

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:)		Chapter 11
)		
EARTH FARE, INC., <i>et al.</i> , ¹)		Case No. 20-10256 (KBO)
)		
Debtors.)		(Jointly Administered)
)		
)		Docket Ref. Nos. 33, 58, 62, 70, 122, 129, 197,
)		260, 262, 269, 277, 279, 280, 281, & 286
)		

DECLARATION OF CHARLES GOAD IN SUPPORT OF SALES

I, Charles Goad, declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, to the best of my knowledge and belief, that:

1. I submit this Declaration (the “Declaration”) in support of the *Debtors’ Motion for Entry of: (I) an Order (A) Approving De Minimis Asset Sale Procedures; (B) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof; (C) Authorizing the Debtors to Enter into Asset Purchase Agreements with Stalking Horse Bidders; and (D) Scheduling a Hearing on the Approval of the Sale of the Debtors’ Remaining Assets Free and Clear of All Encumbrances as well as the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (II) an Order (A) Authorizing the Sale of the Debtors’ Remaining Assets Free and Clear of All Encumbrances, (B) Approving Asset Purchase Agreements, (C) Authorizing the Assumption of Certain Executory Contracts and Unexpired Leases, and (D) Waiving Stay Provisions Pursuant to Bankruptcy Rules 6004(h) and 6006(d) [Docket No. 33] (the “Bidding Procedures/De Minimis Asset Sale*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Earth Fare, Inc. (3936) and EF Investment Holdings, Inc. (8084). The mailing address for each of the Debtors is 220 Continuum Drive, Fletcher, North Carolina 28732.

Motion”)² and, in particular, the proposed Sales of the assets and assumption and assignment of the Debtors’ unexpired leases related to the following stores (the “Acquired Assets” and the “Acquired Leases,” respectively, and together, the “Acquired Assets and Leases”) to the following parties:

<u>Successful Bids</u>			
<u>Bidder</u>	<u>Store Number</u>	<u>Store Property</u>	<u>Landlord Name</u>
DJ3 Delaware, LLC ³	100	Asheville, NC	Westgate Land Unit 4, LLC
DJ3 Delaware, LLC	300	Athens, GA	Domicor, L.L.C.
DJ3 Delaware, LLC	770	Roanoke, VA	Wood Roanoke Center LLC
DJ3 Delaware, LLC	130	Boone, NC	Sofield Childrens Limited Partnership
ALDI, Inc.	550	Tallahassee, FL	Parkway Terrace Properties, Inc.
Winn-Dixie Stores, Inc.	569	Lakewood Ranch, FL	Lakewood Ranch Owner, L.P.
Winn-Dixie Stores, Inc.	572	Boynton Beach, FL	Springs Equity Ltd./Cobblestone Plaza at Boynton LLC
Winn-Dixie Stores, Inc.	583	Viera, FL	SRK Viera Village Associates LP.
Winn-Dixie Stores, Inc.	557	Jacksonville, FL	PGP Jacksonville, LLC ⁴

² Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Bidding Procedures/De Minimis Asset Sale Motion.

³ In relation to its bid, DJ3 Delaware, LLC is also acquiring the Debtors’ intellectual property.

⁴ At present, the Debtors and Winn-Dixie Stores, Inc. have agreed in principle to an amendment to Winn-Dixie’s Successful Bid that would include the potential assumption and assignment of the Debtors’ Jacksonville, Florida lease; however, such amendment is conditioned upon a resolution of certain matters that remain subject to discussion between the bidder and landlord.

<u>Bidder</u>	<u>Store Number</u>	<u>Store Property</u>	<u>Landlord Name</u>
Whole Foods Market Group, Inc.	420	Chattanooga, TN	Gunbarrel Commons, LLC
Whole Foods Market Group, Inc.	105	Asheville, NC	Skyland Towne Center Investors, LLC

Back-Up Bids			
<u>Bidder</u>	<u>Store Number</u>	<u>Store Property</u>	<u>Landlord Name</u>
DJ3 Delaware, LLC	105	Asheville, NC	Skyland Town Centre Investors, LLC
Hendersonville Community Cooperative	130	Boone, NC	Sofield Childrens Limited Partnership

2. In addition, the Debtors have entered into Lease Termination Agreements (as defined herein) with the following landlords (the “Lease Termination Landlords”):

<u>Landlord Name</u>	<u>Store Number</u>	<u>Store Property</u>
Gator Argate Gainesville, LLC	560	Gainesville, FL
MFBY Ocala LLC	562	Ocala, FL
Mainstreet at Midtown Limited Partnership	570	Palm Beach Gardens, FL
BSV Lamonticello Owner LLC	780	Williamsburg, VA
KRG Toringdon, LLC	120	Charlotte, NC
KRG Centre, LLC	675	Carmel, IN

I. Background

3. I am the Chief Restructuring Officer (the “CRO”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”). In July 2019, the Debtors retained FTI Consulting, Inc. to provide temporary employees to provide certain financial services. At that

time, I was appointed as Chief Performance Officer reporting to the Chief Executive Officer and the Board of Directors. On January 31, 2020, I was appointed as CRO of the Debtors.

4. All facts set forth in this Declaration are based on my personal knowledge, my communications with other members of the Debtors' senior management, discussions with my colleagues who are also working on this matter, my review of relevant documents, or my opinion, based on my overall professional experience, in light of my personal knowledge of the Debtors' operations, business affairs, and financial condition. If called as a witness, I could and would competently testify to the matters set forth herein based on the foregoing. I am duly authorized to submit this Declaration on behalf of the Debtors.

II. Case Background

5. On February 4, 2020 (the "Petition Date"), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Chapter 11 Cases"). The Chapter 11 Cases are pending in the United States Bankruptcy Court for the District of Delaware.

6. Additional information about the Debtors' business, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases can be found in my declaration in support of the Chapter 11 Cases and the motions requesting various forms of "first day" relief [Docket No. 18].

7. On February 5, 2020, the Debtors filed the Bidding Procedures/De Minimis Asset Sale Motion. On February 14, 2020, the Court entered its order approving the Bidding Procedures/De Minimis Asset Sale Motion [Docket No. 255] (the "Bidding Procedures/De Minimis Asset Sale Order") approving, among other things, the Bidding Procedures.

III. The Sale Process

8. The Debtors believed, since the outset of the Chapter 11 Cases, that a robust, public sale process would result in the highest and best price for the Assets and would best allow the Debtors to maximize the value of their estates. As such, since the Petition Date, the Debtors, with the aid of their advisors, specifically A&G Realty Partners, LLC (“A&G”), Hilco IP Services, LLC d/b/a Hilco Streambank (“Hilco Streambank”), Hilco Merchant Resources, LLC, and Gordon Brothers Retail Partners, LLC, have engaged in a wholesale effort to market and sell all of the Debtors’ Assets, from the merchandise in the Debtors’ stores covered by the order approving the Debtors’ store closing sales [Docket No. 221] to all of the Debtors’ more significant Assets, such as the Debtors’ unexpired real property leases, the furniture, fixtures, and equipment contained in the Debtors’ stores and used in the operation of the Debtors’ grocery business, and the Debtors’ intellectual property. In short, the Debtors’ efforts since the commencement of the Chapter 11 Cases have been almost singularly focused on selling the Debtors’ assets and, thereby, maximizing the recovery to the Debtors’ estates.⁵

9. On February 7, 2020, in accordance with the Bidding Procedures Order, the Debtors filed the *Notice of Entry of Bidding Procedures/De Minimis Asset Sale Order and Proposed Sale* [D.I. 12] (the “Sale Notice”). The Sale Notice disclosed the following key dates and deadlines, which were approved by the Bidding Procedures/De Minimis Asset Sale Order (the “Original Deadlines”):

⁵ In addition, these post-petition efforts follow on the heels of the Debtors’ prepetition efforts to identify and reach an agreement with a potential acquisition partner, which are described in detail in the First Day Declaration. First Day Declaration ¶¶ 22-37. Although the Debtors were unable to obtain a going-concern bid from the prepetition potential purchaser, those efforts informed the Debtors’ post-petitions strategy and goals.

<u>Event</u>	<u>Date</u>
Stalking Horse Designation Deadline	February 19, 2020
Bid Deadline	February 21, 2020, at 5:00 p.m. (ET)
Deadline to Object to Sale (other than with respect to the conduct of the Auction and designation of a Successful Bidder)	February 24, 2020, at 4:00 p.m. (ET)
Auction Commencement	February 25, 2020, at 10:00 a.m. (ET)
Deadline to Object to Conduct of Auction, Designation of Successful Bidders, and Adequate Assurance	At the commencement of the Sale Hearing
Sale Hearing	February 27, 2020, at 2:00 p.m. (ET)

10. However, over the course of the month of February, it became clear to the Debtors and their professionals that there was sufficient interest in at least certain of the Debtors' more valuable assets to extend the Original Deadlines. In the judgment of the Debtors' professionals and advisors, with added time, there was the potential to unlock significant additional value for the Debtors' assets. As such, in consultation with the Consultation Parties, the Debtors decided to extend the Original Deadlines by approximately one month and, on February 24, 2020, the Debtors filed the *Notice of (I) Revised Proposed Bid Deadline, Auction Date, and Other Sale-Related Deadlines and (II) Sale Hearing* [Docket No. 197] (the "Supplemental Sale Notice" and, with the Sale Notice, the "Sale Notices"). The Supplemental Sale Notice disclosed the following revised dates and deadlines (the "Revised Deadlines"):

<u>Event</u>	<u>Original Date</u>	<u>Modified Date</u>
Deadline to Serve Additional Assumption Notices	February 14, 2020	March 3, 2020
Stalking Horse Designation Deadline	February 19, 2020	March 6, 2020

<u>Event</u>	<u>Original Date</u>	<u>Modified Date</u>
Deadline to Serve Stalking Horse Purchaser Adequate Assurance Information	Within one (1) day of the entry of any order approving a Stalking Horse Purchaser	Within one (1) day of the entry of any order approving a Stalking Horse Purchaser
Deadline to file proposed Sale Order	February 20, 2020, at 4:00 p.m. (ET)	Two (2) weeks before the Sale Hearing
Bid Deadline	February 21, 2020, at 5:00 p.m. (ET)	March 16, 2020, at 5:00 p.m. (ET)
Deadline to Object to Additional Assumption Notices	February 21, 2020, at 4:00 p.m. (ET)	March 17, 2020, at 4:00 p.m. (ET)
Deadline to Serve Adequate Assurance Information	February 22, 2020	March 17, 2020
Deadline to Object to Sale (other than with respect to the conduct of the Auction and designation of a Successful Bidder)	February 24, 2020, at 4:00 p.m. (ET)	March 17, 2020, at 4:00 p.m. (ET)
Deadline to Object to Adequate Assurance of Stalking Horse Purchaser	February 26, 2020, at 4:00 p.m. (ET)	March 20, 2020, at 4:00 p.m. (ET)
Auction Commencement	February 25, 2020, at 10:00 a.m. (ET)	March 23, 2020, at 10:00 a.m. (ET)
Deadline to Object to Conduct of Auction, Designation of Successful Bidders, and Adequate Assurance	At the commencement of the Sale Hearing	At the commencement of the Sale Hearing
Sale Hearing	February 27, 2020, at 2:00 p.m. (ET)	March 24, 2020, at 1:00 p.m. (ET)

In each instance, the Revised Deadlines provided parties with at least as much time as the Original Deadlines and, in most instances, significantly more.⁶

⁶ In consultation with the Consultation Parties, the Bid Deadline with respect to bids for the Debtors' intellectual property was subsequently extended to March 18, 2020, at 5:00 p.m. (ET).

11. Subsequent to the entry of the Bidding Procedures Order as well as the filing of the Sale Notices, the Debtors' professionals, in particular A&G and Hilco Streambank, continued to communicate, and work, with potential bidders. A&G and Hilco Streambank provided potential bidders with copies of the approved Bidding Procedures, notified them of the Bid Deadline, both the original and the revised, and invited them to continue to discuss acquisition of the Debtors' assets and subgroups thereof. Given the extensive marketing undertaken pre-bankruptcy, as well as the extensive efforts post-bankruptcy, I believe that the Debtors and their professionals have had sufficient time to conduct a robust marketing process to ensure that market-tested purchase prices would be obtained.

12. With respect to the potential sale of the Debtors' intellectual property assets, Hilco Streambank contacted 136 parties, six (6) of which executed non-disclosure agreements and were granted access to the Debtors' data room of relevant information to conduct diligence. Of those parties, one bidder (the "Qualified IP Bidder") submitted a qualified bid for the Debtors' intellectual property asset portfolio, including personally identifiable information of the Debtors' customers ("PII"). One other party submitted a bid for the same assets, but requested that the Debtors obtain approval of certain bid protections.⁷

13. As to the Debtors' leases in particular, overall A&G contacted fifty-three (53) prospective purchasers and fifty-seven (57) lease counterparties, of which twenty-six (26) engaged in some level of diligence. Ultimately, the Debtors received five (5) Qualified Bids for the Acquired Assets and Leases: (i) the bid of DJ3 Delaware ("DJ3") for five (5) stores, one of which was ultimately designated a Back-Up Bid, in addition to the Debtors' intellectual property assets but specifically excluding any PII; (ii) the bid of Winn-Dixie Stores, Inc. ("Winn-Dixie")

⁷ The Debtors also received a bid in a de minimis amount for certain PII maintained by the Debtors. The Debtors determined that such bid was not qualified given the costs that would be required to obtain authority to enter into such sale transaction.

for four (4) stores; (iii) the bid of ALDI, Inc. ("ALDI") for one store; (iv) the bid of Whole Foods Market Group, Inc. ("Whole Foods") for two (2) stores; and (v) the bid of Hendersonville Community Cooperative ("Hendersonville") for one store, which was ultimately designated a Back-Up Bid. Based on the Qualified Bids received and discussions with the Qualified Bidders, the Debtors determined, in consultation with the Consultation Parties, that it was unnecessary to hold an Auction because either there was only one Qualified Bid for the applicable Acquired Lease and related Acquired Assets or, where there were multiple Qualified Bids for the applicable Acquired Lease, the Qualified Bidders indicated that they were not willing to increase their bid. As such, the Debtors designated the Qualified Bids as Successful Bids or Back-Up Bids, as described above, and intend to request at the Sale Hearing authority to consummate the transactions contemplated by the Successful Bids with DJ3, Winn-Dixie, ALDI, and Whole Foods and approval of the Back-Up Bids with DJ3 and Hendersonville. Additionally, the Debtors contacted the Qualified IP Bidder to determine whether such bidder intended to increase its bid at an auction in order to compete with the combined value to the estates that will be realized by the DJ3 bid. The Qualified IP Bidder declined to increase its bid. As such, the Debtors determined that there was no need to conduct the Auction.

14. Pursuant to the Bidding Procedures, the Debtors were required to provide financial and other information supporting the applicable Successful Bidders' ability to comply with the requirements of adequate assurance of future performance, and demonstrating the Successful Bidders' financial wherewithal and ability to perform under the Leases. The Debtors complied with these requirements and provided each applicable landlord with appropriate information.

15. Under the terms of the Successful Bids, the Debtors will receive aggregate cash payments of approximately \$6 million for Acquired Assets and Leases, assuming all of the Acquired Assets and Leases are ultimately transferred, and DJ3, Winn-Dixie, ALDI, and Whole Foods will assume substantially all go-forward liabilities of the Acquired Leases.

16. With respect to the balance of the Debtors' properties, the Debtors did not obtain bids from third party acquirers to accept an assignment of the underlying leases. As part of the marketing process, the Debtors, through A&G, contacted the landlords for each of the Debtors' remaining former store locations in order to determine whether such landlords had interest in executing lease termination agreements with the Debtors and have been able to negotiate and enter into lease termination agreements (collectively, the "Lease Termination Agreements") with the Lease Termination Landlords as well as 5070 South Westnedge, LLC.⁸ Under the proposed Lease Termination Agreements, the landlords will acquire the Debtors' furniture, fixtures, and equipment remaining in the store locations in addition to possession of the store facilities in exchange for termination of the underlying leases, waivers of various claims (particularly administrative expense claims for February "stub rent"), and in certain cases, additional cash consideration.

17. The Debtors did not receive any other interest in acquiring the leases that are subject to the Lease Termination Agreements, and I do not believe that continuing to market these leases for sale—all the while continuing to incur administrative rent costs as well as bearing further risk in connection with continued tenancy—will maximize value. I believe that approval of the Lease Termination Agreements is in the best interests of the estates, as the Lease Termination Agreements mitigate the Debtors' liabilities to the landlord creditors and in some

⁸ The lease termination agreement with 5070 South Westnedge, LLC was previously approved by the Court on March 12, 2020 [Docket No. 255].

instances result in additional cash proceeds for the benefit of the estates, all to the benefit of the Debtors' creditors.

IV. Conclusion

18. The Debtors have determined in accordance with their business judgment, the Bidding Procedures/De Minimis Asset Sale Order, and the Bidding Procedures, and I believe, that the Successful Bids and Lease Termination Agreements represent the highest and best offer for the Acquired Assets and Leases. I believe that the terms of the Successful Bids and Lease Termination Agreements provide a greater recovery for the Debtors' estates for the Acquired Assets and Leases than would be provided by any other available alternative and that such Successful Bids and Lease Termination Agreements represent fair and reasonable offers to purchase the Acquired Assets and Leases. Given all of the circumstances of the Chapter 11 Cases and the adequacy and fair value of the consideration provided by the Successful Bidders and counterparties to the Lease Termination Agreements, I believe that the Sales and Lease Termination Agreements constitute a reasonable and sound exercise of the Debtors' business judgment, are in the best interests of the Debtors, their estates, their creditors, and other parties in interest, and that approval is justified.

19. I further believe that the Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sales and Lease Termination Agreements outside the ordinary course of business, and that proceeding with the Sales and Lease Termination Agreements is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, their creditors, and other parties in interest. The sound business reasons for the Sales and Lease Termination Agreements include, but are not limited to, that: the Successful Bids and Lease Termination Agreements constitute the highest and best offers for Acquired Assets and Leases; the Successful Bids and Lease

Termination Agreements and the closing thereon will present the best opportunity to realize the value of the Acquired Assets and Leases; and any other transaction would not have yielded as favorable an economic result.

20. In my opinion, the Debtors and the Successful Bidders and Back-Up Bidders have acted in good faith in connection with the Successful Bids and Back-Up Bids in that, among other things: the Debtors were free to deal with any other party interested in acquiring the Acquired Assets and Leases; the Successful Bidders and Back-Up Bidders complied with the provisions of the Bidding Procedures; the Successful Bids and Back-Up Bids were subject to the competitive bid procedures set forth in the Bidding Procedures Order; and the negotiation and execution of the agreements related to the Successful Bids and Lease Termination Agreements were at arm's-length and in good faith. In my opinion, there has been no insider influence or improper conduct by the Successful Bidders or any affiliates in connection with the negotiation of the Successful Bids and Lease Termination Agreements and related documents with the Debtors. It is also worth noting that at all times the Debtors and the Successful Bidders were each represented by separate counsel.

21. Except as otherwise provided for in the Successful Bids and Lease Termination Agreements, the Debtors are seeking the sale of the Acquired Assets and Leases free and clear of all liens, claims, encumbrances, and other interests. I believe that the Successful Bidders would not have entered into the agreements related to the Successful Bids and Lease Termination Agreements, and would not consummate acquisition of Acquired Assets and Leases, if the Sales were not free and clear of all such interests. Moreover, not selling the Acquired Assets and Leases free and clear of all such liens, claims, encumbrances, and other interests would adversely

impact the Debtors' efforts to maximize the value of their estates because the purchase price for the Acquired Assets and Leases would be significantly reduced.

22. In my opinion, the sale of the Acquired Assets and Leases pursuant to the terms of the Successful Bids and Lease Termination Agreements is the best way to maximize and the value of the Acquired Assets and Leases for the Debtors' estates.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my information, knowledge, and belief.

Dated: March 23, 2020

/s/ Charles Goad
Charles Goad
Chief Restructuring Officer