bid Proposal to serve as a “Stalking Horse Bid” must, before **September 15, 2017** at 5:00 p.m. prevailing Eastern time, (i) submit a Qualified Bid and (ii) notify the Broker, in writing, of its desire to have its Bid Proposal considered a Stalking Horse Bid. The Seller, in consultation with the Broker, may elect to designate a Bid Proposal as a Stalking Horse Bid at any time up to and including seven days prior to the Proposal Deadline by approving the form and substance of the Stalking Horse Agreement with such bidder (each, a “Stalking Horse Bidder”) during the sale process. The Broker will distribute to all known potential bidders a copy of the Stalking Horse Agreement on or before the Proposal Deadline. Any Stalking Horse Bidder must share any information requested by the Seller regarding the Assets with the Broker, who may then include these materials in the Due Diligence Materials to be shared with other potential bidders. For the avoidance of doubt, the Bid Proposal selected as the opening offer that is not a designated Stalking Horse Bid will not be entitled to the Stalking Horse Bid protections set forth below. As used herein, the “Stalking Horse Agreement” means the Form Asset Purchase Agreement, with changes thereto acceptable to the Seller in its sole discretion, in consultation with the Broker.
- F. Stalking Horse Bid Protections. If a Stalking Horse Bid is designated, then upon the consummation of a sale to any party (other than the Stalking Horse Bidder) who submits the Prevailing Bid (as defined below), the Broker shall pay to the Stalking Horse Bidder from the proceeds of such sale, in cash or other immediately available funds, a mutually agreed amount of the cash consideration set forth in the Stalking Horse Agreement as a “Breakup Fee” (which will be inclusive of any and all attorneys’ fees and expenses incurred by the Stalking Horse Bidder as an expense reimbursement). To be entitled to the Break-Up Fee, the Stalking Horse Bidder must remain ready, willing, and able to close in accordance with the Stalking Horse Agreement. The Break-Up Fee shall be solely payable from the proceeds of a sale and the Seller shall have no liability for the payment of the Break-Up Fee.
- G. Credit Bidding: All rights to credit bidding shall be preserved as permitted by 11 U.S.C. § 363(k). Secured creditors wishing to credit bid must bid at the auction in accordance with the bidding procedures established by Equity Partners, including the requirement that all credit bidders register prior to placing bids. In the event a secured creditor is the highest bidder for any Asset(s), at closing such creditor shall be required to pay Equity Partners the purchase price (offset by the amount of such creditor’s claim against the Asset(s) purchased), plus such creditor’s pro rata share of expenses pursuant to Equity Partners’ engagement, unless otherwise agreed by Equity Partners or otherwise ordered by this Court.
- H. The Auction. In the event that at least one Qualified Bid is submitted, as determined by the Seller in its sole discretion, in consultation with the Broker, then the Broker will conduct an auction (if necessary) on **October 3, 2017** at 10:00 a.m. prevailing Eastern time (the “Auction”) at the **U.S. Bankruptcy Court, Flagler Waterview Building, 1515 N. Flagler Dr., Room 801, Courtroom B, West Palm Beach, FL 33401** or such other

location to be noticed by the Broker 14 days prior to the auction.<sup>4</sup> ONLY BIDDERS THAT SUBMIT A QUALIFIED BID FOR THE ASSETS WILL BE ALLOWED TO PARTICIPATE IN THE AUCTION. The Auction shall be conducted as follows:

1. At the commencement of the Auction, the Broker will announce the highest or otherwise best Bid Proposal;
  2. The Broker shall then commence the Auction recorded stenographically, calling for incremental bids from bidders who submitted Bid Proposals, with minimum overbid increments initially of \$25,000, but which may be reduced to smaller increments at the Broker's discretion;
  3. The Broker will open and close bidding and may, in its sole discretion, re-open bidding;
  4. Bidders shall be allowed to caucus privately among themselves (but not with other bidders) at any time; provided, that the Broker may impose uniform reasonable time restrictions on such caucuses so that the Auction may continue and be completed in an orderly and timely manner; and
  5. The Broker may, with the Seller's prior approval, adopt such other rules for the Auction (including changes to bid increments and rules that may depart from those set forth herein) that it anticipates will result in the highest or otherwise best value for the Assets; provided, that any changed or additional rules for the Auction are not materially inconsistent with the Sale Procedures and are communicated to all persons who have submitted a Qualified Bid at or before the Auction.
- I. Selection of the Highest and Best Offers. The Seller, in consultation with the Broker, will determine which Bid Proposal (if any) is the highest and best offer for the sale or other transfer of the Assets from a bidder (the "Prevailing Bidder") and the next highest or otherwise best bid (the "Back-Up Bid") from a bidder (the "Back-Up Bidder").<sup>5</sup> The following non-exclusive factors will influence the Seller's determination of the Prevailing Bid and Back-Up Bid: (i) the consideration offered to be paid; (ii) the potential purchaser's financial strength and ability to timely close on the proposed transaction; (iii) any consent issues surrounding assignment of executory contracts and unexpired leases; (iv) any regulatory issues implicated by the proposed sale transaction; (v) modifications to the Form Asset Purchase Agreement; and (vi) the best way to maximize the value received for the Assets. The Seller, in consultation with the Broker, shall have the right to waive any technical violation of, or deviation from, the Sale Procedures consistent with the goal of maximizing the sale price for the Assets.
- J. Deposit(s). Within two business days after conclusion of the Auction, the proponent of the Prevailing Bid must tender to the Broker an additional cash deposit so that the total deposit

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<sup>4</sup> If no Qualified Bid is submitted, the marketing process will be concluded.

<sup>5</sup> To the extent the Prevailing Bid fails to consummate a transaction, all references to Prevailing Bid shall be substituted with Back-Up Bid.

for its Prevailing Bid equals 15% of the proposed consideration to be paid under such Prevailing Bid. Such deposit (including such proponent's Good Faith Deposit) shall not be refundable unless such Prevailing Bid fails to close solely as a result of a breach by the Seller under the applicable asset purchase agreement. In the event the transaction embodied in such Prevailing Bid fails to close and the Seller elects to close the transaction described in the Back-Up Bid, then the provisions of this paragraph shall apply to the party who submitted the Back-Up Bid. Any deposit received under these Sale Procedures shall be returned within 48 hours after the auction, except for deposits submitted in connection with Prevailing Bids and Back-Up Bids.

- K. Sale Consummation. The sale of the Assets in accordance with the Prevailing Bid must be consummated on or before the 15<sup>th</sup> calendar day following the Auction. In the event that the sale of Assets in accordance with the Prevailing Bid is not closed by the applicable Closing Date as a result of breach by the Prevailing Bidder, then the Prevailing Bidder's deposit will be forfeited and the Back-Up Bidder will be notified. The sale of Assets in accordance with a Back-Up Bid must be consummated on or before the 15<sup>th</sup> calendar day following such notification (each such date, a "Back-Up Closing Date"). In the event that the sale of Assets in accordance with a Back-Up Bid is not closed by the applicable Back-Up Closing Date, then such Back-Up Bidder's deposit will be forfeited.

**Exhibit A**

1. All of FOA and SAI's interests in personal property necessary to conduct aquaculture, research and development operations at the real property, including equipment, contracts, leasehold improvements, leases, and permits.