

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
DADONG CATERING LLC,)	
)	Case No. 19-13629 (SCC)
Debtor.)	
)	

**ORDER (I) AUTHORIZING AND APPROVING PROCEDURES FOR THE SALE OF
THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS AND INTERESTS;
(II) APPROVING THE DEBTOR'S SELECTION OF A STALKING HORSE BIDDER;
(III) SCHEDULING AN AUCTION, SALE HEARING, AND OTHER DATES AND
DEADLINES; (IV) APPROVING PROCEDURES FOR ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH THE SALE OF THE DEBTOR'S ASSETS; (V) APPROVING
SALE OF PROPERTY FREE AND CLEAR OF LIENS; (VI) APPROVING
FORM OF NOTICE OF SALE; AND (VII) GRANTING RELATED RELIEF**

Upon the Motion¹ (the "Motion") [ECF No. 32] of DaDong Catering LLC, as debtor and debtor-in-possession (the "Debtor") in the above-captioned Chapter 11 case (the "Chapter 11 Case") for entry of an Order (i) authorizing and approving procedures for the sale of substantially all of the Debtor's Assets free and clear of all liens and interests; (ii) authorizing the Debtor to designate a stalking horse purchaser and grant stalking horse protections; (iii) scheduling an auction, Sale Hearing, and other dates and deadlines; (iv) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the sale of the Debtor's Assets; notice of the Motion being proper and sufficient and all interested parties having been afforded an opportunity to be heard with respect to the Motion; after a hearing conducted on December 4, 2019, and upon review and consideration of the relief sought in the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors, and other parties in interest:

¹ All capitalized terms not defined in this Order shall have the meanings ascribed to them in the Motion.

THE COURT FINDS 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, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The bases for the relief requested in the Motion are: (i) sections 105, 363, and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007, and 9014; (iii) Local Rules 2002-1, 6004-1, 6006-1, and 9006-1(b), and (iv) the Sale Guidelines.

D. Notice of the Motion has been given to: (i) the United States Trustee for the Southern District of New York; (ii) proposed counsel to the Committee, if one is appointed; (iii) the Debtor's 20 largest unsecured creditors; (iv) the United States Attorney's Office for the Southern District of New York; (v) the Internal Revenue Service; (vi) the office of the New York State Attorney General; (vii) all parties who have expressed a written interest in some or all of the Assets; (viii) each governmental agency that is an interested party with respect to the Sale; (ix) all parties which, to the best of the Debtor's knowledge, information, and belief, may have asserted a lien in any of the Debtor's Assets, (x) all parties to executory contracts and unexpired leases proposed to be assumed and assigned, or rejected, as part of the proposed transaction; and (xi) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 and 9010(b).

E. Notice of the Motion was adequate and sufficient under the circumstances of this Chapter 11 Case, and such notice complied with all of the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Sale Guidelines.

F. The Debtor has articulated good and sufficient reasons for this Court to: (i) approve the Bid Procedures; (ii) authorize the Debtor to designate a stalking horse purchaser and grant stalking horse protections, including a 3% break-up fee (the "Break-Up Fee"); (iii) schedule the Auction and Sale Hearing and approve the manner of notice of the Auction and Sale Hearing; and (iv) approve the Assumption and Assignment Procedures regarding the Contracts and Leases, including notice of proposed cure amounts. The relief granted herein is in the best interests of the Debtor, its estate and creditors, and other parties in interest.

G. The Motion, this Order, and the Assumption and Assignment Procedures are reasonably calculated to provide counterparties to any Contracts and Leases to be assumed by the Debtor and assigned to the Successful Bidder with proper notice of the intended assumption and assignment of its Contracts, the procedures in connection therewith, and establishment of any cure amounts relating thereto.

H. The Sale Notice, substantially in the form attached hereto as **EXHIBIT 3**, is reasonably calculated to provide interested parties with timely and proper notice of the proposed sale, including, without limitation: (i) the date, time, and place of the Auction; (ii) the Bid Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Assets to be sold; (v) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds; (vi) notice of the proposed assumption and assignment

of Contracts and Leases to the Successful Bidder; and (vii) no other or further notice of the Sale shall be required.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent set forth in this Order, and solely with respect to establishment of the Bid Procedures.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.
3. The Bid Procedures, substantially in the form attached hereto as **EXHIBIT 1**, are approved in their entirety, and the Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale or sales of the Assets. Any party desiring to bid on any of the Assets shall comply with the Bid Procedures and this Order. The Debtor is authorized to take any and all actions necessary to implement the Bid Procedures.
4. Stalking Horse. The Debtor is authorized to designate a Stalking Horse Bidder. The Debtor shall designate a Stalking Horse Bidder by **5:00 p.m. (prevailing Eastern Time) on December 20, 2019** by filing a "Notice of Selection of Stalking Horse Bidder." Contemporaneously therewith, the Debtor shall file an asset purchase agreement between the Debtor and the Stalking Horse Bidder. To the extent the Debtor does not select a Stalking Horse bidder, the Debtor shall file a form APA by **5:00 p.m. (prevailing Eastern Time) on December 20, 2019** in lieu of filing a Notice of Selection of Stalking Horse Bidder. The Stalking Horse Bidder's opening bid shall serve as the opening bid at the Auction. The Stalking Horse Bidder shall be entitled to the Break-Up Fee of 3% of its opening bid if it is not the successful bidder at the Auction.

5. Bid Deadline. The deadline by which all bids for the Debtors' Assets must be *actually received* by the parties specified in the Bid Procedures is **January 15, 2020 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

6. Auction. If multiple Qualified Bids are received by the Debtors on or before the Bid Deadline, then the Debtors shall conduct an auction on **January 17, 2020 at 1:00 p.m. (prevailing Eastern Time)** at **the former premises of the Debtor, 3 Bryant Park (120 West 42nd Street, New York, NY 10036)**, or such later time on such day or other place as the Debtor shall notify the Noticed Parties.

7. If the Debtor receives one or more Qualified Bids from Qualified Bidders, then the Debtor shall conduct the Auction in accordance with the Bid Procedures.

8. Each bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale, as set forth in the Bid Procedures, the Auction shall be conducted openly, and the Auction shall be transcribed or videotaped.

9. The Debtor, in consultation with the Consultation Parties, may (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid, any Bid that, in the discretion of the Debtor, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bid Procedures, or (iii) contrary to the best interests of the Debtor's estate and its creditors; and (c) at or before the conclusion of the Auction, may impose such other terms and conditions upon Qualified Bidders as the Debtor, in consultation with the Consultation Parties, determines to be in the best interests of the Debtor's estate in this Chapter 11 Case.

10. Sale Objection Deadline. Objections, if any, to the Sale must be made **on or before January 13, 2020 at 5:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline").

Objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received*** no later than the Sale Objection Deadline by the following parties: (i) counsel to the Debtor; (ii) proposed counsel to the Committee, to the extent a Committee is appointed; and (iii) the United States Trustee. Any reply in opposition to any Objection to the Sale shall be filed with the Court and served on the objecting party so as to be ***actually received*** no later than **12:00 p.m. (prevailing Eastern Time) on January 17, 2020.** A party's failure to timely file or make an objection in accordance with this Order by the Sale Objection Deadline shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder, including the assumption and assignment of any Contracts or Leases to the Successful Bidder pursuant to the applicable purchase agreement, and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment.

11. The Sale Hearing shall commence on **January 22, 2020 at 10:00 a.m (prevailing Eastern Time)** before the Honorable Shelly C. Chapman at Courtroom No. 623, United States Bankruptcy Court, One Bowling Green, New York, New York 10004. Upon entry of this Order, the Debtor is authorized to perform any obligations of the Debtor set forth in any applicable asset purchase agreement that are intended to be performed prior to the Sale Hearing or entry of the Sale Order. The Sale Hearing may be adjourned by the Debtor by announcement in open Court or on the Court's calendar without any further notice required.

12. The Assumption and Assignment Procedures as set forth in the Motion and herein are approved and the Debtor is authorized to take any and all actions necessary and/or appropriate

to implement the Assumption and Assignment Procedures. The Form Assignment Notice attached hereto as **EXHIBIT 2** is hereby approved as sufficient.

13. The following Assumption and Assignment Procedures shall govern the assumption and assignment of the Assumed Contracts and Assumed Leases in connection with the Sale of the Purchased Assets to the Successful Bidder:

- a. Not later than fourteen (14) days prior to the Sale Hearing (as may be adjourned from time to time), the Debtor shall file with the Court a list (the "Cure Schedule") identifying such contracts and leases which may constitute Assumed Contracts and Assumed Leases in connection with the Sale and the amounts necessary to cure defaults and/or provide compensation or adequate assurance of compensation for actual pecuniary loss resulting from a default at the time of assumption as determined by the Debtor (such amounts, "Cure Payment Liability"), with the Purchaser to pay any such Cure Payment Liabilities for any Assumed Contracts and any Assumed Leases. The Debtor shall serve all counterparties to such contracts and leases with the Assignment Notice, specifically stating that the Debtor is or may be seeking the sale, assumption and assignment of such contracts and leases and notifying such parties of the deadline for objecting (a "Cure/Assignment Objection") to the amount of any Cure Payment Liability related thereto, which deadline shall be three (3) business days prior to the Sale Hearing, so as to enable any such party to object to the proposed Cure Payment Liability and the Court to determine such Cure Payment Liability as promptly as is reasonably possible.
- b. In cases in which the Debtor is unable to establish that a default exists, the relevant Cure Payment Liability shall be set at \$0.00 in the Assignment Notice.
- c. Notwithstanding anything herein to the contrary, the Debtor may, from time to time, modify the Cure Schedule to add or remove a contract or lease, counterparty, or to modify the proposed Cure Payment Liability with respect to any counterparty. The non-Debtor counterparty to any such contract or lease will be provided written notice of any such modification and at least fourteen (14) days advance notice of its deadline to object to such modification, and the Debtor will seek to set any such objection for hearing before the Court as promptly as is reasonably possible.

14. Objections to any cure amount proposed by the Debtor in the Cure Schedule, except as such schedule may be modified subsequent to the Auction, in connection with the Assumption and Assignment Procedures shall be filed on or before **January 13, 2020 at 4:00 p.m. (prevailing Eastern Time)**. Any reply in opposition to any proposed cure amount shall be

filed with the Court and served on the objecting party so as to be *actually received* no later than **12:00 p.m. (prevailing Eastern Time) on January 17, 2020.** A hearing on any such objections shall take place on **January 22, 2020 at 10:00 a.m (prevailing Eastern Time)** in conjunction with the Sale Hearing.

15. The form of Sale Notice attached hereto as **EXHIBIT 3** is hereby approved as sufficient.

16. Within two (2) business days after entry of this Order, the Debtor's Claims Agent:
(a) shall provide a copy of the Sale Notice and this Order by first class mail to (i) the Notice Parties,
(ii) each counterparty to an executory contract with the Debtor; and (iii) all known creditors of the Debtor.

17. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

18. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

19. This Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the Bid Procedures, the Assumption and Assignment Procedures, and this Order. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control.

20. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

21. The Debtor is not required to comply with any state or local bulk transfer laws or requirements in connection with the Sale.

22. This Order shall be binding on the Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtor's estate.

23. To the extent any of the deadlines set forth in this Bid Procedures Order do not comply with the Local Rules, such Local Rules are waived and the terms of this Bid Procedures Order shall govern.

Dated: New York, New York
December 9, 2019

/S/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

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Proposed Counsel to the Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
DADONG CATERING LLC,)	
)	Case No. 19-13629 (SCC)
Debtor.)	
)	

BID PROCEDURES

I. Overview

As contemplated by the Bid Procedures Order dated [_____] (A) authorizing and approving procedures for the sale of the Debtor's Assets free and clear of all liens and interests (the "Bid Procedures"), including scheduling an auction (the "Auction") at which DaDong Catering LLC, as debtor and debtor-in-possession (the "Debtor") will sell all or substantially all of its Assets free and clear of all liens and interests, (B) approving the Debtor's selection of a stalking horse bidder (the "Stalking Horse Bidder"); (C) scheduling a Sale Hearing and other dates and deadlines, (D) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the sale of the Debtors' Assets; (E) approving sale of property free and clear of liens; (F) approving form of notice for the sale of the Debtors' Assets; and (G) granting related relief as requested therein (the "Bid Procedures Order") [Docket No.]², the Debtor will solicit higher and better offers in connection with

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

the sale of the Assets, Assumed Liabilities, and Assigned Contracts and Leases. The following Bid Procedures shall be the exclusive mechanism governing the Auction.

The Debtor contemplates the sale (the "Sale") of substantially all of its Assets (as defined in the Motion), the assumption of certain liabilities of the Debtor (collectively, the "Assumed Liabilities"), and the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "Assigned Contracts and Leases"), all such Assets, and Assigned Contracts and Leases to be conveyed free and clear of all liens, claims, encumbrances and interest, other than Assumed Liabilities and Permitted Encumbrances and as may otherwise be provided for in the Asset Purchase Agreement (the "APA"), pursuant to sections 363 and 365 of the Bankruptcy Code. The proposed transaction is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). Qualified Bidders (as defined below) may submit bids for all, substantially all, or certain of the Assets.

(a) Stalking Horse Bidder

The Debtor is authorized to designate a Stalking Horse Bidder. The Debtor shall designate a Stalking Horse Bidder by **5:00 p.m. (prevailing Eastern Time) on December 20, 2019** by filing a "Notice of Selection of Stalking Horse Bidder." Contemporaneously therewith, the Debtor shall file an asset purchase agreement between the Debtor and the Stalking Horse Bidder. To the extent the Debtor does not select a Stalking Horse bidder, the Debtor shall file a form APA by **5:00 p.m. (prevailing Eastern Time) on December 20, 2019** in lieu of filing a Notice of Selection of Stalking Horse Bidder. The Stalking Horse Bidder's opening bid shall serve as the opening bid at the Auction. The Stalking Horse Bidder shall be entitled to the Break-Up Fee, of 3% of its opening bid if it is not the successful bidder at the Auction. Potential purchasers of the Assets must submit an initial minimum overbid of at least \$100,000 over and above the opening bid in order for their

bids to be considered a "Qualified Bid." Subsequent minimum overbids at the Auction shall be in increments of \$20,000.

(b) "As Is, Where Is"

The sale of the Assets or certain of the Assets will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Debtor, its agents, or estate, except, to the extent set forth in the APA or Modified APA (as defined below), as applicable, and the schedules thereto, with respect to the Successful Bidder (as defined below), all as approved by the Bankruptcy Court.

(c) Free Of Any And All Claims And Interests

All of the Debtor's right, title, and interest in and to the Assets, or any portion thereof, to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims charges, options, and interests including, but not limited to any recoupment, offset, defenses, debts and obligations thereon and there against, other than the Assumed Liabilities and Permitted Encumbrances (collectively, the "Claims and Interests"), such Claims and Interests to attach to the net proceeds of the sale of such Assets in the order and priority that existed immediately prior to the closing of such Sale, except, to the extent otherwise set forth in the APA or Modified APA, as applicable.

II. Access to Non-Public Information

To obtain access to certain material non-public information that has been or will be delivered to any Potential Bidder, as defined below concerning the Assets, Assumed Liabilities, and Assigned Contracts and Leases, each interested person or entity must contact counsel to the Debtor, Akerman LLP, Attn: Steven R. Wirth, Esq., 401 E. Jackson St., Ste. 1700, Tampa, FL 33602, steven.wirth@akerman.com. Thereafter, the Debtor, after consultation with its counsel, will determine in their reasonable business judgment whether to afford such Potential Bidder access to

due diligence materials, as the Debtor deems appropriate in the exercise of its reasonable business judgment.

Each Qualified Bidder (as defined below) will be deemed to have acknowledged and will so represent in the APA or Modified APA, as applicable, that it had the opportunity to conduct any and all due diligence necessary prior to making any offer and that it has relied solely on its own independent review and that it did not rely on any written or oral statements, representations, promises or guaranties of the Debtor and regarding the Assets or the Debtor's business or the completeness of any information provided by the Debtor in connection with its bid or bidding process.

III. Bid Requirements

(a) Qualified Bid Requirements

Each offer, solicitation or proposal (a "Bid") from any interested person or entity (each, a "Potential Bidder") must be in writing and satisfy each of the following conditions to be deemed a "Qualified Bid" and for the bidder to be deemed a "Qualified Bidder."

1. Identification of Bidder

The Bid shall identify the Potential Bidder and the applicable Potential Bidder's Sponsor (as defined below) (if any) and their representatives who are authorized to act on their behalf regarding the contemplated transaction. If the Potential Bidder is a newly formed acquisition vehicle, the Bid must include evidence (in the form of binding commitment letters, current financial statements, guarantees or otherwise) that the Potential Bidder and/or the Potential Bidder's Sponsor as defined below, is able to fulfill all obligations in connection with the contemplated transactions including, but not limited to, paying liquidated damages, if any.

2. Executory Contracts and Unexpired Leases

The Bid shall identify with particularity each and every executory contract and unexpired lease that is to be assumed and assigned pursuant to the APA or Modified APA, as defined below, and demonstrate to the reasonable satisfaction of the Debtor after consultation with the Consultation Parties, that such bidder has the financial ability, can otherwise comply with all future obligations under all such executory contracts and unexpired leases, and provide such other adequate assurance of future performance.

3. Nature of Bids for Assets

A Bid must be a good faith offer to purchase all, substantially all or certain of the Assets, as defined in the APA, and provide for the payment and assumption of all of the Assumed Liabilities, as defined in the APA, on terms that are no less favorable to the Debtor than those set forth in the APA. If the Bid is for less than substantially all of the Assets, it must clearly identify the Assets to be purchased and the Assets to be excluded (if any). A Bid shall include a clean and duly executed APA (the "Modified APA") and a marked Modified APA reflecting the variations from the APA. Bids shall not be conditioned on or subject to (i) obtaining financing, (ii) approvals by any shareholders, board of directors (or comparable governing body) or any other entity or any other form of internal approvals, or (iii) further due diligence, including, without limitation, environmental, employment, labor, health and/or safety due diligence, by the Potential Bidder. Each Potential Bidder must agree that if it is selected as the Successful Bidder or the Back-Up Bidder (each as defined below), the Bid will remain binding and irrevocable until the closing of the Sale.

4. Financial Capability

The Bid shall state that such bidder is financially capable of consummating the transactions contemplated by the Modified APA and demonstrate to the reasonable satisfaction of the Debtor,

that such bidder has the financial ability to fund and consummate the acquisition of the Assets and Assumed Liabilities by the Closing, and, except with respect to a Bid by a Secured Lender, the Bid shall include such financial and other information that will allow the Debtor, after consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified APA.

5. Corporate Authority

A Bid shall contain written evidence of the approval of the contemplated transaction by the Potential Bidder's Board of Directors (or comparable governing body); *provided, however* that, if the Potential Bidder is an entity specially formed for the purpose of acquiring the Assets, then the Potential Bidder must furnish evidence or other information acceptable to the Debtor of the approval of the contemplated transactions by the Board of Directors (or comparable governing body) of controlling equity holder(s) of the Potential Bidder (the "Potential Bidder's Sponsor").

6. No Break-Up Fee, etc. for Potential Bidders

Except to the extent agreed to by the Debtor, in consultation with the Consultation Parties, per the procedures above, a Bid (other than that of the Stalking Horse) may not request any break-up fee, termination fee, expense reimbursement or similar type of payment, nor shall any Qualified Bidder be entitled to any break-up fee or similar type of payment. Moreover, neither the tendering of a Bid nor the determination that a Bid is either a Qualified Bid or the Successful Bid (as defined below) shall in any way entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment.

7. Good Faith Deposit

Each Bid from a Potential Bidder must be accompanied by a cash deposit in the amount of \$50,000, exclusive of Cure Costs and any Assumed Liabilities (each such deposit, a "Good Faith Deposit"). Each Good Faith Deposit shall be in the form of a bank check or wire transfer pursuant to instructions issued by the Debtor, and shall be treated according to the terms specified herein.

8. Representation Regarding Excluded Assets

Each Bid shall expressly provide that (a) the Assets do not include any claims, damages, actions, suits, causes of action, rights, liens, demands, obligations and/or liabilities, of any nature whatsoever, whether known or unknown, asserted or unasserted ("Causes of Action"), that existed or that may have existed at any time up until the Closing Date other than those specifically identified as Assets, and (b) the Assets shall, under no circumstances, include any (i) Rights or Causes of Action against any current or former equity holder, the Debtor, or any director, officer, Insider (as defined in the Bankruptcy Code), auditor, insurer, accountant or other retained professional of the Debtor of the foregoing, (ii) Causes of Action arising under Chapter 5 of the Bankruptcy Code or comparable state laws, or (iii) Causes of Action against any person or entity arising out of or in connection with any act or omission made by a party identified in clause (i) of this sentence. Each bid shall also expressly provide that the Assets do not include the other Excluded Assets identified in paragraph 19 hereof.

9. Bid Deadline

Any person or entity interested in participating in the Auction must submit a Qualified Bid on or before **5:00 p.m. (prevailing Eastern time) on January 15, 2020** (the "Bid Deadline") in writing, to (i) counsel to the Debtor, Akerman LLP, Attn: Steven R. Wirth, Esq., 401 E. Jackson St., Ste. 1700, Tampa, FL 33602, steven.wirth@akerman.com and (ii) Moecker Auctions, Inc.,

Attn.: Mark Healy, mhealy@moecker.com. Debtor's counsel will promptly provide copies of timely Bids to the Consultation Parties upon receipt thereof. A bid may, at sole and absolute discretion of the Debtor, be considered at Qualified Bid prior to or without the execution of an APA.

(b) Qualified Bidders

The Debtor, in consultation with the Consultation Parties, and in consideration of their respective views, shall make a determination regarding whether a Bid is a Qualified Bid and shall notify Potential Bidders whether their Bids have been determined to be Qualified Bids by no later than **5:00 p.m. (prevailing Eastern time) on January 16, 2020**. The Debtor reserves the right to reject any Bid (even if such Bid constitutes a Qualified Bid) if the Debtor determines, in its sole discretion after consultation with the Consultation Parties, that such Bid is inadequate or insufficient or the Debtors determines, in its sole discretion after consultation with the Consultation Parties, that such Bid is not in conformity with the requirements of the Bankruptcy Code or any related rules, the terms set forth in the Bid Procedures or contrary to the best interests of the Debtor and its estate.

(c) No Qualified Bids

If no conforming Qualified Bids are received, the Debtor shall not hold an Auction on the date scheduled. The Debtor reserves its right to reschedule the Auction, upon the appropriate Notice.

(d) Negotiation and Modification of Qualified Bids

Between the Bid Deadline and the Auction, the Debtor may discuss, negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtor, a Qualified Bidder may not modify, amend or withdraw its Qualified Bid, except for

proposed amendments to increase the purchase price or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid remains binding as specified herein.

Prior to the Auction, the Debtor shall, in consultation with the Consultation Parties, determine which Qualified Bid(s) constitute(s) the highest and best offer(s) with which it intends to commence the Auction (the "Pre-Auction Successful Bids").

(e) Notice of the Auction

If the Debtor receives more than one Qualified Bid, the Auction will be held on **January 17, 2020 at 1:00 p.m. (prevailing Eastern Time) at the former premises of the Debtor, 3 Bryant Park (120 West 42nd Street, New York, NY 10036**, or at any such other location or time as designated by the Debtor in a notice to all Qualified Bidders, and the Consultation Parties. On or **before 1:00 p.m. prevailing Eastern Time, on January 15, 2020**, the Debtor shall provide each Qualified Bidder and the Consultation Parties (i) written notice of the Auction; and (ii) copy(ies) of the Pre-Auction Successful Bid(s).

IV. The Auction

(a) Attendance at and Participation in the Auction

In addition to Qualified Bidders (along with their advisors and counsel), only the Debtor, the Consultation Parties, the U.S. Trustee, and their respective advisors, counsel and representatives shall be entitled to attend the Auction. The actual bidding shall be transcribed to ensure a record. The Qualified Bidders must appear in person at the Auction, or through a duly authorized representative. The only parties eligible to participate in the Auction shall be Qualified Bidders who have submitted a Qualified Bid to the Debtor prior to the Bid Deadline that was not rejected by the Debtor, in consultation with the Consultation Parties, prior to the Auction.

(b) The Auction Process.

1. The Debtor Shall Conduct the Auction.

The Debtor and its representatives shall direct and preside over the Auction. Only the Qualified Bidders shall be entitled to make any subsequent bids at the Auction. The bidding at the Auction shall start at the purchase price stated in the Pre-Auction Successful Bid and continue, in one or more rounds of bidding, so long as during each round at least one Overbid (as defined below) is submitted. All Overbids shall be made and received on an open basis, such that all material terms of each Overbid will be fully disclosed to all other Qualified Bidders. The bidding at the Auction will be transcribed and the Debtor shall maintain a transcript of all bids made and announced at the Auction, including all Overbids and the Successful Bid (defined below).

2. No Collusion

Each Qualified Bidder shall be required to acknowledge and agree in writing that it has not engaged (and agrees not to engage) in any collusion with respect to any Bids, the Auction or the Sale.

3. Terms of Overbids

An "Overbid" is any bid made at the Auction after the Debtors' announcement of the Pre-Auction Successful Bid, that is an increment of at least \$20,000 greater than the immediately preceding bid, and that otherwise complies with the terms and conditions for a Qualified Bid as set forth herein. All Overbids must also contain sufficient cash to pay the 3% break-up fee to be granted to the Stalking Horse Bidder, if one is designated.

The Auction may include individual negotiations with the Qualified Bidders and/or open bidding in the presence of all other Qualified Bidders.

4. Announcing Overbids

The Debtor shall announce the material terms of each Overbid at the Auction, and shall disclose its valuation of the total consideration offered in each such Overbid (and the basis for its determination) in order to confirm that each Overbid meets the requisite bid increment and to provide a floor for further Overbids.

5. Additional Terms and Conditions

The Debtor may modify these Bidding Procedures and/or adopt additional rules for the Auction at or prior to the Auction that, in its sole discretion after consultation with the Consultation Parties, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order. The Auction may be adjourned as the Debtor deems appropriate after consultation with the Consultation Parties. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to all Qualified Bidders and the Consultation Parties.

V. Identification of the Successful Bidder and Acceptance of Successful Bid

(a) Identification of the Successful Bidder

The Auction shall continue until there is only one offer that the Debtor determines in consultation with the Consultation Parties and in consideration of their respective views, is the highest or best offer from among the Qualified Bidders submitted at the Auction (the "Successful Bid"). In making this decision, the Debtor, in consultation with the Consultation Parties, may consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the APA or Modified APA requested by each Qualified Bidder, and the net

benefit to the Debtor's estate. The Qualified Bidder submitting such Successful Bid shall become the "Successful Bidder").

Within three (3) days after adjournment of the Auction, but prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made and make and pay for all necessary filings with all applicable governmental or other authorities.

In announcing the Successful Bid and the Back-Up Bid (defined below), the Debtor shall announce the material terms of each Bid and the basis for determining the total consideration offered. If there is only one Qualified Bid for an Asset or Assets, the Debtor will not conduct an Auction as to such Asset(s) and the Debtor may, in its sole discretion (after consultation with the Consultation Parties), seek approval of such Qualified Bid(s) at the Sale Hearing (as defined below).

(b) Acceptance of Bid from Successful Bidder

The Debtor presently intends to sell the Assets and the Assumed Liabilities to the Successful Bidder, pursuant to the APA or Modified APA, as applicable. The Debtor shall be bound by the Successful Bid only when such Bid has been approved by the Court at the Sale Hearing (as defined below).

VI. Back-Up Bidder

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid (the "Back-Up Bid"), as determined by the Debtor in the exercise of its business judgment in consultation with the Consultation Parties and in consideration of their respective views, at the Auction shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such

bid open and irrevocable for one (1) business day following the scheduled closing date of the Sale with the Successful Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the Sale with the Back-Up Bidder without further order of the Court after consultation with the Consultation Parties.

VII. Treatment of Good Faith Deposit

Except as otherwise provided herein, Good Faith Deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder by no later than the fifth (5th) Business Day following the conclusion of the Auction. The Good Faith Deposit of the Back-Up Bidder shall be held by the Debtor until one (1) Business Day after the closing of the sale transaction with the Successful Bidder, or will be held and applied in accordance with the APA or Modified APA, as applicable, in the event the Back-Up Bidder acquires the Assets as provided herein. The Good Faith Deposit of the Successful Bidder, if any, shall be held until the Closing of the Sale and applied in accordance with the APA or Modified APA, as applicable. If the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Successful Bidder's Good Faith Deposit shall be forfeited to the Debtor and the Debtor shall have the right to seek any and all remedies and damages from the defaulting Successful Bidder.

If the Back-Up Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Back-Up Bidder, the Back-Up Bidder's Good Faith Deposit shall be forfeited to the Debtor and the Debtor shall have the right to seek any and all remedies and damages from the defaulting Back-Up Bidder.

VIII. The Sale Hearing

The Successful Bid and the Back-Up bid will be subject to approval by the Court. The Sale Hearing will take place on **January 22 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Judge Shelley C. Chapman, United States Bankruptcy Court, for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, Courtroom No. 623. The Sale Hearing may be adjourned with the consent of the Successful Bidder after consultation with the Consultation Parties from time to time without further notice to creditors or parties-in-interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

IX. Jurisdictional Consent

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale and the construction and enforcement of any APA or Modified APA and all other agreements entered into in connection with any proposed Sale transaction. Such consent and waiver shall apply to the extent that it is later determined that the Bankruptcy Court, absent consent, cannot enter final orders or judgments with regard to the foregoing matters consistent with Article III of the United States Constitution.

EXHIBIT 2

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Proposed Counsel to the Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
DADONG CATERING LLC,)	
)	Case No. 19-13629 (SCC)
Debtor.)	

**NOTICE OF (I) INTENT TO ASSUME AND ASSIGN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, (II) PROPOSED CURE AMOUNTS ASSOCIATED WITH
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (II) DEADLINE TO OBJECT THERETO**

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF
YOUR AFFILIATES IS A COUNTERPARTY TO AN EXECUTORY
CONTRACT OR UNEXPIRED LEASE WITH THE DEBTOR THAT MAY
BE ASSUMED AND ASSIGNED BY THE DEBTOR TO A THIRD PARTY.**

**YOU MAY WISH TO SEEK LEGAL ADVICE CONCERNING THE
PROPOSED TREATMENT OF YOUR EXECUTORY CONTRACT OR
UNEXPIRED LEASE.**

PLEASE TAKE NOTICE that on November 21, 2019, the Debtors filed a *Motion of Debtor for Entry of an Order (I) Authorizing and Approving Procedures for the Sale of the Debtor's Assets; (II) Authorizing Debtor to Designate a Stalking Horse Purchaser and Grant Stalking Horse Protections; (III) Scheduling an Auction, Sale Hearing, and Other Dates and Deadlines; (IV) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale; (V) Approving Sale of Property Free and Clear of Liens; and (VI) Approving Form of Notice of Sale* (the "Sale Motion") [ECF No. 32].³

PLEASE TAKE FURTHER NOTICE that on December [REDACTED], 2019 the Bankruptcy Court entered an Order approving the Bid Procedures and approving the form of this Notice (the "Bid Procedures Order") [ECF No. [REDACTED]].

³ Unless otherwise defined herein, capitalized terms shall have the meaning given them in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that on the schedule annexed hereto as **Exhibit A**, the Debtor has indicated the cure amounts (in each instance, the "Proposed Cure Amount") that the Debtor believes must be paid to cure any defaults under the executory contracts and unexpired leases (each, a "Contract") that may be assumed and assigned pursuant to the Sale Order.

PLEASE TAKE FURTHER NOTICE that any party objecting to the Proposed Cure Amount, whether or not such party previously has filed a proof of claim with respect to amounts due under the applicable agreement, or objecting to the potential assumption and assignment of such Contract, shall be required to file and serve an objection setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or otherwise satisfied in respect of the Contracts and/or any and all objection to the potential assumption and assignment of such Contracts, together with all documentation supporting such cure claim or other objection. Any objections to the proposed assumption of the Contracts and/or the corresponding Proposed Cure Amounts, must be filed with the Court no later than **January 13, 2020 at 4:00 p.m. (prevailing Eastern Time)** (a "Cure Objection").

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bid Procedures Order, any Cure Objection must (a) be in writing; (b) comply with the Bankruptcy Rules and Local Rules; (c) state the name and address of the objecting party and the amount and nature of the claim or interest beneficially owned by such entity; (d) state with particularity the legal and factual basis for such objections; and (e) be filed with this Court with proof of service thereof and served upon the following parties so as to be actually received by the Objection Deadline: (i) counsel for the Debtor, Akerman LLP, 401 E. Jackson St., Ste. 1700, Tampa, FL 33602 (Attn: Steven R. Wirth, Esq.); (ii) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Brian S. Masumoto, Esq.); and (iii) to the extent an Office Committee of Unsecured Creditors is appointed, counsel to the Committee.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bid Procedures Order, a hearing to consider approval of the Sale Motion, including the assumption and assignment of Contracts and the Proposed Cure Amounts, will be held on **January 22, 2020 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, in Room 623 of the United States Bankruptcy Court for the Southern District of New York One Bowling Green, New York, New York 10004.

PLEASE TAKE FURTHER NOTICE that in the event no Cure Objection is timely filed with respect to a Contract, the counterparty to such Contract shall be deemed to have consented to the Proposed Cure Amount and shall be forever enjoined and barred from seeking any additional amount on account of the cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtor, its estate, or the successful purchaser. In addition, if no timely Cure Objection is filed with respect to a Contract, upon entry of any final order on the Sale Motion, such counterparty shall be deemed to have waived any right to object, consent, condition, or otherwise restrict the Debtor's assumption and assignment of the Contract to the successful purchaser.

PLEASE TAKE FURTHER NOTICE that the inclusion of a Contract herein is without prejudice to the successful purchaser's right to modify its election to accept an assignment of such

Contract prior to the closing of any sale under the Sale Motion, and inclusion of a Contract herein is not a final determination that such Contract will be assumed and assigned.

PLEASE TAKE FURTHER NOTICE that inclusion of a Contract herein shall not constitute or be deemed to be a determination or admission by the Debtor that such document is, in fact, an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

Dated: December 10, 2019

AKERMAN LLP

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Proposed Counsel for Debtor and Debtor-in-Possession

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Proposed Counsel to the Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
DADONG CATERING LLC,)	
)	Case No. 19-13629 (SCC)
Debtor.)	
)	

**NOTICE OF (I) PROPOSED SALE OF THE DEBTOR'S ASSETS FREE
AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES,
(II) BID PROCEDURES, (III) SELECTION OF STALKING HORSE BIDDER,
AND (IV) RELIEF RELATED THERETO**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On November 21, 2019, the Debtor filed with the Court a motion [ECF No. 32] (the "**Sale Motion**") seeking, among other things: (a) authority to sell assets of the Debtor free and clear of all liens, claims, interests and encumbrances (the "**Sale**"); (b) approval of certain procedures (the "**Bid Procedures**") for the solicitation of bids with respect to the Sale; (c) approval of certain procedures (the "**Assumption and Assignment Procedures**") in connection with the identification and assumption of certain contracts and leases in connection with the Sale; and (d) scheduling an auction (the "**Auction**") and a final hearing with the Court for approval of the Sale (the "**Sale Hearing**").

By Notice at ECF No. ___, the Debtor filed that certain form of Asset Purchase Agreement (including all exhibits, schedules and ancillary agreements related thereto, the "**APA**"), which contemplates the sale of the Sellers' assets (the "**Assets**"), through the Auction, to _____.

A hearing on approval of the Bid Procedures was held before the Court on December 4, 2019, and thereafter the Court entered an Order, among other things, approving the Bid Procedures [ECF No. ___] (the "**Bid Procedures Order**"). The Bid Procedures Order approves and establishes the Bid Procedures that govern the manner in which the Assets are to be sold. All bidders must comply with the Bid Procedures and submit a Qualified Bid so as to be received not later than January 15, 2020.

Pursuant to the Bid Procedures, each Qualified Bidder (as defined in the Bid Procedures) shall be invited to participate in the Auction which Auction must be attended in person and which shall commence at **1:00 p.m. (prevailing Eastern Time) on January 17, 2020, at the former premises of the Debtor, 3 Bryant Park (120 West 42nd Street, New York, NY 10036.**

The Sale Hearing is currently scheduled to be conducted on **January 22 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Shelley C. Chapman, United States Bankruptcy Judge for the Southern District of New York, to consider the approval the highest and best offer by a Qualified Bidder (the "**Successful Bidder**"), the second highest or best offer by a Qualified Bidder (the "**Back-Up Bidder**") and of the APA (as modified by the Successful Bidder) and seeking entry of an order approving the Sale (the "**Sale Order**"). The Sale Hearing may be adjourned or rescheduled from time to time without further notice other than an announcement by the Debtor in the Court of such adjournment on the date scheduled for the Sale Hearing.

A copy of the Bid Procedures Order, the proposed APA, and the Sale Motion (including the proposed Sale Order) may be obtained by written request to counsel to the Debtor at the address below. In addition, copies of the aforementioned pleadings are available at <https://www.donlinrecano.com/Clients/dadong/Index> or may be found on the Bankruptcy Court's website, www.nysb.uscourts.gov, and are on file with the Bankruptcy Court and available for inspection during regular business hours at the office of the Clerk of the Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004.

OBJECTIONS TO ENTRY OF THE SALE ORDER (OTHER THAN THE PROPOSED ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES OR TO ANY PROPOSED CURE PAYMENT LIABILITY AMOUNTS IN CONNECTION THEREWITH), INCLUDING THE DEBTOR'S REQUEST TO APPROVE THE SALE OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS TO PURCHASER (AS DEFINED IN THE APA) OR ANOTHER SUCCESSFUL BIDDER (EACH, AN "**OBJECTION**"), MUST BE MADE IN WRITING AND FILED BEFORE **JANUARY 13, 2020 at 4:00 p.m. (prevailing Eastern Time) (the "OBJECTION DEADLINE")**.

The Bid Procedures Order approves the Assumption and Assignment Procedures, which set forth: (i) the manner in which the Debtor will (a) identify the Assumed Contracts and the Assumed Leases (each as defined in the Sale Motion), and (b) identify amounts the Debtor believes are necessary to cure defaults under each of such Assumed Contracts and Assumed Leases as determined by the Debtor; and (ii) procedures to be followed by any party that wishes to object to the proposed assumption and assignment of any Assumed Contract and Assumed Lease, or the cure amounts proposed by the Debtor in respect thereof. An additional notice setting forth the specific Assumed Contracts and Assumed Leases to be assumed by the Debtor and the proposed cure amounts for such contracts will be served upon all counterparties to the Assumed Contracts and Assumed Leases.

The failure of any person or entity to file an objection on or before the Objection Deadline shall be deemed a consent to the Sale of the Assets to the Successful Bidder and the other relief requested in the Sale Motion and be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Bid Procedures, the Sale Motion, the Bid, the sale of the Assets, the Debtor's

consummation and performance of the APA (or modified APA) with the Successful Bidder (including in any such case, without limitation, the transfer of the Assets free and clear of all liens, claims, encumbrances and interests).

This Notice is subject to the full terms and conditions of the Sale Motion, the Bid Procedures Order and the Bid Procedures, which shall control in the event of any conflict. The Debtor encourages parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

Dated: December 10, 2019

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