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Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re

NORPAC Foods, Inc., Hermiston Foods, LLC, and Quincy Foods, LLC,

Debtors.

Case No. 19-62584-pcm11

**LEAD CASE**

(Jointly Administered with Case Nos. 19-33102-pcm11 and 19-33103-pcm11)

**NOTICE OF MOTION TO APPROVE SALE OF ASSETS TO OPC OR HIGHER AND BETTER BIDDER AT AUCTION, AUCTION, BIDDING PROCEDURES, SALE HEARING, AND OBJECTION DEADLINES**

**PLEASE TAKE NOTICE** that Debtors and Debtors-in-Possession NORPAC Foods, Inc. ("NORPAC"), Hermiston Foods, LLC ("Hermiston Foods"), and Quincy Foods, LLC ("Quincy Foods") (together, "Debtors") moved for approval of the sale of substantially all of Debtors' assets to Oregon Potato Company ("OPC") if there are no higher and better offers from qualified bidders at an auction scheduled for October 24, 2019 commencing at 10:00 a.m. prevailing Pacific time.

The sale to OPC would be pursuant to the Asset Purchase Agreement ("APA") entered into with OPC, a copy of which was filed with the Court and may also be obtained by contacting Spencer Fisher at spencer.fisher@ tonkon.com or from the website of Kurtzman Carson Consultants

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LLC at <http://www.kccllc.net/norpacfoods>. Capitalized terms used but not otherwise defined in this notice shall have the meanings assigned to such terms in the APA. Net sale proceeds will be distributed pursuant to further order of the Court.

**PLEASE TAKE FURTHER NOTICE** that, the APA provides that OPC will assume certain "Assumed Liabilities" and take title to the Assets subject to certain "Permitted Encumbrances" as defined in the APA. The Permitted Encumbrances include valid agricultural liens (which includes agricultural produce and grain producer liens pursuant to ORS 87.705 and ORS 87.755 and processor and preparer liens pursuant to RCW 60.13.020 and RCW 60.13.030) and PACA trust rights to the extent they secure amounts owed to growers for 2019 crops that are Assumed Liabilities under the APA. Pursuant to 11 U.S.C. §§ 105 and 363, Debtors propose to sell the Purchased Assets to OPC or the Successful Bidder at auction (the "Purchaser"), and obtain an order providing and authorizing, *inter alia*, the following: (i) that other than the Permitted Encumbrances, the sale of the Purchased Assets to Purchaser is free and clear of all liens, claims, interests, obligations, and encumbrances; (ii) that other than the Assumed Liabilities, Purchaser has not assumed any of Debtors' liabilities or obligations; (iii) that Purchaser is not a successor to Debtors; (iv) that all persons that have been served with this Notice are bound by the order and are enjoined from pursuing Purchaser to recover on any claims they may have against Debtors; and (v) that the APA and related agreements were entered into in good faith, without collusion, and from arms' length bargaining positions.

**PLEASE TAKE FURTHER NOTICE** that the Court entered an order authorizing Debtors to hold an auction to sell the Purchased Assets if a qualified overbid is received. The auction, if one occurs, is scheduled for **October 24, 2019 at 10:00 a.m. prevailing Pacific time** at the offices of Tonkon Torp LLP, 888 SW Fifth Avenue, Suite 1600, Portland, Oregon 97204.

**PLEASE TAKE FURTHER NOTICE** that the Court entered an order approving Bid Procedures in connection with the sale and the auction. A copy of the Bid Procedures was filed with the court and can be obtained by contacting Spencer Fisher at [spencer.fisher@tonkon.com](mailto:spencer.fisher@tonkon.com) or from the website of Kurtzman Carson Consultants LLC at <http://www.kccllc.net/norpacfoods>.

**PLEASE TAKE FURTHER NOTICE** that competing bidders are required to submit competing bids in an amount that is at least equal to the Purchase Price provided in the APA, plus \$3,000,000 (the "Initial Overbid Amount"), and such purchase price must have a cash component that is not less than that provided for in the APA, and otherwise qualify as bidders in accordance with the approved Bidding Procedures prior to **5:00 p.m. prevailing Pacific time on October 18, 2019**. The Purchase Price, as more particularly set forth in the APA, is an amount equal to (i) One Hundred Fifty-Five Million Five Hundred Thousand Dollars (\$155,500,000), subject to withholding of the Indemnification Escrow Amount; plus (ii) the amount by which the Inventory Value is greater or less than the Target Inventory Value; plus (iii) the Accounts Receivable Collection Value, as those terms are defined in the APA.

**PLEASE TAKE FURTHER NOTICE** that a hearing on the proposed sale to Purchaser (the "Sale Hearing"), is scheduled to be held on **October 28, at 9:30 a.m. prevailing Pacific Time**, or at such later time as may be announced at the auction by Debtors at the United States Bankruptcy Court for the District of Oregon, Courtroom 1, 1001 SW Fifth Avenue, Portland, Oregon 97204.

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**PLEASE TAKE FURTHER NOTICE** that if you wish to object to the sale of the Purchased Assets, you must, on or before **October 18, 2019 at 5:00 p.m.** prevailing Pacific time, file a written objection with the United States Bankruptcy Court for the District of Oregon.

**PLEASE TAKE FURTHER NOTICE** that in connection with the sale, Debtors intend to assume and assign certain of Debtors' executory contracts and leases to the Purchaser. On or before the date that is ten (10) Business Days following the date on which the Bid Procedures Order is entered, Debtors will file a notice of potential assumption (the "Assumption Notice") with the Bankruptcy Court and serve such notice on each counterparty to an executory contract or lease listed thereon. The Assumption Notice will include a schedule (the "Cure Schedule") identifying all executory contracts and leases that Debtors believe may be assumed and assigned in connection with the Transaction and setting forth a good faith estimate of the amount, if any, required to cure any monetary default under each such executory contract or lease (the "Cure Cost"). If no cure cost is estimated to be applicable, the amount of such Cure Cost designated shall be \$0.00.

**PLEASE TAKE FURTHER NOTICE** that on or before **October 23, 2019**, (the "Designation Deadline"), OPC and each other qualified bidder that desires to participate in the Auction shall provide to Sellers an updated schedule listing those executory contracts and Leases that were set forth on the Cure Schedule that it desires to have assumed and assigned to it at Closing (the "Designated Contracts"). Sellers shall promptly inform the Court and interested parties of the Designated Contracts. Notwithstanding the foregoing, Purchaser shall have the right to remove a contract or lease from the list of Designated Contracts at any time pending Closing of the Transaction, even after entry of the Sale Order. Only those Designated Contracts that Purchaser finally elects to assume as of Closing will be assumed by Sellers and assigned to Buyer pursuant to the Sale Order at Closing.

**PLEASE TAKE FURTHER NOTICE** that if you wish to object to the assumption of an executory contract or lease listed on the Assumption Notice or to the amount of the associated Cure Cost, you must, on or before **October 18, 2019 at 5:00 p.m.** prevailing Pacific time, file a written objection with the United States Bankruptcy Court for the District of Oregon, stating the specific facts upon which the objection is based

**PLEASE TAKE FURTHER NOTICE** that if OPC is not the Purchaser, or as to a Designated Contract that was not listed in the Assumption Notice, if you wish to object to the assumption of such contract or to the amount of the associated Cure Cost, you must, either (i) prior to the Sale Hearing file a written objection with the United States Bankruptcy Court for the District of Oregon stating the specific facts upon which the objection is based; or (ii) appear at the Sale Hearing and make your objection.

**PLEASE TAKE FURTHER NOTICE** that unless a timely objection is filed as to a Cure Cost scheduled by Debtors, the Cure Cost scheduled by Debtors on the Assumption Notice shall be binding upon the nondebtor party for all purposes in this Chapter 11 case and will constitute a final determination of the total Cure Cost required to be paid in connection with the potential assumption and assignment of such executory contract or unexpired lease. Further, unless a timely objection is filed, no further evidence shall be required to satisfy the requirements for assumption and assignment, including, without limitation, any further evidence of adequate assurance of performance by OPC, and the nondebtor party to such executory contract or unexpired lease shall be barred from objecting to the assumption and assignment of such executory contract or unexpired lease, and shall

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be deemed to consent to the assumption and assignment of such executory contract or unexpired lease.

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Cure Amounts and Debtors' proposed assumption and assignment of the Designated Contracts is scheduled to be held on **October 28, at 9:30 a.m.** prevailing Pacific Time at the United States Bankruptcy Court for the District of Oregon, Courtroom 1, 1001 SW Fifth Avenue, Portland, Oregon 97204.

Copies of any of the pleadings or documents referenced herein may be obtained by contacting Spencer Fisher at [spencer.fisher@tonkon.com](mailto:spencer.fisher@tonkon.com) or from the website of Kurtzman Carson Consultants LLC at <http://www.kccllc.net/norpacfoods>.

DATED this 25th day of September, 2019.

TONKON TORP LLP

By /s/ Michael W. Fletcher

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