Court File No. CV-21-00657098-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

(Applicants)

SUPPLEMENTARY APPLICATION RECORD
(Re: Comeback Motion)
(Returnable February 26, 2021)

February 24, 2021

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TAB 1

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(Applicants)

AFFIDAVIT OF LEE NICHOLSON
(Sworn February 24, 2021)

I, LEE NICHOLSON, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer with Stikeman Elliott LLP, counsel to TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc. and Tiffany Gate Foods Inc. (collectively, the "**Applicants**" or the "**CCAA Entities**") in connection with these proceedings (the "**CCAA Proceedings**") the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). I am also familiar with the proceedings commenced by U.S. affiliates (the **"Chapter 11 Entities**") of the CCAA Entities under chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**US Court**") (the "**Chapter 11 Proceedings**"). As such, I have knowledge of the matters to which I hereinafter depose herein, except where otherwise stated.

2. On February 17, 2021, the Chapter 11 Entities filed the *Emergency Motion for Entry of an Order: (i) (a) Authorizing and Approving Bid Procedures; (b) Authorizing and Approving the Debtors' entry into the Stalking Horse Purchase Agreement(c) Authorizing and approving the expense reimbursement and Break-Up Fee; (d) Scheduling an Auction and Sale Hearing; (e) Authorizing and Approving Assumption and Assignment Procedures; and (f) Approving Notice Procedures; (ii) Approving the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances and Interests; and (iii) Granting Related Relief* (the "U.S. Bidding Procedure Motion") with the U.S. Court. A copy of the U.S. Bidding Procedures Motion (without exhibits) is attached hereto as **Exhibit "A".**

3. A copy of the Declaration of Michael Krakovsky of Stout Capital LLC sworn in support approval of the U.S. Bidding Procedures Motion is attached hereto as **Exhibit "B"**.

4. On February 21, 2021, the Chapter 11 Entities filed a revised proposed bid procedures order in connection with the U.S. Bidding Procedures Motion. A copy of the revised proposed bid procedure order in the Chapter 11 Proceedings is attached hereto as **Exhibit "C"**. The blacklines included in the revised proposed bid procedure order show the proposed changes made to the Bidding and Sale Procedures (as defined in the proposed Amended and Restated Initial Order) from the version filed in the Applicants' original Application Record.

5. The U.S. Court is scheduled to hear the U.S. Bidding Procedures Motion on February 25, 2021 at 11:30 a.m. prevailing Central time.

I confirm that while connected via video conference technology, the affiant showed me the front and back of his government-issued photo identity document and that I am reasonably satisfied it is the same person and the document is current and valid. I also confirm that I have reviewed each page of this affidavit with the affiant and verify that the pages are identical.

Sworn before me by video conference from the City of Hamilton, to the City of Toronto, Ontario, on February 24, 2021.

DocuSigned by:
Shimshon Dukesz
9CEC8D850C8B467...

Commissioner for Taking Affidavits

DocuSigned by:
Lee Nicholson
82C0CC8E694B4AB...

LEE NICHOLSON

EXHIBIT “A”

EXHIBIT "A"

referred to in the Affidavit of

LEE NICHOLSON

Sworn February 24, 2021

DocuSigned by:

Shimshon Dukesz

9CEC8D850C8B467...

Commissioner for Taking Affidavits

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
COUNTRY FRESH HOLDING COMPANY INC., *et. al.*,[1]	§	**Case No.: 21-30574**
	§	
	§	**(Joint Administration Requested)**
Debtors.	§	

EMERGENCY MOTION FOR ENTRY OF AN ORDER: (I) (A) AUTHORIZING AND APPROVING BID PROCEDURES; (B) AUTHORIZING AND APPROVING THE DEBTORS' ENTRY INTO THE STALKING HORSE PURCHASE AGREEMENT(C) AUTHORIZING AND APPROVING THE EXPENSE REIMBURSEMENT AND BREAK-UP FEE; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) AUTHORIZING AND APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (F) APPROVING NOTICE PROCEDURES; (II) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; AND (III) GRANTING RELATED RELIEF

Emergency relief has been requested. A hearing will be conducted on this matter on February 25, 2021 at 11:30 a.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk Avenue, Houston, Texas 77002. You may participate in the hearing either in person or by audio/video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is **954554**.

You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting code "JudgeIsgur" in the GoToMeeting app or click the link on Judge Isgur's home page on the Southern District of Texas website.

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[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Fresh Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of the hearing. To make your electronic appearance, go to the Southern District of Texas website and select "Bankruptcy Court" from the top menu. Select "Judges' Procedures," then "View Home Page" for Judge Isgur. Under "Electronic Appearance" select "Click here to submit Electronic Appearance." Select the case name, complete the required fields and click "Submit" to complete your appearance.

Country Fresh Holding Company Inc. and its above-captioned debtor affiliates, as debtors and debtors-in-possession (collectively, the "**Debtors**") hereby file this *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Debtors' Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* (the "**Motion**").[2] In support of this Motion, the Debtors respectfully state as follows:

I.
JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 363, 365, 503(b), 507(a), 541, 1107(a) and 1108 of title 11 of the United States Code (the "**Bankruptcy**

[2] All capitalized terms not herein defined are defined in the Bid Procedures (as defined below).

Code"), and rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules of the Southern District of Texas, including the Procedures for Complex Chapter 11 Cases (collectively, the "**Bankruptcy Rules**").

II.
EMERGENCY CONSIDERATION

3. The nature of the Debtors' businesses and current circumstances require an orderly and expeditious sale process to maintain the going concern value of the Debtors' businesses and maximize value for the Debtors' estates and their creditors. In formulating the Bid Procedures and time periods contained therein, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to efficiently sell the Debtors' assets to maximize realizable value. As described more fully herein, the Debtors' assets have been extensively marketed over four months to a broad group of strategic and financial buyers, who have been provided with substantial information regarding the Debtors' assets. Moreover, the Debtors contemporaneously have sought authority to obtain debtor-in-possession financing ("**DIP Financing**"), and the time periods set forth in the Bid Procedures are prudent and consistent with the case milestones set forth in the DIP credit agreement (which were negotiated with the proposed DIP Financing lenders (the "**DIP Lenders**")). Emergency relief is therefore necessary to ensure that the Debtors can comply with the terms of the proposed DIP Financing, ensure a competitive bid process for higher and better offers, and maximize value to the Debtors' estates and creditors. Accordingly, the Debtors respectfully request that the Court approve the relief requested in this motion on an emergency basis.

III.
RELIEF REQUESTED[3]

4. The Debtors seek authority to establish procedures for the sale of substantially all of the Debtors' assets in an expeditious, efficient manner pursuant to an expedited timeline that will promote competitive bidding to maximize value.

5. *First,* by this Motion, the Debtors seek entry of an order, substantially in the form of the proposed order (the "**Bid Procedures Order**"): [4]

(a) approving the bidding procedures proposed to facilitate the orderly sale (the "**Sale**") of substantially all of the Debtors' assets (the "**Assets**"), wherever located, in the form attached hereto as **Exhibit B** and incorporated by reference herein (the "**Bid Procedures**") [5];

(b) authorizing the Debtors to select Stellex/CF Buyer (US) and Stellex/CF Buyer (CN) Inc., acting together, as the "stalking horse bidder" (together with its permitted designee, the "**Stalking Horse Bidder**")

(c) authorizing and approving the stalking horse bid protections, including the Expense Reimbursement and Break-Up Fee (as defined below), to the extent payable pursuant to and on the terms set forth in the Asset Purchase Agreement, dated February 15, 2021 attached hereto as **Exhibit C** (and as may be amended, modified, or supplemented from time to time in accordance with the terms thereof, the "**Stalking Horse Purchase Agreement**") by and among the Debtors and the Stalking Horse Bidder;

(d) authorizing and approving the procedures for the assumption and assignment of executory contracts and unexpired leases (the "**Assumption and Assignment Procedures**") and notice to each non-Debtor counterparty (each a "**Counterparty**" and together, the "**Counterparties**") to a relevant executory contract and/or unexpired leases of the Debtors (collectively, the "**Contracts**")[6] under Section 365 of the Bankruptcy Code regarding the

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[3] **Note to Foley**: Please conform the motion to the agreed Bid Procedures and the Stalking Horse Purchase Agreement.

[4] As defined as the "U.S. Bidding Procedures Order" in the Stalking Horse Purchase Agreement.

[5] As defined as "Bidding Procedures" in the Stalking Horse Purchase Agreement.

[6] "Contracts" shall include Contracts, Leases, Permits, and Insurance Policies, each as defined in the Stalking Horse Purchase Agreement.

potential assumption and assignment of the Contracts and the Debtors' calculation of the amount necessary to cure any monetary defaults under such Contracts (such amounts, the "**Cure Amounts**"), substantially in the form attached to the Bid Procedures Order as Exhibit C (the "**Assumption and Assignment Notice**"), as well as the Post-Auction Notice (defined below) in the form attached to the Bid Procedures Order as Exhibit E;

(e) scheduling a hearing for approval of the sale of all or substantially all of the Debtors' Assets and fixing certain dates and deadlines, subject to modification as necessary, relating to the Bid Procedures, the auction (if one is necessary), the Sale Hearing and the filing of certain objections related thereto:

i **Bid Deadline**: **4:00 p.m. prevailing Central Time on March 22, 2021**, as the deadline by which Qualified Bidders (as defined in the Bid Procedures) must deliver written copies of their bidding materials consistent with, and to the parties specified in, the Bid Procedures (the "**Bid Deadline**");

ii **Auction**: **10:00 a.m. prevailing Central Time on March 24, 2021**, as the date on which an auction for the Assets (the "**Auction**"), if one is necessary, will commence via video conferencing; and

iii **Sale Objection Deadline**: **4:00 p.m. prevailing Central Time on March 25, 2021**, as the deadline by which objections, if any, to the entry of the order approving the Sale Order (defined below) must be filed and served consistent with, and upon the parties specified in, the Bid Procedures (the "**Sale Objection Deadline**");

iv **Sale Hearing**: **March 26, 2021**, at a time convenient for the Court, as the date on which the Sale Hearing will be held; and

(f) approving the form and manner of notice of the hearing to approve the Sale (the "**Sale Hearing**," and the notice thereof, the "**Sale Notice**") attached hereto as **Exhibit F** and incorporated by reference herein; and

6. *Second*, by this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit G** (the "**Sale Order**"), approving the following:

(a) the sale of the Assets free and clear of all liens, claims, encumbrances and interests in accordance with the Bid Procedures; and

(b) the assumption and assignment of Contracts in connection with the Sale.

IV.
BACKGROUND AND PRELIMINARY STATEMENT

7. On February 15, 2021 (the "**Petition Date**"), the Debtors filed their voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**"). The Debtors' bankruptcy proceedings have been jointly administered under the above captioned bankruptcy case.

8. The Debtors continue to operate and to manage their businesses as "debtors-in-possession" pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the above-captioned bankruptcy cases (the "**Chapter 11 Cases**") pursuant to section 1104 of the Bankruptcy Code. An official committee of unsecured creditors has not been appointed in these Chapter 11 Cases.

9. Additional factual background relating to the Debtors' businesses and the commencement of these Chapter 11 Cases is set forth in detail in the Declaration of Stephen Marotta in support of First Day Motions, which is incorporated herein. In further support of the Motion, the Debtors submit the declaration of Michael Krakovsky of Stout Capital LLC ("**Stout**"), attached hereto as **Exhibit A** (the "**Krakovsky Declaration**").

V.
PREPETITION MARKETING PROCESS

A. Marketing Process

10. In October, 2020, the Debtors determined that it was in their best interests to explore merger and acquisition opportunities with potential strategic acquirers in the food and beverage industry. Before engaging an investment banker, the Debtors had strategic discussions and/or inbound inquiries from nine (9) potential parties regarding a potential sale transaction. Following those discussions and inquiries, two parties made offers to acquire all or a portion of

the Debtors' assets. One of the offers was for a small, discrete portion of the Debtors' assets, and the Debtors determined that the proposed purchase price was too low at the time. The second offer, from a large strategic food provider, was for substantially all of the Debtors' assets ("**Initial Potential Buyer**"). Given the serious nature of the discussions with the Initial Potential Buyer and recognizing the need to ensure that the Debtors were receiving a competitive offer for their assets, the Debtors engaged Stout as their investment banker in October 2020.

11. Stout considerably expanded the marketing process for the Debtors' assets by further exploring market opportunities and growing the list of potential interested parties. As detailed in the Krakovsky Declaration, at the direction of the Debtors, Stout identified certain potentially highly strategic buyers in the food and beverage sector, private equity firms with portfolio companies in the food and beverage sector, and a select few pure financial buyers with significant industry experience and an appetite for distressed and/or turnaround situations.

12. Over the course of two months, Stout contacted and/or received inbound interests from over thirty (30) potential acquirers in connection with the first phase of its marketing process. In this first outreach phase, several parties who were contacted declined the transaction opportunity for a variety of reasons, including the distressed nature of the business, lack of strategic fit, their own financial challenges, and/or inability to complete their due diligence in the relevant time period. Others, however, indicated that they remained interested in the Debtors' assets, in whole or in part, and indicated that they would consider participating in an auction. This subset group continued their due diligence of the Debtors' assets.

13. While the Debtors were pursuing their prepetition marketing process, the Debtors operations faced severe liquidity shortfalls, and required capital infusions to continue as a going-concern and avoid the immediate need to cease operations and liquidate the business. To enable

the Company to continue operations, pursue the fulsome marketing process described herein and maximize the value of the Debtors' assets for the benefit of all stakeholders, certain of the Prepetition Secured Parties, beginning in December 2020, funded an additional $8 million of bridge financing to provide the Debtors the means to pursue a value maximizing transaction. Without this much needed bridge financing, the Debtors would not have been able to obtain a stalking horse bidder and would have faced a value destructive liquidation.

B. Launch of Comprehensive Marketing Process

14. In early January 2021, Stout launched a second, more comprehensive marketing process, contacting an additional one hundred seventy (170) parties comprised of sponsors in the food/beverage industry, strategic buyers in the consumer/retail sector, and packaged food processors and food distributors. Stout informed such parties that the Debtors were receptive to a wide range of transaction structures, including a section 363 sale in connection with a bankruptcy filing, plan sponsorship, an out-of-court sale, and structured deals involving "take back" debt and/or equity. As part of the second phase process, Stout solicited bids for a sale of either the Debtors as a whole (including non-Debtor entities) or of discrete portions of the Debtors' assets, recognizing that selling in pieces could potentially yield the highest possible value to the estate.

15. Thus far, Stout has engaged with approximately 210 potential buyers, including nearly 90 strategic parties, 20 "hybrids" (private equity firms with strategic portfolio companies in the sector), and over 100 pure financial buyers. Of the 210 potential buyers, 56 parties declined the transaction opportunity after Stout's initial contact. Stout provided approximately 83 parties with confidential information regarding the Debtors' businesses after such parties executed non-disclosure agreements with the Debtors. Of those 83 parties, (a) 29 parties declined to pursue the transaction after signing the non-disclosure agreement and/or reviewing the contents of a data

room containing additional confidential information; (b) 33 parties expressed interest in considering a transaction with the Debtors and reviewed a confidential information memorandum; and (c) 21 parties were provided the confidential information memorandum and granted access to a data room regarding the Debtors' assets. In sum, the Debtors' prepetition marketing process was extremely thorough, and fostered substantial interest in the Debtors' assets, eventually culminating in the Stalking Horse Bid (defined below).

C. The Initial Potential Buyer

16. As part of the marketing and sale process, in December 2020, the Debtors negotiated and finalized a letter of intent for the sale of substantially all of its assets with the Initial Potential Buyer. The initial offer was predicated on the Initial Potential Buyer serving as a stalking horse bidder in a sale process under Section 363 of the Bankruptcy Code, with a targeted sale closing date in March 2021. In light of the competitive dynamics, and the stated desire by the Debtors to secure a stalking horse bidder to establish a "floor" purchase price and provide certainty to the Debtors' employees, customers and vendors, the Initial Potential Buyer accelerated its due diligence of the Debtors. The Initial Potential Buyer's offer was for the purchase of substantially all of the United States assets and some of the assets of the Debtors' Canadian affiliates. The Initial Potential Buyer was aware that the Debtors continued to market their assets to a wide range of other potential acquirers in an effort to solicit for higher and better offers.

17. While the Initial Potential Buyer continued its due diligence, in late December 2020, one of the potential financial buyers, Stellex Capital Management LLC ("**Stellex**"), indicated an interest in consummating a transaction.

18. The Debtors and the Initial Potential Buyer continued their negotiations over an asset purchase agreement. On January 6, 2021, however, the Initial Potential Buyer withdrew its

offer. At that time, Stellex's due diligence efforts were further ahead than those of other potential bidders and the Debtors and Stout accelerated discussions regarding the potential for Stellex to serve as the stalking horse bidder. On January 25, 2021, the Debtors and Stellex signed a non-binding indication of interest pursuant to which Stellex will serve as the stalking horse bidder in a transaction to purchase substantially all of the Debtors' assets and [a good portion] of the Canadian affiliates' assets.

19. On February 15, 2021, after a good faith and arm's-length negotiations, the Debtors and Stellex entered into an Asset Purchase Agreement, which is subject to better and higher offers through the post-petition bid process and subject to court approvals.

D. Stalking Horse Purchase Agreement

20. The Sellers have obtained a "stalking horse" bid from the Stalking Horse Bidder. The Sellers and the Stalking Horse Bidder have entered into an asset purchase agreement, a form of which is attached to the Motion, which contemplates the sale of the Assets to the Stalking Horse Bidder for a total consideration of: (a) $30 million in cash consideration; (b) $25 million senior secured note; (c) assumption of certain liabilities relating to PACA Claims, Assumed Prepetition Payables and Post-Petition Trade Payables not to exceed, in the aggregate, $21,500,000 million; and (d) Cure Costs.

21. With a Stalking Horse Bid in place, which sets a minimum purchase price, the Debtors believe that it is prudent to implement a competitive bidding process and promptly effectuate the Sale, either to the Stalking Horse Bidder or to a higher and/or better bidder that emerges from the Auction.

22. The proposed sale transaction is fair and appropriate and will generate funds necessary for an orderly liquidation of the Debtors' operations after closing on the sale of the

Assets to the purchaser. To that end, the Debtors seek this Court's approval of the proposed sale transaction and related Bid Procedures to enable the Debtors to solicit competing offers for substantially all of its assets to ensure maximum recovery for its estate. To timely obtain the funds necessary for an orderly wind down and transfer of the Debtors' operations, it is imperative that this process be completed expeditiously. Given the stress on all aspects of the Debtors' businesses resulting from operating in Chapter 11, including the associated administrative expenses, and considering the Debtors' limited liquidity positions, the Debtors' key relationships with suppliers, distributors and other vendors business partners simply cannot be preserved if the proposed sale process is not approved. Importantly, the proposed sale process contemplated by the bidding procedures, coupled with the robust and fulsome prepetition marketing process, will ensure that the Assets are fully and fairly marketed in a way that maximizes value to the estates.

E. Stalking Horse Expense Reimbursement and Break-Up Fee[7]

23. The Debtors also are seeking approval of the following stalking horse bid protections: (a) a break-up fee payable by the Debtors equal to $1,450,000 to be paid to the Stalking Horse Bidder, which amount will constitute an allowed super-priority administrative expense claim of the Debtors pursuant to sections 364(c)(1), 503, and 507 of the Bankruptcy Code (the "**Break-Up Fee**"); and (b) an expense reimbursement payment up to a maximum of $700,000, which amount will constitute an allowed super-priority administrative expense claim of the Debtors pursuant to sections 364(c)(1), 503, and 507 of the Bankruptcy Code (the "**Expense Reimbursement**") to the Stalking Horse Bidder for reasonable, documented, out-of-pocket

[7] Capitalized terms used but not otherwise defined in this Section E shall have the meanings set forth in the Stalking Horse Purchase Agreement.

expenses. The Break-Up Fee and Expense Reimbursement (if approved by the Court) would be paid if: (1) the Stalking Horse Purchase Agreement is terminated because the Stalking Horse Bidder is not the Successful Bidder or the Alternate Bidder; (2) the Debtors enter into a definitive agreement(s) to sell the Assets to other purchaser(s) as approved by the Court or the Assets are sold through a plan, and, in each case, such alternative transaction (an "**Alternative Transaction**") closes; (3) Debtors enter into a standalone plan of reorganization or liquidation which does not provide for Debtors' ability to consummate the Stalking Horse Purchase Agreement; (4) the Stalking Horse Bidder's closing conditions as contemplated under the Stalking Horse Purchase Agreement cannot be fulfilled as a result of Debtors' action or inaction; (5) the Bidding Procedures Orders are not entered by the Bankruptcy Court on or before the date that is thirty (30) days following the Petition Date due to Debtors' action or inaction; (6) the Sale Order is not entered by the Bankruptcy Court on or before the date that is sixty (60) days following the Petition Date (or the first Business Day thereafter) due to Debtors' action or inaction; (7) the Bankruptcy Court enters an Order appointing a trustee, examiner with expanded powers, or responsible officer due to Debtors' action or inaction; (8) the Bidding Procedures and Sale Motion are not filed with the Bankruptcy Court on the Petition Date or as soon as reasonably practicable thereafter but in no event later than three (3) Business Days after the Petition Date; (9) if the Debtors materially breach any representation, warranty or covenant under the Stalking Horse Purchase Agreement and fail to cure same; (10) if any of the Canadian Sellers makes an assignment of bankruptcy or bankruptcy order is made against any of the Canadian Sellers, a trustee is appointed or a receiver is appointed or the Canadian Proceedings are dismissed; and (11) if Debtors terminate the Stalking Horse Purchase Agreement if it is determined to be inconsistent with the Debtors' board's fiduciary obligations. Further, the Expense Reimbursement only would be paid if: (v) the Stalking Horse

Bidder's closing conditions as contemplated under the Stalking Horse Purchase Agreement cannot be fulfilled as a result of Debtors' action or inaction; (w) the Bidding Procedures Orders are not entered by the Bankruptcy Court on or before the date that is thirty (30) days following the Petition Date due to Debtors' action or inaction; (x) the Sale Order is not entered by the Bankruptcy Court on or before the date that is sixty (60) days following the Petition Date (or the first Business Day thereafter) due to Debtors' action or inaction; (y) on or before the date that is sixty (60) days following the Petition Date, the Sale Order is not a Final Order due to the Debtors' action or inaction; or (z) the Bankruptcy Court enters an Order appointing a trustee examiner with expanded powers or responsible officer due to Debtors' action or inaction. The Stalking Horse Purchase Agreement also requires that the Stalking Horse Bid Protections shall (i) constitute an allowed super-priority administrative expense claim under sections 364(c)(1), 503, and 507 of the Bankruptcy Code and shall be senior to all other administrative expense claims that may be approved in the Chapter 11 Cases and (ii) be payable under the terms and conditions set forth therein.[8]

24. The Stalking Horse Bid Protections were negotiated in good faith and were necessary to secure the Stalking Horse Bidder's commitment to purchase the Assets pursuant to the Stalking Horse Purchase Agreement. The Debtors believe that the Stalking Horse Bid Protections are reasonable and appropriate in light of the size and nature of the transaction and the efforts that have been and will be expended by the Stalking Horse Bidder.

25. The Debtors believe that the Stalking Horse Protections are necessary to successfully pursue the sale of the Assets and will not chill bidding. The Debtors believe that the

[8] **<u>Note to Foley</u>**: To confirm this is consistent with the Stalking Horse Purchase Agreement.

presence of the Stalking Horse Bidder will set a floor for the value of the Assets and attract other potential buyers to bid for the Assets, thereby maximizing the realizable value of the Assets for the benefit of the Debtors' estates, creditors and other parties-in-interest.

VI. BID PROCEDURES AND SALE PROCESS

A. Bid Procedures

26. The Debtors have designed the Bid Procedures to promote a competitive and expedient sale process, building on top of the extensive prepetition process. The Debtors believe that the Bid Procedures summarized below are fair and appropriate under the circumstances. Because the Bid Procedures are attached as Exhibit B to the Bid Procedures Order, they are not restated in their entirety herein. The Bid Procedures provide, among other things, the following:

Potential Bidder. Any person other than the Stalking Horse Bidder, the DIP Secured Parties (as defined in the DIP Order) and the Prepetition Secured Parties (as defined in the DIP Order) desiring to participate in the bidding process or otherwise be considered for any purpose under these Bid Procedures (each, a "**Potential Bidder**") will be required to deliver (unless previously delivered) to the Sellers, on or before the Bid Deadline, the following materials:

(a) an executed confidentiality agreement on terms acceptable to the Debtors (a "**Confidentiality Agreement**"), to the extent not already executed;

(b) an executed asset purchase agreement, in both PDF and MS-WORD format, and a mark-up of the Stalking Horse Purchase Agreement, if any, marked to show all changes of its proposed offer as compared to the Stalking Horse Purchase Agreement (the "**Bidder's APA**");

(c) in a form acceptable to the Sellers and their advisors, in consultation with the Consultation Parties: (i) financial information demonstrating the financial wherewithal of such Potential Bidder's ability to consummate the proposed transaction as follows: (x) current financial statements of the

Potential Bidder, (y) if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current financial statements of the equity holder(s) of the Potential Bidder or (z) such other information as required by the Sellers, in consultation with the Consultation Parties, and (ii) a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale; and

(d) any other evidence the Sellers, in consultation with the Consultation Parties, may reasonably request to evaluate the Potential Bidder.

Qualified Bid Requirements. A bid ("**Bid**") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements in this paragraph 3 and all subparts (the "**Bid Requirements**") shall constitute a "**Qualified Bid**"). The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bid Procedures and at all times. To be a Qualified Bid, the Bid must:

a. Disclose the identity of the Potential Bidder and each entity that will be participating in its Bid, including any and all terms regarding or restricting such participation, and provide proof the Potential Bidder is legally empowered, by power of attorney, corporate authorization and approval from Potential Bidder's board of directors (or comparable governing body) to submit, execute, and close the transactions contemplated in such Bid;

b. Include an earnest-money deposit (the "**Deposit**") in cash or in other form of immediately available U.S. funds equal to 10% of the aggregate value of the Potential Bidder's cash and non-cash consideration to be held in the Sellers' counsel's trust account;

c. Specify that the aggregate amount of cash and other consideration being offered by the Potential Bidder exceeds the aggregate sum of the following: (i) the Purchase Price (as defined in the Stalking Horse Purchase Agreement); (ii) an amount in cash sufficient to satisfy the Stalking Horse Bid Protections payable to the Stalking Horse Bidder; and (iii) minimum overbid amount of $500,000 in cash or cash equivalents (collectively, the "**Minimum Overbid**");

d. Indicate whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid and/or the assumption of liabilities and provide a detailed analysis of the value of any non-cash component of the Bid, if any, and back-up documentation to support such value.

e. Identify the Assets the Potential Bidder is agreeing to purchase and assume;

f. Identify any executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale and: (i) provide for the payment of all cure costs related to such executory contracts and unexpired leases; and (ii) provide evidence of ability to comply with section 365 of the Bankruptcy Code and section 11.3 of the CCAA;

g. Identify all liabilities the Potential Bidder seeks to assume, if any, including any employees to be offered employment and proposed treatment of wages and benefits;

h. Include all non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid;

i. Provide that the Assets are being purchased "as is, where is," and that such Potential Bidder is not relying upon any representation or warranty from the Sellers, or their bankruptcy estates or any person or entity, except as otherwise provided in the Stalking Horse Purchase Agreement, if any;

j. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Sellers in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the purchased Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Sellers, in consultation with the Consultation Parties;

k. Include sufficient financial or other information to demonstrate that the Bid is not conditioned on (i) obtaining financing; (ii) any internal approval; (iii) the outcome or review of unperformed due diligence, but may be subject to the accuracy at closing of specified representations and warranties or the satisfaction of specified, usual and customary conditions (including required Bankruptcy Court and CCAA Court approval), which shall be acceptable to the Debtors after consultation with the Consultation Parties;

l. Acknowledges that the Potential Bidder will not seek any transaction, termination, topping, work or break-up fee, expense reimbursement, or any similar type of payment or reimbursement and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process;

m. Include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Sellers, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;

n. Set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale;

o. Contain no conditions to closing of the Sale on the receipt of any third party approvals (excluding required Bankruptcy Court and CCAA Court approval);

p. Confirms that the Potential Bidder consents to the jurisdiction of the Bankruptcy Court and the CCAA Court and agrees to be bound by the Bid Procedures, including willingness to serve as the Back-Up Bidder, if selected by the Sellers, and waives any right to a jury trial in connection with any disputes relating to the Auction and construction and enforcement of these Bid Procedures

q. Provide an express statement that: (a) the Potential Bidder agrees to all terms of the Bidding Procedures; and (b) the Potential Bidder has not engaged in any collusive discussion with any other Potential Bidder;

r. Provide that closing of the contemplated transactions of the Bid shall occur no later than March 31, 2021;

s. Provide that the offer (a) is binding, unconditional and irrevocable until the Successful Bidder and Back-Up Bidder are selected and such Potential Bidder is not selected as either the Successful Bidder or the Back-Up Bidder and (b) is not subject to any due diligence condition, contingencies of any kind or character, indemnities, or qualifications relating to due diligence or board approval; and

t. Include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets and the liabilities to be assumed, if any, prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets and the liabilities to be assumed, if any, in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets and the liabilities to be assumed, if any, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's asset purchase agreement.

Qualified Bidders. A Potential Bidder who delivers the documents and the Deposit described in Paragraphs 2 and 3 (including all subparagraphs) above and who the Sellers determine, in consultation with the Consultation Parties, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale will be deemed to be a "Qualified Bidder." The Sellers' advisors will notify each Potential Bidder in writing (which may be via email) whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder, the DIP Secured Parties and the Prepetition Secured Parties shall be deemed Qualified Bidders for all purposes under these Bid Procedures and at all times.

a. If any Potential Bidder is determined by the Sellers, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Sellers will refund such Potential Bidder's Deposit and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.

b. The Sellers, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder prior to the Bid Deadline that its Bid is not a Qualified Bid (a "Non-Qualifying Bid") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid by the Bid Deadline.

c. Between the date that the Sellers notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Sellers may discuss, negotiate, seek clarification of, or request additional information regarding any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse Purchase Agreement, without the written consent of the Sellers, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures; provided, that any Qualified Bid may be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures

B. Assumption and Assignment Procedures

27. The Debtors also request that the Court approve the proposed Assumption and Assignment Procedures for those certain executory contracts and unexpired leases that the Debtors wish to assume and assign in connection with the sale of the Assets and the form of the Assumption and Assignment Notice attached as **Exhibit D** hereto. The Debtors submit that the service of the Assumption and Assignment Notice on the counterparties ("**Counterparties**") to the Contracts that may be assumed by the Debtors (the "**Proposed Assumed Contracts**") is proper and sufficient to provide notice to such Counterparties.

28. To facilitate the Sale, the Debtors seek authority to assume and assign Proposed Assumed Contracts to the Successful Bidder in accordance with the following Assumption and Assignment Procedures:[9]

- On or prior to **February 26, 2021** (the "**Assumption and Assignment Notice Deadline**"), the Debtors shall file with the Bankruptcy Court, post on the case website at https://dm.epiq11.com/freshfoodgroup, and serve on each Counterparty to a Proposed Assumed Contract, the Assumption and Assignment Notice.

- The Assumption and Assignment Notice shall include, without limitation, a list of Proposed Assumed Contracts (the "**Proposed Assumed Contracts List**") and the Cure Amounts, if any, that the Debtors believe are required to be paid. If a Counterparty objects to the Cure Amounts, the Counterparty must file with the Bankruptcy Court and serve on the Contract Objection Notice Parties (as defined below) a written objection.

- If, after the Assumption and Assignment Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be Proposed Assumed Contracts in connection with such Sale or the Debtors seek to modify the previously stated Cure Amount associated with any Proposed Assumed Contract, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the

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[9] **Note to Foley**: Procedures should be consistent with our comments to the Bid Procedures Order.

applicable Counterparties a supplemental Assumption and Assignment Notice.

- As soon as practicable after the Auction and in no event later than **February 25, 2021**, the Debtors shall file with the Bankruptcy Court and serve, by overnight delivery, on the Counterparties, a notice substantially in the form attached as **Exhibit E** hereto (the "**Post-Auction Notice**") identifying the Successful Bidder.

- Unless otherwise provided, any objection to the proposed assumption and assignment of the applicable Proposed Assumed Contract and/or the proposed Cure Amount (a "**Contract Objection**") shall: (i) be timely filed; (ii) be in writing; (iii) comply with the Bankruptcy Rules and Bankruptcy Local Rules; and (iv) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under Bankruptcy Code Sections 365(b)(1)(A) and (B) for the applicable Proposed Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

- At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of those Proposed Assumed Contracts that have been selected by such Successful Bidder to be assumed and assigned.

- If no Contract Objection is timely filed with respect to a Proposed Assumed Contract:

  (i) the Counterparty to such Proposed Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment to Successful Bidder of the Proposed Assumed Contract, and be forever barred, estopped, and enjoined from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder);

  (ii) any and all defaults under the Proposed Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and (B) upon payment of the Cure Amount set forth in the Assumption and Assignment Notice for such Proposed Assumed Contract; and

  (iii) the Counterparty shall be forever barred, estopped, and enjoined from asserting any other claims related to such Proposed Assumed

Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections and the Sale Order or at a later date as may be fixed by the Bankruptcy Court.

- To the extent that the parties are unable to consensually resolve any Contract Objection, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B), such Contract Objection will be adjudicated by the Court.

- No later than two (2) days prior to the closing date, the Stalking Horse Bidder (or Successful Bidder) may add or remove any Contract from the Proposed Assumed Contract List and either advise the Debtors (i) that it has no objection to the Debtors rejecting such Contract or (ii) to put such Contract (each a "**Designated Contract**") on a list that the Successful Bidder shall not assume or reject on the closing date (the "**Designation List**").

- Until the earlier of (i) ninety (90) days following the closing date, (ii) the effective date of a confirmed plan of reorganization or liquidation for the Debtors, or (iii) dismissal of the chapter 11 cases, the Stalking Horse Bidder (or the Successful Bidder), in consultation with the Debtors, shall have the option to designate any Designated Contract as a Proposed Assumed Contract.

C. Notice, Sale Objection Deadline and Related Procedures

29. The Debtors request that the Court approve the form and manner of service for the Sale Notice, the Assumption and Assignment Notice, and the Post-Auction Notice (collectively, the "**Notices**"), each attached to the proposed Bid Procedures Order. The Debtors submit that service of the Notices as set forth below (the "**Notice Procedures**") is proper and sufficient to provide notice of the Auction, the deadline to object to the sale (the "**Sale Objection Deadline**"), the Assumption and Assignment Procedures, and the Sale Hearing to all known and unknown parties.

30. The Debtors propose that within five (5) days after the entry of the Bid Procedures Order, the Debtors shall file on the docket and serve the Sale Notice, the Bid Procedures Order and the Bid Procedures, by first-class mail, postage prepaid, upon (i) all entities that have expressed

written interest in a Sale with respect to the Assets as part of the Stout marketing process; (ii) the lenders and all other entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Assets; (iii) counsel for any statutory committee appointed in these Chapter 11 Cases, if any; (iv) counsel to the [Agents]; (v) counsel to the [Lenders]; and (vi) the Office of the United States Trustee for the Southern District of Texas; (vii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (viii) the United States Attorney's Office for the states in which the Debtors operate; (ix) the Internal Revenue Service; (x) the counterparties to the Contracts, (xi) all litigation counterparties; and (xii) all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1; (collectively, the "**Sale Notice Parties**"); *provided*, *however*, that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email. [10]

31. As set forth above, the Debtors shall file the Assumption and Assignment Notice with the Court, shall post it on the case website at https://dm.epiq11.com/freshfoodgroup and shall serve it on each Counterparty to a Contract that may be a Proposed Assumed Contract by the Assumption and Assignment Notice Deadline. Furthermore, if an Auction occurs, the Debtors shall file the Post-Auction Notice and serve it on the Sale Notice Parties via ECF, by email, fax, or overnight delivery, as soon as practicable, and in no event later than March 24, 2021. Finally, the Debtors shall cause each of the Notices be posted on their case information website at https://dm.epiq11.com/freshfoodgroup.

32. The Debtors believe the Notice Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process including, among other things, the

[10] **Note to Foley**: Is the Company planning to utilize publication notice?

deadline to object to the proposed Sale Transaction, the Bid Deadline, and the date, time, and location of the Auction and Sale Hearing. Accordingly, the Debtors request that the Court find that the Notice Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

VII.
BASIS FOR THE RELIEF REQUESTED

A. The Court Should Approve the Proposed Bid Procedures.

33. This Court should approve the proposed Bid Procedures because they will promote active bidding from seriously interested parties and will identify the best and/or highest offer(s) available for all of the Assets. The proposed Bid Procedures will allow the Debtors to conduct the sale process and Auction, if necessary, in a controlled, fair, and open fashion that will encourage participation by financially capable bidders that demonstrate the ability to close a transaction. The Debtors believe that the Bid Procedures are (a) sufficient to encourage bidding for the Assets; (b) consistent with other procedures previously approved by bankruptcy courts; and (c) appropriate under relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings.

34. Once a debtor articulates a valid business justification for proposed Bid Procedures, auction, and sale, its justification is evaluated according to the business judgment rule, which is "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'"[11]

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[11] *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. II. 1995); *see also In re Broughton Ltd. P'ship*, 474 B.R. 206, 218 (Bankr. N.D. Tex. 2012) (citing *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[T]he

35. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets of the estate.[12] The paramount goal in any proposed auction of property of the estate is to maximize the proceeds received by the estate.[13] To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions.[14]

36. The Debtors have sound business justifications for seeking approval of the Bid Procedures at this juncture. The Debtors believe it is in the best interests of their estates and the creditors thereof to commence a bidding procedure immediately. In the Debtors' business judgment, the best option for maximizing the value of the Assets is through a sale of the Assets pursuant to the proposed Bid Procedures.

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court relies on an estate representative's sound business judgment in approving acts outside the ordinary course of business."); *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D. N.Y. 1992); *In re Johns-Manville Corp*., 60 B.R. 612, 615-16 (Bankr. S.D. N.Y. 1986) ("A presumption of reasonableness attaches to a Debtor's management decisions.").

12 *See, e.g., In re Redwine Res.*, 2010 WL 5209287 at *2 (Bankr. N.D. Tex., June 24, 2010) (approving the debtor's proposed Bid Procedures where finding the debtors "have exercised sound business judgment and presented sound business reasons for approval of the [b]id [p]rocedures."); *Integrated Res*., 147 B.R. at 656-57 (noting that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

13 *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988) ("It is a well-established principle of bankruptcy law that the trustee's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.").

14 *See, e.g.*, *Integrated Res.*, 147 B.R. at 659 (such procedures "encourage bidding and to maximize the value of the debtor's assets"); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991), ("court-imposed rules for the disposition of assets ... [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates").

37. The Debtors believe that the Bid Procedures will encourage competitive bidding in an orderly manner to maximize the value of its estate for the benefit of creditors. The proposed procedures contain terms typical for a process through which a sale of this nature is consummated and will increase the likelihood that the estate will receive the greatest possible consideration because they will ensure a competitive and fair bidding process. As additional support, section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title."[15] As described above, approval of the Bid Procedures will greatly assist the Debtors in maximizing the value that may be obtained for the Assets. Consequently, the Debtors respectfully submit that granting the requested relief is necessary and appropriate under the circumstances.

B. The Court Should Approve the Stalking Horse Break-Up Fee and Expense Reimbursement

38. The Debtors submit that the proposed Break-Up Fee and Expense Reimbursement are reasonable and appropriate in light of the size and nature of the transaction and the efforts that have been and will be expended by the Stalking Horse Bidder.

39. Courts have acknowledged that the approval of break-up fees and expenses in connection with substantial sales in bankruptcy is warranted to compensate an unsuccessful acquirer whose initial offer served as the basis and catalyst for higher or better offers.[16] As listed in *Hupp Industries*, courts consider various factors in determining whether to authorize break-up fees, such as:

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15 11 U.S.C. § 105(a).

16 *See ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C)*, 650 F.3d 593, 597–98, 601–03 & n.9 (5th Cir. 2011); *In re JW Res., Inc.*, 536 B.R. 193, 195–96 (Bankr. E.D. Ky. 2015); *In re Hupp Indus., Inc.*, 140 B.R. 191, 195 (Bankr. N.D. Ohio 1992).

- whether the fee requested correlates with a maximization of value to the debtor's estate;
- whether the transaction in the negotiated agreement is an arm's-length transaction between the debtor's estate and the negotiating acquirer;
- whether the principal secured creditors are supportive of the concession;
- whether the subject break-up fee constitutes a fair and reasonable percentage of the proposed purchase price;
- the existence of available safeguards beneficial to the debtor's estate; and
- whether there exists a substantial adverse impact upon unsecured creditors, where such creditors are in opposition to the break-up fee.[17]

40. To warrant court approval of such break-up fees and expenses, the Fifth Circuit in *ASARCO* required a showing that the requested fees and expenses must be supported by a sound business justification.[18]

41. Here, the Break-Up Fee and Expense Reimbursement satisfy the foregoing tests because they will be: (i) actual and necessary costs and expenses of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code; (ii) commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) reasonable and appropriate, in light of the size and nature of the proposed Sale Transaction and comparable transactions, to the commitments that have been made and the efforts that have been, and will be expended, by the Stalking Horse Bidder; (iv) necessary to induce the Stalking Horse Bidder to continue to pursue the Sale Transaction and to continue to be bound by the

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[17] *In re Hupp Indus.*, 140 B.R. at 194–96.

[18] *In re ASARCO*, 650 F.3d at 602–03 (favoring business judgment standard governing use of assets outside of the ordinary course of business, rather than the standard for administrative expenses, in assessing propriety of fees and expenses incurred by bidders).

Stalking Horse Purchase Agreement; and (v) subject to all parties-in-interests' rights to object and be heard with respect to approval of such Stalking Horse Bid Protections.

42. The Break-Up Fee and Expense Reimbursement are necessary to successfully pursue the sale of the Assets and will not chill bidding. By setting a floor for the value of the Assets, this will attract other potential buyers to bid for the Assets, thereby maximizing the realizable value of the Assets for the benefit of the Debtors' estates, creditors and other parties-in-interest.

43. Approval of Break-Up Fee and Expense Reimbursement enables the Debtors to ensure a sale to a contractually committed bidder at a price the Debtors believe is fair for the Assets, while also providing the Debtors with the potential of obtaining an enhanced recovery through an auction process wherein that fair price serves as the floor for other bids.

44. Finally, payment of the Stalking Horse Bid Protections in the context of a sale to another purchaser that outbids the Stalking Horse Bidder will not diminish the Debtors' estates to the extent they become payable, as the Bid Procedures require that any competing bid must exceed the Stalking Horse Bid by an amount in excess of the break-up fee and expense reimbursement.

45. The Stalking Horse Bidder has informed the Debtors that it is unwilling to be the stalking horse bidder without being granted the Break-Up Fee and the Expenses Reimbursement. In addition, the Stalking Horse Bidder has expended, and will continue to expend, considerable time, money, and energy in connection with the Sale. Without the Break-Up Fee and the Expense Reimbursement, the Debtors might lose the opportunity to obtain the highest and best offer for the Debtors' Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder.

46. The Stalking Horse Purchase Agreement is the culmination of an extensive and fulsome prepetition marketing effort and part of a process undertaken by the Debtors and the Debtors' professionals to identify and negotiate a transaction that the Debtors believe to be the highest and best proposal for an acquisition of the Debtors' Assets.

47. For the foregoing reasons, the Debtors submit that: (a) the Break-Up Fee and the Expense Reimbursement reflect a sound business purpose; (b) are fair and appropriate under the circumstances; and (c) maximizes the value realized for the benefit of the Debtors' estates, their creditors, and other parties-in-interest. The Debtors therefore request that the Court approve the Break-Up Fee and Expense Reimbursement.

C. The Assumption and Assignment Procedures Are Appropriate and Should Be Approved.

48. In connection with the potential assumption and assignment of the Proposed Assumed Contracts, the Debtors believe it is necessary to establish a process by which (i) the Debtors and the Counterparties can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code, and (ii) such Counterparties can object to the assumption and assignment of the Proposed Assumed Contracts and any applicable Cure Amounts.

49. As set forth in the Assumption and Assignment Procedures, the Debtors are also requesting that any Counterparty that fails to object to the proposed assumption and assignment of any Proposed Assumed Contract be deemed to consent to the assumption and assignment of the applicable Proposed Assumed Contract pursuant to section 365 and on the terms set forth in the

Sale Order, notwithstanding any anti-alienation provision or other restriction on assignment contained in the applicable contract or lease.[19]

50. The Debtors believe that the Assumption and Assignment Procedures are fair and reasonable, provide sufficient notice to the Counterparties to the Proposed Assumed Contracts regarding the potential assumption and assignment of the Proposed Assumed Contracts, and provide certainty to all parties-in-interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request that the Bankruptcy Court approve the Assumption and Assignment Procedures.

D. The Form and Manner of the Sale Notice, the Assumption and Assignment Notice, and the Post-Auction Notice Should Be Approved.

51. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide their creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rules 2002(c)(1), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein.

52. The Debtors submit that notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, together with the service of the Sale Notice, the Assumption and Assignment Notice, and the Post-Auction Notice as provided for herein, constitutes good and adequate notice of the Auction, the Sale Hearing and the proceedings with respect thereto in compliance with, and in satisfactions of, the applicable requirements of Bankruptcy Rules 2002, 6004, and 6006.

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[19] *See, e.g.*, *Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (finding that by not objecting to sale motion, creditor was deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

E. The Sale Is an Exercise of Sound Business Judgment and Should Be Approved.

53. Section 363 of the Bankruptcy Code authorizes a debtor to sell assets of the estate other than in the ordinary course of business and provides, in relevant part: "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate ...."[20] Courts approve proposed sales of property pursuant to § 363 if the transaction represents the reasonable business judgment of the debtor.[21]

54. If a valid business justification exists for the sale, as it does in these Chapter 11 Cases, a debtor's decision to sell property out of the ordinary course of business enjoys a strong presumption "that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company."[22]

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20 11 U.S.C. § 363(b)(1).

21 *See Inst. Creditors of Cont'l. Air Lines, Inc. v. Cont'l. Air Lines, Inc. (In re Cont'l. Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty … there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) ("A sale of assets under § 363 … is subject to court approval and must be supported by an articulated business justification, good business judgment, or sound business reasons."); *In re Delaware & Hudson Rv. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a "sound business reason" justifying the preconfirmation sale of assets); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a Chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith"); *see also Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus. Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

22 *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) ("The business judgment standard in section 363 is flexible and encourages discretion."); *GBL Holding Co.v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005) ("Great judicial deference is given to the [t]rustee's exercise of business judgment" [in approving a proposed sale under section 363].). Therefore, any party objecting to the proposed sale must make a showing of "bad faith, self-interest or gross negligence." *In re Integrated Res., Inc.*, 147 B.R. at 656 (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872-73 (Del. 1985)); *see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D. N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.").

55. In determining whether a proposed § 363(b)(1) sale satisfies the "business judgment standard," courts consider the following: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the price is fair and reasonable; and (d) whether the parties have acted in good faith.[23] The Debtors will show that the proposed sale of the Assets satisfies all these factors.

56. First, the Debtors have proposed the sale of the Assets after a thorough consideration of all viable alternatives, including through an expansive marketing process to other potential purchasers. The sale of the Assets is supported by a number of sound business reasons, and the facts support an orderly yet expeditious sale of the Assets to preserve value in the best interest of the Debtors' estates and their creditors. The Bid Procedures provide an appropriate framework for the Debtors to review, analyze, and compare all bids received to determine which bids are in the best interests of the Debtors' estates and their economic stakeholders. Sale transactions governed by the Bid Procedures undoubtedly will serve the important objectives of obtaining not only a fair and reasonable purchase price for the Assets, but also the highest or otherwise best value for the Assets, which will inure to the benefit of all parties in interest in the Chapter 11 Cases.

57. Second, the Debtors will provide notice of the Bid Procedures, the Auction, and the date of the sale as required in the Bid Procedures Order and will provide notice of this Motion as indicated below. The Debtors submit that that such notice constitutes adequate and reasonable notice to interested parties, as set forth in the Bid Procedures Order. As the Debtors already have

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23 *See, e.g.*, *In re N. Am. Techs. Group, Inc.*, 2010 Bankr. LEXIS 5834, *7 (Bankr. E.D. Tex. Aug. 16, 2010) (citing *In re Condere*, 228 B.R. 615, 626 (Bankr. S.D. Miss. 1998)); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987).

engaged in a prepetition marketing process, a more extended process may harm the Debtors' estates and the creditors thereof.

58. Third, unless a Qualified Bidder appears willing to pay more, the value to be received by the Debtors for the Assets is necessarily the highest possible value.

59. Fourth, through the prepetition marketing process and under the Bid Procedures, the Debtors have and will have thoroughly tested the market to ensure that the ultimate sales price is the highest value possible. The Debtors submit that the approval of the proposed sale is appropriate and warranted under § 363 of the Bankruptcy Code.

F. The Sale of the Assets Will Be Free and Clear of Liens, Claims, Encumbrances, and Interests.

60. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances in property of an entity other than the estate if:

> (a) applicable nonbankruptcy law permits a sale of such property free and clear of such interest;
>
> (b) such entity consents;
>
> (c) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
>
> (d) such interest is in *bona fide* dispute; or
>
> (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.[24]

61. Because section 363(f) of the Bankruptcy Code is drafted "in the disjunctive," satisfaction of any one of its five (5) requirements will suffice to permit the sale of the Assets "free

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[24] 11 U.S.C. § 363(f).

and clear" of liens and interests.[25] The Court also may authorize the sale of a debtor's assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) of the Bankruptcy Code did not apply.[26]

62. With regard to the sale of the Assets to the purchaser, the Debtors believe that at least one of the tests in section 363(f) will be satisfied. In particular, the Debtors believe that sections 363(f)(2) and (f)(5) will be satisfied first, because DIP Lenders and the Prepetition Lenders will have consented to this Motion and, even absent such consent, the DIP Lenders and the Prepetition Lenders could be compelled to accept a monetary satisfaction of its security interest in the Assets. Further, the liens of the DIP Lenders, the Prepetition Lenders, and any other secured parties' liens will attach to the proceeds from the sale of the Assets to the same extent and priority as such liens exist in the Assets.

G. The Purchaser Is Entitled to Protections as a Good-Faith Purchaser.

63. Section 363(m) of the Bankruptcy Code provides, in relevant part:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to

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25 *In re Nature Leisure Times, LLC*, 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007); *see also Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 WL 53743, at *4 (Bankr. S.D. N.Y. Mar. 6, 1992) ("[S]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D. N.Y. 1986).

26 *See Matter of Selby Farms*, 15 B.R. 372, 375 (Bankr. S.D. Miss. 1981) ("The power of the Bankruptcy Court to sell property free and clear of liens has long been recognized." (citing *Van Huffel v. Harkelrode*, 284 U.S. 225, 227-28 (1931))); *In re Trans World Airlines. Inc.*, No. 01-0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) ("Bankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f)."); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

> an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

64. This Court has upheld section 363 purchase agreements "negotiated, proposed, and entered into … in good faith, without collusion … [resulting from] arm's-length bargaining with … parties represented by independent counsel."[27] A sale to a good-faith purchaser cannot be avoided under section 363(m), unless the sale authorization was stayed pending appeal.[28] However, "[t]he trustee may avoid a sale … if the sale price was controlled by an agreement among potential bidders…."[29] Additionally, for the sale to be considered in good-faith, consideration must: (1) be fair and reasonable; (2) be the highest and best offer for the property, and; (3) constitute reasonably equivalent value, fair value, and fair consideration.[30]

65. The Debtors will show at the Sale Hearing that it negotiated with the purchaser at arm's-length, in good faith, and in an effort to achieve the best offer for the Assets. The purchaser was represented by independent counsel, and actively encouraged transparency and the solicitation of competing bids via the Bid Procedures. As such, the Debtors will show that the purchaser is entitled to the protections of a good-faith purchaser under section 363(m) of the Bankruptcy Code, and the sale of the Assets does not constitute an avoidable transaction pursuant to section 363(n).

66. Further, any additional prospective purchaser will have, by definition, participated in a good faith manner if such prospective purchaser complies with the Bid Procedures and submits

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27 *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, *13 (Bankr. N.D. Tex. Nov. 19, 2010).

28 *See* 11 U.S.C. § 363(m) ("The reversal or modification of an authorization under subsection (b) of this section of a sale … does not affect the validity of [the] sale … to an entity that purchased … the property in good faith….").

29 *Id.* § 363(n).

30 *In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *13.

a Qualified Bid. Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or the sale of any of the Bid Assets. *See* Bidding Procedures § [13(b)]. An Auction conducted in accordance with the Bid Procedures will further ensure that a sale of the Assets will be the result of arm's length, good faith negotiations between the Debtors and each party submitting a Qualified Bid, including but not limited to the purchaser. The Bid Procedures and prospect of an open Auction preclude any conduct that would cause or permit the sale to be set aside under section 363(n) of the Bankruptcy Code.

67. Finally, the Debtors reiterate that any agreement executed with or related to the sale of the Assets will provide substantial, essential value to the bankruptcy estates because it will facilitate an efficient and valuable disposition of the Assets for fair and reasonable consideration.[31] Through the Bid Procedures, the Debtors will not limit their options to a sale to the Purchaser, but will instead conduct an open process, subject to review by the Court, that recognizes the rights of all parties-in-interest while providing the estates with reasonably equivalent value in exchange for the Assets. The Debtors believe that the ultimate purchaser of the Assets is therefore a "good faith" purchaser within the meaning of Bankruptcy Code section 363(m), and, entitled to the full protections afforded by section 363(m). Accordingly, the Debtors request that the Sale Order contain findings and protections pursuant to section 363(m) of the Bankruptcy Code.

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[31] *See In re TriDimension Energy, L.P.*, 2010 Bankr. LEXIS 4838, at *9 (finding that reasonably equivalent value existed under the Bankruptcy Code); *Mellon Bank, NA. v. Metro Communications, Inc.*, 945 F.2d 635 (3d Cir. 1991) (same), *cert. denied,* 503 U.S. 937 (1992); *see also Mellon Bank, N.A. v. Official Comm. of Unsecured Creditors (In re R.M.I., Inc.)*, 92 F.3d 139 (3d Cir. 1996); *Salisbury v. Texas Commerce Bank-Houston, N.A. (In re WCC Holding Corp.)*, 171 B.R. 972, 984 (Bankr. N.D. Tex. 1994) (reasonably equivalent value under Texas law) (citing *Besing v. Hawthorne (In re Besing)*, 981 F.2d 1488, 1495 (5th Cir.), *cert. denied.* 510 U.S. 821 (1993) and *Southmark Corp. v. Riddle (In re Southmark Corp.)*, 138 B.R. 820, 829 (Bankr. N.D. Tex. 1992)); *In re China Resource Prod. Ltd. v. Favda Intern., Inc.*, 856 F. Supp. 856, 866 (D. Del. 1994) (citing *Geyer v. Ingersoll Publications Co.*, 621 A.2d 784, 792 (Del. Ch. 1992)).

H. Cause Exists to Eliminate Any Stay Imposed by The Bankruptcy Rules.

68. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."[32] Bankruptcy Rule 6006 provides that an "order authorizing the trustee to assign an executory contract or unexpired lease under section 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."[33]

69. The Debtors request that any order approving this Motion (or authorizing a transaction that is deemed to be a sale of the Assets) be effective immediately, thereby waiving the 14-day stays imposed by Bankruptcy Rules 6004 and 6006. These waivers or eliminations of the 14-day stays are necessary for the sale to close, and the funding to be received, as expeditiously as possible. The Debtors respectfully submit that it is in the best interest of the estates to close the sale as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors request that the Court eliminate the 14-day stays imposed by Bankruptcy Rules 6004 and 6006.

VIII.
NOTICE

70. No trustee, examiner, or statutory creditors' committee has been appointed in these Chapter 11 Cases. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the Southern District of Texas; (ii) the Debtors' primary secured lenders; (iii) counsel to the Debtors' secured lenders (iv) the thirty (30) largest unsecured creditors of the Debtors' bankruptcy estate on a consolidated basis; (v) the Internal Revenue Service; and (vi) all parties in

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32 Fed. R. Bankr. P. 6004(h).

33 Fed. R. Bankr. P. 6006(d).

interest who have formally appeared and requested notice. The Debtors respectfully submit that no further notice of this Motion is required.

71. The pleadings in these Bankruptcy Cases and supporting papers are available on the Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the proposed noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii) counsel for the Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

IX.
CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the Bid Procedures Order and:

(a) approve the Bid Procedures;

(b) authorize and approve the Debtors' entry into the Stalking Horse Purchase Agreement;

(c) authorize and approve the Stalking Horse Bidder's Break-Up Fee and Expense Reimbursement;

(d) approve the form and manner of Notice of the Bid Procedures and the Auction, if necessary;

(e) approve the procedures for objections to this Motion;

(f) schedule the Auction and the Sale Hearing: and

(g) grant the related relief set forth herein.

The Debtors would further request that, at the conclusion of the Sale Hearing, this Court enter the Sale Order in substantially the form attached hereto as **Exhibit G** and, thereby:

(a) authorize and approve the sale of the Assets to the party that timely submits the highest and best Qualified Bid in compliance with the Bid Procedures that, in the Debtors' business judgment, constitutes the highest and best offer, free and clear of all claims, encumbrances, liens and other interests; and

(b) for such other and further relief as the Debtors may show itself justly entitled to receive.

DATED: February 17, 2021

Respectfully submitted by:

FOLEY & LARDNER, LLP

/s/ John P. Melko
John P. Melko (TX 13919600)
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Telephone: 214.999.4150

PROPOSED COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

I hereby certify that, on February 17, 2021, a true and correct copy of the foregoing document was served electronically by the Court's PACER system.

/s/ John P. Melko
John P. Melko

EXHIBIT “B”

EXHIBIT "B"

referred to in the Affidavit of

LEE NICHOLSON

Sworn February 24, 2021

DocuSigned by:

Shimshon Dukesz

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Commissioner for Taking Affidavits

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
COUNTRY FRESH HOLDING COMPANY INC., *et. al.*,[1]	§	**Case No.: 21-30574**
	§	
	§	**(Joint Administration Requested)**
Debtors.	§	

DECLARATION OF MICHAEL KRAKOVSKY IN SUPPORT OF EMERGENCY MOTION FOR ENTRY OF AN ORDER: (I) (A) AUTHORIZING AND APPROVING BID PROCEDURES; (B) AUTHORIZING AND APPROVING THE STALKING HORSE BID PROTECTIONS; (C) SCHEDULING AN AUCTION AND SALE HEARING; (D) AUTHORIZING AND APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (E) APPROVING NOTICE PROCEDURES; (II) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; AND (III) GRANTING RELATED RELIEF

I, Michael Krakovsky, hereby declare under penalty of perjury:

1. My name is Michael Krakovsky. I am over the age of eighteen (18) years. I am of sound mind, capable of making this Declaration and fully competent to testify to the matters stated in this Declaration.

2. I am a Managing Director and Co-Head of Special Situations with Stout Capital, LLC ("**Stout**"), a global advisory firm with over 500 employees whose core service lines are: Investment Banking; Transaction Advisory; Valuation Advisory; Disputes, Compliance, & Investigations; and Management Consulting.

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[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

3. I have over 20 years of special situations investment banking experience providing advice on a wide range of special situations transactions across a broad swath of industries. I have advised middle-market debtors and creditors on numerous in-court and out-of-court restructuring transactions, and have focused on distressed companies as both an investment banker and a principal investor.

4. Prior to joining Stout in 2016, I spent 13 years in Houlihan Lokey's Financial Restructuring Group in Los Angeles, where I was a senior officer completing transactions across a variety of industries. In addition, I have experience as a principal investor at Levine Leichtman Capital Partners' Deep Value distressed debt fund, where I was a Managing Director responsible for sourcing and analyzing distressed debt opportunities and managing the fund's investment portfolio.

5. In October 2020, the Debtors engaged Stout as their investment banker to provide financial and investment banking services in connection with a financial restructuring or reorganization of, one or more merger and/or acquisition transactions involving, and/or one or more financing transactions for the Debtors.

6. I am the lead member of the Stout deal team on this transaction. My team includes Rob Von Furth and Gian Ricco, who are both managing directors within our investment banking group, and who focus broadly on the consumer, food and retail sectors. Our team is augmented by three additional mid-level and junior resources.

7. I submit this Declaration in support of the *Emergency Motion for Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures; (II)*

Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (III) Granting Related Relief.

8. Upon being retained by the Debtors, Stout assembled a list of potential stalking horse bidders for plan sponsors. We identified certain potential highly strategic buyers in the food and beverage sector, private equity firms with portfolio companies in the food and beverage sector, and a select few pure financial buyers with significant industry experience and an appetite for distressed and/or turnaround situations.

9. In early/mid November 2020, Stout reached out to an initial group of nine (9) parties identified by the Debtors as having previously submitted unsolicited interest in all, or a portion of, the Company's assets, and contacted approximately twenty (20) select additional parties as described above.

10. In late November 2020, Stout set up a data room, and signed up potential acquirers under non-disclosure agreements. During this first phase of the marketing process, Stout informed potential parties that the goal was to have a signed asset purchase agreement with a stalking horse bidder by January 2021 followed by an auction and closing by the end of March 2021.

11. By the end of 2020, Stout had reached out to over thirty (30) potential parties in connection with the first phase of its marketing process. Of this first phase group, many parties who were contacted passed on this opportunity for a variety of reasons, including the distressed nature of the business, lack of strategic fit, their own financial challenges, and/or inability to complete their due diligence in time over the holiday season. Others, however, indicated that they remained interested in the Debtors' assets, in whole or in part, and indicated they would consider participating in an auction. This subset group continued their due diligence of the Debtors' assets.

B. Launch of Comprehensive Marketing Process

12. In early January 2021, Stout launched its more comprehensive marketing process, sending teasers to an additional one hundred seventy (170) parties. The types of parties contacted ranged from sponsors in the food/beverage industry, strategics in the consumer/retail sector, and packaged food processors and food distributors. Stout informed parties that the Debtors were receptive to a wide range of transaction structures including a Section 363 sale in connection with a bankruptcy filing, plan sponsorship, an out-of-court sale, structured deals involving "take back" debt and/or equity. In addition, Stout solicited bids for the Debtors as a whole (including non-Debtor entities) as well as discrete portions of the Debtors' assets, recognizing that the selling in pieces could potentially yield the highest possible value to the estate. Stout articulated to buyers that the intent was to have a signed asset purchase agreement in January 2021, with a closing no earlier than late March 2021.

13. Thus far, Stout has reached out to approximately 210 potential buyers including nearly 90 strategic parties, 20 "hybrids" (private equity firms with strategic portfolio companies in the sector), and over 100 pure financial buyers. Of this amount, numerous parties have indicated that they are interested in the Debtors as a whole, while some parties have indicated a preference for select assets.

C. The Initial Potential Buyer

14. In December 2020, the Debtors with Stout's assistance, negotiated and finalized a letter of intent with the Initial Potential Buyer. This initial offer was predicated on such party being a stalking horse bidder and targeted a close by March 2021. The offer was for the United States assets and some of the Canadian assets of the Debtors. In light of the competitive dynamics, and the stated desire by the Debtors' to sign up a stalking horse soon both to establish a "floor" and provide certainty to the Debtors' employees, customers and vendors, the Initial Potential Buyer

accelerated its due diligence of the Debtors. The Initial Potential Buyer was aware that the Debtors continued to market their assets to a wide range of other potential buyers in an effort to solicit higher and better offers.

15. In late December 2020, Stellex Capital Management LLC ("**Stellex**") indicated its interest in acquiring the Debtors, both United States and Canadian assets.

16. The Debtors, along with Stout, and the Initial Potential Buyer continued their negotiations over the asset purchase agreement. On January 6, 2021, the Initial Potential Buyer, however, withdrew its offer.

17. At the time that the Initial Potential Buyer withdrew its offer, Stellex was further ahead of other potential bidders in terms of due diligence. The Debtors and Stout then accelerated discussions with Stellex about being the stalking horse bidder. On January 25, 2021, a non-binding indication of interest was signed by the Debtors and the Stellex.

18. Over the next several weeks, the Debtors and Stout negotiated with Stellex regarding the details of the proposed sale transaction. On February 15, 2021, Stellex and the Debtors signed the Stalking Horse Purchase Agreement.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information, and belief.

Dated: February 17, 2021

Michael Krakovsky
Managing Director and Co-Head of Special Situations
Stout Capital, LLC

EXHIBIT "C"

EXHIBIT "C"

referred to in the Affidavit of

LEE NICHOLSON

Sworn February 24, 2021

DocuSigned by:

Shimshon Dukesz

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Commissioner for Taking Affidavits

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
COUNTRY FRESH HOLDING COMPANY INC., *et al.*[1]	§	**Case No.: 21-30574 (MI)**
	§	
	§	**(Jointly Administered)**
Debtors.	§	

NOTICE OF FILING OF REVISED PROPOSED BID PROCEDURES ORDER
[Related to Docket Nos. 51 and 51-8]

PLEASE TAKE NOTICE that on February 17, 2021, the Debtors filed the *Emergency Motion for Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Debtors' Entry Into the Stalking Horse Purchase Agreement(C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; And (III) Granting Related Relief* [Docket No. 51] ("**Bid Procedures Motion**"). A hearing to consider the Bid Procedures Motion is scheduled for **February 25, 2021, at 11:30 a.m. prevailing Central time** ("**Bid Procedures Hearing**").

PLEASE TAKE FURTHER NOTICE that as part of the Bid Procedures Motion, the Debtors also filed a proposed *Order (A) Authorizing and Approving Bid Procedures; (B)*

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[1] The Debtors in these Chapter 11 cases and the last four digits of each Debtors' taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Fresh Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

Authorizing and Approving the Debtors' Entry Into the Stalking Horse Purchase Agreement(C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures [Docket No. 51-8] ("**Proposed Bid Procedures Order**") with the following exhibits: (a) Exhibit A – Stalking Horse Purchase Agreement; (b) Exhibit B – Bid Procedures; (c) Exhibit C – Assumption and Assignment Notice; (d) Exhibit D – Sale Notice; and (e) Exhibit E – Post Auction Notice (collectively, the "**Bid Procedures Exhibits**").

PLEASE TAKE FURTHER NOTICE that in connection with the Bid Procedures Hearing, the Debtors hereby submit the revised proposed Bid Procedures Order ("**Revised Proposed Bid Procedures Order**"), which is attached hereto as Exhibit 1, along with the following Bid Procedures Exhibits: (a) Exhibit A – Bid Procedures (revised); (b) Exhibit B - Stalking Horse Purchase Agreement;[2] (c) Exhibit C – Assumption and Assignment Notice (revised); (d) Exhibit D – Sale Notice (revised); and (e) Exhibit E – Post Auction Notice (revised) (Exhibits A, C, D, and E are collectively, the "**Revised Bid Procedures Exhibits**").

PLEASE TAKE FURTHER NOTICE that a black-line of the Revised Proposed Bid Procedures Order compared against the Proposed Bid Procedures Order is attached hereto as Exhibit 2.

PLEASE TAKE FURTHER NOTICE that a black-line of the revised Bid Procedures Exhibits compared against the Revised Bid Procedures Exhibits is attached here to as Exhibit 3.

The Debtors intend to seek the Court's approval of the Revised Bid Procedures Order at the Bid Procedures Hearing. The Debtors reserve all rights.

[2] The Stalking Horse Purchase Agreement has not been revised, and is attached as originally filed.

DATED: February 21, 2021

Respectfully submitted by:

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PROPOSED COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

I do hereby certify that on February 21, 2021 a true and correct copy of the foregoing pleading was served via CM/ECF to all parties authorized to receive electronic notice in this case.

/s/ Sharon M. Beausoleil
Sharon M. Beausoleil

<u>EXHIBIT 1</u>
<u>TO NOTICE OF FILING OF REVISED PROPOSED BID PROCEDURES ORDER</u>

REVISED BID PROCEDURES ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
COUNTRY FRESH HOLDING COMPANY INC., *et. al.*,[1]	§	**Case No.: 21-30574 (MI)**
	§	
	§	**(Jointly Administered)**
Debtors.	§	

ORDER (A) AUTHORIZING AND APPROVING BID PROCEDURES; (B) AUTHORIZING THE DEBTORS' ENTRY INTO THE STALKING HORSE PURCHASE AGREEMENT; (C) AUTHORIZING AND APPROVING EXPENSE REIMBURSEMENT AND BREAK-UP FEE; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) AUTHORIZING AND APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (F) APPROVING NOTICE PROCEDURES

The matter having come before this Court on the *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Debtors' Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. 51] (the

1 The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Fresh Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

"**Motion**")[2] filed by Country Fresh Holding Company Inc. and its above-captioned debtor affiliates, as debtors and debtors-in-possession (collectively, the "**Debtors**").

Having reviewed the Motion and all matters brought to the Court's attention at the hearing on February 25, 2021 (the "**Bid Procedures Hearing**"), including all objections thereto, all arguments of counsel and other evidence adduced, and after due deliberation and consideration, the Court finds that all parties in interest, including creditors and equity holders, have had a reasonable opportunity to object or be heard regarding the relief requested in the Motion with respect to the proposed bid procedures (the "**Bid Procedures**")[3] and related relief, that good cause and sound business purpose and justification exists and has been shown to grant the Motion with respect to the Bid Procedures and related relief, which is in the best interest of the Debtors, their bankruptcy estates, and the creditors and other parties in interest.

THE COURT HEREBY FINDS THAT:

A. The findings and conclusions set forth in this Order[4] constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this matter by Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by the Court at the Bid Procedures Hearing shall be deemed additional findings of fact and conclusions of law in this matter and are incorporated herein. When appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

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[2] All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion or the Bid Procedures, as applicable.

[3] Defined in the Stalking Horse Purchase Agreement as the "Bidding Procedures".

[4] Defined in the Stalking Horse Purchase Agreement as the "U.S. Bidding Procedures Order".

B. The legal and factual bases set forth in the Motion and at the Bid Procedures Hearing establish just cause for the relief granted herein. Granting the relief is in the best interests of the Debtors, their estates and creditors.

C. The Court finds that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) the statutory predicates for the relief are 11 U.S.C. §§ 105, 363, 365, and 1146 and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure; (iii) venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the relief granted herein is in the best interests of the Debtors, their estates, and the creditors thereof; and (v) proper and adequate notice of the Bid Procedures Hearing was given to all necessary persons and entities; therefore, no other or further notice is or was required.

D. As reflected in the certificate of service filed on [_____] [Docket No. [__]], the Motion and the notice of the Bid Procedures Hearing was served on the Court's electronic filing system and to: (i) the Office of the United States Trustee for the Southern District of Texas; (ii) the Debtors' primary secured lenders; (iii) counsel to the Debtors' secured lenders (iv) the thirty (30) largest unsecured creditors of the Debtors' bankruptcy estate on a consolidated basis; (v) the Internal Revenue Service; and (vi) all parties in interest who have formally appeared and requested notice. Such notice is adequate and sufficient in light of the circumstances and nature of the relief requested being granted herein and complies with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. A reasonable and fair opportunity to object to the relief granted in this Order has been afforded under the circumstances. Accordingly, no other or further notice of the Motion with respect to the Bid Procedures or the Bid Procedures Hearing was or is necessary or required.

E. The Debtors have articulated good and sufficient reasons and demonstrated a compelling and sound business justification for this Court to grant the relief requested in the Motion with respect to the Bid Procedures, including, without limitation: (i) approval of the Bid Procedures; (ii) approval of the selection of the Stalking Horse Bidder as the "stalking horse" on the terms set forth in the Stalking Horse Purchase Agreement, (iii) approval of the Break-Up Fee and Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement); (iv) approval of the Assumption and Assignment Procedures; (v) approval of the form and manner of notice of all procedures, protections, schedules, and agreements described in the Motion and attached thereto; (vi) the scheduling of a date for the U.S. Sale Hearing; and (vii) all related relief as provided herein. Such good and sufficient reasons and compelling and sound business justification were set forth in the Motion and on the record at the Bid Procedures Hearing and are incorporated by reference herein and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. The Debtors' marketing process has been reasonably calculated to maximize value for the benefit of all stakeholders.

G. The Bid Procedures attached hereto as **Exhibit A** are fair, reasonable, appropriate, and are designed to maximize the value of the Assets to be sold.

H. Entry into the Stalking Horse Purchase Agreement, which is attached hereto as **Exhibit B**, with the Stalking Horse Bidder, is in the best interests of the Debtors and the Debtors' estates and creditors, and all other parties in interest, and it reflects a sound exercise of the Debtors' business judgment. The Debtors have articulated good, sufficient, and sound business justifications and compelling circumstances for performance of obligations related to the Stalking Horse Bid in that, among other things, the Stalking Horse Bid was negotiated by the parties at arm's-length and in good faith, and constitutes the highest or otherwise best proposal that the Debtors have received to date and the Stalking Horse Bid allows the Debtors to solicit the highest or otherwise best bid for the Assets through the Bid Procedures in order to preserve and realize their optimal value.

I. The Expense Reimbursement and Break-Up Fee provided to the Stalking Horse Bidder (i) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of sections 503 and 507 of the Bankruptcy Code, (ii) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder and the Stalking Horse Bid, (iii) are fair, reasonable, and appropriate, including in light of the size and nature of the proposed Sale, the commitments that have been made, and the efforts that have been and will be expended by any Stalking Horse Bidder. The Expense Reimbursement and Break-Up Fee are necessary to induce the Stalking Horse Bidder to pursue the Sale and to be bound by the Stalking Horse Purchase Agreement.

J. The Bid Procedures and Stalking Horse Purchase Agreement were negotiated by the Debtors and the Stalking Horse Bidder at arm's length and in good faith, and were a material inducement to, and express condition of, the willingness of the Stalking Horse Bidder to execute the Stalking Horse Purchase Agreement and submit its bid that will serve as a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, and other bidders may rely.

K. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit C**, is appropriate and reasonably calculated to provide counterparties to the Proposed Assumed Contracts (as defined below) with timely and proper notice of the potential assumption and assignment of their executory contracts or unexpired leases, any cure costs relating thereto, and the Assumption and Assignment Procedures, and no other or further notice is required.

L. The Sale Notice, substantially in the form attached hereto as **Exhibit D**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of the assets, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bid Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order (as defined below)[5], and the date, time, and place of the U.S. Sale Hearing; (iv) reasonably specific identification of the assets to be sold and liabilities to be assumed; (v) instructions for promptly obtaining copies of the Stalking Horse Purchase Agreement; (vi) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (except as expressly set forth in the Sale Order and Stalking Horse Purchase Agreement), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds; and (vii) notice of the proposed assumption and assignment of the Proposed Assumed Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement (or to another Successful Bidder(s) arising from the Auction, if any), and no other or further notice of the Bid Procedures, Auction, Sale or other information contained in the Sale Notice shall be required.

M. The Post-Auction Notice, substantially in the form attached hereto as **Exhibit E**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Successful Bidder(s) and Back-Up Bidder(s), and no other or further notice is required.

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[5] Defined in the Stalking Horse Purchase Agreement as the "U.S. Sale Order".

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.[6]

2. All objections to the relief requested in the Motion as granted herein that have not been withdrawn, waived, or settled as announced to the Court at the Bid Procedures Hearing or by stipulation filed with the Court, are overruled.

3. The record establishes that the Debtors' prior actions in connection with the marketing process, as it relates to the Assets, were appropriate and reasonably calculated to lead to the highest and best offer for the Sale.

I. STALKING HORSE BIDDER AND STALKING HORSE PURCHASE AGREEMENT

4. The Debtors are authorized to enter into the Stalking Horse Purchase Agreement, subject to higher or otherwise better offers received from Qualified Bidders at the Auction in accordance with the Bid Procedures. The Debtors are authorized to perform any obligations of the Debtors set forth in the Stalking Horse Purchase Agreement that are intended to be performed prior to the U.S. Sale Hearing or entry of the Sale Order.

5. The Expense Reimbursement and Break-Up Fee are approved in their entirety and are payable in accordance with, and subject to the terms of, the Stalking Horse Purchase Agreement and the Bid Procedures.

6. The Break-Up Fee and the Expense Reimbursement shall constitute allowed superpriority administrative expense claims pursuant to sections 364(c)(1), 503, and 507 of the Bankruptcy Code.

[6] Notwithstanding anything to the contrary herein, the consummation of the Sale is subject to entry of the Sale Order and, to the extent the Sale involves any Assets of the Canadian Debtors, is subject to the granting of the Canadian Sale Order.

II. THE BID PROCEDURES

7. The Bid Procedures are fair, reasonable and appropriate and designed to maximize the value of the Assets to be sold. The Bid Procedures are approved in their entirety, and the Debtors are granted the power and authority to take all steps necessary or appropriate to carry out the provisions of this Order, the Bid Procedures, and the Stalking Horse Purchase Agreement. The Bid Procedures are incorporated herein by reference as if fully set forth herein.

8. The Debtors have demonstrated a compelling and sound business justification for the relief granted herein and the timeline proposed as set forth below is reasonable, subject to the right of Debtors to modify the following dates pursuant to this Order, the Bid Procedures, and the Stalking Horse Purchase Agreement, and upon proper notice to parties in interest:

(a) **Bid Deadline**: **4:00 p.m., prevailing Central Time on March 19, 2021**, as the deadline by which Qualified Bidders must deliver written copies of their bidding materials consistent with, and to the parties specified in, the Bid Procedures (the "**Bid Deadline**");

(b) **Sale Objection Deadline: 4:00 p.m., prevailing Central Time on March 23, 2021**, as the deadline by which objections, if any, to the entry of an order approving the Sale (the "**U.S. Sale Order**") must be filed and served consistent with, and upon the parties specified in, the Bid Procedures (the "**Sale Objection Deadline**");

(c) **Auction: 10:00 a.m., prevailing Central Time on March 22, 2021**, as the date and time at which an auction for the Assets (the "**Auction**"), if one is necessary. **Instructions to participate via video in the Auction will be provided to Qualified Bidders prior to the Auction.**

(d) **U.S. Sale Hearing:** For the sale of the U.S. Debtors' Assets (as defined in the Stalking Horse Purchase Agreement) will be held on **March 26, 2021 at [ ]:00 [ ].m., prevailing Central Time**.

(e) **Canadian Sale Hearing:** For the sale of the Canadian Debtors' Assets (as defined in the Stalking Horse Purchase Agreement) will be held on **March 26, 2021 at 12:00 p.m., prevailing Eastern Time**.

9. The process and requirements associated with submitting a Qualified Bid and selecting a Successful Bid as set forth in the Bid Procedures are approved as fair, reasonable,

appropriate, and designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interest. The Bid Procedures shall govern the submission, receipt, and analysis of all bids, and any party desiring to submit a higher or otherwise better offer must do so strictly in accordance with the terms of the Bid Procedures, this Order and the Amended and Restated Initial Order.

10. Each bidder participating at an Auction (if any) must be a Qualified Bidder and 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 and an Auction (if any) shall be transcribed or recorded.

11. Any disputes or objections to the selection of Qualified Bids, Successful Bids, or Back-Up Bids shall be resolved by this Court at the U.S. Sale Hearing as set forth herein and, to the extent any such Qualified Bids, Successful Bids, or Back-Up Bids relate to the Canadian Debtors or their Assets, the CCAA Court at the Canadian Sale Hearing.

12. The Stalking Horse Bidder is deemed a Qualified Bidder, and the Stalking Horse Bid, as set forth in the Stalking Horse Purchase Agreement, is deemed a Qualified Bid for all purposes in connection with the bidding process, the Auction, and the Sale. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Stalking Horse Bidder is the Successful Bidder, to be named the Successful Bidder at the U.S. Sale Hearing.

13. The Debtors are authorized to conduct the Auction if they receive one or more Qualified Bids in addition to the Stalking Horse Purchase Agreement in accordance with the Bid Procedures. If no other Qualified Bid is received, no Auction shall be necessary and the Debtors shall cancel the Auction, provided, that the Debtors shall file a notice of cancellation of the

Auction. Further, in the event of a competing Qualified Bid, the Stalking Horse Bidder will be entitled, but not obligated, to submit overbids at any time prior to or at the Auction.

14. The Auction, if held, is necessary to determine which Qualified Bid, if any, represents the highest or otherwise best Qualified Bid. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures. As described in the Bid Procedures, if the Debtors do not receive any Qualified Bids, it will not hold the Auction. If one or more Qualified Bids is timely received from a Qualified Bidder in accordance with the Bid Procedures, then the Debtors shall conduct the Auction as set forth therein. Any disputes as to the selection of the highest and best Qualified Bid, or any other dispute arising from the implementation of the Bid Procedures, shall be resolved by this Court and, to the extent any such disputes relate to the Canadian Debtors or their Assets, the CCAA Court.

III. NOTICE PROCEDURES FOR SALE AND AUCTION

15. The Sale Notice and Post-Auction Notice are approved.

16. The Sale Notice is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties of (a) the Bid Procedures; (b) the objection deadline to the Motion as it relates to the Sale and related transactions; (c) the date and time set for the Auction, if necessary, (d) the date and time set for the U.S. Sale Hearing in accordance with Bankruptcy Rule 2002 and the applicable provisions of the Bankruptcy Code, and (e) entry of this Order. Except as otherwise set forth herein, no other or further notice is necessary.

17. Within three (3) business days after the Court enters this Order, the Debtors shall file and serve a copy of the Sale Notice: (a) by first class United States mail, postage prepaid on the parties identified in the Debtors' *Master Service List* [Docket No. 50] (as may be amended, modified or supplemented from time to time) at the addresses set forth therein, as well as service via electronic mail where possible, including, but not limited to, (i) all parties who have filed a

written request for notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; (ii) the Office of the United States Trustee; (iii) the Debtors' secured lenders; (iv) counsel to the Debtors' secured lenders (v) counsel for the Official Committee of Unsecured Creditors, if any; (vi) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (vii) all parties with liens, claims, encumbrances or security interests in or upon any of the Assets; and (viii) the Internal Revenue Service; (ix) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (x) the United States Attorney's Office for the Southern District of Texas; (xi) the offices of the attorney's general in the states where the Debtors conduct their business operations; (xii) any party to any litigation with the Debtors; and (b) by the Court's electronic filing system on those parties receiving electronic notice by such system. Service as set forth herein shall be deemed proper, due, timely, good, and sufficient notice and no other or further notice is necessary.

18. As soon as reasonably practicable after entry of this Order, the Debtors shall cause the contents of the Sale Notice to be published once in the Wall Street Journal National Edition.

19. As soon as reasonably practicable after the conclusion or cancellation of the Auction, as applicable, but in any event, no later than one (1) business day thereafter, the Debtors shall file on the docket and serve electronically, the Post-Auction Notice.

IV. ASSUMPTION AND ASSIGNMENT PROCEDURES

20. The Assumption and Assignment Procedures, which are set forth below, regarding the assumption and assignment of the executory contracts and unexpired leases proposed to be assumed by the Debtors (collectively, the "**Proposed Assumed Contracts**") pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or the Successful Bidder(s), following the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code and in

accordance with the Stalking Horse Purchase Agreement (or other definitive asset purchase agreement), are approved to the extent set forth herein.

21. On or prior to February 26, 2021, the Debtors shall file and serve a copy of the Assumption and Assignment Notice, which shall include a list of the Proposed Assumed Contracts (the "**Proposed Assumed Contracts List**") and the proposed amount necessary to cure all monetary defaults ("**Cure Amounts**"), if any, under the Proposed Assumed Contracts by first class United States mail, postage prepaid on the counterparties to the Proposed Assumed Contracts. Service as set forth herein shall be deemed proper, due, timely, good, and sufficient notice and no other or further notice is necessary.

22. A counterparty to a Proposed Assumed Contract ("**Contract Counterparty**") set forth on the Assumption and Assignment Notice may file an objection (a "**Contract Objection**") to the proposed assumption and assignment of the applicable Proposed Assumed Contract and/or the proposed Cure Amounts, if any. All Contract Objections must (a) state, with specificity, the legal and factual basis for the objection and, if applicable, what Cure Amounts are required, (b) include appropriate documentation in support thereof, and (c) be filed with the Court and served on counsel to the Debtors so as to be **actually received** no later than that later of (i) **March 23, 2021 at 4:00 p.m., prevailing Central Time**, and (ii) fourteen (14) calendar days following service of the Assumption and Assignment Notice (the "**Contract Objection Deadline**").

23. If a Contract Counterparty timely files and serves a Contract Objection, in a manner that is consistent with the requirements set forth above, and the parties are unable to consensually resolve the dispute, such objection will be determined at the U.S. Sale Hearing, at the next available omnibus hearing date, or such other date determined by this Court. A timely and properly filed Contract Objection will reserve such objecting Contract Counterparty's rights against the Debtors

only with respect to (a) the assumption or assumption and assignment of the Proposed Assumed Contract at issue, to the extent objected to, and/or (b) the Cure Amounts, to the extent objected to, but will not constitute an objection to the remaining relief requested in the Motion, including, without limitation, the Sale.

24. If, (a) prior to the closing date of the Sale, the Debtors (x) discover executory contracts or unexpired leases inadvertently omitted from the Proposed Assumed Contracts List or (y) elect to modify the previously stated Cure Amounts associated with a Proposed Assumed Contract, or (b) until the earlier of (i) ninety (90) days following the closing date, (ii) the effective date of a confirmed plan of reorganization or liquidation for the Debtors, (iii) such time that the Chapter 11 Cases are closed or converted to cases under chapter 7 of the Bankruptcy Code or (iv) dismissal of the Chapter 11 Cases, the Stalking Horse Bidder (or other Successful Bidder), in consultation with the Debtors, designates executory contracts or unexpired leases not previously on the Proposed Assumed Contracts List for inclusion on the Proposed Assumed Contract List, the Debtors will promptly serve a supplemental notice of potential assumption and assignment on the counterparty to each impacted executory contract or unexpired leases (a "**Supplemental Assumption and Assignment Notice**") and provide a reasonable opportunity for the counterparties to object thereto. Each Supplemental Assumption and Assignment Notice will include the same information with respect to listed Proposed Assumed Contracts as was included in the Assumption and Assignment Notice and/or the modified Cure Amounts.

25. The inclusion of a Proposed Assumed Contract on the Proposed Assumed Contract List attached to the Assumption and Assignment Notice (or Supplemental Assumption and Assignment Notice), or any supplement thereto, will not: (a) obligate the Debtors to assume any Proposed Assumed Contract listed thereon or the Successful Bidder(s) to take assignment of such

Proposed Assumed Contract; or (b) constitute any admission or agreement of the Debtors that such Proposed Assumed Contract is an executory contract or unexpired lease.

V. SALE HEARING

26. The U.S. Sale Hearing to (a) approve the sale of certain of the U.S. Debtors' assets to the Successful Bidder(s) and (b) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held on **March 26, 2021, at [ ]:00 [ ].m., prevailing Central Time**, and may be adjourned or rescheduled without notice other than an announcement on the record at Court or by a notice to be filed and served on parties requesting notice pursuant to Bankruptcy Rule 2002 by email or first class mail. The proposed form of Sale Order will be filed with the Court on the date that is no later than three (3) calendar days prior to the U.S. Sale Hearing.

27. At the U.S. Sale Hearing, the Debtors will seek Court approval of the Successful Bid and the Back-Up Bid. The U.S. Sale Hearing shall be an evidentiary hearing on matters relating to the Sale and there will be no further bidding at the U.S. Sale Hearing. In the event that the Successful Bidder(s) cannot or refuses to consummate the Sale, the Debtors shall, in accordance with the Bid Procedures, designate the Back-Up Bid to be the new Successful Bid and the Back-Up Bidder to be the new Successful Bidder(s), and the Debtors shall consummate the transaction with the Back-Up Bidder without further order of the Court or notice to any party.

28. Any objections to the Sale must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure, and (d) be filed with this Court, on or before the Sale Objection Deadline.

29. Any person or entity failing to timely file an objection to the Motion shall be forever barred from objecting thereto, including the sale of the Debtors' right, title and interest in, to, and in substantially all of its assets free and clear of any and all liens, encumbrances, claims, and other

interests, and will be deemed to consent to the sale of such assets free and clear of any and all liens, encumbrances, claims and other interests.

VI. MISCELLANEOUS.

30. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

31. This Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

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

33. Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are waived.

34. The terms of this Order shall control to the extent of any conflict with the Motion.

35. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order, including, but not limited to, any matter, claim, or dispute arising from or relating to the Bid Procedures, the Stalking Horse Purchase Agreement, and the implementation of this Order.

Dated: _______, 2021
Houston, Texas

____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Bid Procedures

BID AND SALE PROCEDURES

Set forth below are the bid and sale procedures (the "**Bid Procedures**") to be employed with respect to the proposed disposition (the "**Sale**") of substantially all of the assets of Country Fresh Holdings Company Inc. and its U.S. debtor affiliates, as debtors and debtors in possession (collectively, the "**U.S. Debtors**"[1]), in jointly administered Chapter 11 cases (the "**Chapter 11 Cases**") and its Canadian affiliates (the "**Canadian Debtors**"[2]) that have commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The U.S. Debtors and the Canadian Debtors are the "**Sellers**".

Bid Procedures Motions

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Debtors' Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. 51] (the "**Bid Procedures Motion**") in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") seeking the entry of an order: (a) approving bidding procedures, (b) approving stalking horse bid protections, (c) scheduling an auction and sale hearing, (d) approving the assumption and assignment procedures for executory contracts and unexpired leases; and (e) approving the sale of substantially all of the assets of the U.S. Debtors free and clear of all liens, claims, encumbrances and interests.

These Bid Procedures were approved and authorized by the Bankruptcy Court's *Order (A) Authorizing and Approving Bid Procedures; (B) Authorizing the Debtors' Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures* [Docket No.

[1] The U.S. Debtors in the Chapter 11 Cases and the last four digits of each U.S. Debtors' taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Fresh Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The U.S. Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases.

On February [___], 2021, the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**" and together with the Bankruptcy Court, the "**Courts**") issued and entered an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved these Bid Procedures, approved the execution of the stalking horse agreement subject to higher and better offers, and authorized the Canadian Debtors to market their business and assets in accordance with these Bid Procedures.

To the extent that these Bid Procedures require the Sellers to consult with any Consultation Party (as defined below) in connection with making a determination or taking any action, or in connection with any other matter related to these Bid Procedures or at the Auction (as defined below), if any, the Sellers shall do so in a regular and timely manner prior to making such determination or taking any such action; provided, however, that during any period in which a Consultation Party has submitted a Qualified Bid and has become a Qualified Bidder, such Consultation Party shall no longer be considered a Consultation Party under these Bid Procedures.

The Sellers shall exercise their reasonable business judgment when taking any action, making any decision or determination, or reviewing or considering any proposal under these Bid Procedures, including, without limitation, with respect to determining the Initial Bid, the Successful Bidder(s), the Back-Up Bidder(s), and the Qualified Bidder(s) (each as defined below). In the case of the Canadian Debtors, the Sellers shall also consult with Ernst & Young Inc., in its capacity as the court-appointed Monitor of the Canadian Debtors (the "**Monitor**") in connection with the sale of the Canadian Debtors' assets.

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order entered by the Bankruptcy Court.

The Bidding Process

1. Bidding Process. Set forth below, is the general process to be employed by the Sellers with respect to the Sale of substantially all of their assets as set forth in the Stalking Horse Purchase Agreement (as defined below) attached to the Bid Procedures Motion (the "**Assets**"):

a. From and after the Petition Date and the date of the Amended and Restated Initial Order, the Sellers, through their investment banker, Stout Capital, LLC ("**Stout**") shall market to those parties reasonably known by the Sellers to have a potential interest in purchasing some or all of such Assets and any other parties expressing an interest therein.

b. The Sellers have obtained a "stalking horse" bid from Stellex/CF Buyer (US) and Stellex/CF Buyer (CN) Inc. (together, the "**Stalking Horse Bidder**"). The Sellers and the Stalking Horse Bidder have entered into an asset purchase agreement, a form of which is attached to the Bid Procedures Motion (the "**Stalking Horse Purchase Agreement**"), which contemplates the sale of the Assets to the Stalking Horse Bidder for a total consideration of: (a) $30 million in cash consideration; (b) $25 million senior secured note; (c) assumption of certain liabilities relating to PACA Claims, Assumed Prepetition Payables and Post-Petition Trade Payables not to exceed, in the aggregate, $21.5 million; and (d) Cure Costs (the "**Stalking Horse Bid**").

c. As part of the Bid Procedures Order, the Bankruptcy Court has approved stalking horse bid protections including a Break-Up Fee in the amount of $1,450,000 and Expense Reimbursement in the amount of $700,000 (collectively, the "**Stalking Horse Bid Protections**").

d. Any person interested in making an offer to purchase some or all of the Assets shall comply with these Bid Procedures. Any person interested may make, and the Sellers shall consider, a bid for some or all of the Assets in accordance with these Bid Procedures.

e. Only Qualified Bids (as defined below) shall be considered by the Sellers.

f. If the Sellers do not receive another Qualified Bid prior to the Bid Deadline (as defined below), then the Stalking Horse Bidder's offer to acquire the Assets under the Stalking Horse Purchase Agreement shall constitute the Successful Bid (as defined below).

g. If the Sellers receive another Qualified Bid prior to the Bid Deadline, then the Sellers, after consultation with the Official Committee of Unsecured Creditors (if appointed), the Monitor, the Ad Hoc Group (as defined in the DIP Order) and the DIP Lenders (as defined in the DIP Order) (each a "**Consultation Party**" and collectively, the "**Consultation Parties**"),[4] shall

[4] The "**DIP Order**" means the Bankruptcy Court's *Interim Order (I) Authorizing the Debtors to Obtain Postpetition*

select the highest or otherwise best Qualified Bid as the Successful Bid after the Sellers have conducted an Auction and considered, among other things, the financial and contractual terms relevant to the Sale, including those factors affecting speed and certainty of consummating the Sale or the overall value to be provided thereby.

h. Upon failure to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder (as defined below) (or Back-Up Bidder (as defined below), if applicable), the Sellers shall be permitted to (i) retain the Successful Bidder's Deposit (as defined below) as liquidated damages and (ii) select the next highest or otherwise best Qualified Bid to be the Successful Bid and to consummate such transaction without further order of the Bankruptcy Court or the CCAA Court; provided, that the release of the Deposit paid by the Stalking Horse Bidder shall be governed by the terms and conditions set forth in the Stalking Horse Purchase Agreement.

i. All Qualified Bidders (as defined below) at the Auction shall be deemed to have (i) consented to the core jurisdiction of the Bankruptcy Court and the CCAA Court, as applicable, with respect to these Bid Procedures, the bid process, the Auction, any Sale, the Sale Hearings (as defined below), or the construction or enforcement of any agreement of any other document related to the Sale; and (ii) waived any right to a jury trial in connection with any of the foregoing and the construction and enforcement of the Qualified Bidder's contemplated transaction documents, as applicable; and (iii) consented to entry of a final order or judgment in any way related to any of the foregoing if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Participation Requirements

2. **Potential Bidder**. Any person other than the Stalking Horse Bidder, the DIP Secured Parties (as defined in the DIP Order) and the Prepetition Secured Parties (as defined in the DIP Order) desiring to participate in the bidding process or otherwise be considered for any purpose under these Bid Procedures (each, a "**Potential Bidder**") will be required to deliver (unless previously delivered) to the Sellers, on or before the Bid Deadline, the following materials:

a. an executed confidentiality agreement on terms acceptable to the Sellers (a "**Confidentiality Agreement**"), to the extent not already executed;

b. an executed asset purchase agreement in PDF with an accompanying MS-

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Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 42]. The DIP Order is available on the U.S. Debtors' claims agent's website at https://dm.epiq11.com/countryfresh or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/.

WORD format document, and a mark-up of the Stalking Horse Purchase Agreement, if any, marked to show all changes of its proposed offer as compared to the Stalking Horse Purchase Agreement (the "**Bidder's APA**");

c. in a form acceptable to the Sellers and their advisors, in consultation with the Consultation Parties: (i) financial information demonstrating the financial wherewithal of such Potential Bidder's ability to consummate the proposed transaction as follows: (x) current financial statements of the Potential Bidder, (y) if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current financial statements of the equity holder(s) of the Potential Bidder or (z) such other information as required by the Sellers, in consultation with the Consultation Parties, and (ii) a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale; and

d. any other evidence the Sellers, in consultation with the Consultation Parties, may reasonably request to evaluate the Potential Bidder.

3. **Qualified Bid Requirements**. A bid ("**Bid**") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements in this paragraph 3 and all subparts (the "**Bid Requirements**") shall constitute a "**Qualified Bid**". The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bid Procedures and at all times. To be a Qualified Bid, the Bid must:

a. Disclose the identity of the Potential Bidder and each entity that will be participating in its Bid, including any and all terms regarding or restricting such participation, and provide proof the Potential Bidder is legally empowered, by power of attorney, corporate authorization and approval from Potential Bidder's board of directors (or comparable governing body) to submit, execute, and close the transactions contemplated in such Bid;

b. Include an earnest-money deposit (the "**Deposit**") in cash or in other form of immediately available U.S. funds equal to 10% of the aggregate value of the Potential Bidder's cash and non-cash consideration to be held in the Sellers' counsel's trust account for the benefit of the U.S. Debtors and the Canadian Debtors;

c. Specify that the aggregate amount of cash and other consideration being offered by the Potential Bidder exceeds the aggregate sum of the following: (i) the Purchase Price (as defined in the Stalking Horse Purchase Agreement); (ii) an amount in cash sufficient to satisfy the Stalking Horse Bid Protections payable to the Stalking Horse Bidder; and (iii) minimum overbid amount of $500,000 in cash or cash equivalents (collectively, the "**Minimum Overbid**");

d. Indicate whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid and/or the assumption of liabilities and provide a detailed analysis of the value of any non-cash component of the Bid, if any, and back-up documentation to support such value, and any other information the Sellers, in consultation with the Consultation Parties, may reasonably request;

e. Identify the Assets the Potential Bidder is agreeing to purchase and assume;

f. Identify any executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale and: (i) provide for the payment of all cure costs related to such executory contracts and unexpired leases; and (ii) provide evidence of ability to comply with section 365 of the Bankruptcy Code and section 11.3 of the CCAA;

g. Identify all liabilities the Potential Bidder seeks to assume, if any, including any employees to be offered employment and proposed treatment of wages and benefits;

h. Include all non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid;

i. Provide that the Assets are being purchased "as is, where is," and that such Potential Bidder is not relying upon any representation or warranty from the Sellers, or their bankruptcy estates or any person or entity, except as otherwise provided in the Stalking Horse Purchase Agreement, if any;

j. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Sellers in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the purchased Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Sellers, in consultation with the Consultation Parties;

k. Include sufficient financial or other information to demonstrate that the Bid is not conditioned on (i) obtaining financing; (ii) any internal approval; (iii) the outcome or review of unperformed due diligence, but may be subject to the accuracy at closing of specified representations and warranties or the satisfaction of specified, usual and customary conditions (including required Bankruptcy Court and CCAA Court approval), which shall be acceptable to the Sellers after consultation with the Consultation Parties;

l. Acknowledges that the Potential Bidder will not seek any transaction, termination, topping, work or break-up fee, expense reimbursement, or any similar type of payment or reimbursement and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process;

m. Include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Sellers, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;

n. Set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale;

o. Contain no conditions to closing of the Sale on the receipt of any third party approvals (excluding required Bankruptcy Court and CCAA Court approvals);

p. Confirms that the Potential Bidder consents to the jurisdiction of the Bankruptcy Court and the CCAA Court and agrees to be bound by the Bid Procedures, including willingness to serve as the Back-Up Bidder, if selected by the Sellers, and waives any right to a jury trial in connection with any disputes relating to the Auction and construction and enforcement of these Bid Procedures;

q. Provide an express statement that: (a) the Potential Bidder agrees to all terms of the Bidding Procedures; and (b) the Potential Bidder has not engaged in any collusive discussion with any other Potential Bidder;

r. Provide that closing of the contemplated transactions of the Bid shall occur no later than March 31, 2021;

s. Provide that the offer (a) is binding, unconditional and irrevocable until the Successful Bidder and Back-Up Bidder are selected and such Potential Bidder is not selected as either the Successful Bidder or the Back-Up Bidder and (b) is not subject to any due diligence condition, contingencies of any kind or character, indemnities, or qualifications relating to due diligence or board approval; and

t. Include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets and the liabilities to be assumed, if any, prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets and the liabilities to be assumed, if any, in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets and the liabilities to be assumed, if any, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's asset purchase agreement.

Notwithstanding the foregoing, where there are multiple Bids for different Assets that are not materially overlapping and that, when taken together, would otherwise constitute a Qualified Bid, the Sellers, in consultation with the Consultation Parties, may designate such Bids together as a Qualified Bid and may negotiate such amendments or modifications to such individual Bids as may be necessary for them to no longer be overlapping.

4. Qualified Bidders. A Potential Bidder who delivers the documents and the Deposit described in Paragraphs 2 and 3 (including all subparagraphs) above and who the Sellers determine, in consultation with the Consultation Parties, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale will be deemed to be a "Qualified Bidder." The Sellers' advisors will notify each Potential Bidder in writing (which may be via email) whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder, the DIP Secured Parties and the Prepetition Secured Parties shall be deemed Qualified Bidders for all purposes under these Bid Procedures and at all times.

a. If any Potential Bidder is determined by the Sellers, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Sellers will refund such Potential Bidder's Deposit and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.

b. The Sellers, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder prior to the Bid Deadline that its Bid is not a Qualified Bid (a "**Non-Qualifying Bid**") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid by the Bid Deadline.

c. Between the date that the Sellers notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Sellers may discuss, negotiate, seek clarification of, or request additional information regarding any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse Purchase Agreement, without the written consent of the Sellers, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures; provided, that any Qualified Bid may be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures.

5. Right to Credit Bid. At the Auction, if any, any Qualified Bidder who holds a valid and perfected lien on any assets of the Sellers' estates (a "**Secured Creditor**"), including, for the avoidance of doubt, the DIP Secured Parties, shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the

Bankruptcy Code and to the extent permitted by section 363(k) of the Bankruptcy Code, the CCAA or applicable law; provided, that nothing herein shall impact any parties' rights with respect to challenges to the liens or claims of any Secured Creditor.

6. **Due Diligence**. After receipt of the Confidentiality Agreement, Potential Bidders shall be eligible to receive due diligence information and access to the Sellers' electronic data room and to additional non-public information regarding the Sellers.

a. **Written Request Required**. Any due diligence requests must be in writing and sent to Aaron Perez of Stout at aperez@stout.com.

b. **Deadline**. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Sellers shall have no obligation to furnish any due diligence information.

c. **Sellers' Obligations**. The Sellers and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; provided, that the Sellers may withhold any diligence materials that the Sellers determine are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Sellers, in consultation with the Consultation Parties, determine is a competitor of the Sellers or is affiliated with any competitor of the Sellers. Neither the Sellers nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder.

Notice Parties

7. **Notice Parties**. The following parties are referred to herein and defined as the "Notice Parties" for the purpose of these Bid Procedures:

Counsel for the Sellers

John P. Melko
Sharon M. Beausoleil
Foley & Lardner LLP
1000 Louisiana Street, Suite 2000
Houston, TX 77002

Joseph Reynaud
Danny Duy Vu
Lee Nicholson
Stikeman Elliott LLP
199 Bay St., Suite 5300
Toronto, ON M5L 1B9

Counsel for the Ad Hoc Group and the DIP Lenders

Elizabeth R. McColm
John T. Weber
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

-and-

Tracy C. Sandler
Richard M. Borins
Osler, Hoskin & Harcourt LLP
100 King Street West
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The Monitor

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Allan Yao
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Counsel to the Monitor

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Puya Fesharaki
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100 Wellington Street West, Suite 3200
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rkennedy@tgf.ca
pfesharaki@tgf.ca

AND

Counsel for the Unsecured Creditors' Committee:

[________________________]
[________________________]
[________________________]

AND

United States Trustee:

Hector Duran
Stephen Statham
Trial Attorneys
515 Rusk Street, Suite 3516
Houston, TX 77002
Hector.Duran.Jr@usdoj.gov
Stephen.Statham@usdoj.gov

Bid Deadline and Requirements

8. **Bid Deadline**. A Qualified Bidder, other than the Stalking Horse Bidder, that desires to make a Bid for some or all of the Assets shall deliver written copies of its Bid that satisfies the Bid Requirements by email (in .pdf or similar format) so that such is **actually received** no later than **4:00 p.m. prevailing Central Time on March 19, 2021** (the "**Bid Deadline**") by the Sellers. The Sellers shall then distribute any Bids received prior to the Bid Deadline to the Notice Parties.

9. **Bid Rejection**. In determining whether a Bid is a Qualified Bid, the Sellers, in consultation with the Consultation Parties, may reject any Bid that: (a) is on terms that are materially more burdensome or conditional than the terms of the Stalking Horse Purchase Agreement; (b) requires the Sellers to indemnify the Qualified Bidder or any other person; (c) includes non-cash consideration which is not freely marketable; (d) is subject to any due diligence, financing condition or other contingencies or conditions that are not included in the Stalking Horse Purchase Agreement; or (e) is received after the Bid Deadline.

10. **Initial Bid**. After the Bid Deadline, the Sellers, after consultation with the Consultation Parties, shall determine which Qualified Bid represents the then highest or otherwise best value to the Sellers (the "**Initial Bid**"). No later than 12:00 p.m. Central Time on the day prior to the Auction, if any, the Sellers shall distribute copies of the Initial Bid to each Qualified Bidder.

Auction

11. **Auction**. If the Sellers receive at least one Qualified Bid (other than that of the Stalking Horse Bidder) on or prior to the Bid Deadline, the Sellers will conduct an auction via video conferencing (the "**Auction**") for the sale of the Assets. **The Auction, if one is necessary, will commence at 10:00 a.m. prevailing Central Time on March 22, 2021. Instructions to participate via video in the Auction will be provided to Qualified Bidders prior to the Auction.**

12. **Participation**. Only Qualified Bidders are eligible to participate in the Auction. No later than 5:00 p.m. prevailing Central Time on the day prior to the Auction, each Qualified Bidder must inform the Sellers whether it intends to participate in the Auction. The Sellers will

promptly thereafter inform in writing each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction. If the Sellers do not receive any Qualified Bids other than the Stalking Horse Bid or if no Qualified Bidder other than the Stalking Horse Bidder has indicated its intent to participate in the Auction, the Sellers will not hold an auction and the Stalking Horse Bidder will be named the Successful Bidder.

13. **Auction Procedures**. The Auction shall be governed by the following procedures:

a. Attendance. Only the Sellers, the Consultation Parties, the Stalking Horse Bidder, and any other Qualified Bidder who has submitted a Qualified Bid and each of their respective advisors will be entitled to attend the Auction, and only the Stalking Horse Bidder and Qualified Bidders will be entitled to make any subsequent Overbids at the Auction;

b. No Collusion. Each Qualified Bidder participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding or the Sale; and (ii) its Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder or the Back-Up Bidder;

c. Minimum Overbid. The Auction shall begin with the Initial Bid and, any bid made at the Auction by a Qualified Bidder subsequent to the Sellers' announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of $200,000;

d. Bidding Disclosure. The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders and that all material terms of each subsequent bid will be fully disclosed to all other bidders throughout the entire Auction;

e. Bidding Conclusion. The Auction shall continue in one or more rounds of bidding and will conclude after (i) each participating Qualified Bidder has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid or bids and (ii) there is only one offer that the Sellers, in consultation with the Consultation Parties, determine is the Successful Bid; and

f. No Post-Auction Bids. No bids will be considered for any purpose after the Auction has concluded.

Selection of Successful Bid

14. **Successful Bid Selection**. At the conclusion of the Auction, or as soon as practicable thereafter, the Sellers, in consultation with their advisors and the Consultation Parties, will: (a) review each Qualified Bid, considering, among other things, (i) the amount of the

Purchase Price, (ii) the form of consideration being offered and, if applicable, the proposed allocation of same, (iii) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof and (iv) the net benefit to the Sellers' estates; and (b) identify the highest or otherwise best offer for the Assets received at the Auction (the "**Successful Bid**" and the bidder making such bid, the "**Successful Bidder**").

15. **Successful Bid Acknowledgement**. Within one business day after adjournment of the Auction, 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.

Selection of Back-Up Bidder

16. **Back-Up Bidder**.

a. Notwithstanding anything in these Bid Procedures to the contrary, if an Auction is conducted for some or all of the Assets, the Qualified Bidder with the next-highest or otherwise second-best bid at the Auction for such Asset(s), as determined by the Sellers, after consultation with the Consultation Parties (the "**Back-up Bid**"), shall be required to serve as a back-up bidder (the "**Back-up Bidder**") for such Asset(s), and each Qualified Bidder in submitting its Bid shall agree and be deemed to agree to be the Back-up Bidder if so designated by the Sellers. For greater certainty, the Sellers shall have the ability to select one or more Back-Up Bidders for non-overlapping Assets.

b. The identity of the Back-up Bidder and the amount and material terms of the Back-up Bid shall be announced by the Sellers at the conclusion of the Auction, if any, at the same time the Sellers announce the identity of the Successful Bidder. The Back-up Bidder shall be required to keep its Bid (or if the Back-up Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Back-up Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.

c. If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Back-up Bidder shall be deemed the Successful Bidder for all purposes. The Sellers shall consummate all transactions contemplated by the Bid of such Back-up Bidder without further order of the Bankruptcy Court and CCAA Court or notice to any party in accordance with the terms of such Bid. Sellers specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance; provided, that remedies against the Stalking Horse Bidder shall be governed by the terms and conditions set forth in the Stalking Horse Purchase Agreement.

The Sale Hearing

17. Allocation. The Successful Bidder(s), and any Back-Up Bidder(s), shall provide the Sellers and the Monitor with an allocation of the offer consideration among the Assets as soon as practicable in advance of the Sales Hearings (defined below).

18. U.S. Sale Hearing. On **March 26, 2021 at [ ]:00 [ ].m. prevailing Central Time**, the U.S. Debtors will seek entry of an order from the Bankruptcy Court at a hearing (the "**U.S. Sale Hearing**") to approve and authorize a Sale of the U.S. Debtors' Assets to the Successful Bidder pursuant to the Successful Bid (the "**U.S. Sale Order**"). With the consent of the Successful Bidder and the Consultation Parties, the U.S. Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the U.S. Sale Hearing or otherwise.

19. Canadian Sale Hearing. On **March 26, 2021 at 12:00 p.m. prevailing Eastern Time,** the Canadian Debtors will seek entry of an order from the CCAA Court at a hearing (the "**Canadian Sale Hearing**") to approve and authorize a Sale of the Canadian Debtors' Assets to the Successful Bidder pursuant to the Successful Bid (the "**Canadian Sale Order**"). With the consent of the Successful Bidder and the Consultation Parties, the Canadian Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Canadian Sale Hearing or otherwise.

20. Joint Hearing. The Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Courts if determined efficient and desirable by each of the Bankruptcy Court and the CCAA Court.

21. Objections to the Sale:

a. Objections, if any, to the consummation of the Sale(s) (the "**Objections**") shall be filed with both the Bankruptcy Court and the CCAA Court not later than **4:00 p.m. prevailing Central time on March 23, 2021**. For greater certainty, each court will retain jurisdiction over its respective proceedings.

b. Any Objections not resolved before the U.S. Sale Hearing and the Canadian Sale Hearing shall be argued at the applicable hearing, including any concurrent or joint hearing, or such other time as set by the Bankruptcy Court and the CCAA Court.

Return of Deposit

22. Return Date. The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Sellers, but shall not become property of the Sellers' estates absent further order of the Bankruptcy Court and the CCAA Court or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Back-up Bidder shall be returned to such Qualified Bidder not later than three (3) business days after the Sale Hearing. The Deposit of the Back-up Bidder, if any, shall be returned to such Back-up Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Back-up Bidder, if applicable) fails to consummate a sale transaction because of a breach or failure to perform on the part of the Successful Bidder (or Back-up Bidder, if applicable), the Sellers will not have any obligation to return the Deposit deposited by the Successful Bidder (or Back-up Bidder, if applicable), and such Deposit shall irrevocably become property of the Sellers and allocated between the U.S. Debtors and the Canadian Debtors as determined (a) by an agreement between the U.S. Debtors and Canadian Debtors, in consultation with the Consultation Parties or (ii) by the Bankruptcy Court and the CCAA Court; provided, that the Deposit of the Stalking Horse Bidder shall be governed by the Stalking Horse Purchase Agreement.

Reservation of Rights

23. Sellers' Reservation of Rights.

a. The Sellers, after consultation with the Consultation Parties, may (a) determine, which Qualified Bid, if any, is the highest or otherwise best offer and (b) reject at any time before entry of an order of the Bankruptcy Court and/or the CCAA Court approving a Qualified Bid, any Bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the CCAA, the Bid Procedures or the terms and conditions of sale or (iii) contrary to the best interests of the Sellers, their respective estates and creditors.

b. The Sellers reserve their rights to modify these Bid Procedures, after consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the sale of some or all of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bid Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the U.S. Sale Hearing and/or the Canadian Sale Hearing in open court without further notice; (c) modifying the Bid Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders; provided, however, that any modification, extension, waiver, or addition to the Bid Procedures shall not be inconsistent with the DIP Order, the Bid Procedures Order, or any other order of the Bankruptcy Court or the CCAA Court. Furthermore, notwithstanding anything to the contrary herein or the Bidding Procedures Order, nothing in the Bidding Procedures Order or Bidding Procedures shall amend, modify, waive or impair, or be deemed to amend, modify, waive or impair, any provisions of the Stalking Horse Purchase Agreement, or any rights or remedies of the Stalking Horse Bidder, all of which are hereby preserved.

Free and Clear of Any And All Interests

24. **Sale Free and Clear**. Except as otherwise provided in the Bid Procedures Motion and any exhibits thereto, and the application materials filed by the Canadian Debtors in connection with the Amended and Restated Initial Order (the "**Initial Order Application**"), all of the Sellers' rights, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "**Interests**") in accordance with section 363 of the Bankruptcy Code and section 36 of the CCAA, with such Interests to attach to the net proceeds of the sale of the Assets. However, notwithstanding anything contained in these Bid Procedures, the Bid Procedures Motion and the Initial Order Application to the contrary, no sale under section 363 of the Bankruptcy Code or section 36 of the CCAA shall occur without approval by the Bankruptcy Court and the CCAA Court.

EXHIBIT B

Stalking Horse Purchase Agreement

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and among

The Sellers Listed on Schedule I
("Sellers"),

STELLEX/CF BUYER (US) LLC
("U.S. Buyer")

and

STELLEX/CF BUYER (CN) INC.
("Canadian Buyer")

Dated: February 15, 2021

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**"), is made as of the 15th day of February, 2021 (the "**Effective Date**"), by and among (a) each of the entities set forth on Schedule I (each, a "**Seller**" and collectively, the "**Sellers**"), (b) Stellex/CF Buyer (US) LLC, a Delaware limited liability company, having an address at 900 Third Avenue, 25th Floor, New York, NY 10022 ("**U.S. Buyer**") and (c) Stellex/CF Buyer (CN) Inc., a corporation incorporated under the laws of the Province of British Columbia, having its registered office at Suite 2400, 745 Thurlow Street, Vancouver, British Columbia V6E 0C5 ("**Canadian Buyer**" and together with the U.S. Buyer, the "**Buyers**").

RECITALS

A. Sellers are in the business of providing fresh-cut fruits and vegetables, snacking products and home meal replacement solutions for retail, food-service, club and convenience stores, including merchandising and category support as currently conducted (the "**Business**").

B. The U.S. Sellers intend to commence, on February 15, 2021 (the "**U.S. Petition Date**"), voluntary cases under chapter 11 of title 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") (the "**U.S. Bankruptcy Cases**") for the U.S. Sellers.

C. The Canadian Sellers intend to commence, on February 17, 2021 (the "**Canadian Petition Date**"), proceedings (the "**Canadian Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") before the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") in respect of the Canadian Sellers (together with the U.S. Bankruptcy Cases, the "**Bankruptcy Cases**").

D. U.S. Sellers desire to sell, transfer and assign the U.S. Assets (as defined herein) to U.S. Buyer and have U.S. Buyer assume the U.S. Assumed Liabilities (as defined herein) and U.S. Buyer desires to purchase, acquire and assume the U.S. Assets and assume the U.S. Assumed Liabilities of U.S. Sellers, all on the terms and conditions set forth in this Agreement.

E. Canadian Sellers desire to sell, transfer and assign the Canadian Assets (as defined herein) to Canadian Buyer and have Canadian Buyer assume the Canadian Assumed Liabilities (as defined herein) and Canadian Buyer desires to purchase, acquire and assume the Canadian Assets and assume the Canadian Assumed Liabilities of Canadian Sellers, all on the terms and conditions set forth in this Agreement.

F. The Parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets pursuant to sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code and sections 11 and 36 and other applicable provisions of the CCAA, to the extent that the Buyers are designated as the Successful Bidders in accordance with the Bidding Procedures.

G. Sellers have agreed to file the Bidding Procedures Motions and, if applicable, the Sale Motions (as defined below) with the Bankruptcy Court and the Canadian Court, as applicable, and take the other steps set forth herein and in the Bidding Procedures Orders, the Bidding Procedures and the Sale Orders (as each such term is defined below) to implement the transactions contemplated hereby upon the terms and subject to the conditions set forth herein and in the Sale Orders.

H. Sellers' ability to consummate the transactions set forth in this Agreement is subject to, among other things, the entry of the Sale Orders.

NOW, THEREFORE, in consideration of the foregoing and the respective promises, representations, warranties and covenants herein contained, the Parties hereto, intending to be legally bound hereby, do agree as follows:

ARTICLE I
DEFINITIONS

1.1 **Definitions**. For purposes of this Agreement the following terms shall have the meanings ascribed below:

"***Accounting Firm***" shall mean BDO USA. LLP.

"***Accounts Payable***" shall mean all accounts payable of Sellers, including goods received but not invoiced (GRNI), in each case, as determined in accordance with GAAP.

"***Accounts Receivable***" shall mean (a) all trade accounts receivable and other rights to payment from customers of Sellers (whether current or non-current) and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable of Sellers and the full benefit of all security for such accounts or notes, (c) other amounts due to any Seller that such Seller has historically classified as accounts receivable in the balance sheet of such Seller and (c) any security interest, claim, cause of action, remedy or other right related to any of the foregoing, in each case, net of doubtful accounts which shall include accounts overdue by more than thirty (30) days ("***Overdue Accounts***"); provided, that if Buyers are able to collect such Overdue Accounts prior to submission of the Closing Statement, such Overdue Accounts shall not be considered doubtful accounts.

"***Acquired Intellectual Property***" shall have the meaning set forth in Section 2.2(k).

"*Action*" shall mean any claim, charge, controversy, examination, action, hearing, Order, complaint, lawsuit, arbitration, proceeding, litigation, citation, summons, grievance, audit, subpoena or investigation, legal, administrative, judicial or other dispute resolution proceeding, whether at law or in equity.

"***Affiliate***" shall mean with respect to any Person, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

"***Agreement***" shall have the meaning set forth in the preamble.

"***Alternate Bidder***" shall mean the competing bidder who submits a Qualified Bid that is the next-highest or otherwise second-best bid as determined in accordance with the Bidding Procedures.

"***Ancillary Agreements***" shall have the meaning set forth in Section 5.2(b).

"***Anti-Corruption Laws***" shall mean the U.S. Foreign Corrupt Practices Act of 1977, as amended, the Corruption of Foreign Public Officials Act (Canada), the Special Economic Measures Act (Canada), the Freezing Assets of Corrupt Foreign Public Officials Act (Canada), or any rules or regulations thereunder, or any similar laws and regulations regarding corruption, bribery, ethical business conduct, or gifts, hospitalities, or expense reimbursements to public officials and private persons which are applicable in countries where any Seller engages in business.

"***AR/Inventory Excess Amount***" shall have the meaning set forth in Section 3.1(e).

"***AR/Inventory Shortfall Amount***" shall have the meaning set forth in Section 3.1(e).

"***Assets***" shall mean all properties, rights, interests and other tangible and intangible assets of Sellers (other than the Excluded Assets), which are owned, used or held for use by Sellers (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP), including any assets acquired by any Seller after the date hereof but prior to the Closing, to conduct, or in connection with the Business, or which are otherwise related to or necessary for conducting the Business, including those specified in Section 2.2.

"***Assigned Contracts***" shall mean those Desired Contracts which the applicable Seller shall assume and assign to the applicable Buyer pursuant to and in accordance with Section 2.6.

"***Assigned Insurance Policies***" shall mean those Desired Insurance Policies which the applicable Seller shall assume and assign to the applicable Buyer pursuant to and in accordance with Section 2.6.

"***Assigned Leases***" shall mean those Desired Leases which the applicable Seller shall assume and assign to the applicable Buyer pursuant to and in accordance with Section 2.6.

"***Assigned Permits***" shall mean those Desired Permits which the applicable Seller shall assume and assign to the applicable Buyer pursuant to and in accordance with Section 2.7.

"***Assumed Liabilities***" shall have the meaning set forth in Section 2.4.

"*Assumed Prepetition Payables*" shall mean those Accounts Payable with respect to pre-petition obligations of Sellers for which Sellers have obtained approval to make payments to as critical vendors, and with whom Sellers have negotiated deferred payment terms, concessions, or other settlement terms under which there are payment obligations extending beyond the Closing Date for which Buyers shall be assuming pursuant to Section 2.4(b).

"***Auction***" shall mean the auction for the sale and assumption of Sellers' assets and certain liabilities, conducted by Sellers pursuant to, and in accordance with, the Bidding Procedures and Bidding Procedures Orders.

"***Balance Sheet Date***" shall have the meaning set forth in Section 5.1(d).

"***Balance Sheet Financials***" shall have the meaning set forth in Section 5.1(d).

"***Bankruptcy Case Documents***" shall have the meaning set forth in Section 6.4(f).

"***Bankruptcy Cases***" shall have the meaning set forth in the Recitals.

"***Bankruptcy Code***" shall mean title 11 of the United States Code, § 101 *et seq*.

"***Bankruptcy Court***" shall have the meaning set forth in the Recitals.

"***Bankruptcy Rules***" shall mean the Federal Rules of Bankruptcy Procedure and the local rules of bankruptcy procedures for the Bankruptcy Court, each, a "***Bankruptcy Rule***".

"***Bidding Procedures***" shall mean the procedures to be employed with respect to the proposed sale of the Assets and the assumption of the Assumed Liabilities, to be approved by the Bankruptcy Court and the Canadian Court pursuant to the Bidding Procedures Orders, which procedures shall be substantially in the form of Exhibit A attached hereto.

"***Bidding Procedures Motions***" shall have the meaning set forth in Section 6.4(c).

"***Bidding Procedures Orders***" shall mean, collectively, the U.S. Bidding Procedures Order and the Canadian Bidding Procedures Order, which orders shall approve the Buyers, acting together, as the Stalking Horse Bidder.

"***Bill of Sale***" shall mean the bill of sale substantially in the form of Exhibit B attached hereto.

"***Break-Up Fee***" shall mean a fee payable as set forth in this Agreement in an amount equal to $1,450,000, which will constitute an allowed super-priority administrative expense claim of Buyers in Sellers' Bankruptcy Cases pursuant to sections 364(c)(1), 503, and 507 of the Bankruptcy Code and the CCAA.

"***Business***" shall have the meaning set forth in the Recitals.

"***Business Day***" shall mean any day other than a Saturday or Sunday, or other day recognized as a holiday by the U.S. Government or the government of the State of Texas or the State of New York, or on which banks or similar financial institutions in the State of Texas or the State of New York are generally closed.

"***Business Intellectual Property***" means all Owned Intellectual Property and all Intellectual Property used or held for use in connection with, or related to, or otherwise necessary for, conducting the Business.

"***Buyer Ancillary Agreements***" shall have the meaning set forth in Section 5.2(b).

"***Buyer Financing***" shall have the meaning set forth in Section 6.15.

"***Buyer Selected Employees***" shall have the meaning set forth in Section 6.6(a).

"***Buyers***" shall have the meaning set forth in the Recitals.

"***Canadian Assets***" shall mean those Assets of the Canadian Sellers except for any Acquired Intellectual Property.

"***Canadian Assumed Liabilities***" shall mean those Assumed Liabilities of the Canadian Sellers.

"Canadian Bidding Procedures Order" shall refer to the Order to be entered by the Canadian Court approving, among other things, the Bidding Procedures, which shall be in form and substance satisfactory to the Buyers.

"***Canadian Buyer***" shall have the meaning set forth in the Recitals.

"***Canadian Court***" shall have the meaning set forth in the Recitals.

"***Canadian Mortgage***" shall mean that certain mortgage to be executed at the Closing in connection with the Secured Note, substantially in the form attached hereto as Exhibit F-2.

"***Canadian Proceedings***" shall have the meaning set forth in the Recitals.

"***Canadian Purchase Price***" shall have the meaning set forth in Section 3.3.

"Canadian Sale Order" shall mean an order of the Canadian Court pursuant to section 36 and other applicable provisions of the CCAA, in form and substance satisfactory to the Buyers, which shall, among other things, (a) approve the sale of the Canadian Assets by the Canadian Sellers; (b) vest the Canadian Assets in the Canadian Buyer free and clear of Encumbrances other than Permitted Encumbrances; and (c) authorize and effect the assignment of the Assigned Contracts and the assumption of Assumed Liabilities.

"Canadian Sellers" shall mean, collectively, TGF Acquisition Parent Ltd., Tiffany Gate Foods Inc. and Sun Rich Fresh Foods Inc.

"***Cap***" shall have the meaning set forth in Section 2.4(d).

"***CARES Act***" shall mean the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136), as amended (or a similar provision of U.S. state or local law), and the rules and regulations promulgated thereunder.

"Cash Consideration Amount" shall have the meaning set forth in Section 3.1.

"***CCAA***" shall have the meaning set forth in the Recitals.

"CFIA" shall mean the Canadian Food Inspection Agency.

"Claim" shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

"Closing" shall have the meaning set forth in Section 4.1.

"***Closing Date***" shall have the meaning set forth in Section 4.1.

"***Closing Date AR/Inventory Aggregate***" shall have the meaning set forth in Section 3.1(c).

"***Closing Date Assumed Prepetition Payables***" shall have the meaning set forth in Section 3.1(c).

"***Closing Date PACA Claims***" shall have the meaning set forth in Section 3.1(c).

"***Closing Date Post-Petition Trade Payables***" shall have the meaning set forth in Section 3.1(c).

"***Closing Statement***" shall have the meaning set forth in Section 3.1(c).

"***COBRA***" shall have the meaning set forth in Section 2.5(f).

"***Code***" shall mean the U.S. Internal Revenue Code of 1986, as amended.

"***Competition Act***" shall mean the *Competition Act* (Canada), and includes the regulations promulgated thereunder.

"***Confidentiality Agreement***" shall mean the confidentiality agreement by and between Country Fresh Holding Company, Inc. and a client of Stout Capital, LLC dated December 28, 2020.

"***Confidential Information***" shall have the meaning set forth in Section 6.8(b).

"***Consent***" shall mean any approval, consent, ratification, permission, clearance, designation, qualification, waiver, or authorization, or an Order of the Bankruptcy Court or the Canadian Court, as applicable, that deems or renders unnecessary the same.

"***Contract***" shall mean any written or oral agreement, contract, indenture, mortgage, hypothec, instrument, guaranty, loan or credit agreement, note, bond, customer Order, purchase order, sales order, quotes, quote schedules, statements of work, sales agent agreement, supply agreement, development agreement, joint venture agreement, license agreement, contribution agreement, partnership agreement or other arrangement, understanding, permission or commitment that, in each case, is legally binding, including in all cases any schedules, annexes, exhibits, amendments, supplements or modifications thereto, but excluding Leases.

"COVID-19" shall mean SARS-CoV-2 or COVID-19, and any evolutions or mutations thereof or related or associated epidemics, pandemic or disease outbreaks.

"COVID-19 Measures" shall mean any of the Sellers' compliance with any quarantine, "shelter in place," "stay at home," work force reduction, social distancing, shut down, closure, sequester, safety or similar Law, policies, guidelines or recommendations promulgated by any Governmental Authority or the Centers for Disease Control and Prevention, in each case, in connection with, related to, or in response to COVID-19.

"*Cure Costs*" shall mean all monetary Liabilities, including pre-petition monetary Liabilities, that must be paid or otherwise satisfied under section 365(b)(1) of the Bankruptcy Code and section 11.3(4) of the CCAA, as applicable, or otherwise to cure all monetary and other defaults under the Assigned Leases, Assigned Contracts, Assigned Insurance Policies or Assigned Permits, as applicable, in each case as set forth on the Cure Notice, to effectuate, pursuant to the Bankruptcy Code and the CCAA, the assumption by the applicable Seller and assignment to Buyer of the Assigned Leases, Assigned Contracts, Assigned Insurance Policies and Assigned Permits.

"***Cure Notice***" shall have the meaning set forth in Section 6.4(e).

"***Current DIP Credit Agreement***" shall mean that certain Superpriority Senior Secured Debtor-In-Possession Credit Agreement (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time), by and among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as borrower, each of the other entities party thereto as guarantors, Cortland Capital Market Services LLC, as administrative agent and collateral agent and the other lenders party thereto.

"***Current DIP Financing***" shall mean that the post-petition financing obtained by Country Fresh Holdings, LLC as debtor in possession and certain other of the Sellers as Guarantors on a superpriority basis in respect of a senior secured superpriority credit facility in the aggregate principal amount of $13,416,000, plus capitalized interest thereon pursuant to the terms and conditions of the Current DIP Credit Agreement.

"D&O Causes of Action" shall mean any claims, causes of action, demand, actions, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever against any Person who on the Petition Date was a director, manager, officer, employee, or other representative of one or more of Sellers.

"***Deposit***" shall have the meaning set forth in Section 3.1(a).

"***Desired Contracts***" shall have the meaning set forth in Section 2.6(a).

"***Desired Insurance Policies***" shall have the meaning set forth in Section 2.6(a).

"***Desired Leases***" shall have the meaning set forth in Section 2.6(a).

"***Desired Permits***" shall have the meaning set forth in Section 2.7(a).

"***Disclosure Schedule***" shall mean those disclosure schedules accompanying this Agreement.

"***Effective Date***" shall have the meaning set forth in the Recitals.

"***Employee Plan***" shall have the meaning set forth in Section 5.1(n).

"***Employees***" shall have the meaning set forth in Section 5.1(o).

"***Employment Liabilities***" shall have the meaning set forth in Section 2.4(a)(iv).

"***Encumbrance***" shall mean any pledge, lien, mortgage, hypothec, deed of trust, interest, charge, claim, interest, security interest, put, call, conditional sale or installment contract, finance lease involving substantially the same effect, security agreement or other encumbrance or restriction on the use, transfer or ownership of any property of any type (including real property, tangible property and intangible property), right of first refusal or other option, easement, encroachment, right of way, servitude or restriction.

"***Environmental Claim***" shall mean any action, claim, complaint, notice of violation, notice of "potentially responsible party" liability, enforcement proceeding, information request, governmental Order or decree, Encumbrance, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging Liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"***Environmental Laws***" shall mean all Laws relating to the Release of Hazardous Materials or protecting worker health or safety or the environment, including without limitation: (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), as amended ("**CERCLA**"); (ii) the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.), as amended; (iii) the Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended; (iv) the Clean Water Act (33 U.S.C. § 1251), as amended; (v) the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended; (vi) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), as amended; (vii) the Safe Drinking Water Act (41 U.S.C. § 300f et seq.), as amended; (viii) the Federal Water Pollution Control Act (33 U.S.C. § 125, et seq.), (ix) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), (x) the Canadian Environmental Protection Act, 1999 (S.C. 1999, c. 33), (xi) the Ontario Environmental Protection Act R.S.O.1990, c.E.19 and regulations thereunder, as amended and (xii) the Environmental Management Act, SBC 2003, C.53 and regulations thereunder, as amended.

"***Environmental Notice***" shall mean any written directive or notice with respect to any Environmental Claim.

"***Environmental Permit***" shall mean any Permit, letter, clearance, Consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"***ERISA***" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" shall mean, with respect to Sellers, any other Person that is a member of a controlled group for purposes of Section 4001(a)(14) of ERISA or that is treated as a single employer for purposes of Section 414 of the Code.

"***Escrow***" shall have the meaning set forth in Section 3.1(a).

"***Escrow Agent***" shall mean Citibank, N.A.

"***Escrow Agreement***" shall mean the Escrow Agreement by and among U.S. Buyer, Holdings and the Escrow Agent to be dated not later than the second Business Day following the date hereof, in the form attached hereto as Exhibit C.

"***ETA***" shall have the meaning set forth in Section 3.5(b).

"***Excluded Assets***" shall have the meaning set forth in Section 2.3.

"***Excluded Contracts***" shall mean all Contracts that are not Assigned Contracts.

"***Excluded Insurance Policies***" shall mean all Insurance Policies that are not Assigned Insurance Policies.

"***Excluded Leases***" shall mean all Leases that are not Assigned Leases.

"***Excluded Permits***" shall mean all Permits that are not Assigned Permits.

"***Excluded Liabilities***" shall have the meaning set forth in Section 2.5.

"***Excluded Records***" shall mean (a) the general corporate files and records of Sellers, insofar as they do not relate to the Business and are not required for the future ownership of the Assets or operation of the Business, (b) all privileged files and records (other than files exclusively related to Assumed Liabilities), (c) income Tax files and records related to Taxes paid or payable by any Seller, (d) confidential personnel and medical files pertaining to any employee to the extent the disclosure of such information is prohibited by applicable Law, (e) records relating to potential and actual bidders, (f) copies of records stored for archival and/or back up purposes, and (g) any other files or records to the extent exclusively relating to any Excluded Assets; provided that Buyers shall have the right to make copies of any portions of such retained Excluded Records, at their sole cost and expense, to the extent that such portions relate to the Business, any Asset or any Assumed Liability and such copies would not otherwise cause the Sellers to waive privilege or breach any confidentiality provisions.

"***Expense Reimbursement***" shall mean an amount equal to the reasonable, documented, out-of-pocket costs and expenses of Buyers (including the reasonable, documented expenses of outside counsel, investment bankers and other outside advisors) related to negotiating this Agreement and investigating Sellers, the Assets and the Assumed Liabilities, up to a maximum amount of $700,000, which amount, upon entry of the Bidding Procedures Orders by the Bankruptcy Court and the Canadian Court, as applicable, will constitute an allowed super-priority administrative expense claim of Buyers in Sellers' Bankruptcy Cases pursuant to sections 364(c)(1), 503, and 507 of the Bankruptcy Code and the applicable provisions of the CCAA.

"***Facilities***" shall mean each of the facilities and related buildings, structures, signage, improvements erected or located thereon as set forth on Schedule 1.2 attached hereto.

"***Families First Act***" shall mean the Families First Coronavirus Response Act (P.L. 116-127) or a similar provision of U.S. state or local law.

"***FDA***" shall mean the United States Food and Drug Administration.

"***FDA Recall Insurance Proceeds***" shall mean the amount of, and all rights to any, claims or proceeds under the Sellers' Insurance Policies related to losses and expenses, including but not limited to employee wages, product and packaging disposal, customer sales and margin loss, temporary lost sales, facility repair and cleaning, transportation and contractor services, incurred by Sellers in connection with the temporary shutdown of the facility located at 920 Avenue R, Suite 100, Grand Prairie, Texas, pursuant to and in connection with that certain FDA Warning Letter dated December 12, 2019.

"***Final Order***" shall mean an Order entered by the Bankruptcy Court, Canadian Court or other court of competent jurisdiction as to which: (i) no appeal, notice of appeal, motion for reconsideration, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been dismissed or withdrawn, (ii) the time for instituting or filing an appeal or motion for rehearing or motion for new trial shall have expired; and (iii) if an appeal, motion for reconsideration, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been filed, and no stay pending an appeal is in effect of the Sale Orders.

"***Financial Statements***" shall have the meaning set forth in Section 5.1(d).

"***Financing Period***" shall have the meaning set forth in Section 6.15.

"***Food Safety Claim***" shall mean shall mean any action, claim, complaint, notice of violation, notice of "potentially responsible party" liability, enforcement proceeding, information request, governmental Order or decree, Encumbrance, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging Liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, governmental response, removal or remediation, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from any actual or alleged non-compliance with any Food Safety Law or term or condition of any Food Safety Permit.

"***Food Safety Laws***" shall mean all applicable Laws issued or implemented by the FDA, USDA, CFIA, Health Canada and/or any other comparable Governmental Authority, including those related to recordkeeping, food safety, food additives, food contact substances, supplier verification, current good manufacturing practices, import and export compliance, corrective action preparedness, and food labeling and advertising.

"***Food Safety Notice***" shall mean any written directive or notice with respect to any Food Safety Claim.

"***Food Safety Permit***" shall mean any Permit, clearance, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Food Safety Law.

"***GAAP***" shall mean generally accepted accounting principles in the United States applied on a consistent basis.

"***Governmental Authority***" shall mean any national, federal, state, provincial, territorial, municipal or local government or political subdivision thereof or any court of competent jurisdiction, governmental, legislative, regulatory or administrative agency, tribunal, judicial body or commission or other governmental or quasi-governmental authority or instrumentality, domestic or foreign.

"***GST***" shall mean the Taxes (including the goods and services tax and harmonized sales tax) imposed under Part IX of the *Excise Tax Act* (Canada) and the regulations made thereunder.

"***Guarantor***" shall mean Stellex/CF Intermediate LLC.

"***Guaranty***" shall mean that certain Guaranty, guaranteeing the Secured Note, to be executed by the Guarantor at the Closing substantially in the form attached hereto as Exhibit D.

"***Hatfield Capital Expenditure***" shall mean that certain build of a USDA room in the Sellers' Hatfield facility, which was completed in November 2020 and of which, $225,000 remains outstanding as of the Effective Date.

"***Hazardous Materials***" shall mean (i) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; (ii) those substances, materials, or wastes included within statutory and/or regulatory definitions or listings of "hazardous substance," "special waste," "hazardous waste," "extremely hazardous substance," "solid waste" "medical waste," "regulated substance," "hazardous materials," "toxic substances," or "air contaminant", "contaminant," or "pollutant," under any Environmental Law; and/or (iii) any substance, material, or waste which is or contains: (A) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation polychlorinated biphenyls and per- and polyfluoroalkyl substances, (B) explosives, or (C) radioactive materials (including naturally occurring radioactive materials).

"***Holdings***" shall mean Country Fresh Holding Company Inc.

"***Income Statement Financials***" shall have the meaning set forth in Section 5.1(d).

"***Indebtedness***" of any Person shall mean, without duplication, (a) the principal of and premium (if any) in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds, or other similar instruments for the payment of which such Person is responsible or liable, (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person, and all obligations of such Person under any title retention agreement (but excluding trade accounts payable for goods and services and other accrued current liabilities arising in the ordinary course of business), (c) all obligations of such Person under leases required to be capitalized in accordance with GAAP, (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance, or similar credit transaction, (e) obligations under any interest rate, currency swap or other hedging agreement or arrangement, (f) all obligations of the type referred to in clauses (a) through (e) of any Person for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety, or otherwise, including guarantees of such obligations, and (g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Encumbrance on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"***Insurance Policies***" shall mean all primary, excess and umbrella insurance policies, bond and other forms of insurance owned or held by or on behalf, or providing insurance coverage to the Business, any Seller or any of their respective operations, properties and assets.

"***Intellectual Property***" shall mean all worldwide: (i) patents, industrial designs, and utility models, and any applications for any of the foregoing; all reissues, reexaminations, divisions, divisionals, renewals, extensions, provisionals, continuations, and continuations-in-part for any of the foregoing; and all patents, applications, documents ,and filings claiming priority to or serving as a basis for priority for any of the foregoing; (ii) trademarks, service marks, certification marks, trade names, trade dress, logos, slogans, tag lines, fictitious business names (d/b/a's), uniform resource locators, internet domain names, social media accounts, websites, and all other source or business identifiers or designators of origin (all whether registered or unregistered); all applications and registrations for any of the foregoing; all renewals and extensions for any of the foregoing; and all common law rights in and goodwill associated with any of the foregoing (collectively, "***Trademarks***"); (iii) works of authorship, copyrights, mask work rights, database rights, and design rights (all whether registered or unregistered); applications and registrations for any of the foregoing; all renewals and extensions for any of the foregoing; all moral rights associated with any of the foregoing; and all economic rights of authors and inventors, however denominated, associated with any of the foregoing; (iv) computer software, databases, source code, object code, development tools, comments, user interfaces, menus, buttons, and icons; all files, data, scripts, application programming interfaces, manuals, design notes, programmers' notes, architecture, algorithms, and other items and documentation related to or associated with any of the foregoing; any derivative works, foreign language versions, fixes, upgrades, updates, enhancements, new versions, previous versions, new releases, and previous releases of any of the foregoing; and all media and other tangible property necessary for the delivery or transfer of any of the foregoing (collectively, "***Software***"); (v) proprietary information, confidential information, and trade secrets, including inventions (whether or not patentable), invention disclosures, ideas, developments, improvements, know-how, designs, drawings, algorithms, source code, methods, processes, techniques, formulae, research and development, compilations, compositions, manufacturing processes, production processes, devices, data, specifications, reports, analyses, data analytics, customer lists, supplier lists, pricing information, cost information, business plans, business proposals, marketing plans, and marketing proposals; (vii) any rights recognized under applicable Law that are equivalent or similar to any of the foregoing and (viii) all past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief relating, referring, or pertaining to any of the foregoing.

"***Intellectual Property Assignment Agreement***" shall have the meaning set forth in Section 4.2(a)(iii).

"***Inventory***" shall mean all inventories of Sellers including all finished goods, work in process, raw materials and all other materials and supplies to be used or consumed by Sellers in the production of finished goods, at book value on a consistent basis in accordance with past practices.

"***Investment Canada Act***" shall mean the *Investment Canada Act* (Canada).

"***Key Customers***" means the person set forth on Schedule 1.3.

"***Knowledge***" shall mean, with respect to any matter, (a) in the case of Sellers, the knowledge of any individuals listed on Schedule 1.4 attached hereto with respect to such matter, following, in each case, such individual's reasonable investigation of such matter and (b) in the case of Buyers, the knowledge of any individuals listed on Schedule 1.5 attached hereto with respect to such matter, following, in each case, such individual's reasonable investigation of such matter.

"***Law***" shall mean (i) any United States, Canadian or foreign, federal, state, provincial, territorial, municipal or local law (both common and statutory law and civil and criminal law), statute, code, treaty, constitution, convention, directive, legislation, ordinance, rule, regulation, principle of common law or equity, rule, by-law, judgment, decree, policy, practice, protocol, standard, guideline or other requirement of any Governmental Authority or any other requirement have the force of law, or (ii) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law.

"Leased Real Property" shall mean all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property of Sellers.

"Leases" shall mean all leases, subleases, licenses, concessions, and other agreements, including all amendments, extensions, renewals, guaranties, and other agreements with respect thereto, in each case pursuant to which a Seller holds or has any interest in Leased Real Property, but excluding Contracts.

"***Letter of Intent***" shall mean that certain Indication of Interest letter agreement by and between Stellex Capital Management LLC and Country Fresh Holding Company Inc. dated January 25, 2021.

"***Liability***" shall mean any and all debts, Indebtedness, claims, Encumbrances, losses, damages, deficiencies, assessments, adverse claims, liabilities, fines, penalties, duties, responsibilities, taxes, obligations and expenses (including reasonable attorneys' fees and reasonable costs of investigation and defense) of any kind, character, or description, whether known or unknown, direct or indirect, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, asserted or unasserted, ascertained or ascertainable, disputed or undisputed, liquidated or unliquidated, choate or inchoate, secured or unsecured, joint or several, vested or unvested, executory, determined, determinable, in contract, tort, strict liability, or otherwise, or otherwise due or to become due.

"***Losses***" shall mean any demands, claims, allegations, assertions, actions or causes of action, assessments, losses, damages, deficiencies, liabilities, costs and expenses (including, without limitation, reasonable legal fees, interest, penalties and all reasonable amounts paid in investigation, defense or settlement of any of the foregoing, whether or not the underlying demands, claims or allegations of third parties are meritorious).

"***Material Adverse Change***" shall mean any fact, event, change, occurrence or development that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business or Sellers, taken as a whole, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis. Notwithstanding anything to the contrary contained in this paragraph, none of the following shall be deemed, individually or in the aggregate, to constitute a Material Adverse Change: any change, effect, event, circumstance, state of facts or development resulting from or relating to (directly or indirectly) any of the following: (i) general political, business, economic, financial, or capital market conditions (including interest rates); (ii) changes in Laws or Orders or interpretations thereof or changes in accounting standards, requirements or principles (including GAAP); (iii) changes, occurrences, or developments in the industries, markets or geographical areas in which Sellers operate in general; (iv) any action taken by Sellers as expressly permitted by this Agreement or with Buyers' written consent; (v) any natural disaster, other acts of God or any acts of terrorism, sabotage, civil unrest, military action or war (whether or not declared), epidemic, pandemic or similar health outbreak (including but not limited to, COVID-19) or any escalation or worsening thereof, whether or not occurring or commencing before or after the date of this Agreement, and any actions taken in response to any of the foregoing; provided, that for purposes of this clause (v), solely with respect to COVID-19, any fact, event, change, occurrence or development resulting in any cancellation or significant reduction in sales or orders by a customer or supplier of the Sellers shall not be excluded from the determination of a Material Adverse Change; (vi) any action required to be taken under any Law (including any COVID-19 Measures) or Order by which Sellers (or any of the Assets) are bound; or (vii) the failure, in and of itself, of the financial or operating performance of Sellers to meet internal or Buyers' projections, forecasts, or budgets for any period; provided, that the underlying causes of any failures in clauses (i) through (vi) shall not be excluded if such facts, changes, events, effects, or occurrences referred to therein has had, or is reasonably like to have, a disproportionate adverse impact on the Business taken as a whole, relative to other similarly situated businesses in the industry in which the Business operates.

"***Material Contracts***" shall have the meaning set forth in Section 5.1(j).

"***Material Customers***" shall have the meaning set forth in Section 5.1(f)(i).

"***Material Vendors***" shall have the meaning set forth in Section 5.1(f)(i).

"***Monitor***" shall mean Ernst & Young, Inc.

"***Mortgages***" shall mean U.S. Mortgages and Canadian Mortgage.

"***Notice of Disagreement***" shall have the meaning set forth in Section 3.1(c).

"***Notifiable Transactions Regulations***" shall mean the Notifiable Transactions Regulations (SOR/87-348).

"***Order***" shall mean any order, writ, judgment, injunction, assessment, decree, ruling, verdict, stipulation or award, compliance agreement, or other decision entered, issued, made or rendered by any Governmental Authority.

"Owned Equity Interests" shall mean any equity interests or equity securities of any Seller, including shares of capital stock or other equity interest of Sellers or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of Sellers.

"***Owned Intellectual Property***" shall mean all Intellectual Property owned or purported to be owned by Sellers and used or held for use in connection with, or related to, or otherwise necessary for, conducting the Business.

"***Owned Real Property***" shall have the meaning set forth in Section 5.1(r)(i).

"***PACA***" shall mean the Perishable Agricultural Commodities Act.

"***PACA Claims***" shall mean the trade claims against Sellers arising under PACA as set forth on Schedule 1.6(a) attached hereto.

"***PACA Lien Assets***" shall mean the Encumbrances on Accounts Receivables the Sellers hold on any agricultural commodities and any inventories, receivables and proceeds derived from vendors or suppliers, arising under PACA.

"***Party***" shall mean either Buyers or Sellers, as the case may be, and "***Parties***" shall mean both Buyers and Sellers.

"***Permits***" shall mean all licenses, permits, Environmental Permits, Food Safety Permits, certificates, approvals, Consents, waivers, registrations, franchises, authorizations, ratifications, exemptions, classifications, variances, Orders, or other similar documents or rights or authorizations issued, granted, given or otherwise obtained from or by any Governmental Authority, under the authority thereof, or pursuant to any applicable Law, including Safe Quality Food (SQF) Food Safety Program or Global Food Safety Initiative (GFSI) food safety certifications and registrations with the FDA, USDA, including PACA licensing, and CFIA.

"***Permitted Encumbrances***" shall mean (i) any Encumbrances for Taxes not yet due and payable that have been fully accrued on the books and records of the applicable Seller; (ii) mechanics' carriers, workmen's, repairmen's or other similar Encumbrances arising or incurred in the ordinary course of business or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business or the Assets; (iii) with respect to real property, easements, rights of way, zoning ordinances and other similar encumbrances which are not individually or in the aggregate, material to the Business or the Assets or which interfere with the use of the Real Property as currently used; and (iv) Encumbrances arising under conditional sales contracts or equipment leases with third parties entered into in the ordinary course of business which are not, individually or in the aggregate, material to the Business or the Assets.

"***Person***" shall mean any individual, firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Authority or other entity whatsoever.

"***Personal Information***" shall mean, to the extent regulated by any Law, Contract or privacy policy applicable to the Sellers, any data that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household or any other data that constitutes personal data or personal information.

"***Post-Petition Trade Payables***" shall mean the Accounts Payable, consistent with post-petition terms, which are outstanding as of the Closing Date and that are directly attributable to the production of Product for the Business and generation of Accounts Receivable, except for any such costs and expenses related to overhead, selling, general and administrative expenses, professional fees, Taxes or services not directly attributable to Products for the Business.

"***Prepetition First Lien Credit Agreement***" shall mean that certain Credit Agreement (First Lien), dated as of April 29, 2019, among certain of the Sellers, the lenders from time to time party thereto and Cortland Capital Market Services, LLC, as administrative agent for such lenders, as amended by the First Amendment to Credit Agreement, dated as of April 24, 2020, pursuant to which the applicable lenders extended certain loans to the borrowers thereunder.

"***Prepetition Second Lien Credit Agreement***" shall mean that certain Second Lien Credit Agreement, dated as of April 29, 2019, among certain of the Sellers as borrowers, the lenders from time to time party thereto and Cortland Capital Market Services, LLC, as administrative agent for such lenders, as amended by the First Amendment to Credit Agreement, dated as of April 24, 2020, pursuant to which the applicable lenders extended certain loans to the borrowers thereunder.

"***Prepetition Secured Credit Facilities***" shall mean the Prepetition Super Senior Credit Agreement, the Prepetition First Lien Credit Agreement and the Prepetition Second Lien Credit Agreement.

"***Prepetition Secured Debt***" shall mean shall mean the indebtedness issued under the Prepetition Secured Credit Facilities.

"***Prepetition Super Senior Credit Agreement***" shall mean that certain Term Loan Credit Agreement (Super Senior), dated as of June 1, 2020 among certain of the Sellers, the lenders from time to time party thereto and Cortland Capital Market Services, LLC, as administrative agent for such lenders, as amended by the First Amendment to Term Loan Credit Agreement (Super Senior), dated as of December 29, 2020 and by the Second Amendment to Term Loan Credit Agreement (Super Senior), dated as of February 4, 2020, pursuant to which the applicable lenders party thereto extended certain loans to the borrowers thereunder.

"***Privacy and Security Requirements***" shall mean, to the extent applicable to Sellers, (a) any Laws regulating the Processing of Protected Data (including, without limitation, Laws regulating the sending of text messages, emails and other commercial electronic messages); (b) the Payment Card Industry Data Security Standard issued by the PCI Security Standards Council, as it may be amended from time to time ("***PCI DSS***"); (c) all Contracts between Sellers and any Person that is applicable to the PCI DSS and/or the Processing of Protected Data; and (d) all policies and procedures applicable to Sellers relating to the PCI DSS and/or the Processing of Protected Data, including without limitation all website and mobile application privacy policies and internal information security procedures.

"***Product***" shall mean each product sold or delivered by any Seller in connection with the Business.

"***Process***" shall mean the creation, collection, use (including, without limitation, for the purposes of sending telephone calls, text messages and emails), storage, maintenance, processing, recording, distribution, transfer, transmission, receipt, import, export, protection, safeguarding, access, disposal or disclosure or other activity regarding data (whether electronically or in any other form or medium).

"***Protected Data***" shall mean Personal Information and all data for which Sellers are required by Law, Contract or privacy policy to safeguard, restrict use and/or keep confidential or private, including all such data transmitted to Sellers by customers of Sellers or Persons that interact with Sellers.

"***Purchase Price***" shall have the meaning set forth in Section 3.1.

"Qualified Bid" shall mean competing bids that are submitted by a qualified bidder in accordance with the Bidding Procedures and Bidding Procedures Orders.

"***R&D Persons***" shall mean the Persons set forth on Schedule 1.7.

"***Real Property***" shall mean, collectively, the Owned Real Property and Leased Real Property.

"***Records***" shall mean books, records, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists and supplier lists), plans (whether written, electronic, or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, ledgers, information, data and other materials related to the Business or which have been utilized in connection with the operation of the Business but shall not include any Excluded Records.

"***Release***" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

"***Representative***" shall mean with respect to a particular Person, any director, officer, manager, partner, member, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants, and financial advisors.

"***Required Consents***" shall mean the consents in Section 5.1(c) of the Disclosure Schedules, other than those that (i) relate to Contracts that are immaterial to the Business or (ii) are not necessary in light of the Sale Orders.

"***RRSP***" shall mean each Employee Plan that is a "registered retirement savings plan" as defined in the Tax Act.

"***Sale Motions***" shall have the meaning set forth in Section 6.4(c).

"***Sale Orders***" shall mean, collectively, the U.S. Sale Order and the Canadian Sale Order.

"***Secured Note***" shall mean that certain senior secured note payable to the Sellers, or a designee of the Sellers (as may be requested by Sellers), in the principal amount of Twenty-

Five Million and 00/100 Dollars ($25,000,000), guaranteed by the Guarantor, to be executed at the Closing, substantially in the form attached hereto as Exhibit E; provided, that in the event that assigning to a designee would result in an adverse tax consequence to the Buyers, Buyers may require the Secured Note to be issued to the Sellers at Closing and the Sellers may thereafter assign the Secured Note to their designee to the extent permitted thereby.

"***Security Breach***" shall mean any (i) security breach or breach of Protected Data under applicable Privacy and Security Requirements, including any unauthorized access, acquisition, use, disclosure, modification, deletion, or destruction of information (including Protected Data); or (ii) unauthorized interference with system operations or security safeguards of IT systems, including any phishing incident or ransomware attack.

"***Sellers***" shall have the meaning set forth in the Recitals.

"***Sellers Ancillary Agreements***" shall have the meaning set forth in Section 5.1(b).

"***Sellers' Retained Employees***" shall have the meaning set forth in Section 6.6(a).

"***Service Provider***" shall mean any director, officer, full-time or part-time employee, independent contractors, independent consultants, or temporary employees, of any Seller.

"***Software***" shall have the meaning set forth in the definition of Intellectual Property.

"***Stalking Horse Bidder***" shall mean the U.S. Buyer and the Canadian Buyer, acting together, as the "stalking horse bidder".

"***Subsidiary***" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or other persons performing similar functions with respect to such corporation) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be or control any managing director, managing member or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"***Successful Bidder***" shall mean the bidder with the highest or otherwise best bid at the conclusion of the Auction, if any, as determined in accordance with the Bidding Procedures and Bidding Procedures Orders.

"***Superior Proposal***" shall mean any bona fide proposal or offer to or from a Person other than Buyers pursuant to this Agreement with respect to (a) any plan of reorganization or liquidation, proposal, offer, dissolution, winding up, liquidation, reorganization, merger, consolidation, business combination, joint venture, partnership, sale of assets or equity interests or restructuring involving the Assets, or (b) any other direct or indirect acquisition involving the Assets, that, in each case, Sellers have determined in their business judgment would, if consummated, result in a transaction superior to the transactions contemplated hereunder or a Qualified Bid that is higher or otherwise better that that of Buyers or its Affiliates in accordance with the Bidding Procedures and Bidding Procedures Orders. Notwithstanding the foregoing, any Expense Reimbursement under this Agreement will be treated as an administrative expense.

"***Target AR/Inventory Bottom Collar***" shall mean $45,000,000.

"***Target AR/Inventory Top Collar***" shall mean $49,000,000.

"***Tax***" or "***Taxes***" shall mean (i) any and all federal, state, provincial, territorial, municipal, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all net or gross income, net or gross receipts, net or gross proceeds, capital, capital gains, sales, use, user, lease, leasing, natural resources, premium, harmonized sales, goods and services, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, employer health, social security, disability, unemployment, excise, severance, escheat, stamp, fuel, registration, recording, turnover, unclaimed or abandoned property, alternative or add-on, windfall or excess profits, environmental, occupation, personal property (tangible or intangible), real property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever; (ii) any and all employment insurance premiums, Canada or other government pension plan contributions or premiums, (iii) all interest, penalties, fines, installments, additions to tax or additional amounts imposed by any Taxing Authority in connection with any item described in clauses (i) and (ii); and (iv) any liability in respect of any items described in clauses (i) - (ii) payable by reason of Contract, assumption, transferee liability, operation of Law, Treasury Regulation section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise, in each case, whether disputed or not.

"***Tax Act***" shall mean the *Income Tax Act* (Canada).

"***Tax Return***" shall mean any return, declaration, report, claim for refund, estimate, information return, election, notice, statement or other similar document relating to or required to be filed with any Governmental Authority in respect of any Taxes, including any schedule, or attachment thereto and including any amendment thereof, or any extension of time to file or pay any of the foregoing.

"***Taxing Authority***" shall mean the U.S. Internal Revenue Service, the Canada Revenue Agency and any other Governmental Authority responsible for the administration of any Tax.

"***Third Party Consents***" shall have the meaning set forth in Section 5.1(c).

"***Title Company***" shall mean the title company selected by Buyers in their sole discretion.

"***Title Policy***" shall mean an owner's title insurance policy issued by the Title Company on the most current form of ALTA fee owner's title insurance policy, or in the case of the Owned Real Property situated in Canada, on the Title Company's standard form of owner's title insurance policy, with extended coverage over the standard exceptions, insuring the good and marketable fee simple title of Buyers, subject only to Permitted Encumbrances, and with such affirmative coverages and endorsements at Buyers' expense as Buyers shall reasonably require and which the Title Company agrees to issue, including without limitation the following endorsements, or the Title Company's equivalent Canadian endorsements, as the case may be: (a) ALTA 3.1 zoning, (b) owner's comprehensive, (c) land "same as" survey, (d) subdivision compliance, (e) tax parcel identification, (f) contiguity, (g) location, (h) waiver of arbitration, (i) utilities availability, (j) ALTA 28.1 Encroachments; (k) minerals and other subsurface substances; (l) ALTA 9.9 private rights; (m) ALTA 8.2 environmental protection lien; and (n) access.

"***Trademarks***" shall have the meaning set forth in the definition of Intellectual Property.

"***Transfer Taxes***" shall mean all transfer, documentary, sales, use, stamp, registration, customs duties, import and export taxes, surtaxes, value added, Goods and Services Tax, Harmonized Sales Tax, Quebec Sales Tax, provincial, territorial sales/retail Taxes, fees and any other similar Taxes (including any real property transfer Tax and any other similar Tax) and any related penalties and interest.

"***Transition Services Agreement***" shall have the meaning set forth in Section 4.2(a)(xii).

"***U.S. Assets***" shall mean the Assets other than the Canadian Assets, including the Acquired Intellectual Property.

"***U.S. Assumed Liabilities***" shall mean the Assumed Liabilities other than the Canadian Assumed Liabilities.

"***U.S. Bankruptcy Cases***" shall have the meaning set forth in the Recitals.

"***U.S. Bidding Procedures Order***" shall refer to the Order to be entered by the Bankruptcy Court approving, among other things, the Bidding Procedures, and shall be in form and substance satisfactory to the Buyers.

"***U.S. Buyer***" shall have the meaning set forth in the Recitals.

"***U.S. Mortgages***" shall mean those certain mortgages to be executed at the Closing in connection with the Secured Note, each substantially in the form attached hereto as Exhibit F-2.

"***U.S. Purchase Price***" shall have the meaning set forth in Section 3.3.

"***U.S. Sale Order***" shall mean an order entered by the Bankruptcy Court authorizing the sale of the Assets free and clear of all Encumbrances other than Permitted Encumbrances, if any, pursuant to section 363(f) of the Bankruptcy Code, and the assumption of Assumed Liabilities as contemplated herein.

"***U.S. Sellers***" shall mean Country Fresh Holding Company Inc., Country Fresh Midco Corp., Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, Country Fresh LLC, County Fresh Manufacturing, LLC, Country Fresh Carolina, LLC, Country Fresh Dallas, LLC, CF Products, LLC, Country Fresh Midwest, LLC, Country Fresh Pennsylvania, LLC, Country Fresh Transportation LLC, Country Fresh Orlando, LLC, Champlain Valley Specialty of New York, Inc., Sun Rich Fresh Foods (NV) Inc., Sun Rich Foods (USA) Inc., and Sun Rich Fresh Food (PA) Inc.

"***USDA***" shall mean the United States Department of Agriculture.

"***WARN Act***" shall mean the United States Worker Adjustment and Retraining Notification Act, or any similar applicable non-United States, state or local Law.

ARTICLE II
SALE AND PURCHASE OF ASSETS

2.1 Agreement to Sell and Purchase.

a) Subject to the terms and conditions of this Agreement and in consideration of the U.S. Purchase Price, on the Closing Date, U.S. Sellers shall sell, transfer, convey and assign to U.S. Buyer and U.S. Buyer shall purchase from U.S. Sellers all of U.S. Sellers' right, title and interest in and to all of the U.S. Assets, free and clear of all Encumbrances (other than Permitted Encumbrances expressly identified on Schedule 2.1 attached hereto).

b) Subject to the terms and conditions of this Agreement and in consideration of the Canadian Purchase Price, on the Closing Date, Canadian Sellers shall sell, transfer, convey and assign to (i) Canadian Buyer, and Canadian Buyer shall purchase from Canadian Sellers, all of Canadian Sellers' right, title and interest in and to all of the Canadian Assets, free and clear of all Encumbrances (other than Permitted Encumbrances expressly identified on Schedule 2.1 attached hereto) and (ii) U.S. Buyer, and U.S. Buyer shall purchase from Canadian Sellers, all of Canadian Sellers' right, title and interest in and to all of the Acquired Intellectual Property, free and clear of all Encumbrances (other than Permitted Encumbrances expressly identified on Schedule 2.1 attached hereto).

2.2 Assets. Without limiting the generality of Section 2.1, the Assets to be purchased by Buyers at the Closing include all of Sellers' right, title and interest in all Assets (other than the Excluded Assets), free and clear of all Encumbrances (other than Permitted Encumbrances expressly identified on Schedule 2.1 attached hereto), including without limitation the following:

a) the Owned Real Property;

b) the Facilities and all tangible property, apparatus, equipment, machinery, furniture, fixtures, computers, computer hardware, Software and programs (including all source code, object code, firmware, development tools, files, records, data, and documentation), reports, databases, user manuals, training manuals, sales literature, operations documentation, leasehold improvements (to the extent of any Seller's rights to any leasehold improvements under Assigned Leases) and other items of personal property which are utilized in connection with the Business and located thereat (together, the "**PP&E**");

c) all Inventory (including all rights of any Seller to receive such Inventory) and all open purchase orders with suppliers;

d) all Accounts Receivable;

e) subject to Section 2.6, all Assigned Contracts, Assigned Insurance Policies and Assigned Leases;

f) subject to Section 2.7, all Assigned Permits;

g) all assignable or transferable warranties and guaranties presently in effect from contractors, suppliers or manufacturers of personal property installed in or used in connection with the PP&E (to the extent assignable);

h) except for Excluded Liabilities, all claims, causes of action and other legal rights and remedies of Sellers, and any proceeds of, or property and interests recovered in respect of, and the right to control, all claims and causes of action of any Seller, whether or not known as of the Closing Date, but excluding causes of action and other legal rights and remedies of Sellers (i) against either Buyer with respect to the transactions contemplated by this Agreement, (ii) relating exclusively to the Excluded Assets or (iii) against their lenders;

i) all Records;

j) all Business Intellectual Property, including the Intellectual Property listed on Schedule 5.1(h), and all goodwill associated therewith and symbolized thereby and all rights and privileges relating to or pertaining to the foregoing Intellectual Property (including all rights and privileges to the foregoing Intellectual Property under any employment agreements, non-disclosure agreements and intellectual property assignment agreements) (the "***Acquired Intellectual Property***", including all usernames, passwords and other information and credentials used to access, use, manage, maintain or renew any domain names or social media accounts included in the Acquired Intellectual Property;

k) all claims, rights, credits, causes of action (including any commercial tort claims), defenses and rights of set-off of any type of any Seller, including D&O Causes of Action, and any proceeds of, or property and interests recovered in respect of, and the right to control, all claims, counterclaims, causes of action and defenses of any Seller, including all causes of action pursuant to chapter 5 of the Bankruptcy Code or similar state laws, and with respect to the Assets, Assumed Liabilities, and any suppliers and vendors of the Sellers who, in the sole discretion of the Buyers, are going to be continuing suppliers and vendors, all claims arising under or in connection with non-disclosure, confidentiality, non-compete, and/or non-solicitation agreements, and all proceeds of the foregoing, in each case whether or not either Buyer chooses to settle, dismiss, prosecute, defend or otherwise pursue or resolve such claims, rights, credits, causes of action, defenses and/or rights of set-off; provided, however, the foregoing shall exclude any Sellers' claims, rights, causes of action or defenses of any type with respect to their lenders and Buyers hereby agree not to commence D&O Causes of Action that are Assets acquired under this Section 2.2(k);

l) subject to Section 2.3, the amount of, and all rights to any, claims or proceeds received by any Seller under any Insurance Policy after the date hereof in respect of (i) the loss, destruction, or condemnation of any Assets, occurring prior to, on or after the Closing or (ii) any Assumed Liabilities, except as set forth in Schedule 2.1(l) attached hereto;

m) the PACA Lien Assets;

n) all rights of Sellers relating to deposits and prepaid expenses, claims for refunds and rights of offset in respect thereof that are not Excluded Assets; and

o) all other assets that are related to or used in connection with the Business and that are owned or leased by any Seller as of the Closing.

For the avoidance of doubt, at the Closing, the U.S. Assets shall be conveyed to U.S. Buyer and the Canadian Assets shall be conveyed to Canadian Buyer.

2.3 Excluded Assets. The Assets being conveyed to Buyers shall not include any of the property, rights or interests forth on Schedule 2.3 attached hereto (the "**Excluded Assets**"). Notwithstanding the foregoing, nothing herein will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Buyers, and Sellers will retain all right, title and interest to, in and under the Excluded Assets.

2.4 Assumed Liabilities

a) Subject to the terms and conditions herein and Section 2.5, Buyers shall assume only the following Liabilities of Sellers (the "**Assumed Liabilities**"):

(i) Assigned Contracts; Assigned Leases; Assigned Insurance Policies; Assigned Permits. Subject to Section 2.6 and Section 2.7, all of Sellers' Liabilities under the Assigned Contracts, Assigned Leases, Assigned Insurance Policies and Assigned Permits to the extent arising from and after the Closing or arising prior to the Closing to the extent requiring performance from and after the Closing, as well as subject to Section 2.4(b), all Cure Costs related to any such Assigned Contracts, Assigned Insurance Policies, Assigned Permits and Assigned Leases.

(ii) PACA Claims. All Liabilities related to the PACA Claims.

(iii) Post-Petition Trade Payables. All Liabilities related to the Post-Petition Trade Payables.

(iv) Buyer Selected Employees. Subject to Section 2.5(f) or Section 6.6, all accrued wages (including the portion of any wages that are required employer contributions to the RRSP), vacation pay, paid time off, other paid leave and payroll commissions (if applicable) that relate to the period on or prior to the Closing Date (irrespective of whether such amounts are accrued) (the "**Employment Liabilities**") with respect to any Buyer Selected Employee who accepts Buyer's offer of employment following Closing. Notwithstanding the foregoing, with respect to wages (including the portion of any wages that are required employer contributions to the RRSP), payroll commissions (if applicable) and payroll taxes related thereto only, such amounts shall not exceed an aggregate amount equal to two (2) weeks of wages (including the portion of any wages that are required employer contributions to the RRSP), payroll commissions (if applicable) and payroll taxes for each employee.

b) Assumption of Liabilities. Notwithstanding anything herein to the contrary, Buyers' assumption of Liabilities related to PACA Claims, Assumed Prepetition Payables and Post-Petition Trade Payables shall not exceed, in the aggregate, Twenty-One Million Five Hundred Thousand and 00/100 Dollars ($21,500,000) (the "**Cap**").

c) For the avoidance of doubt, the U.S. Assumed Liabilities shall be assumed by U.S. Buyer and the Canadian Assumed Liabilities shall be assumed by Canadian Buyer.

2.5 Excluded Liabilities. Buyers are assuming only the Assumed Liabilities and are not assuming any other Liability of any Seller of whatever nature, whether presently in existence or arising hereafter, including without limitation any claims asserted or unasserted, known or unknown for injuries to Persons or property which are related to circumstances or events that predate the Closing, except to the extent any such claim is directly attributable to Buyers' or any of their Representatives' negligence in performing due diligence at any of the Sellers' premises. All such other Liabilities shall be retained by and remain Liabilities of Sellers (all such Liabilities are, collectively, the "**Excluded Liabilities**"). Without limiting the foregoing, except for the Assumed Liabilities as expressly provided by Section 2.4, neither of the Buyers nor any of their respective Affiliates will assume or have any Liability for:

a) any Liability in respect of any Indebtedness of Sellers;

b) any Liability to the extent arising out of or related to the breach, performance or non-performance by Sellers prior to the Closing (in each case, regardless of when any claims arising therefrom or relating thereto mature or are asserted) of any Contract, Lease or Permit;

c) any Liability arising in connection with any violation of any Law by any Seller, including in respect of the pending or threatened Actions, including those set forth (or that should have been set forth) on Schedule 2.5(c) attached hereto and all litigation claims and any other Liabilities, including any tort claims, breach of contract claims, employment claims and discrimination claims, which are not Assumed Liabilities, to the extent relating to Actions (including Actions instituted after the Closing Date), events or conditions arising out of or relating in any way to the conduct or operation of the Business or the ownership of the Assets prior to the Closing Date even if instituted after the Closing Date;

d) (i) subject to Section 2.4(a)(iv), all Taxes of any Seller or any of their respective Affiliates, including Taxes imposed on any Seller under Treasury Regulations Section 1.1502-6 and similar provisions of state, local or foreign Tax Law accruing prior to Closing and (ii) all Liabilities for Taxes relating to the Business or the Assets for all Taxable periods (or portions thereof) ending on or prior to the Closing Date (including, for the avoidance of doubt, any payroll or other employment Taxes deferred by any Seller pursuant to Section 2302 of the CARES Act and any subsidies pursuant to section 125.7 and subsection 153(1.02) of the Tax Act);

e) all Liabilities of Sellers, whether arising before or after the Petition Date, for fees, costs and expenses incurred in connection with Sellers' Bankruptcy Cases or negotiating, preparing, closing and carrying out this Agreement and the transactions contemplated hereby, including (i) any fees, costs, commissions, expenses of or payments to attorneys, investment bankers, finders, brokers, financial advisors, accountants, agents, consultants or any other professional service provider, (ii) any fees, costs and expenses or payments related to any transaction bonus, discretionary bonus, change-of-control payment, retention or other compensatory payments made to any Service Provider (including the employer portion of any payroll, social security, unemployment or similar Taxes related thereto) and (iii) any claims for such fees, costs, commissions, expenses or payments related to the foregoing clauses (i) and (ii);

f) subject to Section 2.4(a)(iv), all Liabilities arising out of, relating to or with respect to the employment or performance of services for or termination of employment or services for, or potential employment or engagement for the performance of services for, Sellers or any of their respective Affiliates of any employee or independent contractor for periods on or prior to Closing, including but not limited to, Liabilities related to wages, incentive compensation, option agreements and similar equity awards, bonuses, transaction payments, vacation, paid time off, other paid leave, severance, payroll commissions, workers' compensation, contributions to retirement plans and unemployment benefits;

g) subject to Sections 2.4(a)(iv), all Liabilities under, relating to or with respect to any Employee Plans, irrespective of when such Liabilities arise; provided further that nothing in Section 2.4(a)(iv) shall be construed so as to require either Buyer or any of its respective Affiliates to assume the RRSP;

h) subject to Section 2.4(a), all Liabilities arising out of, under or in connection with Contracts, Insurance Policies, Permits and Leases that are not Assigned Contracts, Assigned Insurance Policies, Assigned Permits or Assigned Leases;

i) all Liabilities related to any notice or payment in lieu of notice and any applicable penalties under the WARN Act and similar state or local Law, or any similar provision in a collective bargaining agreement that requires notice on or prior to the Closing Date;

j) all Liabilities related to workers' compensation claims or coverage relating to the period prior to the Closing Date and with respect to employees who are not employed by Buyers or an Affiliate of Buyers following the Closing, relating to the period prior to, on or after the Closing;

k) all Liabilities related to any misclassification of employees or other noncompliance under the Fair Labor Standards Act or similar state Law or the misclassification of independent contractors relating to the period prior to the Closing Date, and with respect to employees who are not employed by Buyers or an Affiliate of Buyers following the Closing, relating to the period prior to, on or after the Closing;

l) all Liabilities under any collective bargaining agreement to which any Seller or any Affiliate of any Seller is a party;

m) any Liability to the extent relating to any Excluded Asset or other asset that is not an Asset and the ownership, operation and conduct of any business in connection therewith or therefrom;

n) any Liability related to or arising from any actual or alleged violation or Liability under any Environmental Law or Environmental Permit, any Release of Hazardous Materials, or any Environmental Notice or any Environmental Claim relating to the period prior to or existing as of the Closing Date;

o) any Liability related to or arising from any actual or alleged violation or Liability under any Food Safety Law, Food Safety Permit, Food Safety Notice or Food Safety Claim relating to the period prior to or existing as of the Closing Date;

p) any Liability of Sellers under this Agreement and the Sellers Ancillary Agreements and the transactions contemplated hereby or thereby;

q) any Liability to any (i) owner or former owner of equity interests of the Sellers, (ii) current or former officer or director of the Sellers or (ii) any Subsidiary of any Seller, in each case in their capacity as such; and

r) any Liability arising from the gross negligence or willful misconduct of Sellers prior to, at or after the Closing.

2.6 Designation of Contracts, Leases and Insurance Policies.

a) Schedule 2.6(a)(i) attached hereto sets forth a complete list as of the Effective Date of all Contracts Buyers intend will be Assigned Contracts (the "**Desired Contracts**"). Schedule 2.6(a)(ii) attached hereto sets forth a complete list as of the Effective Date of all Leases that Buyers intend will be Assigned Leases (the "**Desired Leases**"). Schedule 2.6(a)(iii) attached hereto sets forth a complete list as of the Effective Date of all Insurance Policies that Buyers intend will be Assigned Insurance Policies (the "**Desired Insurance Policies**"). Until the earlier of (w) ninety (90) days following the Closing Date, (x) the effective date of a confirmed plan of reorganization or liquidation for the Sellers, (y) such time that the U.S. Bankruptcy Cases are closed or converted to a case under Chapter 7 or (z) dismissal of the Bankruptcy Cases, Buyers will have the right, in consultation with Sellers, to provide written notice to Sellers of Buyers' election to:

(i) designate a Contract as a Desired Contract, and upon such designation such Contract will constitute an Asset and Assigned Contract and will be conveyed to the applicable Buyer under this Agreement at Closing (and, if applicable, will cease to constitute an Excluded Asset), so long as (A) such Contract is added to the Desired Contracts prior to the entry of any Order of the Bankruptcy Court approving the rejection of such Contract, and (B) the third party to such Contract has an opportunity to object within such period of time set forth in an Order of the Bankruptcy Court, an Order of the Canadian Court or section 11.3 of the CCAA, as applicable;

(ii) designate a Contract (including any Contract that is a Desired Contract immediately before such designation) as an Excluded Contract, Excluded Asset and Excluded Liability, and upon such designation, such Contract will constitute an Excluded Contract, Excluded Asset and Excluded Liability;

(iii) designate a Lease as a Desired Lease, and upon such designation such Lease will constitute an Asset and Assigned Lease and will be conveyed to the applicable Buyer under this Agreement at Closing (and, if applicable, will cease to constitute an Excluded Asset), so long as (A) such Lease is added to the Desired Leases prior to the entry of any Order of the Bankruptcy Court approving the rejection of such Lease and (B) the third party to such Lease has an opportunity to object within such period of time set forth in an Order of the Bankruptcy Court, an Order of the Canadian Court or section 11.3 of the CCAA, as applicable;

(iv) designate a Lease (including any Lease that is a Desired Lease immediately before such designation) as an Excluded Lease, Excluded Asset and Excluded Liability, and upon such designation such Lease will constitute an Excluded Lease, Excluded Asset and Excluded Liability;

(v) designate an Insurance Policy as a Desired Insurance Policy, and upon such designation such Insurance Policy will constitute an Asset and Assigned Insurance Policy and will be conveyed to the applicable Buyer under this Agreement at Closing (and, if applicable, will cease to constitute an Excluded Asset), so long as (A) such Insurance Policy is added to the Desired Insurance Policies prior to the entry of any Order of the Bankruptcy Court approving the rejection of such Insurance Policy, and (B) the third party to such Insurance Policy has an opportunity to object within such period of time set forth in an Order of the Bankruptcy Court, an Order of the Canadian Court or section 11.3 of the CCAA, as applicable; and

(vi) designate an Insurance Policy (including any Insurance Policy that is a Desired Insurance Policy immediately before such designation) as an Excluded Insurance Policy, Excluded Asset and Excluded Liability, and upon such designation, such Insurance Policy will constitute an Excluded Permit, Excluded Asset and Excluded Liability.

b) To the extent that Buyers make a valid designation with respect to any Contracts, Leases and Insurance Policies pursuant to Section 2.6(a) above, the applicable Exhibits and Schedules to this Agreement will be deemed to have automatically been updated (without action of any Party or Person) to reflect such designation.

c) If Buyers exercise their rights in Section 2.6(a) above to designate a Contract, Lease or Insurance Policy as an Asset or as an Excluded Asset (as the case may be), then the Parties acknowledge and agree that there will be no reduction in the Purchase Price as a result of such designation or change in designation, nor will there be any delay to the Closing as a result thereof.

d) To the extent that the Buyers have not made a determination with respect to whether any Contract, Lease, Insurance Policy or Permit will be a Desired Contract, Desired Lease, Desired Insurance Policy or Desired Permit, as applicable, prior to the Closing, until the earlier of (w) ninety (90) days following the Closing Date, (x) the effective date of a confirmed plan of reorganization or liquidation for the Sellers, (y) such time that the U.S. Bankruptcy Cases are closed or converted to a case under Chapter 7 or (z) dismissal of the Bankruptcy Cases, Buyers shall be responsible for all obligations under such Contract, Lease, Insurance Policy or Permit, as applicable, including all payments to be made thereunder, the costs to perform thereunder and all expenses ancillary thereto, on the terms to be set forth in a Transition Services Agreement to be negotiated in good faith by Buyers and Sellers and executed at Closing. Sellers shall take any such actions reasonably requested by Buyers with respect to such Contract, Lease, Permit or Insurance Policy, following Closing, at Buyers' expense so long as such expenses would not have been incurred absent such direction from Buyers, including, if requested, filing any motions, objections, and related pleadings and prosecution of such pleadings in the Bankruptcy Court or the CCAA Court (for clarity, Buyers agree that this covenant shall not require any final resolution or guarantee any outcome of any such actions).

2.7 Designation of Permits.

a) Schedule 2.7(a) attached hereto sets forth a complete list as of the Effective Date of all Permits Buyers intend will be Assigned Permits, to the extent assignable (the "**Desired Permits**").

b) Until the earlier of (w) ninety (90) days following the Closing Date, (x) the effective date of a confirmed plan of reorganization or liquidation for the Sellers, (y) such time that the U.S. Bankruptcy Cases are closed or converted to a case under Chapter 7 or (z) dismissal of the Bankruptcy Cases, Buyers will have the right, in consultation with the Sellers, to provide written notice to Sellers of Buyers' election to:

(i) designate a Permit as a Desired Permit, and upon such designation such Permit will constitute an Asset and Assigned Permit and will be conveyed to the applicable Buyer under this Agreement at Closing (and, if applicable, will cease to constitute an Excluded Asset) to the extent permitted by Law, so long as (A) such Permit is added to the Desired Permits prior to the entry of any Order of the Bankruptcy Court or any Order of the Canadian Court approving the rejection of such Permit, and (B) the third party to such Permit has an opportunity to object within such period of time set forth in an Order of the Bankruptcy Court or an Order of the Canadian Court; and

(ii) designate a Permit (including any Permit that is a Desired Permit immediately before such designation) as an Excluded Permit, Excluded Asset and Excluded Liability, and upon such designation, such Permit will constitute an Excluded Permit, Excluded Asset and Excluded Liability.

c) To the extent that Buyers make a valid designation with respect to any Permits pursuant to Section 2.7(b) above, the applicable Exhibits and Schedules to this Agreement will be deemed to have automatically been updated (without action of any Party or Person) to reflect such designation.

d) If Buyers exercise their rights in Section 2.7(b) above to designate a Permit as an Asset or as an Excluded Asset (as the case may be), then the Parties acknowledge and agree that there will be no reduction in the Purchase Price as a result of such designation or change in designation, nor will there be any delay to the Closing as a result thereof.

ARTICLE III
PURCHASE PRICE; PRORATIONS; ALLOCATION

3.1 Purchase Price. In exchange for the sale and transfer of the Assets to Buyers, Buyers shall (i) assume the Assumed Liabilities and (ii) pay to Sellers in accordance with the allocable percentages set forth on Schedule 3.1 to be provided prior to Closing, the aggregate consideration of Fifty-Five Million Dollars ($55,000,000) or if directed by the Canadian Sellers, to the Monitor (collectively, the "**Purchase Price**") comprised of (A) cash consideration in the amount of Thirty Million and 00/100 Dollars ($30,000,000) (the "**Cash Consideration Amount**") and (B) the Secured Note, subject to any adjustments as provided for in Section 3.1(e). The Purchase Price shall be paid as follows:

a) Not later than the second Business Day following the execution of this Agreement, pursuant to the terms of this Agreement and the Escrow Agreement, as applicable, Buyers shall deposit with the Escrow Agent the sum of Five Million Five Hundred Thousand and 00/100 Dollars ($5,500,000) (the "**Deposit**") which shall be held by the Escrow Agent in an escrow account ("**Escrow**") to be released by the Escrow Agent and delivered to either Buyers or Sellers in accordance with this Agreement and the terms of the Escrow Agreement. The Deposit (together with any and all accrued investment income thereon) shall be distributed upon the earlier of the Closing or the termination of this Agreement in accordance with Section 8.3.

b) At Closing, Buyers shall (i) pay to Sellers the Cash Consideration Amount less the Deposit, payable by wire transfer of immediately available funds to a bank account designated by Sellers in writing to Buyers no less than three (3) Business Days prior to Closing and (ii) deliver the Secured Note to Sellers.

c) Not more than seventy-five (75) days following the Closing Date, Buyers shall prepare and deliver to Sellers a statement ("**Closing Statement**") of its calculation of (i) the Accounts Receivable and Inventory of Sellers as of the Closing Date (the "**Closing Date AR/Inventory Aggregate**"), (ii) PACA Claims of Sellers as of the Closing Date (the "**Closing Date PACA Claims**"), (iii) Assumed Prepetition Payables of Sellers as of the Closing Date (the "**Closing Date Assumed Prepetition Payables**") and (iv) Post-Petition Trade Payables of Sellers as of the Closing Date (the "**Closing Date Post-Petition Trade Payables**") and the amount of any adjustment to the principal of the Secured Note as determined in accordance with Section 3.1(e). The Closing Statement shall become final and binding upon the Parties unless Sellers provide written notice of its disagreement with any component of the Closing Statement ("**Notice of Disagreement**") to Buyers within twenty (20) Business Days following Sellers' receipt thereof. If a Notice of Disagreement complying with the preceding sentence is received by Buyers in a timely manner, then the Closing Statement (as revised in accordance with clause (x) or (y) below) shall become final, binding and non-appealable (after complying with Section 3.1(d)) upon the (x) earlier of the date on which the Parties resolve in writing any disputes with respect to the matters specified in the Notice of Disagreement or (y) the date on which any such disputes are finally resolved in writing by the Accounting Firm in accordance with this Section 3.1.

d) During the thirty (30) day period following the delivery of a Notice of Disagreement in compliance with Section 3.1(c), the Parties shall seek in good faith to resolve any disputes with respect to the matters specified in the Notice of Disagreement. If, at the end of such thirty (30) day period, the Parties are unable to resolve such disputes the Parties shall submit the dispute to the Accounting Firm for review and resolution. The Parties shall use their respective good faith efforts to cause the Accounting Firm to render a decision resolving the matters in dispute within thirty (30) days following submission of such matters to the Accounting Firm. In resolving any such dispute, the Accounting Firm shall consider only those items or amounts in the Notice of Disagreement as to which Sellers have disagreed and their decision for each such item or amount must be within the range of values assigned to each such item in the Closing Statement and the Notice of Disagreement, respectively. The Accounting Firm's determination shall be set forth in a written statement delivered to the Parties and shall be final, binding and non-appealable. The fees and expenses of the Accounting Firm shall be paid by Sellers, on the one hand, and by Buyers, on the other hand, based upon the percentage that the amount actually contested but not awarded to Sellers or Buyers, respectively, bears to the aggregate amount actually contested by Sellers and Buyers, as determined and calculated by the Accounting Firm.

e) As soon as practicable after the Closing Date AR/Inventory Aggregate has been finally determined pursuant to this Section 3.1, (i) if the Closing Date AR/Inventory Aggregate is less than the Target AR/Inventory Bottom Collar (such differential amount, the "**AR/Inventory Shortfall Amount**"), then the amount of the Secured Note shall be decreased by an amount equal to the AR/Inventory Shortfall Amount or (ii) if the Closing Date AR/Inventory Aggregate exceeds the Target AR/Inventory Top Collar (such differential amount, the "**AR/Inventory Excess Amount**"), then the amount of the Secured Note shall be increased by an amount equal to the AR/Inventory Excess Amount.

f) As soon as practicable after the Closing Date PACA Claims, Closing Date Assumed Prepetition Payables and Closing Date Post-Petition Trade Payables have been finally determined pursuant to this Section 3.1, if (i) the Closing Date PACA Claims, Closing Date Assumed Prepetition Payables and Closing Date Post-Petition Trade Payables, in the aggregate, exceed the Cap and (ii) Buyers determine in their sole discretion, to be responsible for any such amounts (which for the avoidance of doubt, are otherwise Excluded Liabilities), then the Secured Note shall be decreased by an amount equal to such excess that Buyers have determined to be responsible for.

g) The Parties will execute an amendment to the Secured Note reflecting the foregoing adjustments within thirty (30) days following the final determination of the Closing Date AR/Inventory Aggregate, Closing Date PACA Claims, Closing Date Assumed Prepetition Payables and Closing Date Post-Petition Trade Payables pursuant to this Section 3.1. Any adjustment to the Secured Note pursuant this Section 3.1(e) shall be treated as an adjustment to the Purchase Price by the Parties for all purposes hereunder, including Tax purposes, unless otherwise required by applicable Law.

3.2 Prorations. The following prorations shall be made between Sellers and Buyers at the Closing, computed as of the Closing Date. To the extent required to give effect to the prorations and provisions set forth herein, this Section 3.2 shall survive the Closing.

a) Taxes. All real property, personal property, sales, use and ad valorem Taxes and similar recurring Taxes and fees on the Assets for taxable periods beginning before, and ending after, the Closing Date, shall be prorated between Buyers and Sellers as of the Closing Date. Sellers shall be responsible for all such Taxes and fees on the Assets accruing during any period up to the Closing Date. Buyers shall be responsible for all such Taxes and fees on the Assets accruing during any period commencing on or after the Closing Date. With respect to Taxes described in this Section 3.2(a), Sellers shall timely file all Tax Returns due before the Closing Date with respect to such Taxes and Buyers shall prepare and timely file all Tax Returns due on or after the Closing Date with respect to such Taxes. If one Party remits to the appropriate Taxing Authority payment for Taxes, which are subject to proration under this Section 3.2(a) and such payment includes the other party's share of such Taxes, such other party shall promptly reimburse the remitting party for its share of such Taxes.

b) Leased Real Property Expenses. Except as otherwise specifically provided below, all expenses and obligations relating to the operation of Assigned Leases shall be prorated on a *per diem* basis to the Closing Date using a calendar year and adjusted between Sellers and Buyers as of 11:59 p.m. (Central Standard Time) on the day immediately preceding the Closing Date, and for purposes of these prorations and adjustments, Sellers shall be deemed the lessee under the Assigned Leases in each case, on the day immediately preceding the Closing Date, and Buyers shall be deemed the lessee under the Assigned Leases in each case, on and after the Closing Date. To the extent that the amounts of the items to be adjusted are not reasonably ascertainable as of the Closing, they shall be re-adjusted and paid as promptly thereafter as the amounts thereof can be ascertained. For purposes of this Section 3.2, the amount of any expense credited by one Party to the other shall be deemed an expense paid by that Party.

c) Adjustment to Prorations. In the event that any prorations, apportionments or computations made under Section 3.2(a) and 3.2(b) above shall require final adjustment, then the Parties shall use good faith and diligent efforts to make the appropriate adjustments promptly when accurate information becomes available and either Party shall be entitled to an adjustment to correct the same provided that, it makes written demand on the one from whom it is entitled to such adjustment within six (6) months of the Closing Date (or prior to the end of any applicable tax period).

d) Access to Records. From and after the Closing, Buyers shall promptly provide to Sellers, their Representatives and the Monitor (after reasonable advance written notice and during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of the Buyers) reasonable access to all Records included in the Assets for periods prior to the Closing to the extent such access is reasonably necessary in order for Sellers to comply with their obligations to administer the Bankruptcy Cases and so long as such Persons accessing such Records is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) four (4) years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, (iii) the conclusion of all bankruptcy proceedings relating to the Bankruptcy Cases or (iv) in the case of Records related to Taxes, the expiration of the statute of limitation applicable to such Taxes; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney client privilege or take any action in violation of applicable Law. Such access shall include access to any information in electronic form to the extent reasonably available.

3.3 **Allocation**. With respect to the Assets, on the Closing Date, Buyers shall prepare and deliver to Sellers statement allocating the Purchase Price (including applicable Assumed Liabilities which in the case of the U.S. Purchase Price shall include the U.S. Assumed Liabilities and in the case of the Canadian Purchase Price shall include the Canadian Assumed Liabilities) between the aggregated U.S. Assets (the "**U.S. Purchase Price**") and the aggregated Canadian Assets (the "**Canadian Purchase Price**"). Such statement shall be accompanied by: (i) a copy of Form 8594 and any required exhibits thereto allocating the U.S. Purchase Price (including any U.S. Assumed Liabilities) among the U.S. Assets, and (ii) a statement allocating the Canadian Purchase Price (including the Canadian Assumed Liabilities) among the Canadian Assets (the "**Allocation Statement**"). Sellers shall have thirty (30) days following receipt of the Allocation Statement to provide comments in writing to Buyers, which Buyers shall consider in good faith. Buyers and Sellers shall negotiate in good faith to finalize the Allocation Statement unless Sellers fail to provide their comments within the thirty (30) day period, in which case, Buyers' determination of the Allocation Statement shall be deemed final. The Parties hereto shall make appropriate adjustments to the Allocation Statement to reflect changes in the Purchase Price. The Parties hereto agree for all Tax reporting purposes to report the transactions in accordance with the Allocation Statement, as adjusted pursuant to the preceding sentence, and to not take any position during the course of any audit or other Action inconsistent with such schedule unless required by a determination of the applicable Governmental Authority that is final.

3.4 **Withholding**. Buyers (or any Affiliate thereof) shall be entitled to deduct and withhold from any amounts payable under this Agreement amounts that Buyers shall determine in good faith they (or any Affiliate thereof) are required to deduct and withhold under any provision of any applicable Law; provided however, that, except with respect to withholding on payments treated as compensation for services, the Person intending to withhold shall use commercially reasonable efforts to notify Sellers of its intention to deduct and withhold such amount at least three (3) days prior to the date that the applicable payment is to be made. All amounts withheld shall be treated for all purposes of this Agreement as being timely paid to the Person in respect of whom such deduction and withholding was made.

3.5 **Transfer and Sales Taxes**.

a) Buyers, on the one hand, and Sellers, on the other hand, shall each be responsible for and shall pay, or cause to be paid on the Closing Date, fifty percent (50%) of any Transfer Tax payable in respect of the purchase and sale of the Assets under this Agreement and such Transfer Tax shall be remitted to the appropriate Governmental Authority as provided for under applicable Law; provided, that any GST/HST payable in respect of the purchase and sale of the Assets under this Agreement for which the Buyers are entitled to claim a corresponding input tax credit, input tax refund or similar treatment shall be paid entirely by the Buyers. Sellers and Buyers shall reasonably cooperate to (i) mitigate and/or eliminate the amount of Transfer Taxes resulting from the transactions contemplated herein and (ii) timely prepare and file any Tax Returns relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any such Transfer Taxes. Subject to applicable law, any Tax Returns that must be filed with respect to Transfer Taxes shall be prepared and filed when due by the party customarily responsible for making such filing under applicable Law, with the cooperation of the other party if necessary.

b) Notwithstanding Section 3.5(a), if available, Canadian Sellers and Canadian Buyer will, on or before Closing, execute jointly an election, in the prescribed form and containing the prescribed information, to have subsection 167(1.1) of Part IX of the *Excise Tax Act* (Canada) (the "**ETA**") and any provincial sales tax equivalent, as applicable, apply to the sale and purchase of the Assets hereunder so that no GST is payable in respect of such sale and purchase under the ETA and under any equivalent provincial sales tax legislation, as applicable. Canadian Buyer will file such election with the appropriate Taxing Authorities within the time prescribed by the ETA and by any equivalent provincial sales tax legislation, as applicable. Notwithstanding such election(s), in the event it is determined by the applicable Taxing Authorities that there is a liability of Canadian Buyer to pay, or of Canadian Sellers to collect and remit, any GST or any applicable provincial equivalent Taxes in respect of the sale and transfer of the Canadian Assets, such Taxes shall be paid by Canadian Buyer and Canadian Buyer shall indemnify and save Canadian Sellers (and any current or former directors and officers of Canadian Sellers) harmless with respect to any such Taxes (including interest and penalties) and costs payable resulting from such determination or assessment.

c) The Parties will furnish or cause to be furnished to the other, each at their own expense, as promptly as practicable, such information, documentation and assistance and provide additional information and explanations of any material provided, relating to the purchase and sale of the Assets under this Agreement as is reasonably necessary for the filing of any Tax returns, for the claim or application for any relief, for the claim of any Tax credit, refund or similar payment, for the preparation of any audit and for the prosecution or defense of any claim, relating to any adjustment or proposed adjustment with respect to Taxes.

3.6 Tax Elections

a) Section 20(24) Election. To the extent permitted by the applicable Tax legislation, each Seller selling Assets and Canadian Buyer acquiring Canadian Assets will jointly execute an election in the prescribed manner and within the prescribed time limits, to have the rules in subsection 20(24) of the Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial Tax legislation, apply to the obligations of such Seller in respect of undertakings which arise from the operation of the Business and to which paragraph 12(1)(a) and 12(1)(e) of the Tax Act apply. For the purposes of such election(s), Canadian Buyer and Sellers will, acting reasonably, jointly determine the elected amount and Canadian Buyer and Sellers acknowledge that the applicable Seller is transferring assets to Canadian Buyer which have a value equal to such elected amount as consideration for the assumption by Canadian Buyer of such obligations of Sellers.

b) Section 22 Election. To the extent permitted by the applicable Tax legislation, each Seller selling Assets and Canadian Buyer acquiring the Canadian Assets will jointly execute, and each of them will file promptly following the Closing Date, an election under Section 22 of the Income Tax Act (Canada), and any corresponding provisions of any applicable provincial income Tax legislation. For the purposes of such elections, Canadian Buyer and Sellers will, acting reasonably, jointly determine the amount that the Parties will designate as the portion of the Purchase Price allocable to the debts in respect of which such elections are made. For greater certainty, each Seller and Canadian Buyer agree to prepare and file their respective Tax Returns in a manner consistent with such election(s).

c) Paragraph 125.7(4.1)(e) Election.

(i) Each of Canadian Buyer and Canadian Sellers agree and acknowledge that immediately prior to the Closing: (A) the fair market value of the Canadian Assets constituted (1) all or substantially all of the fair market value of the property of such Canadian Seller used in the course of carrying on business, or (2) all or substantially all of the property of such Canadian Seller that can reasonably be regarded as being necessary for Canadian Buyer to be capable of carrying on a business of such Canadian Seller, or part of a business of such Canadian Seller, as a business; and (B) the Canadian Assets were used by such Canadian Seller in the course of a business carried on in Canada by it.

(ii) At the request of Canadian Buyer, each of the Canadian Sellers will jointly elect with Canadian Buyer in accordance with paragraph 125.7(4.1)(e) of the Tax Act to have the provisions of subsection 125.7(4.2) of the Tax Act apply in respect of any "qualifying period" (as defined in subsection 125.7(1) of the Tax Act) which includes or occurs after the Closing Date. Canadian Sellers shall take any and all steps, and execute, acknowledge and deliver to Canadian Buyer, any and all further instruments and assurances that Canadian Buyer hereto may reasonably require for the purpose of giving full force and effect to the provisions of such election.

ARTICLE IV
CLOSING

4.1 **<u>Closing</u>**. The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place remotely by exchange of electronic signatures and shall occur on the earlier of the date that is two (2) Business Days following the day on which the last to be satisfied or waived of the conditions set forth in <u>Article VII</u> (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement or on such other date or at such other place and time as the Parties may mutually agree in writing (the date on which the Closing actually occurs is referred herein as the "**Closing Date**"). The Closing shall be deemed to have occurred at 11:59 p.m. (Central Standard Time) on the Closing Date.

4.2 **<u>Closing Deliveries</u>**.

a) At the Closing, Sellers will deliver to Buyers the following documents and other items, duly executed by an authorized person of Sellers, as applicable:

(i) the Bill of Sale;

(ii) an Assignment and Assumption Agreement substantially in the form of <u>Exhibit G</u> attached hereto (the "**Assignment and Assumption Agreement**");

(iii) an Intellectual Property Assignment Agreement substantially in the form of <u>Exhibit H</u> attached hereto (the "**Intellectual Property Assignment Agreement**");

(iv) joint written instructions to the Escrow Agreement releasing the Deposit to Holdings, on behalf of Sellers, duly executed by Holdings, on behalf of Sellers;

(v) a certificate signed by an authorized officer of each Seller to the effect that each of the conditions specified in <u>Sections 7.2(a)</u>, <u>7.2(b)</u> and <u>7.2(i)</u> is satisfied in accordance with the terms thereof;

(vi) a non-foreign affidavit, from each Seller, dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code stating that each Seller is not a "foreign person" as defined in Section 1445 of the Code;

(vii) from each Seller, a duly completed and executed Internal Revenue Service Form W-9 or Form W-8, as applicable;

(viii) a copy of the resolutions adopted by the governing body of each Seller evidencing its authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by an officer of each Seller; and

(ix) duly executed copies of the Required Consents;

(x) a certificate of good standing of each Seller issued reasonably soon before the Closing Date by the Delaware Secretary of State or the Registrar of Companies Province of British Columbia, as applicable;

(xi) with respect to any recorded Uniform Commercial Code financing statement or mortgage, a UCC-3 termination statement, a discharge statement pursuant to the applicable personal property security act in any province or territory of Canada, or mortgage and other Encumbrance releases (in form and substance reasonably satisfactory to Sellers, Buyers and their respective counsel) releasing the Assets from such security interest or mortgage;

(xii) one or more Transition Services Agreements in all respects reasonably satisfactory to the Buyers and the applicable Sellers (each a "**Transition Services Agreement**") to the extent Buyers reasonably request as necessary to enforce their respective rights under this Agreement, including designation rights pursuant to Sections 2.6 and 2.7 and to operate the Business following Closing;

(xiii) to the extent bulk sale issues are not otherwise sufficiently addressed by the Canadian Sale Order, a certificate or similar documentation issued reasonably soon before the Closing Date with respect to the sale of any or all of the Assets to Canadian Buyer pursuant to the provisions of any applicable Canadian bulk sales, bulk transfer or similar Laws of any jurisdiction, as applicable

(xiv) with respect to the Owned Real Property:

(A) a duly completed, executed and registrable transfer/covenant deed for each parcel of Owned Real Property, in form and substance reasonably satisfactory to Buyers transferring the Owned Real Property to the applicable Buyer;

(B) any and all documentation required by the Title Company issuing the Title Policies, including, without limitation, any and all owner's affidavits, memoranda of lease, affidavits of non-foreign status, GAP affidavits, survey certifications, tax affidavits, certificates of good standing and due authorization and articles of incorporation, and any other documentation reasonably required by the Title Company to remove the standard exceptions from each Title Policy and add any endorsements to such Title Policies as reasonably requested by Buyers;

(C) all other certificates, assignments, agreements, and other instruments as, in the discretion of Buyers and their counsel, are deemed reasonably necessary or appropriate to vest in

Buyers all of Sellers' right, title, and interest in, to, and under the Owned Real Property;

(xv) with respect to the Leased Real Property:

(A) an assignment and assumption for each Assigned Lease, duly executed by the applicable Seller, in form and substance reasonably satisfactory to Buyers;

(B) all Consents required pursuant to the Assigned Leases in connection with the consummation of the transactions contemplated hereby;

(C) an estoppel certificate, from each landlord, lessor, sublessor or licensor of each Assigned Leases, confirming, among other things, that no defaults exist thereunder, and the status of all payments associated therewith; and

(xvi) if applicable, the elections described in Section 3.6;

(xvii) with respect to any security interests granted to Cortland Capital Market Services LLC, a duly executed release in form and substance reasonably satisfactory to Buyers releasing the Assets from such security interest;

(xviii) a confirmatory assignment from the R&D Persons assigning the intellectual property (including recipes, formulas and processes) developed in connection with work for the Sellers;

(xix) any and all other customary materials and documents anticipated to be signed and delivered by Sellers at the Closing or which are reasonably requested by Buyers or Escrow Agent and consistent with this Agreement.

b) At the Closing, Buyers will deliver to Sellers the following documents and other items, duly executed by an authorized person of Buyers, as applicable:

(i) the Cash Consideration Amount (less the Deposit);

(ii) the Secured Note, Guaranty and Mortgages;

(iii) the Bill of Sale;

(iv) the Assignment and Assumption Agreement;

(v) the Intellectual Property Assignment Agreement;

(vi) joint written instructions to the Escrow Agreement releasing the Deposit to Holdings, on behalf of Sellers, duly executed by U.S. Buyer;

(vii) a certificate to the effect that each of the conditions specified in Sections 7.3(a) and 7.3(b) is satisfied in accordance with the terms thereof;

(viii) a certificate of good standing of U.S. Buyer issued reasonably soon before the Closing Date by the Delaware Secretary of State;

(ix) a copy of the resolutions adopted by the governing body of each Buyer evidencing its authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by an officer of Buyers;

(x) duly executed elections pursuant to the ETA and any provincial sales tax equivalent, required to be delivered pursuant to Section 3.5(b), as applicable;

(xi) each Transition Services Agreement; and

(xii) any and all other customary materials and documents anticipated to be signed and delivered by Buyers at the Closing or which are reasonably requested by Sellers or Escrow Agent and consistent with this Agreement.

4.3 Payment of Cure Costs for Assigned Contracts , Assigned Leases and Assigned Insurance Policies. Upon receipt of the Closing Cash Payment from Buyers, (i) Sellers shall assume and assign pursuant to section 365(a) of the Bankruptcy Code or section 11.3 of the CCAA, as applicable, each of the Assigned Contracts, Assigned Insurance Policies and Assigned Leases that may be assumed and assigned pursuant to the Sale Orders, (ii) Buyers shall assume such Assigned Contracts, Assigned Leases and Assigned Insurance Policies and (iii) Buyers shall pay the Cure Costs so that all applicable Assigned Contracts, Assigned Insurance Policies and Assigned Leases may be assumed by and assigned to Buyers.

4.4 Further Assurances. From time to time following the Closing, Sellers and Buyers shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to Buyers and their respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyers under this Agreement and to assure fully to Sellers and its Affiliates and their successors and assigns, the assumption of the Assumed Liabilities by Buyers under this Agreement, and to otherwise make effective the transactions contemplated hereby and thereby.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE PARTIES

5.1 Sellers' Representations and Warranties. To induce Buyers to enter into this Agreement, Sellers hereby, jointly and severally, represent and warrant to Buyers as of the date of this Agreement and as of the Closing Date, as follows:

a) Organization. Each Seller is a corporation, limited liability company or limited partnership, as applicable, and as set forth on Section 5.1(a) of the Disclosure Schedules, and is duly organized, validly existing and in good standing under the laws of the jurisdiction in which such entity was formed. Each Seller has the necessary corporate, company or partnership power and authority to own its properties and assets and to conduct business in the manner in which its business is currently being conducted. Each Seller is qualified and in good standing (to the extent applicable) under each foreign jurisdiction where the nature of its business requires such qualification, except where the failure to be so qualified or be in good standing would not have a Material Adverse Change. Except as set forth on Section 5.1(a) of the Disclosure Schedules, Sellers have no Subsidiaries. Except as set forth on Section 5.1(a) of the Disclosure Schedules, all outstanding equity interests of each Subsidiary of each Seller are held of record by such Seller and beneficially owned by such Seller. All outstanding equity interests of each Subsidiary, if any, of such Seller have been duly authorized, validly issued and are fully paid and non-assessable. There are no outstanding or authorized, and there is no obligation of any Subsidiary of such Seller to issue or grant, any options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, preemptive rights, redemption rights, repurchase rights, rights of first refusal or other rights, or Contracts that could require any Subsidiary of such Seller to issue, sell or otherwise cause to become outstanding or that otherwise relate to the equity interests of any Subsidiary of such Seller or to redeem or otherwise acquire any of its outstanding equity interests, or obligate any Subsidiary of such Seller to grant, extend or enter into any such agreements.

b) Authority. Each Seller has the corporate, company or partnership power and authority to enter into this Agreement and provided the Canadian Sale Order is obtained, each of the agreements, certificates and documents required to be delivered by such Seller pursuant to the terms of this Agreement (the "**Sellers Ancillary Agreements**") and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the Sellers Ancillary Agreements, and the consummation of the transactions contemplated by this Agreement and the Sellers Ancillary Agreements, have been duly authorized and approved by all necessary action on the part of each Seller. This Agreement and each of the Sellers Ancillary Agreements constitute the legal, valid and binding obligations of each Seller, enforceable against each Seller in accordance with their terms.

c) Non-Contravention; Third Party Consents. Except as set forth on Section 5.1(c) of the Disclosure Schedules ("**Third Party Consents**"), neither the execution and delivery of this Agreement or any Sellers Ancillary Agreement to be executed and delivered by Sellers, nor the consummation of the transactions contemplated hereby and thereby, will, subject to the U.S. Sale Order and the Canadian Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, (i) conflict with or result in a breach of the certificate of incorporation, by-laws or other organizational documents of Sellers, (ii) violate any Law to which Sellers are, or their respective assets or properties are, subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any Contract or any Lease to which a Seller is a party or by which it is bound or to which any of the Assets is subject, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as (A) individually or in the aggregate, are not material or (B) would be discharged by the U.S. Sale Order or the Canadian Sale Order. Subject to the U.S. Sale Order and the Canadian Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, except as set forth on Section 5.1(c) of the Disclosure Schedules, no Seller is required to give any notice to, make any filing with, or obtain any authorization, Consent or approval of any Governmental Authority or other Person (x) in order for the Parties to consummate the transactions contemplated by this Agreement or any Ancillary Agreement, or (y) for the continuing validity and effectiveness immediately following the Closing of any Contract, Lease or Permit of Sellers.

d) Financial Statements. Attached as Section 5.1(d) of the Disclosure Schedules are true and complete copies of (i) the Sellers' audited consolidated statements of income and cash flows for the year ended December 31, 2019 and unaudited consolidated statements of income and cash flows for the eleven (11) month period ended November 30, 2020 (the "**Income Statement Financials**"), (ii) the Sellers' audited consolidated balance sheet as of December 31, 2019 and (iii) the unaudited consolidated balance sheet of Sellers, as well as separate balance sheets for each of the three (3) business segments of the Sellers, in each case, as of the period ended November 30, 2019 and the period ended November 30, 2020 (such date, the "**Balance Sheet Date**") (such balance sheets in clauses (ii) and (iii), the "**Balance Sheet Financials**") (the Income Statement Financials and Balance Sheet Financials, including the notes thereto, are collectively referred to as the "**Financial Statements**"). The Financial Statements (x) were prepared from the books and records of Sellers in accordance with GAAP, unless otherwise noted therein and (y) present fairly in all material respects the financial position of Sellers as of the date thereof and the results of their operations for the periods then ended (except with respect to the Balance Sheet Financials, subject to normal year-end adjustments and any other adjustments expressly described therein or in the Schedules).

e) Absence of Changes. Except as set forth on Section 5.1(e) of the Disclosure Schedules, since November 30, 2020, other than in connection with the Bankruptcy Code or the CCAA, Sellers have operated in the ordinary course of business and there is no state of facts, change, event, effect, development, condition, circumstance or occurrence that has occurred or, to the Knowledge of the Sellers, been threatened that (when taken together with all other states of fact, changes, events, effects, developments, conditions, circumstances or occurrences) has had or is reasonably likely to have, a Material Adverse Change and, since November 30, 2020, no Seller has:

(i) permitted or allowed any of its properties or assets to be mortgaged, pledged or subject to any Encumbrance, except for Permitted Encumbrances;

(ii) entered into any Material Contract (other than renewals or amendments of Material Contracts in the ordinary course of business consistent with past practices);

(iii) assigned, transferred, licensed, or otherwise disposed of or abandoned or allowed to lapse any Assets other than sales of Inventory in the ordinary course of business;

(iv) caused or experienced the acceleration, termination, modification, or cancellation of any Material Contract, or received written notice, or to the Knowledge of the Sellers, received any oral notice that any other Person intends to accelerate, terminate, modify or cancel any Material Contract;

(v) caused or experienced the acceleration, termination, modification, or cancellation of any material right or claim;

(vi) made or committed to make any capital expenditure (or series of related capital expenditures) for additions to property or equipment except for expenditures made in the ordinary course of business and involving no more than $50,000;

(vii) other than in the ordinary course of business consistent with past practices, (vii) incurred any Indebtedness in excess of $50,000, or (viii) assumed or guaranteed any Indebtedness or other Liability of any third party;

(viii) other than as required by any Employee Plan or by applicable Laws, granted, increased or modified the compensation, severance, or benefits of employees, officers, directors, agents, contractors, consultants or other Service Provider (including, without limitation, any increase pursuant to any bonus, pension, profit-sharing, retirement or other plan or commitment), or any increase or modification in any such compensation, severance, or benefits payable or to become payable to any officer, employee, director, agent, contractor, consultant or other Service Provider;

(ix) made any change in the accounting methods used by Sellers;

(x) instituted, adopted, modified, or terminated any collective bargaining agreement, employment agreement, independent contractor agreement, Employee Plan or other employee welfare, equity compensation plan, profit-sharing, retirement or similar plan or arrangement with, any of the officers, directors, managers, employees, independent contractors or other Service Provider;

(xi) hired or terminated any employee or officer whose annual compensation is at least $75,000;

(xii) wrote-down or wrote-up the value of any asset of the Sellers other than in the ordinary course of business;

(xiii) experienced or caused damage, destruction or loss (not covered by insurance) to any Assets, with aggregate value in excess of $50,000; or

(xiv) entered into any Contract or any Lease, or authorized any of its officers, employees, agents, contractors or consultants, to take any of the actions referred to in <u>clauses (i)</u> through <u>(xiii)</u>.

f) <u>Customers, Supplier and Vendors</u>.

(i) Section 5.1(f) of the Disclosure Schedules sets forth a list of (i) all customers of Sellers (the "**Material Customers**") and (ii) all suppliers and vendors of Sellers (the "**Material Vendors**"), in each case to which Sellers have received or made payments aggregating $50,000 or more for the fiscal year ended December 31, 2019 or for the fiscal year ending December 31, 2020. Section 5.1(f) of the Disclosure Schedules shows, with respect to each, the name and dollar volume involved. The Sellers have not experienced and there does not exist any material quality control or similar problems with the Products currently being supplied or on order from any of the Material Customers or Material Vendors except as set forth on Section 5.1(f) of the Disclosure Schedules.

(ii) The Sellers maintain good relations with each of the Material Customers, and, to the Sellers' Knowledge, no event has occurred that would adversely affect the Sellers' relations with any such Material Customer. Since July 31, 2019, no Material Customer has filed a claim or, to the Sellers' Knowledge, threatened to file a claim for an amount in excess of $50,000. Since July 31, 2019, none of the Material Customers has canceled, terminated or made any written or, to the Sellers' Knowledge, oral threat to any employee of the Sellers to: (A) cancel or otherwise terminate its Contract; (B) cancel or otherwise terminate its business relationship with the Sellers or materially change the terms (whether related to payment, timing of payment, price or otherwise); or (C) otherwise take any action that could reasonably result in a reduction of the revenue received by the Sellers as a result of its relationship with such Material Customer.

(iii) The Sellers maintain good relations with each of the Material Vendors, and, to the Sellers' Knowledge, no event has occurred that would adversely affect the Sellers' relations with any such Material Vendor. Since July 31, 2019, none of the Material Vendors has canceled, terminated or made any written or, to the Sellers' Knowledge, oral threat to (A) cancel or otherwise terminate its Contract, (B) cancel or otherwise terminate its business relationship with the Sellers or materially change the terms (whether related to payment, timing of payment, price or otherwise), or (C) otherwise take any action that could reasonably result in a reduction of the dollar purchase volume supplied to the Sellers.

g) Accounts Receivable. All accounts receivable set forth on the Records of Sellers have arisen from bona fide transactions entered into by Sellers related to the sale of goods or rendering of services incurred in the ordinary course of business.

h) Intellectual Property. Section 5.1(h)(i) of the Disclosure Schedules contains a list of all registered, applied for and material unregistered Owned Intellectual Property. All registered and applied-for Owned Intellectual Property has been maintained effective by the filing of all necessary filings, maintenance, and renewals, and timely payment of requisite fees. Except as set forth on Section 5.1(h)(ii) of the Disclosure Schedules, there are no registered or applied-for patents, copyrights or trademarks (whether state or federal) associated with the Business. Sellers own all right, title, and interest in, or have a valid and enforceable written license or right to use, all Acquired Intellectual Property. Sellers are the sole and exclusive owners of all Owned Intellectual Property, free and clear of all joint ownership, assignments, licenses, sublicenses, liens, security interests and Encumbrances. All Owned Intellectual Property is valid and enforceable. No Seller has granted, or is obligated to grant, any license or other permission to any Person with respect to any Acquired Intellectual Property other than to the extent specified on Section

5.1(h)(iii) of the Disclosure Schedules. Except as set forth on Section 5.1(h)(iv) of the Disclosure Schedules, Sellers, the Owned Intellectual Property, and the former and current conduct of the Business and products and services thereof, including the manufacture, importation, use, offer for sale, sale, licensing, distribution, or other commercial exploitation of such products and services, have not at any time infringed, misappropriated, or otherwise violated; and do not infringe, misappropriate, or otherwise violate, any Intellectual Property rights or rights of publicity of any Person. The Sellers are not the subject of any pending Action that either alleges a claim of infringement, misappropriation, or other violation of any Intellectual Property rights of any Person, or challenges the ownership, use, patentability, registration, validity, or enforceability of any Owned Intellectual Property, and no such claims have been asserted or threatened against the Sellers at any time. No Person has notified any Seller at any time that any of such Person's Intellectual Property rights are infringed, misappropriated, or otherwise violated by any Seller or that any Seller requires a license to any of such Person's Intellectual Property rights. To the Knowledge of the Sellers, there is no infringement, misappropriation, or other violation by any Person of any of the Owned Intellectual Property. No written or oral claims alleging any infringement, misappropriation, or other violation have been made against any Person by any Seller at any time. The Acquired Intellectual Property constitutes all material Intellectual Property rights necessary for the operation of the Business.

i) Title to and Sufficiency of Assets. Except as set forth in Section 5.1(i)(A) of the Disclosure Schedules, Sellers own and have good and valid title to, or lease and have a valid leasehold interest in, the Assets, free and clear of any Encumbrances (except for Permitted Encumbrances). The Assets constitute all of the assets and properties used or needed to conduct the Business as currently conducted. Except as set forth in Section 5.1(i)(B) of the Disclosure Schedules, the items of equipment and other tangible assets owned by or leased to Sellers are in good operating condition and repair (ordinary wear and tear excepted). Upon consummation of the transactions contemplated hereby, Sellers will not have any right, title, or interest in or to any Assets (other than the Excluded Assets).

j) Contracts.

(i) Section 5.1(j) of the Disclosure Schedules sets forth a true, correct and complete list of each of the following Contracts (x) by which any of the Assets are bound or affected or (y) to which a Seller is a party or by which a Seller is bound in connection with the Business, the Assets or the Assumed Liabilities (collectively, the "**Material Contracts**"):

(A) any Contract relating to Indebtedness, any guaranty or suretyship, indemnification or contribution agreement (in each case of a Person not Sellers), power of attorney, joint venture, partnership or profit-sharing agreement or evidence of Indebtedness, or letter of credit, pledge, bond or similar arrangement given by or running to the account of Sellers;

(B) any Contract obligating any Seller: (1) to refrain from competing with any business, (2) to refrain from conducting business in any particular jurisdiction or (3) that otherwise restrains or prevents a Seller from carrying on any lawful business;

(C) any Contract relating to the development, ownership, use, registration, or enforcement of, or exercise of any rights under, any Intellectual Property, excluding (1) licenses of commercially available off-the-shelf Software having a replacement cost of less than $25,000 that is not incorporated in, linked to, distributed with or used to host or provide any Product or service of the Business or owned Software and (2) nonexclusive licenses granted by the Sellers to their customers in the ordinary course of business consistent with past practice;

(D) any Lease and any Contract that involves the lease of real property or that obligates any Seller to purchase or sell real property;

(E) any Contract granting to any Person an option or a first refusal, first-offer, or similar preferential right to purchase or acquire any of the Assets;

(F) any Contract with customers, suppliers or vendors for which Sellers received or paid $50,000 or more during the most recent twelve (12) month period;

(G) any Contract for the purchase or sale of equipment, supplies, products or other personal property, the performance of which will extend over a period of more than six months after the Closing Date or involves consideration in excess of $50,000 per annum;

(H) any Contract granting any Person an Encumbrance on all or any part of any of the Assets;

(I) any Contract that creates or governs a partnership, joint venture, strategic alliance, or similar arrangement;

(J) all Contracts that provide for the assumption of any Tax, environmental, food safety, or other Liability of any Person;

(K) all Contracts that relate to the acquisition or disposition of any business, stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(L) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(M) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements);

(N) all Contracts with any Governmental Authority;

(O) all Contracts for the sale of any of the Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Assets;

(P) all collective bargaining agreements or Contracts with any union;

(Q) any staffing agency agreements, temporary employment agreements, or similar agreements for leased employees and temporary labor; and

(R) all other Contracts that are material to the Assets or the operation of the Business and not previously disclosed pursuant to this Section 5.1(j).

(ii) Each Material Contract is valid and binding on the applicable Seller in accordance with its terms and is in full force and effect and, to the Knowledge of the Sellers, is valid and binding on the counterparty thereto, enforceable against such Seller and, to the Knowledge of the Sellers, the counterparty thereto in accordance with its terms and conditions. No Seller, or to Sellers' Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) nor has any Seller or any other party provided or received, any written notice, or the Knowledge of the Sellers, any oral notice, of any intention to terminate or modify any Material Contract. To the Sellers' Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

k) Legal Proceedings. Except as set forth in Section 5.1(k) of Disclosure Schedules, there are no Actions pending, or to the Knowledge of the Sellers, threatened against Sellers. There are no Actions threatened by any Seller. No Seller is subject to any judgment, decree, injunction or Order of any Governmental Authority.

l) Permits; Compliance with Laws. Section 5.1(l) of Disclosure Schedules contains a true, correct and complete list of all Permits that each Seller holds in connection with the operations of the Business. Sellers hold the Permits necessary to enable it to conduct its business in the manner in which such business is currently being conducted and to perform all of its obligations under the Contracts to which it is a party. The business, product and output of the

Sellers are operated in compliance and are compliant in all material respects with all applicable Laws, rules, regulations, codes, ordinances, and Orders of all Governmental Authorities applicable to them or their business or properties and have been in compliance in all material respects with all such Laws applicable to their business or properties, including but not limited to all U.S. Department of Transportation and U.S. Federal Motor Carrier Safety Administration Permits. No Seller has received any written communication from any Governmental Authority (i) asserting any violation of or failure to comply with any Law of any Permit or (ii) notifying such Person of the suspension, revocation, withdrawal, failure to renew or adverse modification of any Permit. Sellers have complied with, and are not in violation of, any applicable Laws, including but not limited to (i) economic sanctions laws and regulations as administered by the Office of Foreign Assets Control (31 C.F.R. Part 500 et seq.) and Global Affairs Canada, (ii) all import laws and regulations, including but not limited to those administered by U.S. Customs and Border Protection, Canada Border Services Agency and Global Affairs Canada, (iii) export control regulations, including but not limited to laws and regulations issued by the Department of Commerce pursuant to the Export Administration Regulations (15 C.F.R. 730 et seq.) and Global Affairs Canada, except where the failure to comply would not have a Material Adverse Change.

m) Tax Matters.

(i) All Tax Returns required to be filed with any Governmental Authority by Sellers have been properly and timely filed on or prior to the applicable due date (including applicable extensions) for such Tax Returns and all such Tax Returns were true, correct and complete in all material respects. Except as set forth in Section 5.1(m)(i) of Disclosure Schedules, Sellers have not requested any extension of time within which to file any Tax Return, which Tax Return has not yet been filed. Sellers have timely paid all applicable Taxes due and owing (whether or not shown on such Tax Returns and including Taxes withheld or required to be withheld by Sellers).

(ii) Except as set forth in Section 5.1(m)(ii) of Disclosure Schedules, no Seller has received written notice from a Governmental Authority in a jurisdiction where Sellers do not file Tax Returns that a Seller is or may be subject to taxation by (or required to file a Tax Return in) such jurisdiction.

(iii) Except as set forth in Section 5.1(m)(iii) of Disclosure Schedules, there is no Tax deficiency or delinquency asserted in writing or, to the Knowledge of the Sellers, threatened in writing against Sellers and no audit, Action or similar legal proceeding relating to such Tax matters is in process, pending or, to the Knowledge of the Sellers, threatened in writing by any Governmental Authority against any Seller. No adjustment relating to any Tax Return of Sellers has been proposed in writing by any Governmental Authority. Sellers have not waived or granted any extension to any Governmental Authority of the limitations period during which any Tax liability may be assessed or collected.

(iv) Sellers have withheld and paid over to the appropriate Governmental Authority all Taxes required to have been withheld and paid in connection with the amounts paid to any employee, independent contractor, creditor, owner, or other third party, and all Internal Revenue Service Forms W-2 and 1099 or other applicable forms required with respect thereto have been properly completed and timely filed.

(v) There are no Encumbrances for Taxes on any of the Assets other than Permitted Encumbrances, and each of the Sellers has paid or has made arrangements for the payment of all Taxes which have accrued or are due on or before the Closing Date and which are capable of forming or resulting in an Encumbrance on the Assets. Notwithstanding the foregoing, no Seller has made any claim for, received or retained any amount under section 125.7 or subsection 153(1.02) of the Tax Act, that has resulted or is capable of forming or resulting in an Encumbrance on the Assets.

(vi) No Seller has (i) received from any Governmental Authority any Tax ruling, administrative relief, technical advice or change of method of accounting relating to or affecting the Business or the Assets or made any request therefor that is still pending or (ii) executed or entered into a closing agreement relating to or affecting the Business or the Assets pursuant to Section 7121 of the Code or any predecessor provision thereof or any similar provision of any Law.

(vii) None of the Assets acquired from the Canadian Sellers consist of "United States real property interests" within the meaning of Section 897(c) of the Code.

(viii) The Financial Statements reflect all Taxes owed or paid by Sellers and an adequate reserve for all unpaid Taxes of Sellers through the Balance Sheet Date, and such reserve, as adjusted for the passage of time through the Closing Date, is adequate for all Taxes payable by Sellers for the taxable periods and portions ending on the Closing Date. Since the Balance Sheet Date, no Seller has incurred any liability for Taxes arising from extraordinary gains or losses that are outside the ordinary course of business.

(ix) Section 5.1(m)(ix) of the Disclosure Schedules sets forth a true and complete list of elections and applications that have been made (or are pending) and actions that have been taken (or are pending) by any Seller pursuant to Sections 2301-2308 of the CARES Act Sections 7001-7005 of the Families First Act and section 125.7 and subsection 1.53(1.02) of the Tax Act. All such elections and applications are true, correct and complete in all material respects and all such actions have been taken in accordance with applicable Law.

(x) The Canadian Sellers are registered under the ETA with registration number 11931 7410 RT0001 and under the provincial sales tax legislation of British Columbia, and such registrations are in good standing and have not been revoked. The Sellers are not registered, do not have the obligation to be registered, and have never had the obligation to be registered for purposes of any other Canadian Transfer Taxes.

(xi) No Seller of any Canadian Assets is a non-resident of Canada for purposes of the Tax Act.

n) Employee Benefit Matters.

(i) Set forth in Section 5.1(n)(i) of the Disclosure Schedules is a true, correct and complete list identifying each material "employee benefit plan," as defined in Section 3(3) of ERISA, each employment, severance or similar contract, plan, arrangement or policy and each other plan or arrangement (written or oral, formal or informal, funded or unfunded, insured or uninsured, registered or unregistered) providing for compensation, bonuses, commissions, profit-sharing, phantom equity, stock option, equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, paid time off, sick leave, supplemental insurance, fringe benefits, deferred compensation, pension, health and welfare benefits, severance or post-employment or retirement benefits, in each case which is sponsored, maintained, administered or contributed to by Sellers or any Affiliates of the Sellers and which covers any current or former director, manager, officer or employee of Sellers, or with respect to which Sellers have any liability or obligation. Each such plan, contract, arrangement or policy is referred to herein as an "**Employee Plan**." Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter, or is entitled to rely on an opinion letter, from the Internal Revenue Service. Sellers have previously made available to Buyers a true and complete copy of the following documents, to the extent applicable: (i) any written plan documents and all amendments thereto, (ii) the most recent Forms 5500 (or similar report) and all schedules thereto and the most recent actuarial report, if any, (iii) the most recent Internal Revenue Service or Governmental Authority determination letter, and (iv) any material, non-routine correspondence with any Governmental Authority received in the past twenty-four (24) months regarding the operation or the administration of any Employee Plan. None of the Employee Plans is a "registered pension plan" or a "retirement compensation arrangement" (each as defined in the Tax Act).

(ii) There is no Action, suit, investigation, audit or proceeding pending against or involving or, to the Knowledge of Sellers, threatened against any Employee Plan before any Governmental Authority (other than routine benefit claims made in the ordinary course under an Employee Plan). Each Employee Plan has been maintained, registered (if required), funded, operated and administered in compliance, with its terms and applicable Laws, including, but not limited to, ERISA, the Code, and the Health Insurance Portability and Accountability Act of 1996 (including all rules and regulations thereunder), as amended. The Sellers and their Affiliates, as applicable, have made all required contributions and paid in full, or have otherwise accrued on the Balance Sheet Financials, all required insurance premiums and other required payments with regard to each Employee Plan to the extent due or owing on or before the Closing Date, and no Employee Plan is a source of unfunded benefit Liability.

(iii) Except as set forth in Section 5.1(n)(iii) of the Disclosure Schedules, no Employee Plan is, and neither Sellers nor any of their ERISA Affiliates contribute to any employee benefit plan that is, (i) subject to Title IV of ERISA or Section 412 of the Code, (ii) a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA), (iii) a "multiple employer plan" as defined in Section 413(e) of the Code, (iv) a "welfare benefit trust" or "voluntary employees beneficiary association" within the meaning of Sections 419, 419A or 501(a)(9) of the Code, (v) a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA), (vi) a single employer defined benefit pension plan or subject to Title IV of ERISA or (vii) a "nonqualified deferred compensation plan" within the meaning of

Section 409A(d)(1) of the Code. Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Employee Plan provides post-termination or retiree health or welfare benefits to any individual for any reason, and neither the Sellers nor any of their respective Affiliates has any Liability to provide post-termination or retiree health or welfare benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health or welfare benefits.

(iv) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in conjunction with any other event) result in, accelerate the vesting, funding, or delivery of, or increase the amount or value of, any payment, severance, or benefit to any employee, former employee, or officer or director, independent contractor, or consultant. No amount paid or payable in connection with the transaction contemplated by this Agreement will, either alone or in combination with another event, be an "excess parachute payment" within the meaning of Section 280G of the Code (determined without regarding the exceptions provided for in Section 280G(b)(5) of the Code). The Sellers and their Affiliates are not a party to any plan, program, agreement, or arrangement that provides for a gross-up or reimbursement of Taxes imposed under Section 4999 or Section 409A of the Code to any employee, director, officer, or other Service Provider.

(v) Section 5.1(n)(v) of the Disclosure Schedules sets forth a complete summary of all actions taken by Seller and/or their Affiliates with respect to the Employee Plans in the wake of COVID-19.

o) Employee Matters.

(i) Except as set forth on Section 5.1(o)(i) of the Disclosure Schedules, no Seller is a party to or bound by any collective bargaining agreement, labor contract, labor representative agreement, letter of understanding, letter of intent, voluntary recognition agreement, legally binding commitment to any labor or trade union or bargaining relationship covering the employees of Sellers or their Affiliates (collectively, the "**Employees**"). Section 5.1(o)(i) of the Disclosure Schedules sets forth with respect to each Employee: such Employee's full name (other than in respect of Canadian Employees), title or position, employment classification (exempt or non-exempt), work location and wages (2021 base salary or hourly wage rate, 2021 bonus targets, and 2020 bonuses and commissions paid or payable) and benefits to which they are entitled. All Employees are, and have been, in all material respects, properly classified as exempted or non-exempt under the Fair Labor Standards Act or similar Laws.

(ii) Section 5.1(o)(ii) of the Disclosure Schedules sets forth a list of each independent contractor, consultant, and leased worker (other than those provided by staffing companies) providing services to Sellers or their Affiliates since January 1, 2020, including for each the fees paid in 2020 and to-date in 2021. Sellers and their Affiliates, as applicable, have not misclassified any independent contractor or consultant and do not have any Liability with respect to any leased worker providing services through a third party.

(iii) There is no effort currently being made or, to the Knowledge of the Sellers, threatened by, or on behalf of, any union to organize any Employee, and, except as set forth on Section 5.1(o)(iii) of the Disclosure Schedules, there has been no such effort during the last five (5) years. There are no strikes, work stoppages, work slowdowns, or lockouts pending, or to the Knowledge of the Sellers, threatened against the Sellers or any of their Affiliates.

(iv) Sellers and their Affiliates, as applicable, have been in material compliance with all applicable Laws relating to compensation, human rights, accessibility, occupational health and safety, employment equity, immigration, employment, discrimination, harassment, the payment and withholding of Social Security, pay equity and workers' minimum wage and overtime compensation, human rights, accessibility, labor relations, collective bargaining, employment equity and workers' compensation, including without limitation, the Fair Labor Standards Act, as amended and the Ontario Employment Standards Act, 2000, as amended. Sellers and their Affiliates, as applicable, have been in material compliance with all applicable Laws relating to occupational safety and health, including without limitation, the Occupational Safety and Health Act of 1970, as amended, the Ontario Occupational Health and Safety Act, and any applicable state or foreign occupational safety and health Law. Except as set forth on Section 5.1(o)(iv) of the Disclosure Schedules, there is no Action, suit, investigation, audit or proceeding pending against or involving or, to the Knowledge of Sellers, threatened against Sellers or their Affiliates, as applicable, brought by or related to any current or former employee, candidate for employment, consultant, independent contractor, or leased worker.

(v) Within the last five (5) years, no Seller nor any Affiliate of Seller, as applicable, has (i) effectuated a "plant closing" (as defined in the WARN Act affecting any single site of employment or one or more facilities or operating units within any single site of employment, or (ii) effectuated a "mass layoff" (as defined in the WARN Act) affecting any single site of employment. Section 5.1(o)(v) of the Disclosure Schedules sets forth a summary of all workforce actions taken, including layoffs, reductions in hours or compensation, furloughs, and workplace closures, in the wake of COVID-19.

(vi) Sellers and, as applicable, their Affiliates have properly accrued on the Balance Sheet Financials or paid in full (i) to all current and former employees, any wages, salaries, commissions, bonuses, compensation, overtime, cash out of accrued and unused vacation, paid time off or other leave, severance, and any other amounts that are due and payable; and (ii) to all independent contractors, consultants, and temporary employees, any fees for services that are due and payable.

p) Environmental Matters. The operations of Sellers with respect to the Business and the Assets are currently in, and for the last five (5) years, have been in compliance in all material respects with all Environmental Laws and no material Liability related to the Business and Assets has arisen under Environmental Laws. No Seller has received from any Person, with respect to the Business or Assets, any: (i) Environmental Notice or (ii) written request for information pursuant to any Environmental Law, which, in each case, either remains pending or unresolved, or is the source of any ongoing obligations or requirements as of the Closing Date. There is no Environmental Claim pending or, to Sellers' Knowledge, threatened against the Sellers. Sellers have timely obtained, maintained in full force and effect and are in, and for the last five (5) years, have been in material compliance with the Environmental Permits used to conduct the Business as currently conducted. The Environmental Permits are disclosed on Section

5.1(p) of the Disclosure Schedules. There has been no Release of Hazardous Materials with respect to the Business or the Assets or any real property currently or formerly owned, leased or operated by Sellers in connection with the Business or Assets. To the Knowledge of the Sellers, there are no Hazardous Materials present in, on or under any real property currently owned, leased or operated by Sellers at levels that may reasonably be expected to result in a Material Adverse Effect. Sellers have provided to the Buyers any and all environmental reports, including Phase I environmental site assessments, Phase II reports, and environmental and health safety audits conducted in the last five (5) years, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the Business or the Assets or any real property formerly owned, leased or operated by Sellers in connection with the Business or Assets which are in the possession or control of Sellers related to compliance with or Liability arising under Environmental Laws, Environmental Claims, an Environmental Notice or the Release of Hazardous Materials.

q) Insurance. Section 5.1(q)(i) of the Disclosure Schedules sets forth a true, correct and complete list of all Insurance Policies for Sellers (other than those underlying the Employee Plans). All such Insurance Policies are in full force and effect. No notice of cancellation, refusal of coverage, any notice that a defense will be afforded with reservation of rights, or non-renewal with respect to any Insurance Policy has been received in writing by any Seller.

r) Real Property.

(i) Owned Real Property. Section 5.1(r)(i) of the Disclosure Schedules sets forth the address of each parcel of real property owned by Sellers (together with all buildings, fixtures and improvements erected thereon and all appurtenant easements and other rights and interests appurtenant thereto, the "**Owned Real Property**"). Sellers have made available to Buyers copies of all deeds and other instruments by which the applicable Seller acquired the Owned Real Property and copies of all title insurance policies, environmental reports, food safety reports, assessments, zoning reports and surveys, in each case to the extent in the possession or under the control of Sellers relating to the Owned Real Property. With respect to the Owned Real Property: (1) Sellers have good and marketable fee simple title to the Owned Real Property, free and clear of all Encumbrances other than the Permitted Encumbrances; (2) Sellers have not assigned, transferred, conveyed, mortgaged, leased, licensed, deeded in trust or encumbered any interest in the Owned Real Property other than the Permitted Encumbrances, nor has an agreement (other than this Agreement) been entered into to do so; (3) Sellers are not in receipt of any notice of default pursuant to any Encumbrance, nor does any condition exist that is or could be a default by any party under any Encumbrance; (4) to the Sellers' Knowledge, there is no pending or threatened expropriation Actions relating to the Owned Real Property; (5) Sellers have not received written notice of any breach of any municipal or other governmental requirements relating to the Owned Real Property or the requirements of insurers of the Owned Real Property; (6) Sellers have not received written notice of any present or future obligation to pay monies to any Governmental Authority in connection with off-site roads, services, utilities or similar services nor, to the Sellers' Knowledge, do they now have any present or future obligation to construct or provide off-site roads, services, utilities or similar services in connection with the Owned Real Property. Without limiting the generality of the foregoing, but rather in furtherance and confirmation thereof, to Sellers' Knowledge, the Owned Real Property is not subject to any ongoing license, lease or tenancy of any kind and there are no parties, other than the Sellers (and holders of recorded easements and other encumbrances listed in the Title Policies) occupying or with a right to occupy the Owned Real Property. The respective Seller's title to the Owned Real Property is insured under valid and collectible title insurance policies.

(ii) Leased Real Property. Section 5.1(r)(ii) of the Disclosure Schedules sets forth a true, correct and complete list of the address of each Leased Real Property, and a true and complete list of all of the Leases. Sellers have made available to Buyers true and complete copy of each such Lease, as amended, and copies of all environmental reports, food safety reports and assessments, in each case to the extent in the possession or under the control of Sellers relating to the Leased Real Property. With respect to each of the Leases: (1) each such Lease is legal, valid, binding, enforceable and in full force and effect and the applicable Seller has a valid and enforceable leasehold interest under each of the Leases and is entitled to the full benefit and advantage of each Lease in accordance with its terms; (2) no Seller has assigned, sublet, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest or estate created thereby; (3) the applicable Seller is not in breach or default under such Lease and, to the Knowledge of the Sellers, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, and, to the Knowledge of Sellers, no other party is in default thereof, and no party to any of the Leases has exercised any termination rights with respect thereto; and (4) there are no other Persons occupying, or having a right to occupy the Leased Real Property.

(iii) All of the Real Property, and all components of all improvements included within such Real Property, including the roofs and structural elements thereof and the sprinkler and fire protection, heating, ventilation, air conditioning, plumbing, electrical, mechanical, sewer, waste water, storm water, paving and parking equipment, systems and facilities included therein, are in good condition, working order and repair and do not require material repair or replacement in order to serve their intended purposes, including use and operation consistent with their present use and operation, except for scheduled maintenance, repairs and replacements conducted or required in the ordinary course with respect to the operation of the Real Property. The Sellers have made all material repairs and replacements that, to the Knowledge of Sellers, are required to be made under the Leases or as required under applicable Law.

(iv) To the Sellers' Knowledge, each parcel of Real Property abuts on at least one side a public street or road in a manner so as to permit reasonable, customary and adequate commercial and noncommercial vehicular and pedestrian ingress, egress and access to such parcel, or has adequate easements across intervening property to permit reasonable, customary and adequate commercial and non-commercial vehicular and pedestrian ingress, egress and access to such parcel from a public street or road. There are no restrictions on entrance to or exits from the Real Property to adjacent public streets, and no conditions exist which may result in the termination of the present access from the Real Property to existing public streets and roads.

(v) To the Sellers' Knowledge, the applicable zoning of each parcel of Real Property permits the presently existing improvements and the continuation of the Business being conducted on such parcel. There is no pending or contemplated zoning or rezoning of any Real Property. The Real Property and the use thereof are in compliance with applicable Laws, including those which relate to zoning.

(vi) There are no Actions which are pending or, to Sellers' Knowledge, threatened against the Real Property or the Sellers with respect to the Real Property.

s) Privacy. Sellers are and have been, for the past three (3) years, in compliance with all applicable Privacy and Security Requirements. The Sellers have, and have had, for the past three (3) years, policies in place regarding the Processing of Protected Data (including, without limitation, regarding the sending of commercial electronic messages) that comply with applicable Law and have been in compliance with such policies. The Sellers have not experienced any Security Breaches, and Sellers have no Knowledge of any notices or complaints from any Person regarding such a Security Breach. The Sellers have not received any written notices or complaints, or to the Knowledge of the Sellers, any oral notices or complaints, from any Person and no action, investigation, regulatory review, audit or inquiry has been commenced or, to the Knowledge of the Sellers, threatened by any Person regarding the unauthorized Processing of Protected Data or non-compliance with applicable Privacy and Security Requirements. Sellers have valid and legal rights to Process all Protected Data that is Processed by or on behalf of Sellers in connection with the use and/or operation of their Products, services and business, and the execution, delivery, and performance of this Agreement will not affect these rights or violate any applicable Privacy and Security Requirements. Upon the Closing, the Buyers will continue to have the right to Process the Protected Data on identical terms and conditions as the Business enjoyed immediately before the Closing, subject to Buyers' compliance with the Privacy and Security Requirements. The Sellers have implemented and have required all third parties that receive Protected Data from or on behalf of Sellers to implement, reasonable physical, technical and administrative safeguards consistent with industry standards that are designed to protect Protected Data from unauthorized access by any Person, and to ensure compliance in all material respects with all applicable Privacy and Security Requirements.

t) Anti-Corruption Laws.

(i) Neither any Seller nor, to the Knowledge of the Sellers, any of their respective directors, managers, officers, employees, or agents, in each case, acting for or on behalf of Sellers, has in the last five (5) years offered, paid, promised to pay or authorized the corrupt payment of anything of value, including cash, checks, wire transfers, tangible and intangible gifts, favors, services and entertainment and travel expenses, to (i) an executive, official, employee or agent of a Governmental Authority, (ii) a director, officer, employee, representative, or agent of a wholly or partially government-owned or -controlled company or business, (iii) a political party or official thereof, or candidate for political office, or (iv) an executive, official, employee, representative or agent of a public international organization (*e.g.*, the United Nations, World Bank or International Monetary Fund), in order to obtain or retain business or direct business to Sellers to secure any improper advantage for Sellers, or otherwise obtain a loan, reward, advantage or benefit of any kind in violation of Anti-Corruption Laws.

(ii) Sellers, their respective directors, managers, officers, employees, and agents have been in compliance with Anti-Corruption Laws applicable to the Business. No part of the consideration to be paid in connection with the transactions contemplated by this Agreement shall be used for any purpose that would constitute a violation of any Anti-Corruption Law.

(iii) Sellers have not made any contribution or expenditure, whether in the form of money, products, services, facilities or discounts, for any election for political office or to any public official, except to the extent permitted by applicable Law.

u) U.S. Food and Drug Administration, U.S. Department of Agriculture and Other Comparable Governmental Authority Regulatory Compliance, including the Canadian Food Inspection Agency.

(i) All Products currently being manufactured, developed, processed, labeled, stored or distributed by or on behalf of Sellers, which are subject to the jurisdiction of the FDA, USDA, CFIA, Health Canada or any comparable Governmental Authority, are being manufactured, tested, developed, processed, labeled, stored, distributed, and marketed and promoted (including promotions on the Sellers' website) in compliance with all applicable Laws and regulatory directives issued by the FDA, USDA, Health Canada, the CFIA or any other comparable Governmental Authority, including any: (A) pre-market notification or pre-market approval requirements, (B) labeling requirements, (C) current good manufacturing practices requirements, (D) FDA Indirect Food Additives requirements, 21 CFR Parts 174-179, (E) permissible ingredient mix composition, (F) any applicable registration requirements, and (G) any recalls and corrective actions that are required to be reported to customers with reporting obligations to FDA, USDA, Health Canada, CFIA or other applicable Government Authority have been reported.

(ii) None of Products are, or have been, "adulterated", "unfit for human consumption", "harmful", "unsanitary", or "misbranded" within the meaning of the U.S. Federal Food, Drug, and Cosmetic Act or the Canadian Food and Drugs Act and Regulations at the time such Products were sold by the applicable Seller and, to the Knowledge of Sellers, none of the Products constituted an article prohibited from introduction into interstate commerce by the FDA or the CFIA at the time of its manufacture, distribution, delivery, or sale by Sellers.

(iii) All the operations of Sellers are and have been in compliance in all material respects with all applicable Laws issued or implemented by the FDA, USDA, CFIA, Health Canada or any other comparable Governmental Authority, including those related to recordkeeping, food safety, food additives, food contact substances, supplier verification, current good manufacturing practices, import and export compliance, corrective action preparedness, and food labeling and advertising.

(iv) Except as set forth on Section 5.1(u)(iv) of the Disclosure Schedules, the Sellers have not received and none of them is subject to any administrative or regulatory action, warning or untitled letter, regulatory verification or audit results, notice of violation letter, FDA 483, or other similar written notice or complaint or compliance or enforcement action from or by the FDA, USDA, Health Canada, CFIA or any comparable Governmental Authority asserting that the testing, manufacture, processing, distribution, marketing or sale of the Products is not in compliance with any applicable Law, and to the Knowledge of Sellers, none of the foregoing is threatened. Furthermore, Sellers have made all material notifications, submissions, and reports required by the FDA, USDA, Health Canada, CFIA or any comparable Governmental Authority.

(v) Each Product has conformed in all respects to any promises or affirmations of fact made on the Product container or label or in any Product-related marketing, advertising, promotional, or similar materials and Sellers possess and retain for any legally prescribed period of time appropriate certifications or scientifically reliable materials to substantiate all such claims.

(vi) Sellers maintain registration with the FDA, USDA, including PACA licensing, Health Canada and CFIA for applicable Products and within Sellers' facilities.

(vii) Sellers currently maintain Safe Quality Food (SQF) Food Safety Program or Global Food Safety Initiative (GFSI) food safety certifications for each of their manufacturing and processing facilities, and there is no pending or, to the Knowledge of the Sellers, threatened repeal, failure to renew, or challenge to any such certifications.

(viii) None of Sellers, nor, to the Knowledge of Sellers, any of their vendors or suppliers, has received written notice, or to the Knowledge of the Sellers, any oral notice, of, or been subject to, any seizure, injunction, detention, refusal of admittance, civil penalty, criminal investigation or penalty, disqualification or debarment, in each case of the foregoing, relating to any of (A) the Products, (B) the components or ingredients in such Products or (C) the facilities of Sellers at which such Products are manufactured.

v) <u>Competition Act</u>. The Sellers, along with their affiliates, have an aggregate value of assets in Canada that do not exceed C$400 million and have gross revenues from sales in, from or into Canada that do not exceed C$400 million, each determined as of the time and in the manner prescribed in accordance with section 109 of the Competition Act and the Notifiable Transactions Regulations.

w) <u>Investment Canada Act</u>. The Assets do not comprise a cultural business within the meaning of section 14.1(6) of the *Investment Canada Act*.

x) <u>Broker's Fees</u>. Except as set forth on <u>Section 5.1(x) of the Disclosure Schedules</u>, no Seller has entered into any Contract to pay any fees or commissions or have any other Liability to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyers could become liable or obligated to pay.

y) <u>No Other Representations or Warranties; Disclosure Schedules</u>. Except for the representations and warranties contained in this <u>Article V</u> (as qualified, amended, supplemented and modified by the Disclosure Schedules) and in the Sellers Ancillary Agreements, neither Sellers nor any other Person make (and Buyers are not relying upon) any other express or implied representation or warranty with respect to Sellers, the Business, the Assets (including the value, condition or use of any Asset), the Assumed Liabilities or the transactions contemplated by this Agreement, and Sellers disclaim any other representations or warranties, whether made by Sellers, any Affiliate of Sellers or any of their respective officers, directors, employees, agents or Representatives.

z) Sale "As Is, Where is". Buyers acknowledge and agree that except for the representations and warranties set forth in this Article V and in the Sellers Ancillary Agreements, Sellers shall sell and convey to Buyers and Buyers shall accept the Assets "**AS IS, WHERE IS, WITH ALL FAULTS**". Except as expressly set forth in this Agreement and in the Sellers Ancillary Agreements, Buyers have not relied and will not rely on, and Sellers have not made and are not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Assets or relating thereto made or furnished by Sellers or third party representing or purporting to represent Sellers, to whomever made or given, directly or indirectly, orally or in writing. The Parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement, which when taken together with the Sellers Ancillary Agreements, fully and completely expresses their agreement.

aa) Survival of Sellers' Representations and Warranties. Except (i) those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Closing, (ii) the Parties' representations and warranties relating to such Party's authority with regard to the execution of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby, (iii) Section 3.2, (iv) Article IX, and (v) all defined terms set forth in Article I that are referenced in the foregoing provisions referred to in clauses (i) through (iv) above and each other provision hereof that by its terms survives the Closing, all of the representations and warranties of Sellers contained in this Agreement, or in any schedules or exhibits delivered pursuant hereto shall terminate upon the Closing and be of no further force or effect thereafter. Notwithstanding anything to the contrary herein, the remedies of Buyers with respect to any breach of any Sellers' representation, warranty or covenant contained in this Agreement prior to Closing shall be limited to Buyers' rights under Article VIII.

5.2 Buyers' Representations and Warranties. To induce Sellers to enter into this Agreement, Buyers hereby represent and warrant to Sellers as of the date of this Agreement and the Closing Date, as follows:

a) Organization. U.S. Buyer is a limited liability company validly existing and in good standing under the laws of the State of Delaware. Canadian Buyer is a corporation validly existing and in good standing under the laws of British Columbia. Each Buyer has the necessary limited liability company power and authority to conduct business in the manner in which its business is currently being conducted.

b) Authority. Each Buyer has the limited liability company power and authority to enter into and to perform its obligations under this Agreement and each of the agreements, certificates and documents required to be delivered by such Buyer pursuant to the terms of this Agreement (the "**Buyer Ancillary Agreements**", and together with the Sellers Ancillary Agreements, the "**Ancillary Agreements**"). The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements, and the consummation of the transactions contemplated by this Agreement and the Buyer Ancillary Agreements, have been duly authorized and approved by all necessary action on the part of Buyers. This Agreement and each of the Buyer Ancillary Agreements constitute the legal, valid and binding obligations of Buyers, enforceable against Buyers in accordance with their terms.

c) Non-Contravention; Third Party Consents. Neither the execution and delivery of this Agreement or any Ancillary Agreement to be executed and delivered by Buyers, nor the consummation of the transactions contemplated hereby and thereby, will, subject to the U.S. Sale Order and the Canadian Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, (i) conflict with or result in a breach of the certificate of incorporation, by-laws or other organizational documents of Buyers, (ii) violate any Law to which Buyers are, or their respective assets or properties are, subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any Contract to which Buyers are a party or by which it is bound or to which any of the Assets is subject, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice that would not (A) individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Buyers to consummate the transactions contemplated by this Agreement or by the Buyer Ancillary Agreements or (B) would be discharged by the U.S. Sale Order or the Canadian Sale Order. Subject to the U.S. Sale Order and the Canadian Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, Buyers are not required to give any notice to, make any filing with, or obtain any authorization, Consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Ancillary Agreement, except where the failure to give notice, file or obtain such authorization, Consent or approval would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Buyers to consummate the transactions contemplated by this Agreement.

d) Broker's Fees. Buyers have not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Sellers could become liable or obligated to pay.

e) Sufficient Funds; Adequate Assurances. Buyers have, and upon the Closing Buyers will have, immediately available funds sufficient for the satisfaction of all of Buyers' obligations under this Agreement, including the payment of the Closing Cash Payment and all fees, expenses of, and other amounts required to be paid by, Buyers in connection with the transactions contemplated hereby. Buyers are and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code and sections 11.3 and 36 of the CCAA with respect to the Assets and the related Assumed Liabilities.

f) Adequate Assurances Regarding Assigned Contracts and Assigned Leases. Buyers are and will be capable of satisfying the conditions contained in sections 365(b)(1)(C) and

365(f) of the Bankruptcy Code and sections 11.3 and 36 of the CCAA with respect to the Assigned Contracts and Assigned Leases.

g) Competition Act. The Buyers, along with their affiliates, have no assets in Canada and no gross revenues from sales in, from or into Canada, each determined as of the time and in the manner prescribed in accordance with section 109 of the Competition Act and the Notifiable Transactions Regulations.

ARTICLE VI
INTERIM OPERATIONS AND COVENANTS

6.1 **Conduct of Business Pending Closing**. From the Effective Date until the Closing Date, Sellers shall, except (i) as expressly set forth in this Agreement, (ii) in compliance with the Bankruptcy Code and the CCAA or (iii) as consented to by Buyers in writing (which consent may not be unreasonably withheld, conditioned or delayed):

a) continue to operate the Business in the ordinary and usual manner consistent with past practice;

b) maintain the Assets substantially in their present condition (ordinary wear and tear and casualty excepted);

c) maintain the Permits and in the ordinary and usual manner consistent with past practice;

d) maintain in full force and effect substantially the same liability and casualty insurance coverage that Sellers now maintain in effect with respect to the Business and their operations thereof;

e) until the Closing Date, (i) continue to employ all the Employees, subject to Sellers' existing employment practices and (ii) notify Buyers promptly (and in any event within three (3) Business Days) of the termination of employment of any Employee for cause or the replacement or hiring of any new Employee or otherwise for the Business (and the terms of employment of such replacement or new Employee);

f) collect Accounts Receivable in the ordinary and usual manner consistent with past practice;

g) produce Products and Inventory in the ordinary and usual manner consistent with past practice;

h) use commercially reasonable efforts to preserve relationships with their (i) material suppliers, (ii) customers and (iii) others doing business with them and maintain customer service at current levels;

i) not enter into, amend or modify, terminate or reject any Contract or Lease and continue to perform in all material respects all obligations of Sellers under all Contracts and all Leases; and

j) agree in writing to take any of the foregoing actions or support any other Person to take any of the foregoing actions.

6.2 <u>Prohibited Actions Pending Closing</u>. Other than as set forth in <u>Section 6.3</u>, mandated by the Bankruptcy Court or approved by Buyers in writing, from the Effective Date until the Closing Date, Sellers shall not:

a) enter into or agree to enter into any merger or consolidation with, any corporation or other Person, and not engage in any new business or invest in, make a loan, advance or capital contribution to, or otherwise acquire the securities or all of substantially all of the assets of any other Person;

b) sell or otherwise dispose of, or agree to sell or dispose of any of the Assets or remove or permit to be removed from any building, facility, or real property any Asset, except in the ordinary course of business or as permitted by this Agreement;

c) enter into, modify or terminate any labor or collective bargaining agreement or, through negotiation or otherwise, make any commitment or incur any Liability to any labor organization;

d) terminate, amend, restate, supplement or waive any rights of the Business, including those under any (A) Material Contract or Lease or (B) Permit;

e) make any loan or advance to any Person or otherwise purchase or acquire any Indebtedness, debt securities or equity securities of any Person, or make any loans, advances or capital contributions to, or investments in, any other Person or incur any Indebtedness;

f) make or rescind any election relating to Taxes, settle or compromise any Action relating to Taxes, or except as may be required by applicable Law or GAAP, make any material change to any of their methods of accounting or methods of reporting income or deductions for Tax or accounting practice or policy from those employed in the preparation of their most recent Tax Returns;

g) (A) other than key employee retention bonus payments and amounts due under the Sellers' key employee incentive plan to certain employees in connection with the Bankruptcy Cases, all of which are Excluded Liabilities, grant any bonus, benefit or other direct or indirect compensation to any Employee, director, consultant or other Service Provider or (B) materially increase the coverage or benefits available under any (or modify or create any new) Employee Plan, severance pay, termination pay, vacation pay, company awards, salary continuation for disability, sick leave, deferred compensation, bonus or other incentive compensation, insurance, pension or other employee benefit plan or arrangement made to, for, or with any of the directors, officers, employees, agents, other Service Providers or Representatives of Sellers or their Affiliates;

h) enter into, modify, or terminate any employment agreement under which the annual compensation is at least $75,000, or engage or hire any new Employee, director, consultant or other Service Provider;

i) make any unusual or extraordinary efforts to collect any outstanding Accounts Receivable or intercompany obligation, Liability or Indebtedness, give any discounts or concessions for early payment of such Accounts Receivable or intercompany obligation, liability or indebtedness, or make any sales of, or convey any interest in, any Accounts Receivable or intercompany obligation, Liability or Indebtedness to any third party;

j) amend their articles of incorporation, bylaws or other similar organizational documents (whether by merger, consolidation or otherwise);

k) split, combine or reclassify their shares of capital stock or membership interests or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect thereof;

l) other than the Hatfield Capital Expenditure, incur any capital expenditures in excess of $50,000 or any obligations or Liabilities in respect thereof without the prior written consent of Buyers;

m) change their methods of accounting, except as required by concurrent changes in GAAP;

n) settle, or offer or propose to settle, any material Action;

o) grant any right (including any distribution or exploitation right) or interest (whether ownership, security, participation or otherwise) in or to any of the Assets or permit or authorize any or other Person to grant any right (including any distribution or exploitation right) or interest (whether ownership, security, participation or otherwise) in or to any of the Assets;

p) file, commence, pursue, consent to or encourage any Action or any other claim or cause of action (except for claims or causes of action based upon a breach of this Agreement);

q) reduce standard vigilance concerning theft of Inventory or other Assets;

r) subject to any Encumbrance or otherwise encumber or permit, allow or suffer to be encumbered, any of the properties or assets (whether tangible or intangible) of Sellers including the Assets; or

s) take any action prior to the Closing Date that would breach any of the representations and warranties contained in this Agreement.

6.3 Governmental Notices.

a) Subject to, in the case of Sellers, the Bankruptcy Code, the CCAA and the Orders of the Bankruptcy Court and the Canadian Court, each of the Parties will give any notices to, make any filings with, and use its reasonable best efforts to obtain any authorizations, Consents, and approvals of Governmental Authorities and other Persons as are otherwise necessary to consummate the transactions contemplated hereby. Subject to the terms and conditions set forth in this Agreement and applicable Law, Buyers and Sellers shall, with respect to this Agreement and the transactions contemplated by this Agreement, (A) promptly notify the other Party of any communication to that Party from any Governmental Authority in respect of any filing, investigation or inquiry concerning this Agreement or the transactions contemplated by this Agreement, (B) if practicable, and so long as such access is subject to an obligation of confidentiality, permit the other Party the opportunity to review in advance all the information relating to Sellers and their respective Affiliates or Buyers and their respective Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Authority in connection with this Agreement and the transactions contemplated by this Agreement and incorporate the other Party's reasonable comments, (C) not participate in any substantive meeting or discussion with any Governmental Authority in respect of any filing, investigation, or inquiry concerning this Agreement and the transactions contemplated by this Agreement unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Authority, gives the other Party the opportunity to attend, and (D) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Affiliates and Representatives, on the one hand, and any Governmental Authority or its respective staff, on the other hand; provided, however, that any materials provided under this Section 6.3 may be redacted before being provided to the other Party (i) to remove references concerning the valuation of Buyers, Sellers, or any of their respective Affiliates, (ii) financing arrangements, (iii) as necessary to comply with contractual arrangements, and (iv) as necessary to address reasonable privilege or confidentiality issues.

6.4 Bankruptcy Approval; Bidding Procedures and Sale Motions.

a) Sellers and Buyers each acknowledge that this Agreement and the sale of the Assets to Buyers and the assumption of the Assumed Liabilities by Buyers are subject to the approval of the Bankruptcy Court and the Canadian Court. Buyers acknowledge that (i) to obtain such approval, Sellers must demonstrate that they have taken reasonable steps to obtain the highest and otherwise best offer possible for the Assets, and that such demonstration will include giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court or the Canadian Court, as applicable, and, if necessary, conducting the Auction, and (ii) Buyers must provide adequate assurance of future performance as required under the Bankruptcy Code with respect to each Assigned U.S. Contract and Assigned U.S. Lease.

b) As consideration for substantial expenditures of time, effort and expense undertaken and continuing by Buyers in connection with the completion of their due diligence review of the Business and the preparation, negotiation and execution of this Agreement, the Bidding Procedures, the Bidding Procedures Orders and related matters, each Seller acknowledges and agrees that: subject to the entry of the Bidding Procedures Orders (i) Buyers, acting together, will be the Stalking Horse Bidder for the Assets at the Auction; and (ii) no Seller will participate in any negotiations for the purpose of naming any Person other than the Buyers, acting together, as the Stalking Horse Bidder for the Assets and no Person other than Buyers, acting together, will be the Stalking Horse Bidder at the Auction.

c) On the U.S. Petition Date and the Canadian Petition Date, respectively, or as soon as reasonably practicable thereafter but in no event later than three (3) Business Days after the U.S. Petition Date and the Canadian Petition Date, respectively, Sellers shall file with each of the Bankruptcy Court and the Canadian Court a motion (the "**Bidding Procedures Motions**") seeking, in each respective Court, entry of the applicable Bidding Procedures Order approving, among other things, (i) Buyers as the Stalking Horse Bidder for the Assets, (ii) notice and service requirements to creditors and parties in interest with respect to the transactions contemplated hereby, (iii) the Break-Up Fee and the Expense Reimbursement and (iv) the bidding procedures related to the sale of the Assets pursuant to this Agreement. Concurrently with the filing of the U.S. Bidding Procedures Motion, U.S. Sellers shall also file with the Bankruptcy Court a motion (the "**U.S. Sale Motion**") seeking entry of the U.S. Sale Order, which U.S. Sale Motion shall be in form and substance satisfactory to the Buyers. Upon the Canadian Buyer being designated as Successful Bidder for the Canadian Assets following completion of the Bidding Procedures, the Canadian Sellers shall file with the Canadian Court a motion (the "**Canadian Sale Motion**") seeking entry of the Canadian Sale Order. Each of Sellers and Buyers agree to take any action reasonably necessary or appropriate to obtain the issuance and entry of the Bidding Procedures Orders, the Sale Orders, if applicable, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court or the Canadian Court, as applicable.

d) From and after the Effective Date and until such time as the transactions contemplated by this Agreement are consummated, Sellers are permitted, and are permitted to cause its Representatives and Affiliates, to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, respond to any unsolicited inquiries, proposals or offers submitted by, and enter into any discussions or negotiations regarding any of the foregoing with, any Person (in addition to Buyers and their respective Affiliates, agents and Representatives) in connection with any sale or other disposition of all or any portion of the Business or the Assets, or any other similar transaction with respect to Sellers or the Business (each, a "**Competing Transaction**"). In addition, Sellers shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any portion of the Business or the Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code or the CCAA, including supplying information relating to the Business and the Assets to prospective buyers.

e) Following entry of the Bidding Procedures Orders, Sellers shall serve a cure notice (the "**Cure Notice**") in accordance with the procedures set forth therein.

f) Without limiting Sellers' other obligations under this Agreement, Sellers shall provide drafts of the Bidding Procedures, Sale Motions, Bidding Procedures Orders, the Sale Orders, and any other material documents to be field with the Bankruptcy Court or the Canadian

Court that relate directly to this Agreement or the transactions contemplated hereby in advance of the proposed filing date.

g) If an Auction is conducted, and Sellers do not choose Buyers, acting together, as the Successful Bidder, but instead choose Buyers, acting together, as the Alternate Bidder, Buyers, acting together, will be the Alternate Bidder. If Buyers, acting together, are chosen as the Alternate Bidder, Buyers will be required to keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by Buyers prior to or at the Auction) open and irrevocable until the closing of the sale of the Assets to the Successful Bidder. If the Superior Proposal with the Successful Bidder is terminated prior to the termination of this Agreement, Buyers, acting together, will be deemed to be the Successful Bidder and will forthwith consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by Buyers prior to or at the Auction).

h) If an appeal is taken, or petition for certiorari or motion for rehearing or re-argument filed, or a stay pending appeal is requested from either the Bidding Procedures Orders or the Sale Orders, Sellers will promptly notify Buyers of such appeal, petition, motion or stay request and Sellers, with input from Buyers, will take all reasonable steps to defend against such appeal, petition, motion, or stay request.

i) At Buyers' expense, the Sellers shall file any motion required to extend the time to assume or reject all Leases pursuant to section 365(d)(4) of the Bankruptcy Code to the maximum extent permitted under the Bankruptcy Code as necessary for the Buyers to assume any Contracts, Leases, Insurance Policies, or Permits in accordance with this Agreement.

6.5 Cooperation.

a) Subject to Sellers' right to solicit and consummate a Competing Transaction as contemplated by Section 6.4(e), each of the Parties will use its reasonable best efforts to (i) obtain the Required Consents and (ii) take all action and to do all things necessary in order to consummate and make effective the transactions contemplated by this Agreement on or prior to May 15, 2021, except as otherwise provided in Section 6.3. Without limiting the generality of the foregoing, no Party will take any action, or permit any of its Affiliates to take any action, to materially diminish the ability of any other Party to consummate, or materially delay any other Party's ability to consummate, the transactions contemplated hereby, including taking any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

b) To the extent that the assignment to Buyers of any Assigned Contract, Assigned Lease, Assigned Insurance Policy or Assigned Permit pursuant to this Agreement is not permitted without the Consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Orders or other related order of the Bankruptcy Court or the Canadian Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Contract, such Lease or such Permit or any right or interest therein unless and until such Consent is obtained; provided, however, that the Parties will use their reasonable best efforts, before the Closing, to obtain all such Consents; provided, further, that if any such Consents are not obtained prior to the Closing Date, from and after the Closing and until the earlier of (i) such date on which such applicable Consent is obtained or (ii) until the earlier of (A) 90 days following the Closing Date, (B) confirmation of a plan of reorganization or liquidation, (C) such time that the U.S. Bankruptcy Cases are closed or converted to a case under Chapter 7 or (D) dismissal of the Bankruptcy Cases, Sellers and Buyers will reasonably cooperate with each other in any lawful and feasible arrangement (including holding such Contract, such Lease or such Permit in trust for the Buyers pending receipt of the required Consent to the extent practicable) designed to (i) provide Buyers with the benefits of any such Contract, such Lease or such Permit and, to the extent permissible, Buyers shall be responsible for performing all obligations under such Contract, such Lease or such Permit required to be performed by Sellers on or after the Closing Date to the extent set forth in this Agreement and (ii) enforce for the account of Buyers any rights of the applicable Seller under such Contract, Lease or Permit (including the right to elect to terminate such Contract, Lease or Permit, as applicable, in accordance with the terms thereof upon the written direction of Buyers). Notwithstanding the foregoing, the filing of any pleadings in the Bankruptcy Court or the CCAA Court for such Contract, Lease or Permit shall be at Buyers' expense.

6.6 Employees

a) As of the Closing Date, Buyers may, but shall not be obligated to, hire any or all of the Employees. Within at least ten (10) Business Days prior to the Closing, (i) Sellers and Buyers shall mutually agree upon a list of the Employees who Sellers will retain following the Closing in order to implement a plan or other course of action regarding the Excluded Assets (the "**Sellers' Retained Employees**") and (ii) Buyers shall provide a list of the Employees to whom it shall make offers of employment if the Closing occurs (the "**Buyer Selected Employees**"). To the extent any Buyer Selected Employee is not a Sellers' Retained Employee, Buyers shall have the right to hire such individual. Any Liability, costs, or expenses associated with any Buyer Selected Employee who refuses an offer of employment with Buyers or an Affiliate of Buyers shall be the responsibility of Sellers.

b) Except with respect to the Employment Liabilities set forth in Section 2.4(a)(iv), Sellers shall (i) pay all such amounts to the Buyer Selected Employees on or immediately prior to the Closing, including any salary, bonuses, commissions in excess of the enumerated cap set forth on Section 2.4(a)(iv), such salary, bonuses, commissions, employee benefits or severance payable or that relates to the period on or prior to the Closing Date (irrespective of whether such amounts are accrued) and (ii) provide the Buyers with written evidence thereof, in each case, not later than five (5) Business Days following the Closing Date with respect to any such amounts that are in excess of the enumerated amounts in Section 2.4(a)(iv). For the avoidance of doubt, Sellers shall remain responsible for all Liabilities, costs, and expenses related to any former Employees, Service Providers, or any Employees or Service Providers who do not become employees of Buyers or an Affiliate of Buyers, irrespective of when such Liabilities, costs, or expenses arise.

c) Sellers shall be solely responsible for satisfying the requirements of Section 4980B of the Code for all individuals who are "M&A qualified beneficiaries" as such term is defined in Treasury Regulation Section 54.4980-9 prior to or in connection with the Closing, whether such obligation to providing continuing benefits or coverage under any Employee Plan, COBRA, or similar state Law arise prior to, on, or after the Closing Date. If any Liability under COBRA transfers to the Buyers or an Affiliate of Buyer, or if the Buyers or an Affiliate of Buyers is required to provide such COBRA coverage to the "M&A qualified beneficiaries" due to the termination by Sellers of any Employee Plan or in connection with applicable Law, then such Liability shall automatically be deemed to be an Excluded Liability and Sellers shall reimburse Buyers or such Affiliate of Buyers for all costs associated with providing such coverage.

d) Effective as of the Closing, Sellers shall hereby assign to Buyers all of their rights and interests in any confidentiality, non-solicitation of clients or customers, non-solicitation of employees or consultants, non-interference, non-competition, non-disparagement or similar Contracts (existing and in effect as of the date hereof) between Sellers or any Affiliate of Sellers, on the one hand, and any Buyer Selected Employee, on the other hand, to the extent such assignment is permitted under applicable Law. In the event that such rights and interests are not assignable, Sellers shall reasonably assist Buyers, to the extent practicable, in the enforcement of such rights and interests. This Section 6.6(d) shall survive the Closing.

e) To the extent Buyers elect to clone the 401(k) plan and/or health and welfare plans of Sellers for the benefit of the Buyer Selected Employees, Sellers shall use reasonable best efforts to cooperate with Buyers to clone such employee plans in connection with, or as soon as practicable following, the Closing.

f) The provisions of this Section 6.6 are solely for the benefit of the Parties, and no current or former employee, director, independent contractor, consultant or other Service Provider of Sellers, Buyers or any other Person associated therewith shall be regarded as a third-party beneficiary of this Section 6.6. No provision of this Agreement shall be construed as amending any Employee Plan. Nothing herein shall provide any Employee with any rights to continued employment or require Buyers or any Affiliate of Buyers to continue any employee benefit plan, program, policy, or arrangement.

6.7 Confidentiality.

a) Subject to Section 6.4 and the requirements of the Bankruptcy Code, the CCAA, and the Bankruptcy Court and the Canadian Court and except as may otherwise be provided for in this Agreement, the terms of the Confidentiality Agreement are hereby incorporated by reference and shall continue in full force and effect from the date hereof until the Closing with respect to information pertaining to the Business, in accordance with the terms thereof, such that the information obtained by Buyers or their Representatives during any investigation conducted as provided for in this Agreement in connection with the negotiation, execution and performance of this Agreement or the consummation of the transactions contemplated hereby or otherwise, shall be governed by the Confidentiality Agreement; provided however, in the event of the termination of this Agreement, the terms of the Confidentiality Agreement shall survive for the term as provided therein. Effective as of the Closing, the

Confidentiality Agreement shall terminate automatically without further action by any of the Parties hereto.

b) From and after the Closing, each Seller agrees that it shall, and shall cause its respective Affiliates and Representatives to, hold in confidence any and all Confidential Information, whether written or oral, concerning the Business. As used herein, "**Confidential Information**" shall mean all information that is confidential, proprietary or otherwise not generally available to the public and relates to the Business, except to the extent that such information can be shown by such Seller to have been (i) in the public domain prior to the Closing or (ii) in the public domain at or after the Closing through no fault of such Seller. If a Seller or any of its Affiliates or their respective Representatives are compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of Law, such Seller shall promptly notify Buyers in writing and shall disclose only that portion of such information which such Seller is advised by its counsel is legally required to be disclosed. For the avoidance of doubt, disclosure of information with respect to the transactions contemplated by this Agreement or any Ancillary Agreement shall be governed by this Section 6.7(b).

6.8 Post-Closing Operation of Sellers. The Sellers hereby acknowledge and agree that upon the consummation of the transactions contemplated hereby, Buyers shall have the sole right to the use of the name "Fresh Food Group," "Country Fresh," "Sun Rich," "Tiffany Gate," or similar or other relevant names or any service marks, trademarks, trade names, identifying symbols, logos, emblems or signs containing or comprising the foregoing, including any name or mark confusingly similar thereto. After the Closing Date, none of Sellers nor any of their respective Affiliates shall use the name or mark "Fresh Food Group," "Country Fresh," "Sun Rich," "Tiffany Gate," or any derivatives thereof or other relevant names or service marks. The Parties shall seek entry of an Order (which may be the U.S. Sale Order or the Canadian Sale Order), modifying the caption as of the Closing Date in the proceedings before the Bankruptcy Court to reflect the change in the name of Sellers, except that during the pendency of such proceedings, any Seller shall be permitted to use the name "Fresh Food Group," "Country Fresh," "Sun Rich," "Tiffany Gate," or similar or other relevant names or derivatives thereof solely as a former name for legal and noticing purposes in connection with matters relating to Sellers' Bankruptcy Cases. Within thirty (30) days after the Closing, Sellers and their respective Affiliates shall promptly file with the applicable Governmental Authorities all documents reasonably necessary to delete from their names the words "Fresh Food Group," "Country Fresh," "Sun Rich," "Tiffany Gate," or any derivatives thereof, other relevant names or service marks and shall do or cause to be done all other acts, including the payment of any fees required in connection therewith, to cause such documents to become effective as promptly as reasonably practicable.

6.9 Press Releases. Other than statements made in the Bankruptcy Court or the Canadian Court (or in any related documents filed therein), prior to the Closing and following the Closing Date, no Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Party, which shall not be unreasonably withheld or delayed; provided, however, that any Party may make (and permit the making of) any public disclosure that is required by applicable Law (in which case the disclosing Party will use its reasonable best efforts to advise the other Parties prior to making the disclosure); provided, that Buyers may disclose this Agreement, its terms and the transactions contemplated hereby to their Affiliates, actual and/or potential debt or equity financing sources, the limited partners of such Affiliates, and prospective limited partners of such Affiliates.

6.10 **Access**. Upon reasonable advance written request by Buyers, Sellers will permit Buyers and their Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Sellers to all premises, properties, personnel, Records, Contracts, Leases and Permits related to the Business, in each case, for the sole purpose of evaluating the Business and otherwise consummating the transactions contemplated hereby; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney client privilege or take any action in violation of applicable Law.

6.11 **Notices**.

a) The Parties agrees that, with respect to the representations and warranties of Sellers contained in this Agreement, between the date hereof and the Closing Date, Sellers shall add, supplement or amend the Disclosure Schedules with respect to any matter hereafter arising or discovered which, if existing or known at the Effective Date or thereafter, would have been required to be set forth or described in such Disclosure Schedules (together, the "**Schedule Amendments**"); provided, that any such Schedule Amendments shall not be deemed to be an amendment to this Agreement for any purposes hereof and shall have no effect whatsoever on the rights and obligations of the Buyers and the Sellers pursuant to this Agreement (including with respect to any determination as to whether any breach has occurred, whether the conditions set forth in Section 7.2(a) have been satisfied or for the purposes of any termination rights pursuant to Article VIII).

b) The Sellers agree to provide written notice to the Buyers at least fourteen (14) days prior to any confirmation of a plan of reorganization or liquidation, the closure of the U.S. Bankruptcy Cases or conversion of the U.S. Bankruptcy Cases to a case under Chapter 7, if such are at Sellers' direction only.

c) The Sellers agree to provide the notices listed on Section 5.1(c) of the Disclosure Schedules prior to Closing.

d) The Sellers agree to provide prompt written notice to the Buyers of any termination of ongoing business with one or more of any Key Customer's distribution centers.

6.12 **Further Assurances**. In case at any time from and after the Closing Date any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Orders, at any Party's request and sole cost and expense, each Party shall take such further action (including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption or confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyers all of the Assets, to confirm Buyers' assumption of the Assumed Liabilities and to confirm Sellers' retention of the Excluded Assets and Excluded Liabilities. Sellers shall also use their reasonable best efforts to transfer and complete all necessary documents and filings to convey all of the Desired Contracts, Desired Leases, Desired Insurance Policies and the Desired Permits, including but not limited to Environmental Permits listed on Section 5.1(p) of the Disclosure Schedules and the Food Safety Permits, to the Buyers. Without limiting the generality of this Section 6.12, to the extent that either Buyers or Sellers discover any additional assets or properties which should have been transferred or assigned to the Buyers as Assets but were not so transferred or assigned, Buyers and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyers, and no additional consideration shall be due from Buyers in connection therewith; provided, that Buyers shall compensate Sellers for any reasonable, out-of-pocket costs with respect to the foregoing.

6.13 Insurance Policies. To the extent that any current or prior Insurance Policy is not transferable to Buyers at the Closing in accordance with the terms thereof, the applicable Seller shall hold such Insurance Policy for the benefit of Buyers until the earlier of (a) 90 days following the Closing Date, (b) confirmation of a plan of reorganization or liquidation, (c) such time that the U.S. Bankruptcy Cases are closed or converted to a case under Chapter 7 or (d) dismissal of the Bankruptcy Cases, shall reasonably cooperate with Buyers in pursuing any claims thereunder, at Buyers' sole cost and expense, and subject to Section 2.2(l), shall pay over to Buyers promptly any insurance proceeds paid or recovered thereunder with respect to the Assets or the Assumed Liabilities except to the extent such proceeds constitute Excluded Assets. For any Insurance Policy transferred to Buyers at the Closing, Buyers shall cause any such Insurance Policy to name Sellers as an additional insured party therein to provide coverage with respect to any Excluded Asset or Excluded Liability. In the event Buyers determine to purchase replacement coverage with respect to any such Insurance Policy, each Seller shall reasonably cooperate with Buyers to terminate such Insurance Policy to the extent only applicable to the Assets.

6.14 Collection of Accounts Receivable.

a) As of the Closing Date, each Seller hereby (i) authorizes Buyers to open any and all mail addressed to such Seller relating to the Business or the Assets (or which Buyers believe may be related to the Business or the Assets prior to opening) and delivered to the offices of the Business or otherwise to Buyers if received on or after the Closing Date and (ii) appoints Buyers as its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyers after the Closing Date with respect to Accounts Receivable that are Assets or accounts receivable relating to work performed by Buyers after the Closing, as the case may be, made payable or endorsed to such Seller or such Seller's order, for Buyers' own accounts.

b) As of the Closing Date, each Seller agrees that any cash, monies, checks, or negotiable instruments received by such Seller after the Closing Date with respect to (i) Accounts Receivable (including credit card receivables), (ii) other Assets, or (iii) cash, monies, checks, negotiable instruments or accounts receivable relating to the period after the Closing, shall be held in trust by such Seller for Buyers' benefit and account, and promptly upon receipt by such Seller of any such payment (but in any event within five (5) Business Days of such receipt), such Seller shall pay over to Buyers the amount of such payments with appropriate endorsements. In addition, each Seller agrees that, after the Closing Date, it shall hold in trust and shall promptly transfer and deliver to Buyers, from time to time as and when received by such Seller, any other property that such Seller may receive on or after the Closing Date which properly belongs to Buyers hereunder. Buyers agree that, after the Closing Date, they shall hold and shall promptly transfer and deliver to the applicable Seller, from time to time as and when received by Buyers or their Affiliates, any Excluded Assets that Buyers or their Affiliates may receive on or after the Closing.

c) As of the Closing Date, Buyers shall have the sole authority to bill and collect Accounts Receivable that are Assets and accounts receivable relating to work performed by Buyers after the Closing.

6.15 Buyer Financing. If, after the entry of the Sale Orders but prior to the Sale Orders becoming Final Orders (the "Financing Period"), in their sole discretion, Buyers elect to provide debtor-in-possession financing to the Sellers during the Financing Period for the sole purpose of funding operations other than professional fees (except to the extent material and incurred at the direction of Buyers) ("Buyer Financing"), then (A) Sellers agree to seek, subject to the requirements of the Bankruptcy Code and the CCAA, approval of each of the Bankruptcy Court and Canadian Court of such Buyer Financing on an expedited, emergency, basis and not to seek or support any other party in seeking to convert the Bankruptcy Cases to Chapter 7, a bankruptcy under the Bankruptcy and Insolvency Act (Canada) or a receivership or to dismiss, lift the stay in respect of or otherwise terminate such Bankruptcy Cases, and (B) subject to the Bankruptcy Court's and Canadian Court's approval orders, as applicable, such Buyer Financing shall be (i) on substantially the same terms and conditions as the Current DIP Financing, other than with respect to the term thereof, (ii) senior in right of priority to the Prepetition Secured Debt and any Director's Charge (as defined in the Canadian Sale Order), Transaction Fee Charge (as defined in the Canadian Sale Order) or Canadian Intercompany Charge (as defined in the Canadian Sale Order) and (iii) junior in right of priority to the Current DIP Financing; provided, that if the Closing occurs, the amount of the Buyer Financing shall not be required to be repaid by Sellers; provided, further, that if the Closing occurs, then notwithstanding anything set forth herein to the contrary, the Assets shall include any cash and cash equivalents from the Buyer Financing remaining at Closing and any cash and cash equivalents received by the Sellers after the time the Buyer Financing is provided which is remaining at Closing. If Buyers make such election, then Sellers shall, until the earlier of the Closing or the end of the Financing Period, fund administrative expenses (other than the operations being funded by the Buyer Financing) from the Current DIP Financing.

ARTICLE VII
CONDITIONS PRECEDENT

7.1 Mutual Conditions to Closing. Subject to Section 7.4, the Parties' obligation to consummate the transactions contemplated hereby is subject to satisfaction or waiver of the following conditions:

a) no Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

b) the Bankruptcy Court shall have entered the U.S. Sale Order and such order shall be a Final Order on the Closing Date; and

c) the Canadian Court shall have entered the Canadian Sale Order and such Order shall be a Final Order on the Closing Date.

7.2 Conditions Precedent to Buyers' Obligations. Subject to Section 7.4, the obligation of Buyers, acting together, becoming the Successful Bidder (whether following the conclusion of the Auction, or thereafter, if selected as Alternate Bidder, as a result of the Successful Bidder failing to consummate the transactions contemplated hereby) under this Agreement to consummate the Closing is subject to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent (any of which may be waived in writing in whole or in part by Buyers in their sole discretion):

a) Sellers' representations and warranties contained in this Agreement shall be true as of the Effective Date and on the Closing Date in all material respects (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true only as of such other specified date); provided that for purposes of determining the truth of such representations and warranties, all materiality, Material Adverse Change and similar qualifications contained in such representations and warranties shall be disregarded;

b) Sellers shall have performed and compiled in all material respects with all agreements and conditions contained in this Agreement that are required to be performed or complied with by them prior to or at the Closing;

c) Sellers shall have obtained entry of the Bidding Procedures Orders approving the Bidding Procedures, each in a form reasonably acceptable to Buyers and such Orders shall each be a Final Order;

d) Sellers shall have obtained entry of the U.S. Sale Order in form and substance satisfactory to Buyers and such Order shall be a Final Order;

e) Sellers shall have obtained entry of the Canadian Sale Order in form and substance satisfactory to Buyers and such Order shall be a Final Order;

f) Buyers shall have received all of Sellers' deliveries described in Section 4.2(a);

g) With respect to each parcel of Owned Real Property, Buyers shall have received a Title Policy, at Buyers' sole cost and expense, for each such parcel;

h) Buyers shall have received written confirmation from Sellers that since the Effective Date and as of immediately prior to Closing, Sellers have not received notice from any Key Customer of termination of ongoing business with one or more of such Key Customer's distribution centers which, in the aggregate, results in a loss of revenue derived from any such Key Customer greater than twenty-five percent (25%) of the revenue derived from such Key Customer during calendar year 2020; provided that, with respect to the Major Key Customer designated on Schedule 1.3, such loss of revenue shall not be greater than fifteen percent (15%); provided, further, that such loss of revenue in the aggregate for all of the Key Customers shall not be greater than twenty percent (20%); and

i) Since the Effective Date, there shall have been no Material Adverse Change.

7.3 Conditions Precedent to Sellers' Obligations. Subject to Section 7.4, the obligation of Sellers under this Agreement to consummate the Closing is subject to Buyers, acting together, becoming the Successful Bidder (whether following the conclusion of the Auction, or thereafter, if selected as Alternate Bidder, as a result of the Successful Bidder failing to consummate the transactions contemplated hereby), and to the fulfillment or satisfaction, prior to or at the Closing, of each of the following conditions precedent (any of which may be waived in writing in whole or in part by Sellers in their sole discretion):

a) Buyers' representations and warranties contained in this Agreement shall be true as of the Effective Date and on the Closing Date in all material respects (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true only as of such other specified date); provided that for purposes of determining the truth of such representations and warranties, all materiality, Material Adverse Change and similar qualifications contained in such representations and warranties shall be disregarded;

b) Buyers shall have performed and complied in all material respects with all agreements and conditions contained in this Agreement that are required to be performed or complied with by them prior to or at the Closing;

c) Sellers shall have obtained entry of the U.S. Sale Order in the form reasonably acceptable to Buyers and such Order shall be a Final Order;

d) Sellers shall have obtained entry of the Canadian Sale Order in the form reasonably acceptable to Buyers and such Order shall be a Final Order; and

e) Sellers shall have received all of Buyers' deliveries described in Section 4.2(b).

7.4 No Frustration of Closing Conditions. Neither Buyers nor Sellers may rely on the failure of any condition to its obligation to consummate the transactions contemplated hereby set forth in Sections 7.1, 7.2 or 7.3, as the case may be, to be satisfied if such failure was caused by such Party's failure to use its reasonable best efforts or commercially reasonable efforts, as applicable, with respect to those matters contemplated by the applicable Sections of this

Agreement to satisfy the conditions to the consummation of the transactions contemplated hereby or other breach of a representation, warranty or covenant hereunder.

ARTICLE VIII
TERMINATION; DEFAULT

8.1 Termination of Agreement. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing upon the occurrence of any of the following events, subject in all cases, to any conditions set forth in this Article VIII:

a) by Buyers or Sellers, by written notice of either to the other Party:

(i) if the Closing shall not have occurred by the close of business on May 15, 2021 ("**End Date**"); provided however, that if the Closing shall not have occurred on or before the End Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyers or Sellers, then the breaching party may not terminate this Agreement pursuant to this Section 8.1(a)(i);

(ii) if there shall be in effect a final non-appealable decree of a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the Parties hereto shall promptly appeal any adverse determination which is not non-appealable (and pursue such appeal with reasonable diligence); provided that, a Party may not terminate this Agreement pursuant to this Section 8.1(a)(ii) if such Party is in material breach of its representations, warranties, covenants or agreements contained herein; provided, however that the Party seeking to terminate this Agreement pursuant to this Section 8.1(a)(ii) has used its commercially reasonable efforts to remove such decree prior to terminating this Agreement;

(iii) if, (A) Buyers, acting together, are not the Successful Bidder or the Alternate Bidder; (B) Sellers enter into a definitive agreement providing for a Superior Proposal, Buyers are the Alternate Bidder at the Auction, and the closing of the sale of the relevant Assets to the Successful Bidder pursuant to such Superior Proposal has occurred or the period during which Buyers are required to keep their back-up bid open and irrevocable under the Bidding Procedures and Bidding Procedures Orders has expired, or (C) Sellers enter into a definitive agreement providing for a Superior Proposal, including, but not limited to, a standalone plan of reorganization or liquidation with respect to the Assets other than as set forth herein and which does not provide for Sellers' ability to consummate the transactions contemplated by this Agreement, subject, however, in the case of each of the foregoing clauses (A), (B) and (C), to Buyers' rights to the Break-Up Fee and Expense Reimbursement as provided for hereunder and in the Bidding Procedures Orders; or;

b) by mutual written consent of Sellers and Buyers.

c) by Buyers, by written notice to Sellers:

(i) if any of the conditions to the obligations of Buyers set forth in Sections 7.1 or 7.2 shall have become incapable of fulfillment other than as a result of a breach by Buyers of any covenant or agreement contained in this Agreement, and such condition is not waived by Buyers;

(ii) if (A) the Bidding Procedures and Sale Motions are not filed with the Bankruptcy Court and the Canadian Court, as applicable, on the Petition Date or as soon as reasonably practicable thereafter but in no event later than three (3) Business Days after the U.S. Petition Date and the Canadian Petition Date, respectively, (B) the Bidding Procedures Orders, in form and substance acceptable to Buyers, are not entered by the Bankruptcy Court and the Canadian Court, as applicable, on or before the date that is thirty (30) days following the Petition Date (or the first Business Day thereafter that the Bankruptcy Court or the Canadian Court, as applicable, is available), (C) the Sale Orders, in form and substance acceptable to Buyers, are not entered by the Bankruptcy Court and the Canadian Court, as applicable, on or before the date that is sixty (60) days following the Petition Date (or the first Business Day thereafter that the Bankruptcy Court or the Canadian Court, as applicable, is available), (D) on or before the date that is sixty (60) days following the Petition Date (or the first Business Day thereafter that the Bankruptcy Court, as applicable, is available), the U.S. Sale Order is not a Final Order; or (E) on or before the date that is sixty-three (63) days following the Petition Date (or the first Business Day thereafter that the Canadian Court, as applicable, is available) the Canadian Sale Order is not a Final Order;

(iii) if there shall be a material breach by Sellers of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Sections 7.1 or 7.2 and which breach cannot be cured or, if capable of cure, has not been cured by the earlier of (A) five (5) Business Days after the giving of written notice by Buyers to Sellers of such breach and (B) the End Date, so long as Buyers are not in material breach of their obligations under this Agreement;

(iv) if (A) the Bankruptcy Court enters an Order appointing a trustee, examiner with expanded powers or responsible officer in the U.S. Bankruptcy Cases, or (B) the U.S. Bankruptcy Cases are converted to a case under Chapter 7 of the Bankruptcy Code or the Bankruptcy Cases are dismissed; and

(v) if (A) any of the Canadian Sellers make an assignment in bankruptcy, a bankruptcy order is made against any of the Canadian Sellers or a trustee is appointed with respect to any of the Canadian Sellers, in each case pursuant to the *Bankruptcy and Insolvency Act* (Canada), (B) a receiver is appointed with respect to any of the Canadian Sellers or any of the Canadian Assets, or (C) the Canadian Proceedings are dismissed.

d) by Sellers, by written notice to Buyers:

(i) if any condition to the obligations of Sellers set forth in Sections 7.1 or 7.3 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;

(ii) if there shall be a material breach by Buyers of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 7.1 or 7.3 and which breach cannot be cured or has not been cured by the earlier of (A) five (5) Business Days after the giving of written notice by Sellers to Buyers of such breach and (B) the End Date, so long as Sellers are not in material breach of their obligations under this Agreement;

(iii) if Buyers fail to consummate the transactions contemplated hereby, including payment of the Purchase Price, as and when required by Articles III and IV;

(iv) if Sellers, or the board of directors of Sellers, determines, in consultation with outside legal counsel, that proceeding with the transactions contemplated hereby or failing to terminate this Agreement would be inconsistent with its or the board's fiduciary obligations under applicable Law, including to pursue a Superior Proposal.

8.2 Procedure Upon Termination. In the event of termination and abandonment by Buyers, on the one hand, or Sellers, on the other hand, or both, pursuant to Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by Buyers or Sellers.

8.3 Effect of Termination; Break Up Fee, Expense Reimbursement.

a) If any Party terminates this Agreement pursuant to Section 8.1, then all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I (Definitions), Section 6.7 (Confidentiality), Article IX (Miscellaneous), and this Article VIII (Termination) shall survive any such termination) and no Party shall have any Liability or obligation to any other Party hereunder except as set forth in Sections 8.3(b) and 8.3(c) below. Upon any termination of this Agreement (other than pursuant to Section 8.1(d)(ii) and Section 8.1(d)(iii)), Holdings and U.S. Buyer shall deliver joint written instructions to instruct the Escrow Agent within two (2) Business Days of receipt of Buyers' notice of termination, to release the Deposit together with all accrued investment income or interest thereon to U.S. Buyer. If this Agreement is terminated pursuant to Section 8.1(d)(ii) and Section 8.1(d)(iii)), then Holdings and U.S. Buyer shall deliver joint written instructions to instruct the Escrow Agent to release the Deposit, together with all accrued investment income or interest thereon to Sellers in accordance with the Escrow Agreement. Notwithstanding the foregoing, if the Buyers have the right to terminate this Agreement pursuant to Section 8.1(c) and the Buyers have performed or are ready, willing, and able to perform all of their agreements and covenants contained herein which are to be performed or observed at or prior to Closing, the Buyers' right to pursue all legal rights and remedies hereunder and under applicable Law will survive such termination unimpaired.

b) If this Agreement is terminated pursuant to Section 8.1(a)(iii), then U.S. Sellers shall pay to Buyers the Break-Up Fee and the Expense Reimbursement within five (5) Business Days of closing of the Superior Proposal by wire transfer of immediately available funds to an account designated by Buyers; provided, that, Buyers must furnish U.S. Sellers with documentation supporting the Expense Reimbursement as reasonably requested by U.S. Sellers prior to payment of such Expense Reimbursement; provided further, however, in the event this Agreement is terminated in accordance with (i) Section 8.1(a)(iii), and the closing of the Superior Proposal does not occur, (ii) Section 8.1(c)(i), Section 8.1(c)(ii)(B), Section 8.1(c)(ii)(C), Section 8.1(c)(ii)(D), Section 8.1(c)(ii)(E) or Section 8.1(c)(iv)(A), in each case, as a result of any action or inaction by any of the Sellers, (iii) Section 8.1(c)(ii)(A), (iv) Section 8.1(c)(iii), (v) Section 8.1(c)(iv)(B), (vi) Section 8.1(c)(v) or (vii) Section 8.1(d)(iv), the U.S. Sellers shall pay the Break-Up Fee and the Expense Reimbursement as allowed super-priority administrative claims under sections 503 and 507 of the Bankruptcy Code and the comparable provisions of the CCAA and shall not be subordinate to any other administrative expense claim against the Sellers; provided, further, that in the event this Agreement is terminated in accordance with Section 8.1(c)(i), Section 8.1(c)(ii)(B), Section 8.1(c)(ii)(C), Section 8.1(c)(ii)(D), Section 8.1(c)(ii)(E) or Section 8.1(c)(iv)(A), in each case, other than as a result of any action or inaction by any of the Sellers, the U.S. Sellers shall pay the Expense Reimbursement as an allowed super-priority administrative claim under sections 503 and 507 of the Bankruptcy Code and the comparable provisions of the CCAA and shall not be subordinate to any other administrative expense claim against the Sellers. Any Order approving a Superior Proposal must provide for the payment in full in cash of the Expense Reimbursement and Break-Up Fee at closing of such Superior Proposal. Notwithstanding the foregoing, in the event this Agreement is terminated by the Buyers because of the breach of this Agreement by the Sellers or because one or more of the conditions to the Buyers' obligations under this Agreement is not satisfied as a result of the Sellers' failure to comply with their obligations under this Agreement, the Buyers' right to pursue all legal rights and remedies hereunder and under applicable Law will survive such termination unimpaired.

c) The Buyers and the Canadian Sellers agree that Transfer Taxes shall be paid over and above the Break-Up Fee and Expense Reimbursement, if applicable and as the case may be. The Buyers and the Sellers agree that to the extent any Transfer Taxes are payable as a result of the Deposit and the Sellers are entitled to receive the Deposit upon a termination of this Agreement pursuant to the terms hereof, the Sellers' receipt of such Deposit shall satisfy any obligations the Buyers have with respect to the payment of any Transfer Taxes hereunder; provided, that to the extent the Buyers actually receive any refund of such Transfer Taxes, Buyers will turn over such refund to Sellers.

d) The Confidentiality Agreement shall survive any termination of this Agreement and nothing in this Section 8.3 shall relieve Buyers or Sellers of their respective obligations under the Confidentiality Agreement.

e) Each of the Parties acknowledges that (i) the agreements contained in this Article VIII are an integral part of the transactions contemplated by this Agreement; (ii) the damages resulting from termination of this Agreement under circumstances where a Break-Up Fee or Expense Reimbursement are payable are uncertain and incapable of accurate calculation and therefore, the amounts payable pursuant to this Section 8.3 are not a penalty, but rather are a reasonable amount that will compensate Buyers for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision; and (iii) without the agreements contained in this Section 8.3, the Parties would not have entered into this Agreement.

f) Notwithstanding anything herein to the contrary, in the event that the Sellers close on a Superior Proposal, neither Sellers nor any of their respective Affiliates shall have any liability with respect to Buyers or any other Person hereunder in excess of the applicable Break-Up Fee and the Expense Reimbursement and any claim, right or cause of action by Buyers or any other Person against any Sellers or their respective Affiliates in excess of the Break-Up Fee and the Expense Reimbursement is hereby fully waived, released and forever discharged in such case of Buyers' termination pursuant to same.

g) The covenants of Buyers in this Agreement that contemplate performance prior to Closing and the representations and warranties of Buyers contained in this Agreement shall not survive the Closing except as provided for herein. The covenants made by Buyers in this Agreement that contemplate performance following the Closing will survive Closing until such time as they are fully performed by Buyers.

ARTICLE IX
MISCELLANEOUS

9.1 Entire Agreement; Amendment. This Agreement, together with the Sellers Ancillary Agreements, the Buyer Ancillary Agreements, the Bidding Procedures Orders (once entered) and the Sale Orders (once entered) constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the Parties, whether oral or written, including, but not limited to, the Letter of Intent, and there are no warranties, representations or other agreements among the Parties in connection with the subject matter hereof except as specifically set forth herein or therein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No Party shall be deemed to have waived the exercise of any right which it holds under this Agreement unless such waiver is made expressly and in writing. No delay or omission by any Party in exercising any right shall be deemed a waiver of its future exercise. No waiver made as to any instance involving the exercise of any right shall be deemed a waiver as to any other instance, or any other right.

9.2 Applicable Law. This Agreement shall be given effect and construed by application of the laws of the State of Texas without regard to conflicts of laws. Any action arising out of, in connection with, or relating to this Agreement shall be brought in the Bankruptcy Court or, if the Bankruptcy Case has been closed, courts of the State of Texas, except that if it is to be brought in a United States District Court, it shall be brought in the United States District Court for the Southern District of Texas.

9.3 Notices. Any notice to be provided hereunder to a Party shall be in writing and shall be deemed to have been provided the next Business Day after having been deposited with a national courier service, or on having been sent by immediate electronic communication, in each case if receipt is acknowledged or confirmed or delivery is first refused, to the persons and addresses set forth below, as such address may be changed from time to time by notice to the other Party. Any notice by one Party amending or terminating this Agreement shall include a notice to the Escrow Agent.

To Sellers:

Country Fresh Holding Company Inc.
3200 Research Forest Drive, Suite A5
The Woodlands, TX 77381
Attention: William Andersen
Email: william.andersen@freshfoodgroup.com

with a copy to:

Foley & Lardner LLP
1000 Louisiana Street, Suite 2000
Houston, TX 77002
Attention: Eunice Song
Email: esong@foley.com

with a copy to:

Stikeman Elliott LLP
1155 Rene-Levesque Blvd. West, 41st Floor
Montreal, Quebec, H3B 3V2 Canada
Joseph Reynaud
Email : jreynaud@stikeman.com

To Buyers: Stellex/CF Buyer (US) LLC, Stellex/CF Buyer (CN) Inc.

c/o Stellex Capital Management LLC
900 Third Avenue, 25th Floor
New York, NY 10022
Attn: Trey Lee
Email: tlee@stellexcapital.com

with a copy to: Winston & Strawn LLP
200 Park Avenue
New York, NY 10166
Attn: Jennifer C. Kurtis
Email: jkurtis@winston.com

Any notice by one Party amending or terminating this Agreement or alleging a default under this Agreement shall include a notice to Escrow Agent. Notice provided by legal counsel for a Party shall be effective as notice given by such Party.

9.4 **Waiver of Jury Trial**. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

9.5 **Construction**. All references made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; and in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) the words "ordinary course of business" shall be deemed to be followed by the words "consistent with past practice", (e) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified and (f) all references to "$" or "dollars" shall to be U.S. dollars unless otherwise specified.

9.6 **Disclosure Schedule**. All capitalized terms not defined in the Disclosure Schedule shall have the meaning ascribed to them in this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of this Agreement to which it relates. The disclosure in any section or paragraph of the Disclosure Schedule, and those in any amendment or supplement thereto, shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered or lettered section of this Agreement, except to the extent that: (a) such information is cross-referenced in another part of the Disclosure Schedule; or (b) it is reasonably apparent on the face of the disclosure (without reference to any document referred to therein or any independent knowledge on the part of the reader regarding the matter disclosed) that such information qualifies another representation or warranty of Sellers.

9.7 **Severability**. If any provision, clause or part of this Agreement, or the application thereof under certain circumstances, is held invalid or unenforceable by a final Order of a court of competent jurisdiction, then the remainder of this Agreement, or the application of such provision, clause or part under other circumstances, shall not be affected thereby and the Parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

9.8 **Time of Essence**. Time shall be of the essence of this Agreement.

9.9 **Counterparts; Headings**. This Agreement may be executed in several counterparts, each of which shall be deemed original, but such counterparts shall together constitute but one and the same agreement. The Table of Contents and Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof or be used as interpreting the meaning of this Agreement.

9.10 **Facsimile or Electronic Signatures**. The exchange of copies of this Agreement and of signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or e-mail shall be deemed to be their original signatures for all purposes.

9.11 **Equal Participation**. Each Party hereto hereby acknowledges that all Parties hereto participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one Party than against the other.

9.12 **Assignment**. This Agreement and each Party's respective rights hereunder may not be assigned at any time without the prior written consent of the other Party hereto.

9.13 **No Reliance**. No third party, other than a successor by operation of law or an assignee permitted by this Agreement (and then, subject to the applicable limitations in this Agreement), is entitled to rely on any of the representations, warranties and agreements contained in this Agreement and no Party to this Agreement assumes any liability to any third party, other than an assignee permitted by this Agreement (and then, subject to the applicable limitations in this Agreement), because of any reliance on the representations, warranties and agreements contained in this Agreement.

9.14 **Expenses**. Except to the extent otherwise provided herein, each of the Parties hereto shall pay the fees and expenses of their respective counsel, consultants and other expenses incident to the negotiation and preparation of this Agreement and consummation of the transactions contemplated by this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representatives, to be effective as of the Effective Date.

COUNTRY FRESH HOLDING COMPANY INC.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH MIDCO CORP.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH ACQUISITION CORP.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH HOLDINGS, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH DALLAS, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH MIDWEST, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH TRANSPORTATION LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH MANUFACTURING, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH PENNSYLVANIA, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH CAROLINA, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

COUNTRY FRESH ORLANDO, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

CF PRODUCTS, LLC

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

CHAMPLAIN VALLEY SPECIALTY OF NEW YORK, INC.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

TGF ACQUISITION PARENT LTD.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

SUN RICH FOODS (USA) INC.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

SUN RICH FRESH FOODS (PA) INC.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

SUN RICH FRESH FOODS (NV) INC.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

SUN RICH FRESH FOODS INC.

By: William T. Andersen
Name: William Andersen
Title: Chief Executive Officer

TIFFANY GATE FOODS INC.

By: *William T. Andersen*
Name: William Andersen
Title: Chief Executive Officer

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representatives, to be effective as of the Effective Date.

BUYERS:

STELLEX/CF BUYER (US) LLC

By:____________________________

Name: John L. Lee, III

Title: Vice President and Secretary

STELLEX/CF BUYER (CN) INC.

By:____________________________

Name: John L. Lee, III

Title: Director

EXHIBIT A

Bidding Procedures

EXHIBIT B

Form of Bill of Sale

EXHIBIT C

Form of Escrow Agreement

EXHIBIT D

Form of Guaranty

EXHIBIT E

Form of Secured Note

EXHIBIT F-1

Form of U.S. Mortgage

EXHIBIT F-2

Form of Canadian Mortgage

EXHIBIT G

Form of Assignment and Assumption Agreement

<u>EXHIBIT H</u>

Form of Intellectual Property Assignment Agreement

EXHIBIT C

Assumption and Assignment Notice

NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT MAY BE ASSUMED OR ASSUMED AND ASSIGNED IN CONNECTION WITH SALE AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO

PLEASE TAKE NOTICE OF THE FOLLOWING:

On February 15, 2021, Country Fresh Holding LP and certain of its debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

On February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively referred to as the "**Sellers**".

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the U.S. Debtors' Entry into the Stalking Horse Bid Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. ___] in the Bankruptcy Court.

On [__________], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

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[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

On [______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Amended and Restated Initial Order (the "**Canadian Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**").

You are receiving this notice (the "Assumption and Assignment Notice") because you may be a Counterparty to an executory contract or unexpired lease of the Sellers that potentially could be assumed or assumed and assigned to a Successful Bidder in connection with a Sale Transaction.

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Sellers may, in connection with any Sale with a Successful Bidder (as defined in the Bid Procedures), seek to assume or assume and assign to the Successful Bidder (or its designated affiliate assignee, if applicable) certain executory contracts or unexpired leases of the Sellers.

Each of the executory contracts or unexpired leases that may be assumed or assumed and assigned (the "**Proposed Assumed Contracts**") in connection with the Sale with a Successful Bidder and the Sellers' calculation of the Cure Amounts with respect thereto are set forth in **Exhibit 1** hereto (the "**Proposed Assumed Contracts List**").

The inclusion of any Proposed Assumed Contract on **Exhibit 1** does not constitute an admission that a particular Proposed Assumed Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or an assignable contract under the CCAA or require or guarantee that such Proposed Assumed Contract ultimately will be assumed or assumed and assigned. The assumption or assumption and assignment of a Proposed Assumed Contract is subject to Bankruptcy Court or CCAA Court approval, as applicable. All rights of the Sellers with respect thereto are reserved.

No later than two (2) days prior to the closing date, the Successful Bidder may add or remove any executory contract or unexpired lease from the Proposed Assumed Contract List and either advise the Sellers (i) that it has no objection to the Sellers rejecting or disclaiming such executory contract or unexpired lease or (ii) to put such executory contract or unexpired lease (each a "**Designated Contract**") on a list that the Successful Bidder shall not assume, reject, or disclaim on the closing date (the "**Designation List**").

Until the earlier of (i) ninety (90) days following the closing date, (ii) the effective date of a confirmed plan of reorganization or liquidation for the Sellers, (iii) such time that the Chapter 11 Cases are closed or converted to cases under chapter 7 of the Bankruptcy Code, or (iv) dismissal of the Chapter 11 Cases and the CCAA Proceedings, the Successful Bidder, in consultation with the Sellers, shall have the option to designate any Designated Contract as a Proposed Assumed Contract.

Objections

Any objection to the proposed assumption or assumption and assignment of a contract or lease identified on **Exhibit 1**, or the proposed Cure Amounts therefor (a "**Contract Objection**"), must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv) be filed with the Bankruptcy Court, via ECF, and/or received by the Monitor (as defined below) at freshfoodcanada.monitor@ca.ey.com no later than 5:00 p.m. (prevailing Central Time) on **[March 15], 2021** (the "**Contract Objection Deadline**").

For the avoidance of doubt, any objections to a Successful Bidder's proposed form of adequate assurance of future performance will be resolved at the U.S. Sale Hearing.

IF NO CONTRACT OBJECTION IS TIMELY RECEIVED WITH RESPECT TO ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF A PROPOSED ASSUMED CONTRACT: (I) THE COUNTERPARTY TO SUCH PROPOSED ASSUMED CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE SELLERS AND ASSIGNMENT TO SUCCESSFUL BIDDER OF THE PROPOSED ASSUMED CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE CURE AMOUNT, ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE SUCCESSFUL BIDDER, WHETHER THE SUCCESSFUL BIDDER WOULD BE ABLE TO PERFORM THE OBLIGATIONS AND WHETHER THE ASSIGNEE IS APPROPRIATE); (II) ANY AND ALL DEFAULTS UNDER THE PROPOSED ASSUMED CONTRACT AND ANY AND ALL PECUNIARY LOSSES/MONETARY DEFAULTS RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND (B) OR SECTION 11.3 OF THE CCAA UPON PAYMENT OF THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH PROPOSED ASSUMED CONTRACT; AND (III) THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH PROPOSED ASSUMED CONTRACT SHALL BE CONTROLLING, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUCH PROPOSED ASSUMED CONTRACT, OR ANY OTHER RELATED DOCUMENT, AND THE COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE CURE AMOUNT AND SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH PROPOSED ASSUMED CONTRACT AGAINST THE SELLERS AND THEIR ESTATES OR THE SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING THE CONTRACT OBJECTIONS AND THE ORDER APPROVING THE SALE TO THE SUCCESSFUL BIDDER.

Sale Hearing

PLEASE TAKE FURTHER NOTICE that the hearing (the "**U.S. Sale Hearing**") to approve and authorized the sale of the U.S. Debtors' Assets will be held on **March 26, 2021** at _________ __.m. (prevailing Central Time) electronically via video/telephone before the Bankruptcy Court before the Honorable Marvin Isgur, United States Bankruptcy Judge (prevailing Central Time). If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at 1-832-917-1510 and entering conference code 954554. You may also join by videoconference by use of an internet connection, using the website www.join.me, selecting "join a meeting," and entering meeting code "JudgeIsgur." At such hearing, the U.S. Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale of the U.S. Debtors' Assets to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the U.S. Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with the assumption and assignment of executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern Time** (the "**Canadian Sale Hearing**"). Further details may be found on the Monitor's Website (defined below).

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearings.

The Sellers' presentation to the Bankruptcy Court and CCAA Court for approval of a Successful Bid does not constitute the Sellers' acceptance of the Successful Bid. The Sellers shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Bankruptcy Court and CCAA Court.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **[March 23], 2021 at 4:00 P.M. CST.** Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure or the CCAA, as applicable, and (d) be filed with both the Bankruptcy Court and the CCAA Court and served on undersigned counsel for the Debtors.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached bid procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii) counsel for the U.S. Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada (the "**Monitor's Website**"). Should you require further information regarding the Canadian Debtors and the CCAA Proceedings, you may contact: (i) the Monitor at: freshfoodcanada.monitor@ca.ey.com; or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

Exhibit 1

Proposed Assumed Contracts

EXHIBIT D

Form of Sale Notice

NOTICE OF (I) SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE U.S. DEBTORS AND CANADIAN DEBTORS AND (II) SALE HEARINGS

PLEASE TAKE NOTICE that, on February 15, 2021, Country Fresh Holding LP and certain of its debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

PLEASE FURTHER TAKE NOTICE that, on February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively referred to as the "**Sellers**".

PLEASE FURTHER TAKE NOTICE that, on February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. 51] in the Bankruptcy Court.

PLEASE FURTHER TAKE NOTICE that, on [______], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

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[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

On [______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Amended and Restated Initial Order (the "**Canadian Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**").

PLEASE TAKE FURTHER NOTICE that the Bid Deadline under the Bid Procedures is **[March 19], 2021 at 4:00 p.m. (prevailing Central Time)**, and that any person or entity who wishes to participate in the Auction must comply with the participation requirements, bid requirements, and other requirements set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that the Sellers intend to conduct the Auction at which it will consider proposals submitted to the Sellers and their professionals, by and pursuant to the Bid Procedures as set forth in the Bid Procedures Order and the Amended and Restated Initial Order, on **[March 22], 2021 at 10:00 a.m. (prevailing Central Time)**. Instructions to participate in the Auction via video will be provided to Qualified Bidders prior to the Auction.

PLEASE TAKE FURTHER NOTICE that the hearing (the "**U.S. Sale Hearing**") to approve and authorized the sale of the U.S. Debtors' Assets will be held on **[March 26], 2021** at _________ __.m. _________________.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern Time** (the "**Canadian Sale Hearing**").

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearings.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **[March 23], 2021 at 4:00 P.M. CST.** Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure or the CCAA, as applicable, and (d) be filed with both the Bankruptcy Court and the CCAA Court and served on undersigned counsel for the Sellers.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached Bid Procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the proposed noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii). counsel for the U.S. Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada. Should you require further information regarding the

Canadian Debtors and the CCAA Proceedings you may contact, (i) the Monitor at (freshfoodcanada.monitor@ca.ey.com); or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

EXHIBIT E

Post Auction Notice

NOTICE OF DESIGNATION OF SUCCESSFUL BID AND BACK-UP BID

PLEASE TAKE NOTICE OF THE FOLLOWING:

On February 15, 2021, Country Fresh Holding LP and certain of its debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

On February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively referred to as the "**Sellers**".

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the U.S. Debtors' Entry into the Stalking Horse Bid Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. 51] in the Bankruptcy Court.

On [__________], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or

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[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

On [______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Amended and Restated Initial Order (the "**Canadian Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**").

Pursuant to the Bid Procedures Orders, (i) the deadline for submitting a Qualified Bid was **[March 19], 2021 at prevailing Central Time** (the "**Bid Deadline**") and (ii) in the event that (x) the Sellers timely received one or more Qualified Bids or (y) a Stalking Horse Bidder was selected and the Sellers received a Qualified Bid that the Sellers in their business judgment, in consultation with the Consultation Parties, determined to be the Initial Bid, the Sellers would conduct the Auction to be held on **10:00 a.m. prevailing Central Time on [______] 2021** (the "**Auction**").

On **____________, 2021**, the Sellers conducted the Auction in accordance with the Bid Procedures and certain rules distributed to Auction attendees prior to and at the Auction. At the Auction, the Sellers determined that the highest or best offer was submitted by [●] (the "**Successful Bidder**" and the Successful Bidder's winning bid, the "**Successful Bid**") and the second highest or best offer was submitted by [●] (the "**Back-up Bidder**," and the Back-up Bidder's bid, the "**Back-up Bid**").

Exhibit 1 attached hereto is a copy of the final, fully-executed asset purchase agreement (the "**APA**," and the transaction contemplated thereby the "**Sale Transaction**") between the Sellers and the Successful Bidder, containing the terms of the Successful Bid.

Important Dates and Deadlines

Sale Objection Deadline:

Objections (the "**Objections**") to consummation of the Sale Transaction, if any, shall be filed with both the Bankruptcy Court and the CCAA Court not later than **[____ a.m./p.m.] prevailing Central Time on [March 23], 2021**. Any Objections not resolved prior to the Sale Hearings shall be argued at the Sale Hearings or such other time as set by the Bankruptcy Court and/or the CCAA Court.

Sale Hearings:

The hearing to approve and authorized the sale of the U.S. Debtors' Assets pursuant to the Sale Transaction (the "**U.S. Sale Hearing**") shall be held electronically via video/telephone before the Bankruptcy Court before the Honorable [●] on **[March 26], 2021 at [●] [a.m./p.m.] (prevailing Central Time)**. If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at **1-832-917-1510** and entering conference code 954554. You may also join by videoconference by use of an internet connection, using the website **www.join.me**, selecting "**join a meeting**," and entering meeting code "**JudgeIsgur**." At such hearing, the U.S.

Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale of the U.S. Assets to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the U.S. Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with any executory contracts or unexpired leases.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern time** (the "**Canadian Sale Hearing**").

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Sellers of the adjourned date at the Sale Hearings.

The Sellers' presentation to the Bankruptcy Court and CCAA Court for approval of a Successful Bid does not constitute the Sellers' acceptance of the Successful Bid. The Sellers shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Bankruptcy Court and CCAA Court.

If the Sale Transaction is not consummated with the Successful Bidder pursuant to the Successful Bid, the Sellers shall designate the Back-up Bidder as the Successful Bidder and such Back-up Bidder's Back-up Bid as the Successful Bid.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached bid procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the proposed noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii) counsel for the U.S. Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada. Should you require further information regarding the Canadian Debtors and the CCAA Proceedings you may contact, (i) the Monitor at freshfoodcanada.monitor@ca.ey.com; or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

Exhibit 1

Asset Purchase Agreement

<u>EXHIBIT 2</u>
<u>TO NOTICE OF FILING OF REVISED PROPOSED BID PROCEDURES ORDER</u>

BLACK-LINE OF BID PROCEDURES ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
	§	
COUNTRY FRESH HOLDING COMPANY INC., *et. al.*,[1]	§	**Case No.: 21-30574 (MI)**
	§	
	§	**(Jointly Administered)**
Debtors.	§	

ORDER (A) AUTHORIZING AND APPROVING BID PROCEDURES; (B) AUTHORIZING THE DEBTORS' ENTRY INTO THE STALKING HORSE PURCHASE AGREEMENT; (C) AUTHORIZING AND APPROVING EXPENSE REIMBURSEMENT AND BREAK-UP FEE; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) AUTHORIZING AND APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES; AND (F) APPROVING NOTICE PROCEDURES

The matter having come before this Court on the *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Debtors' Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. ~~###~~51] (the "**Motion**")[2] filed by Country Fresh Holding Company Inc. and its

[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Fresh Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion or the Bid Procedures, as applicable.

above-captioned debtor affiliates, as debtors and debtors-in-possession (collectively, the "**Debtors**").

Having reviewed the Motion and all matters brought to the Court's attention at the hearing on February 25, 2021 (the "**Bid Procedures Hearing**"), including all objections thereto, all arguments of counsel and other evidence adduced, and after due deliberation and consideration, the Court finds that all parties in interest, including creditors and equity holders, have had a reasonable opportunity to object or be heard regarding the relief requested in the Motion with respect to the proposed bid procedures ~~attached hereto~~ (the "**Bid Procedures**")[3] and related relief, that good cause and sound business purpose and justification exists and has been shown to grant the Motion with respect to the Bid Procedures and related relief, which is in the best interest of the ~~Debtor, its~~Debtors, their bankruptcy ~~estate~~estates, and the creditors and other parties in interest.

THE COURT HEREBY FINDS THAT:

A. The findings and conclusions set forth in this Order[4] constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this matter by Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by the Court at the Bid Procedures Hearing ~~or the Sale Hearing~~ shall be deemed additional findings of fact and conclusions of law in this matter and are incorporated herein. When appropriate, all findings of fact shall be construed as conclusions of law, and all conclusions of law shall be construed as findings of fact.

[3] Defined in the Stalking Horse Purchase Agreement as the "Bidding Procedures".

[4] Defined in the Stalking Horse Purchase Agreement as the "U.S. Bidding Procedures Order".

B. The legal and factual bases set forth in the Motion and at the Bid Procedures Hearing establish just cause for the relief granted herein. Granting the relief is in the best interests of the Debtors, their estates and creditors.

C. The Court finds that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) the statutory predicates for the relief are 11 U.S.C. §§ 105, 363, 365, and 1146 and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure; (iii) venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the relief granted herein is in the best interests of the Debtors, their estates, and the creditors thereof; and (v) proper and adequate notice of the Bid Procedures Hearing was given to all necessary persons and entities; therefore, no other or further notice is or was required.

D. As reflected in the certificate of service filed on [•_____] [Docket No. [•__]], the Motion and the notice of the Bid Procedures Hearing was served on the Court's electronic filing system and ~~the [Sale Notice Parties]~~to: (i) the Office of the United States Trustee for the Southern District of Texas; (ii) the Debtors' primary secured lenders; (iii) counsel to the Debtors' secured lenders (iv) the thirty (30) largest unsecured creditors of the Debtors' bankruptcy estate on a consolidated basis; (v) the Internal Revenue Service; and (vi) all parties in interest who have formally appeared and requested notice. Such notice is adequate and sufficient in light of the circumstances and nature of the relief requested being granted herein and complies with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. A reasonable and fair opportunity to object to the relief granted in this Order has been afforded under the circumstances. Accordingly, no other or further notice of the Motion with respect to the Bid Procedures or the Bid Procedures Hearing was or is necessary or required.

E. The Debtors have articulated good and sufficient reasons and demonstrated a compelling and sound business justification for this Court to grant the relief requested in the Motion with respect to the Bid Procedures, including, without limitation: (~~a~~i) approval of the Bid Procedures; (~~b~~ii) approval of the selection of the Stalking Horse Bidder as the "stalking horse" on the terms set forth in the Stalking Horse Purchase Agreement, ~~and~~(iii) approval of the Break-Up Fee and Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement); (~~c~~iv) approval of the Assumption and Assignment Procedures; (~~d~~v) approval of the form and manner of notice of all procedures, protections, schedules, and agreements described in the Motion and attached thereto; (~~e~~vi) the scheduling of a date for the U.S. Sale Hearing; and (~~f~~vii) all related relief as provided herein. Such good and sufficient reasons and compelling and sound business justification were set forth in the Motion and on the record at the Bid Procedures Hearing and are incorporated by reference herein and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. The Debtors' marketing process has been reasonably calculated to maximize value for the benefit of all stakeholders.

G. The Bid Procedures attached hereto as **Exhibit A** are fair, reasonable, appropriate, and are designed to maximize the value of the Assets to be sold.

H. ~~G.~~ Entry into the ~~Asset~~Stalking Horse Purchase Agreement, which is attached hereto as **Exhibit ~~A~~B**, with the Stalking Horse Bidder, is in the best interests of the Debtors and the Debtors' estates and creditors, and all other parties in interest, and it reflects a sound exercise of the Debtors' business judgment. The Debtors have articulated good, sufficient, and sound business justifications and compelling circumstances for performance of obligations related to the Stalking Horse Bid in that, among other things, the Stalking Horse Bid was negotiated by the parties at arm's-length and in good faith, and constitutes the highest or otherwise best proposal that the Debtors have received to date and the Stalking Horse Bid allows the Debtors to solicit the highest or otherwise best bid for the Assets through the Bid Procedures in order to preserve and realize their optimal value.

~~H. The Bid Procedures set forth in **Exhibit B** attached hereto are fair, reasonable, appropriate, and are designed to maximize the value of the Assets to be sold.~~

I. The Expense Reimbursement and Break-Up Fee provided to the Stalking Horse Bidder (i) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of sections 503 and ~~507of~~507 of the Bankruptcy Code, (ii) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder and the Stalking Horse Bid, (iii) are fair, reasonable, and appropriate, including in light of the size and nature of the proposed Sale, the commitments that have been made, and the efforts that have been and will be expended by any Stalking Horse Bidder. The Expense Reimbursement and Break-Up Fee are necessary to induce the Stalking Horse Bidder to pursue the Sale and to be bound by the Stalking Horse Purchase Agreement.

J. The Bid Procedures and Stalking Horse Purchase Agreement were negotiated by the Debtors and the Stalking Horse Bidder at arm's length and in good faith, and were a material inducement to, and express condition of, the willingness of the Stalking Horse Bidder to execute the Stalking Horse Purchase Agreement and submit its bid that will serve as a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, and other bidders may rely.

K. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit C**, ~~are~~is appropriate and reasonably calculated to provide counterparties to the Proposed Assumed Contracts (as defined below) with timely and proper notice of the potential assumption and assignment of their executory contracts or unexpired leases, any cure costs relating thereto, and the Assumption and Assignment Procedures, and no other or further notice is required.

L. The Sale Notice, substantially in the form attached hereto as **Exhibit D**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of the assets, including, without limitation: (~~a~~i) the date, time, and place of the Auction (if one is held); (~~b~~ii) the Bid Procedures; (~~c~~iii) the deadline for filing objections to the Sale and entry of the Sale Order (as defined below)[5], and the date, time, and place of the U.S. Sale Hearing; (~~d~~iv) reasonably specific identification of the assets to be sold and liabilities to be assumed; (~~e~~v) instructions for promptly obtaining copies of the Stalking Horse Purchase Agreement; (~~f~~vi) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (except as expressly set forth in the Sale Order and Stalking Horse Purchase Agreement), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds; and (~~g~~vii) notice of the proposed assumption and assignment of the Proposed Assumed Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement (or to another Successful Bidder(s) arising from the Auction, if any), and no other or further notice of the Bid Procedures, Auction, Sale or other information contained in the Sale Notice shall be required.

M. The Post-Auction Notice, substantially in the form attached hereto as **Exhibit E**, is appropriate and reasonably calculated to provide all interested parties with timely and proper

5 Defined in the Stalking Horse Purchase Agreement as the "U.S. Sale Order".

notice of the Successful Bidder(s) and Back-Up Bidder(s), and no other or further notice is required.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.[6]

2. All objections to the relief requested in the Motion as granted herein that have not been withdrawn, waived, or settled as announced to the Court at the Bid Procedures Hearing or by stipulation filed with the Court, are overruled.

3. The record establishes that the Debtors' prior actions in connection with the marketing process, as it relates to the Assets, were appropriate and reasonably calculated to lead to the highest and best offer for the Sale.

I. STALKING HORSE BIDDER AND STALKING HORSE PURCHASE AGREEMENT

4. The Debtors are authorized to enter into the Stalking Horse Purchase Agreement, subject to higher or otherwise better offers received from Qualified Bidders at the Auction in accordance with the Bid Procedures. The Debtors are authorized to perform any obligations of the Debtors set forth in the Stalking Horse Purchase Agreement that are intended to be performed prior to the U.S. Sale Hearing or entry of the Sale Order.

5. The Expense Reimbursement and Break-Up Fee are approved in their entirety and are payable in accordance with, and subject to the terms of, the Stalking Horse Purchase Agreement~~. The Expense Reimbursement and Break-Up Fee shall be payable in accordance with, and subject to the terms of, the Stalking Horse Agreement~~ and the Bid Procedures.

[6] Notwithstanding anything to the contrary herein, the consummation of the Sale is subject to entry of the Sale Order and, to the extent the Sale involves any Assets of the Canadian Debtors, is subject to the granting of the Canadian Sale Order.

6. The Break-Up Fee and the Expense Reimbursement shall constitute allowed superpriority administrative expense claims pursuant to sections ~~105~~364(~~a~~c)(1), 503~~(b)~~, and 507~~(a)(2)~~ of the Bankruptcy Code~~ with priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code, other than, and subject and subordinate in all respects to, the Carve-Out and the DIP Obligations.~~[7].

II. THE BID PROCEDURES

7. The Bid Procedures are fair, reasonable and appropriate and designed to maximize the value of the Assets to be sold. ~~Accordingly, the~~The Bid Procedures are ~~hereby~~ approved in their entirety, and the Debtors are ~~hereby~~ granted the power and authority to take all steps necessary or appropriate to carry out the provisions of this Order, the Bid Procedures, and the Stalking Horse Purchase Agreement. The Bid Procedures are incorporated herein by reference as if fully set forth herein. ~~Accordingly, the~~

8. The Debtors have demonstrated a compelling and sound business justification for the relief granted herein and the timeline proposed as set forth below is reasonable, subject to the right of Debtors to modify the following dates pursuant to this Order, the Bid Procedures, and the Stalking Horse Purchase Agreement, and upon proper notice to parties in interest:

(a) **Bid Deadline**: **4:00 p.m., prevailing Central Time on ~~[______]~~March 19, 2021**, as the deadline by which Qualified Bidders must deliver written copies of their bidding materials consistent with, and to the parties specified in, the Bid Procedures (the "**Bid Deadline**");

(b) **Sale Objection Deadline**: **4:00 p.m., prevailing Central Time on ~~[______]~~March 23, 2021**, as the deadline by which objections, if any, to the entry of an order approving the Sale ~~and the assumption and assignment of Proposed Assumed Contracts (the "~~(the "**U.S. Sale Order**")

~~[7] "Carve-Out" and "DIP Obligations" shall have the meanings set forth in the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 42].~~

must be filed and served consistent with, and upon the parties specified in, the Bid Procedures (the "**Sale Objection Deadline**");

(c) **Auction: 10:00 a.m., prevailing Central Time on ~~[ ]~~March 22, 2021**, as the date and time at which an auction for the Assets (the "**Auction**"), if one is necessary. **Instructions to participate via video in the Auction will be provided to Qualified Bidders prior to the Auction.**

(d) **U.S. Sale Hearing:** For the sale of the U.S. Debtors' Assets (as defined in the Stalking Horse Purchase Agreement) will be held on **~~[ ]~~March 26, 2021 at [ ]:00 [ ].m., prevailing Central Time**.

(e) **Canadian Sale Hearing:** For the sale of the Canadian Debtors' Assets (as defined in the Stalking Horse Purchase Agreement) will be held on **~~[ ]~~March 26, 2021 at ~~.m.~~ 12:00 p.m., prevailing Eastern Time**.

9. ~~8.~~ The process and requirements associated with submitting a Qualified Bid and selecting a Successful Bid as set forth in the Bid Procedures are approved as fair, reasonable, appropriate, and designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interest. The Bid Procedures shall govern the submission, receipt, and analysis of all bids, and any party desiring to submit a higher or otherwise better offer must do so strictly in accordance with the terms of the Bid Procedures ~~and~~, this Order and the Amended and Restated Initial Order.

10. ~~9.~~ Each bidder participating at an Auction (if any) must be a Qualified Bidder and 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 and an Auction (if any) shall be transcribed or recorded.

11. ~~10.~~ Any disputes or objections to the selection of Qualified Bids, Successful Bids, or Back-Up Bids shall be resolved by this Court at the U.S. Sale Hearing as set forth herein and,

to the extent any such Qualified Bids, Successful Bids, or Back-Up Bids relate to the Canadian Debtors or their Assets, the CCAA Court at the Canadian Sale Hearing.

12. ~~11.~~ The Stalking Horse Bidder is deemed a Qualified Bidder, and the ~~Bid of the~~ Stalking Horse ~~Bidder~~Bid, as set forth in the Stalking Horse Purchase Agreement, is deemed a Qualified Bid for all purposes in connection with the bidding process, the Auction, and the Sale. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder shall not be required to take any further action in order to participate in the Auction (if any) or, if the Stalking Horse Bidder is the Successful Bidder, to be named the Successful Bidder at the U.S. Sale Hearing.

13. ~~12.~~ The Debtors are authorized to conduct the Auction if they receive one or more Qualified Bids in addition to the Stalking Horse Purchase Agreement in accordance with the Bid Procedures. If no other Qualified Bid is received, no Auction shall be necessary and the Debtors shall cancel the Auction, provided, that the Debtors shall file a notice of cancellation of the Auction. Further, in the event of a competing Qualified Bid, the Stalking Horse Bidder will be entitled, but not obligated, to submit overbids at any time prior to or at the Auction.

14. ~~13.~~ The Auction, if held, is necessary to determine which Qualified Bid, if any, represents the highest or otherwise best Qualified Bid. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures. As described in the Bid Procedures, if the Debtors do not receive any Qualified Bids, it will not hold the Auction. If one or more Qualified Bids is timely received from a Qualified Bidder in accordance with the Bid Procedures, then the Debtors shall conduct the Auction as set forth therein. Any disputes as to the selection of the highest and best Qualified Bid, or any other dispute arising from the implementation of the Bid Procedures, shall be resolved by this Court and, to the extent any such disputes relate to the Canadian Debtors or their Assets, the CCAA Court.

III. NOTICE PROCEDURES FOR SALE AND AUCTION

15. ~~14.~~ The Sale Notice and Post-Auction ~~Sale~~ Notice are approved.

16. ~~15.~~ The Sale Notice is adequate and reasonably calculated to provide due, proper, and timely notice to all interested parties of (~~i~~a) the Bid Procedures; (~~ii~~b) the objection deadline to the Motion as it relates to the Sale and related transactions; (~~iii~~c) the date and time set for the Auction, if necessary, (~~iv~~d) the date and time set for the U.S. Sale Hearing in accordance with Bankruptcy Rule 2002 and the applicable provisions of the Bankruptcy Code, and (~~v~~e) entry of this Order. Except as otherwise set forth herein, no other or further notice is necessary.

17. ~~16.~~ Within three (3) business days after the Court enters this Order, the Debtors shall file and serve a copy of the Sale Notice: (a) by first class United States mail, postage prepaid on the parties identified in the ~~*Order Granting Motion for Order Establishing Notice Procedures and Approving Form Notice of Commencement of Cases* [Docket No. ##] (the "**Notice Procedures Order**")~~Debtors' *Master Service List* [Docket No. 50] (as may be amended, modified or supplemented from time to time) at the addresses set forth therein, as well as service via electronic mail where possible, including, but not limited to, ~~upon~~ (i) all ~~entities that have expressed written interest in a Sale with respect to the Assets as part of the Stout marketing process; (ii) the lenders and all other entities known to have asserted any lien, claim, interest, or encumbrance~~ parties who have filed a written request for notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; (ii) the Office of the United States Trustee; (iii) the Debtors' secured lenders; (iv) counsel to the Debtors' secured lenders (v) counsel for the Official Committee of Unsecured Creditors, if any; (vi) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (vii) all parties with liens, claims, encumbrances or security interests in or upon any of the Assets; ~~(iii) counsel for any statutory committee appointed in these Chapter 11 Cases,~~

~~if any; (iv) counsel to the [Agents]; (v) counsel to the [Lenders]; and (vi) the Office of the United States Trustee for the Southern District of Texas; (vii)~~and (viii) the Internal Revenue Service; (ix) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (~~viii~~x) the United States Attorney's Office for the ~~states in which the Debtors operate; (ix) the Internal Revenue Service; (x) the counterparties to the Contracts, (xi) all litigation counterparties; and (xii) all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1~~Southern District of Texas; (xi) the offices of the attorney's general in the states where the Debtors conduct their business operations; (xii) any party to any litigation with the Debtors; and (b) by the Court's electronic filing system on those parties receiving electronic notice by such system. Service as set forth herein shall be deemed proper, due, timely, good, and sufficient notice and no other or further notice is necessary.

18. ~~17.~~ As soon as reasonably practicable after entry of this Order, the Debtors shall cause the contents of the Sale Notice to be published once in the Wall Street Journal National Edition.

19. ~~18.~~ As soon as reasonably practicable after the conclusion or cancellation of the Auction, as applicable, but in any event, no later than one (1) business day thereafter, the Debtors shall file on the docket and serve electronically, the Post-Auction Notice.

IV. ASSUMPTION AND ASSIGNMENT PROCEDURES

20. ~~19.~~ The Assumption and Assignment Procedures, which are set forth below, regarding the assumption and assignment of the executory contracts and unexpired leases proposed to be assumed by the Debtors (collectively, the "**Proposed Assumed Contracts**") pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or the Successful Bidder(s), following the Auction, if any) pursuant to section 365(f) of the

Bankruptcy Code and in accordance with the Stalking Horse Purchase Agreement (or other definitive asset purchase agreement), are ~~hereby~~ approved to the extent set forth herein.

21. ~~20.~~ On or prior to ~~[_________~~February 26, 2021~~]~~, the Debtors shall file and serve a copy of the Assumption and Assignment Notice, which shall include a list of the Proposed Assumed Contracts (the "**Proposed Assumed Contracts List**") and the proposed amount necessary to cure all monetary defaults ("**Cure Amounts**"), if any, under the Proposed Assumed Contracts by first class United States mail, postage prepaid on the counterparties to the Proposed Assumed Contracts. Service as set forth herein shall be deemed proper, due, timely, good, and sufficient notice and no other or further notice is necessary.

22. ~~21.~~ A counterparty to a Proposed Assumed Contract ("**Contract Counterparty**") set forth on the Assumption and Assignment Notice may file an objection (a "**Contract Objection**") to the proposed assumption and assignment of the applicable Proposed Assumed Contract and/or the proposed Cure Amounts, if any. All Contract Objections must (a) state, with specificity, the legal and factual basis for the objection and, if applicable, what Cure Amounts are required, (b) include appropriate documentation in support thereof, and (c) be filed with the Court and served on counsel to the Debtors so as to be **actually received** no later than that later of (i) **~~[_______]~~March 23, 2021 at ~~[____] [a.m. /p.m.] (~~4:00 p.m., prevailing ~~Eastern~~Central Time~~)~~**, and (ii) ~~[ten~~fourteen (~~10~~14)~~]~~ calendar days following service of the Assumption and Assignment Notice (the "**Contract Objection Deadline**").

23. ~~22.~~ If a Contract Counterparty timely files and serves a Contract Objection, in a manner that is consistent with the requirements set forth above, and the parties are unable to consensually resolve the dispute ~~prior to the Sale Hearing~~, such objection will be determined at the U.S. Sale Hearing, at the next available omnibus hearing date, or such other date determined

by this Court. A timely and properly filed Contract Objection will reserve such objecting Contract Counterparty's rights against the Debtors only with respect to (a) the assumption or assumption and assignment of the Proposed Assumed Contract at issue, to the extent objected to, and/or (b) the Cure Amounts, to the extent objected to, but will not constitute an objection to the remaining relief requested in the Motion, including, without limitation, the Sale.

24. ~~23.~~ If, (a) prior to the closing date of the Sale, the Debtors (x) discover executory contracts or unexpired leases inadvertently omitted from the Proposed Assumed Contracts List or (y) elect to modify the previously stated Cure Amounts associated with a Proposed Assumed Contract, or (b) until the earlier of (i) ninety (90) days following the closing date, (ii) the effective date of a confirmed plan of reorganization or liquidation for the Debtors, (iii) such time that the Chapter 11 Cases are closed or converted to cases under chapter 7 of the Bankruptcy Code or (iv) dismissal of the Chapter 11 Cases, the Stalking Horse Bidder (or other Successful Bidder), in consultation with the Debtors, designates executory contracts or unexpired leases not previously on the Proposed Assumed Contracts List for inclusion on the Proposed Assumed Contract List, the Debtors will promptly serve a supplemental notice of potential assumption and assignment on the counterparty to each impacted executory contract or unexpired leases (a "**Supplemental Assumption and Assignment Notice**") and provide a reasonable opportunity for the counterparties to object thereto. Each Supplemental Assumption and Assignment Notice will include the same information with respect to listed Proposed Assumed Contracts as was included in the Assumption and Assignment Notice and/or the modified Cure Amounts.

25. ~~24.~~ The inclusion of a Proposed Assumed Contract on the Proposed Assumed Contract List attached to the Assumption and Assignment Notice (or Supplemental Assumption and Assignment Notice), or any supplement thereto, will not: (a) obligate the Debtors to assume

any Proposed Assumed Contract listed thereon or the Successful Bidder(s) to take assignment of such Proposed Assumed Contract; or (b) constitute any admission or agreement of the Debtors that such Proposed Assumed Contract is an executory contract or unexpired lease.

V. SALE HEARING

26. ~~25.~~ The U.S. Sale Hearing to (a) approve the sale of certain of the U.S. Debtors' assets to the Successful Bidder(s) and (b) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held on ~~[_______]~~**March 26, 2021, at ~~1:00 p.m.~~[ ]:00 [ ].m., prevailing Central Time**, and may be adjourned or rescheduled without notice other than an announcement on the record at Court or by a notice to be filed and served on parties requesting notice pursuant to Bankruptcy Rule 2002 by email or first class mail. The proposed form of Sale Order will be filed with the Court on the date that is no later than ~~[~~three (3)~~]~~ calendar days prior to the U.S. Sale Hearing.

27. ~~26.~~ At the U.S. Sale Hearing, the Debtors will seek Court approval of the Successful Bid and the Back-Up Bid. The U.S. Sale Hearing shall be an evidentiary hearing on matters relating to the Sale and there will be no further bidding at the U.S. Sale Hearing. In the event that the Successful Bidder(s) cannot or refuses to consummate the Sale, the Debtors ~~may~~shall, in accordance with the Bid Procedures, designate the Back-Up Bid to be the new Successful Bid and the Back-Up Bidder to be the new Successful Bidder(s), and the Debtors shall consummate the transaction with the Back-Up Bidder without further order of the Court or notice to any party.

28. ~~27.~~ Any objections to the Sale must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure, and (d) be filed with this Court, on or before the Sale Objection Deadline.

29. ~~28.~~ Any person or entity failing to timely file an objection to the Motion shall be forever barred from objecting thereto, including the sale of the Debtors' right, title and interest in, to, and in substantially all of its assets free and clear of any and all liens, encumbrances, claims, and other interests, and will be deemed to consent to the sale of such assets free and clear of any and all liens, encumbrances, claims and other interests.

VI. MISCELLANEOUS.

30. ~~29.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

31. ~~30.~~ This Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

32. ~~31.~~ To the extent any of the deadlines set forth in this Order do not comply with the Local Bankruptcy Rules, such Local Bankruptcy Rules are waived and the terms of this Order shall govern.

33. ~~32.~~ Notwithstanding Bankruptcy Rules 6004, 6006, or otherwise, this Order shall be effective and enforceable immediately upon entry, and its provisions shall be self-executing. To the extent applicable, the stays described in Bankruptcy Rules 6004(h) and 6006(d) are ~~hereby~~ waived.

34. ~~33.~~ The terms of this Order shall control to the extent of any conflict with the Motion.

35. ~~34.~~ The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order, including, but not limited to, any matter, claim, or dispute arising from or relating to the Bid Procedures, the Stalking Horse Purchase Agreement, and the implementation of this Order.

Dated: ________, 2021
Houston, Texas

____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Bid Procedures

EXHIBIT B

~~Form of Notice~~Stalking Horse Purchase Agreement

EXHIBIT C

Assumption and Assignment Notice

EXHIBIT D

Sale Notice

EXHIBIT E

Post-Auction Notice

EXHIBIT 3
TO NOTICE OF FILING OF REVISED PROPOSED BID PROCEDURES ORDER

BLACK-LINE OF BID PROCEDURES ORDER EXHIBITS

EXHIBIT ~~B~~A

~~Proposed~~ Bid Procedures

~~IN THE UNITED STATES BANKRUPTCY COURT~~
~~FOR THE SOUTHERN DISTRICT OF TEXAS~~
~~HOUSTON DIVISION~~

~~In re:~~		
~~COUNTRY FRESH HOLDING~~	§	~~Chapter 11~~
~~COMPANY INC., *et. al.*,~~[1]	§	
~~Debtors.~~	§	~~Case No.: 21-30574~~
	§	
	§	~~(Joint Administration Requested)~~
	§	

~~BIDDING~~BID AND SALE PROCEDURES

Set forth below are the bid and sale procedures (the "**Bid Procedures**") to be employed with respect to the proposed disposition (the "**Sale**") of substantially all of the assets of Country Fresh Holdings Company Inc. and its ~~above-captioned~~U.S. debtor affiliates, as debtors and debtors in possession (collectively, the "**U.S. Debtors**"[1]), in ~~the above-captioned,~~ jointly administered Chapter 11 cases (the "**Chapter 11 Cases**") and ~~the~~its Canadian affiliates ~~of the Debtors~~[2](the "**Canadian Debtors**"[2]) that have commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The U.S. Debtors and the Canadian Debtors are the "**Sellers**"~~)~~.

~~[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.~~

[1] The U.S. Debtors in the Chapter 11 Cases and the last four digits of each U.S. Debtors' taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Fresh Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The U.S. Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

~~[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.~~

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

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Bid Procedures ~~Motion~~Motions

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Debtors' Entry into the Stalking Horse ~~Bid Protections; (C)~~Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (~~D~~E) Authorizing and Approving Assumption and Assignment Procedures; and (~~E~~F) Approving Notice Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. ~~###~~51] (the "**Bid Procedures Motion**") in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") seeking the entry of an order: (a) approving bidding procedures, (b) approving stalking horse bid protections, (c) scheduling an auction and sale hearing, (d) approving the assumption and assignment procedures for executory contracts and unexpired leases; and (e) approving the sale of substantially all of the assets of the U.S. Debtors free and clear of all liens, claims, encumbrances and interests.

These Bid Procedures were approved and authorized by the Bankruptcy Court's *Order (A) Authorizing and Approving Bid Procedures; (B) Authorizing ~~and Approving~~the Debtors' Entry into the Stalking Horse ~~Bid Protections; (C)~~Purchase Agreement; (C) Authorizing and Approving Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (~~D~~E) Authorizing and Approving Assumption and Assignment Procedures; and (~~E~~F) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases.

~~The~~On February [___], 2021, the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**" and together with the Bankruptcy Court, the "**Courts**") ~~also has entered an order (the "**Canadian Bid Procedures Order**" and together with the Bid Procedures Order, the "**Bid Procedures Orders**")~~issued and entered an Amended and Restated Initial Order in the CCAA Proceedings ~~approving~~(the "**Amended and Restated Initial Order**") which, among other things, approved these Bid Procedures, ~~approving~~approved the execution of the stalking horse agreement subject to higher and better offers, and ~~authorizing~~authorized the Canadian Debtors to market their business and assets in accordance with these Bid Procedures.

To the extent that these Bid Procedures require the Sellers to consult with any Consultation Party (as defined below) in connection with making a determination or taking any action, or in connection with any other matter related to these Bid Procedures or at the Auction (as defined below), if any, the Sellers shall do so in a regular and timely manner prior to making such determination or taking any such action; provided, however, that during any period in which a Consultation Party has submitted a Qualified Bid and has become a Qualified Bidder, such Consultation Party shall no longer be considered a Consultation Party under these Bid Procedures.

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order entered by the Bankruptcy Court.

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The Sellers~~'~~ shall exercise their reasonable business judgment when taking any action, making any decision or determination, or reviewing or considering any proposal under these Bid Procedures, including, without limitation, with respect to determining the Initial Bid, the Successful Bidder(s), the Back-Up Bidder(s), and the Qualified Bidder(s) (each as defined below). In the case of the Canadian Debtors, the Sellers shall also consult with Ernst & Young Inc., in its capacity as the court-appointed Monitor of the Canadian Debtors (the "**Monitor**") in connection with the sale of the Canadian Debtors' assets.

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The Bidding Process

1. **Bidding Process**. Set forth below, is the general process to be employed by the Sellers with respect to the Sale of substantially all of their assets as set forth in the Stalking Horse Purchase Agreement (as defined below) attached to the Bid Procedures Motion (the "**Assets**"):

a. From and after the Petition Date and the date of the Amended and Restated Initial Order, the Sellers, through their investment banker, Stout Capital, LLC ("**Stout**") shall market to those parties reasonably known by the Sellers to have a potential interest in purchasing some or all of such Assets and any other parties expressing an interest therein.

b. The Sellers have obtained a "stalking horse" bid from Stellex/CF Buyer (US) and Stellex/CF Buyer (CN) Inc. (together, the "**Stalking Horse Bidder**"). The Sellers and the Stalking Horse Bidder have entered into an asset purchase agreement, a form of which is attached to the Bid Procedures Motion (the "**Stalking Horse Purchase Agreement**"), which contemplates the sale of the Assets to the Stalking Horse Bidder for a total consideration of: (a) $30 million in cash consideration; (b) $25 million senior secured note; (c) assumption of certain liabilities relating to PACA Claims, Assumed Prepetition Payables and Post-Petition Trade Payables not to exceed, in the aggregate, $~~22~~21.5 million; and (d) Cure Costs (the "**Stalking Horse Bid**").[4]

c. As part of the Bid Procedures Order, the Bankruptcy Court has approved stalking horse bid protections including a Break-Up Fee in the amount of $1,450,000 and Expense Reimbursement in the amount of $700,000 (collectively, the "**Stalking Horse Bid Protections**").

d. Any person interested in making an offer to purchase some or all of the Assets shall comply with these Bid Procedures. Any person interested may make, and the Sellers shall consider, a bid for some or all of the Assets in accordance with these Bid Procedures.

e. Only Qualified Bids (as defined below) shall be considered by the Sellers.

f. If the Sellers do not receive another Qualified Bid prior to the Bid Deadline (as defined below), then the Stalking Horse Bidder's offer to acquire the Assets under the Stalking Horse Purchase Agreement shall constitute the Successful Bid (as defined below).

[4] ~~**NTD**: Subject to APA revisions.~~

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g. If the Sellers receive another Qualified Bid prior to the Bid Deadline, then the Sellers, after consultation with the Official Committee of Unsecured Creditors (if appointed), ~~Ernst & Young Inc., in its capacity as the court-appointed~~the Monitor~~ of the Canadian Debtors (the "**Monitor**")~~, the Ad Hoc Group (as defined in the DIP Order) and the DIP Lenders (as defined in the DIP Order) (each a "**Consultation Party**" and collectively, the "**Consultation Parties**"),[5][4] shall select the highest or otherwise best Qualified Bid as the Successful Bid after the ~~Debtors~~Sellers have conducted an Auction and considered, among other things, the financial and contractual terms relevant to the Sale, including those factors affecting speed and certainty of consummating the Sale or the overall value to be provided thereby.

h. Upon failure to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder (as defined below) (or ~~Back-up~~Back-Up Bidder (as defined below), if applicable), the Sellers shall be permitted to (i) retain the Successful Bidder's Deposit (as defined below) as liquidated damages and (ii) select the next highest or otherwise best Qualified Bid to be the Successful Bid and to consummate such transaction without further order of the Bankruptcy Court or the CCAA Court; provided, that the ~~Deposit~~release of the Deposit paid by the Stalking Horse Bidder shall be governed by the terms and conditions set forth in the Stalking Horse Purchase Agreement.

i. All Qualified Bidders (as defined below) at the Auction shall be deemed to have (i) consented to the core jurisdiction of the Bankruptcy Court and the CCAA Court, as applicable, with respect to these Bid Procedures, the bid process, the Auction, any Sale, the Sale ~~Hearing~~Hearings (as defined below), or the construction or enforcement of any agreement of any other document related to the Sale; and (ii) waived any right to a jury trial in connection with any of the foregoing and the construction and enforcement of the Qualified Bidder's contemplated transaction documents, as applicable; and (iii) consented to entry of a final order or judgment in any way related to any of the foregoing if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Participation Requirements

~~5~~ [4] The "**DIP Order**" means the Bankruptcy Court's *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. ~~[●]~~42]. The DIP Order is available on the U.S. Debtors' claims agent's website at https://dm.epiq11.com/countryfresh or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/.
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2. **Potential Bidder**. Any person other than the Stalking Horse Bidder, the DIP Secured Parties (as defined in the DIP Order) and the Prepetition Secured Parties (as defined in the DIP Order) desiring to participate in the bidding process or otherwise be considered for any purpose under these Bid Procedures (each, a "**Potential Bidder**") will be required to deliver (unless previously delivered) to the Sellers, on or before the Bid Deadline, the following materials:

a. an executed confidentiality agreement on terms acceptable to the ~~Debtors~~Sellers (a "**Confidentiality Agreement**"), to the extent not already executed;

b. an executed asset purchase agreement~~, —~~ in ~~both~~ PDF ~~and~~with an accompanying MS-WORD format document, and a mark-up of the Stalking Horse Purchase Agreement, if any, marked to show all changes of its proposed offer as compared to the Stalking Horse Purchase Agreement (the "**Bidder's APA**");

c. in a form acceptable to the Sellers and their advisors, in consultation with the Consultation Parties: (i) financial information demonstrating the financial wherewithal of such Potential Bidder's ability to consummate the proposed transaction as follows: (x) current financial statements of the Potential Bidder, (y) if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current financial statements of the equity holder(s) of the Potential Bidder or (z) such other information as required by the Sellers, in consultation with the Consultation Parties, and (ii) a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale; and

d. any other evidence the Sellers, in consultation with the Consultation Parties, may reasonably request to evaluate the Potential Bidder.

3. **Qualified Bid Requirements**. A bid ("**Bid**") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements in this paragraph 3 and all subparts (the "**Bid Requirements**") shall constitute a "**Qualified Bid**"~~)~~. The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bid Procedures and at all times. To be a Qualified Bid, the Bid must:

a. Disclose the identity of the Potential Bidder and each entity that will be participating in its Bid, including any and all terms regarding or restricting such participation, and provide proof the Potential Bidder is legally empowered, by power of attorney, corporate authorization and approval from Potential Bidder's board of directors (or comparable governing body) to submit, execute, and close the transactions contemplated in such Bid;

b. Include an earnest-money deposit (the "**Deposit**") in cash or in other form of immediately available U.S. funds equal to 10% of the aggregate value

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of the Potential Bidder's cash and non-cash consideration to be held in the Sellers' counsel's trust account for the benefit of the U.S. Debtors and the Canadian Debtors;

c. Specify that the aggregate amount of cash and other consideration being offered by the Potential Bidder exceeds the aggregate sum of the following: (i) the Purchase Price (as defined in the Stalking Horse Purchase Agreement); (ii) an amount in cash sufficient to satisfy the Stalking Horse Bid Protections payable to the Stalking Horse Bidder; and (iii) minimum overbid amount of $500,000 in cash or cash equivalents (collectively, the "**Minimum Overbid**");

d. Indicate whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid and/or the assumption of liabilities and provide a detailed analysis of the value of any non-cash component of the Bid, if any, and back-up documentation to support such value~~.~~, and any other information the Sellers, in consultation with the Consultation Parties, may reasonably request;

e. Identify the Assets the Potential Bidder is agreeing to purchase and assume;

f. Identify any executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale and: (i) provide for the payment of all cure costs related to such executory contracts and unexpired leases; and (ii) provide evidence of ability to comply with section 365 of the Bankruptcy Code and section 11.3 of the CCAA;

g. Identify all liabilities the Potential Bidder seeks to assume, if any, including any employees to be offered employment and proposed treatment of wages and benefits;

h. Include all non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid;

i. Provide that the Assets are being purchased "as is, where is," and that such Potential Bidder is not relying upon any representation or warranty from the Sellers, or their bankruptcy estates or any person or entity, except as otherwise provided in the Stalking Horse Purchase Agreement, if any;

j. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Sellers in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the purchased Assets

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and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Sellers, in consultation with the Consultation Parties;

k. Include sufficient financial or other information to demonstrate that the Bid is not conditioned on (i) obtaining financing; (ii) any internal approval; (iii) the outcome or review of unperformed due diligence, but may be subject to the accuracy at closing of specified representations and warranties or the satisfaction of specified, usual and customary conditions (including required Bankruptcy Court and CCAA Court approval), which shall be acceptable to the ~~Debtors~~Sellers after consultation with the Consultation Parties;

l. Acknowledges that the Potential Bidder will not seek any transaction, termination, topping, work or break-up fee, expense reimbursement, or any similar type of payment or reimbursement and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process;

m. Include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Sellers, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;

n. Set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale;

o. Contain no conditions to closing of the Sale on the receipt of any third party approvals (excluding required Bankruptcy Court and CCAA Court ~~approval~~approvals);

p. Confirms that the Potential Bidder consents to the jurisdiction of the Bankruptcy Court and the CCAA Court and agrees to be bound by the Bid Procedures, including willingness to serve as the Back-Up Bidder, if selected by the Sellers, and waives any right to a jury trial in connection with any disputes relating to the Auction and construction and enforcement of these Bid Procedures;

q. Provide an express statement that: (a) the Potential Bidder agrees to all terms of the Bidding Procedures; and (b) the Potential Bidder has not engaged in any collusive discussion with any other Potential Bidder;

r. Provide that closing of the contemplated transactions of the Bid shall occur no later than March 31, 2021;

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s. Provide that the offer (a) is binding, unconditional and irrevocable until the Successful Bidder and Back-Up Bidder are selected and such Potential Bidder is not selected as either the Successful Bidder or the Back-Up Bidder and (b) is not subject to any due diligence condition, contingencies of any kind or character, indemnities, or qualifications relating to due diligence or board approval; and

t. Include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets and the liabilities to be assumed, if any, prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets and the liabilities to be assumed, if any, in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets and the liabilities to be assumed, if any, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's asset purchase agreement.

Notwithstanding the foregoing, where there are multiple Bids for different Assets that are not materially overlapping and that, when taken together, would otherwise constitute a Qualified Bid, the Sellers, in consultation with the Consultation Parties, may designate such Bids together as a Qualified Bid and may negotiate such amendments or modifications to such individual Bids as may be necessary for them to no longer be overlapping.

4. Qualified Bidders. A Potential Bidder who delivers the documents and the Deposit described in Paragraphs 2 and 3 (including all subparagraphs) above and who the Sellers determine, in consultation with the Consultation Parties, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale will be deemed to be a "Qualified Bidder." The Sellers' advisors will notify each Potential Bidder in writing (which may be via email) whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder, the DIP Secured Parties and the Prepetition Secured Parties shall be deemed Qualified Bidders for all purposes under these Bid Procedures and at all times.

a. If any Potential Bidder is determined by the Sellers, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Sellers will refund such Potential Bidder's Deposit and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.

b. The Sellers, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder prior to the Bid Deadline that its Bid is not a Qualified Bid (a "**Non-Qualifying Bid**") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid by the Bid Deadline.

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c. Between the date that the Sellers notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Sellers may discuss, negotiate, seek clarification of, or request additional information regarding any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse Purchase Agreement, without the written consent of the Sellers, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures; provided, that any Qualified Bid may be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures.

5. Right to Credit Bid. At the Auction, if any, any Qualified Bidder who holds a valid and perfected lien on any assets of the Sellers' estates (a "**Secured Creditor**"), including, for the avoidance of doubt, the DIP ~~Lenders~~Secured Parties, shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code and to the extent permitted by section 363(k) of the Bankruptcy Code, the CCAA or applicable law; provided, that nothing herein shall impact any parties' rights with respect to challenges to the liens or claims of any Secured Creditor.

6. Due Diligence. After receipt of the Confidentiality Agreement, Potential Bidders shall be eligible to receive due diligence information and access to the Sellers' electronic data room and to additional non-public information regarding the Sellers.

a. **Written Request Required**. Any due diligence requests must be in writing and sent to Aaron Perez of Stout at aperez@stout.com.

b. **Deadline**. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Sellers shall have no obligation to furnish any due diligence information.

c. **Sellers' Obligations**. The Sellers and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; provided, that the Sellers may withhold any diligence materials that the Sellers determine are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Sellers, in consultation with the Consultation Parties, determine is a competitor of the Sellers or is affiliated with any competitor of the Sellers. Neither the Sellers nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder.

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Notice Parties

7. **Notice Parties**. The following parties are referred to herein and defined as the "Notice Parties" for the purpose of these Bid Procedures:

Counsel for the Sellers

John P. Melko
Sharon M. Beausoleil
Foley & Lardner LLP
1000 Louisiana Street, Suite 2000
Houston, TX 77002

Joseph Reynaud
Danny Duy Vu
Lee Nicholson
Stikeman Elliott LLP
199 Bay St., Suite 5300
Toronto, ON M5L 1B9

Counsel for the Ad Hoc Group and the DIP Lenders

Elizabeth R. McColm
John T. Weber
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

-and-

Tracy C. Sandler
Richard M. Borins
Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 2600, P.O. Box 50
Toronto ON M5X 1B5
TSandler@osler.com
RBorins@osler.com

The Monitor
Alex Morrison
Allan Yao
Ernst & Young Inc.
100 Adelaide St W
Toronto, ON M5H 0B3

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Alex.F.Morrison@parthenon.ey.com
Allen.Yao@parthenon.ey.com

Counsel to the Monitor
Rebecca Kennedy
Puya Fesharaki
Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
rkennedy@tgf.ca
pfesharaki@tgf.ca

AND

Counsel for the Unsecured Creditors' Committee:
[________________________]
[________________________]
[________________________]

AND

United States Trustee:

Hector Duran
Stephen Statham
Trial Attorneys
515 Rusk Street, Suite 3516
Houston, TX 77002
Hector.Duran.Jr@usdoj.gov
Stephen.Statham@usdoj.gov

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Bid Deadline and Requirements

8. **Bid Deadline**. A Qualified Bidder, other than the Stalking Horse Bidder, that desires to make a Bid for some or all of the Assets shall deliver written copies of its Bid that satisfies the Bid Requirements by email (in .pdf or similar format) so that such is **actually received** no later than **4:00 p.m. prevailing Central Time on ~~[~~March 19~~]~~, 2021** (the "**Bid Deadline**") by the Sellers. The Sellers shall then distribute any Bids received prior to the Bid Deadline to the Notice Parties.

9. **Bid Rejection**. In determining whether a Bid is a Qualified Bid, the Sellers, in consultation with the Consultation Parties, may reject any Bid that: (a) is on terms that are materially more burdensome or conditional than the terms of the Stalking Horse Purchase Agreement; (b) requires the ~~Debtors~~Sellers to indemnify the Qualified Bidder or any other person; (c) includes non-cash consideration which is not freely marketable; (d) is subject to any due diligence, financing condition or other contingencies or conditions that are not included in the Stalking Horse Purchase Agreement; or (e) is received after the Bid Deadline.

10. **Initial Bid**. After the Bid Deadline, the Sellers, after consultation with the Consultation Parties, shall determine which Qualified Bid represents the then highest or otherwise best value to the Sellers (the "**Initial Bid**"). No later than 12:00 p.m. Central Time on the day prior to the Auction, if any, the Sellers shall distribute copies of the Initial Bid to each Qualified Bidder.

Auction

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11. **<u>Auction</u>**. If the Sellers receive at least one Qualified Bid (other than that of the Stalking Horse Bidder) on or prior to the Bid Deadline, the Sellers will conduct an auction via video conferencing (the "**Auction**") for the sale of the Assets. **<u>The Auction, if one is necessary, will commence at 10:00 a.m. prevailing Central Time on ~~[____]~~March 22, 2021. Instructions to participate via video in the Auction will be provided to Qualified Bidders prior to the Auction.</u>**

12. **<u>Participation</u>**. Only Qualified Bidders are eligible to participate in the Auction. No later than 5:00 p.m. prevailing Central Time on the day prior to the Auction, each Qualified Bidder must inform the Sellers whether it intends to participate in the Auction. The Sellers will promptly thereafter inform in writing each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction. If the Sellers do not receive any Qualified Bids other than the Stalking Horse Bid or if no Qualified Bidder other than the Stalking Horse Bidder has indicated its intent to participate in the Auction, the Sellers will not hold an auction and the Stalking Horse Bidder will be named the Successful Bidder.

13. **<u>Auction Procedures</u>**. The Auction shall be governed by the following procedures:

a. <u>Attendance</u>. Only the Sellers, the Consultation Parties, the Stalking Horse Bidder, and any other Qualified Bidder who has submitted a Qualified Bid and each of their respective advisors will be entitled to attend the Auction, and only the Stalking Horse Bidder and Qualified Bidders will be entitled to make any subsequent Overbids at the Auction;

b. <u>No Collusion</u>. Each Qualified Bidder participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding or the Sale; and (ii) its Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder or the Back-Up Bidder;

c. <u>Minimum Overbid</u>. The Auction shall begin with the Initial Bid and, any bid made at the Auction by a Qualified Bidder subsequent to the Sellers' announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of $200,000;

d. <u>Bidding Disclosure</u>. The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders and that all material terms of each subsequent bid will be fully disclosed to all other bidders throughout the entire Auction;

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e. Bidding Conclusion. The Auction shall continue in one or more rounds of bidding and will conclude after (i) each participating Qualified Bidder has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid or bids and (ii) there is only one offer that the Sellers, in consultation with the Consultation Parties, determine is the Successful Bid; and~~,~~

f. No Post-Auction Bids. No bids will be considered for any purpose after the Auction has concluded.

Selection of Successful Bid

14. Successful Bid Selection. At the conclusion of the Auction, or as soon as practicable thereafter, the Sellers, in consultation with their advisors and the Consultation Parties, will: (a) review each Qualified Bid, considering, among other things, (i) the amount of the Purchase Price, (ii) the form of consideration being offered and, if applicable, the proposed allocation of same, (iii) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof and (iv) the net benefit to the Sellers' estates; and (b) identify the highest or otherwise best offer for the Assets received at the Auction (the "**Successful Bid**" and the bidder making such bid, the "**Successful Bidder**").

15. Successful Bid Acknowledgement. Within one business day after adjournment of the Auction, 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.

Selection of Back-Up Bidder

16. Back-Up Bidder.

a. Notwithstanding anything in these Bid Procedures to the contrary, if an Auction is conducted for some or all of the Assets, the Qualified Bidder with the next-highest or otherwise second-best bid at the Auction for such Asset(s), as determined by the Sellers, after consultation with the Consultation Parties (the "**Back-up Bid**"), shall be required to serve as a back-up bidder (the "**Back-up Bidder**") for such Asset(s), and each Qualified Bidder in submitting its Bid shall agree and be deemed to agree to be the Back-up Bidder if so designated by the Sellers. For greater certainty, the Sellers shall have the ability to select one or more Back-Up Bidders for non-overlapping Assets.

b. The identity of the Back-up Bidder and the amount and material terms of the Back-up Bid shall be announced by the Sellers at the conclusion of the Auction, if any, at the same time the Sellers announce the identity of the Successful Bidder. The Back-up Bidder shall be required to keep its Bid (or if the Back-up Bidder submits one or more Overbids at the Auction, its

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final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Back-up Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.

c. If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Back-up Bidder shall be deemed the Successful Bidder for all purposes. The Sellers shall consummate all transactions contemplated by the Bid of such Back-up Bidder without further order of the Bankruptcy Court and CCAA Court or notice to any party in accordance with the terms of such Bid. Sellers specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance; provided, that ~~any~~ remedies against the Stalking Horse Bidder shall be governed by the terms and conditions set forth in the Stalking Horse Purchase Agreement.

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The Sale Hearing

17. **Allocation.** The Successful Bidder(s), and any Back-Up Bidder(s), shall provide the Sellers and the Monitor with an allocation of the offer consideration among the Assets as soon as practicable in advance of the Sales Hearings (defined below).

18. ~~17.~~ **U.S. Sale Hearing**. On ~~[__________]~~**March 26, 2021 at** ~~______, the~~**[ ]:00 [ ].m. prevailing Central Time**, the U.S. Debtors will seek entry of an order from the ~~bankruptcy court~~Bankruptcy Court at a hearing (the "**U.S. Sale Hearing**") to approve and authorize a Sale of the U.S. Debtors' Assets to the Successful Bidder pursuant to the Successful Bid (the "**U.S. Sale Order**"). With the consent of the Successful Bidder and the Consultation Parties, the U.S. Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the U.S. Sale Hearing or otherwise.

19. ~~18.~~ **Canadian Sale Hearing**. On ~~[__________]~~**March 26, 2021 at** ~~______~~**12:00 p.m. prevailing Eastern Time**, the Canadian Debtors will seek entry of an order from the CCAA Court at a hearing (the "**Canadian Sale Hearing**" ~~and together with the U.S. Sale Hearing, the "**Sale Hearings**"~~) to approve and authorize a Sale of the Canadian Debtors' Assets to the Successful Bidder pursuant to the Successful Bid (the "**Canadian Sale Order**" ~~and together with the U.S. Sale Order, the "**Sale Orders**"~~). With the consent of the Successful Bidder and the Consultation Parties, the Canadian Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Canadian Sale Hearing or otherwise.

20. ~~19.~~ **Joint Hearing**. The Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Courts if determined efficient and desirable by each of the Bankruptcy Court and the CCAA Court.

21. ~~20.~~ **Objections to the Sale**:

a. Objections, if any, to the consummation of the Sale(s) (the "**Objections**") shall be filed with both the Bankruptcy Court and the CCAA Court not later than **4:00 p.m.** ~~(~~**prevailing Central time**~~)~~ **on** ~~__________~~**March 23, 2021**. For greater certainty, each court will retain jurisdiction over its respective proceedings.

b. Any Objections not resolved ~~prior~~before the U.S. Sale Hearing ~~or~~and the Canadian Sale Hearing shall be argued at the applicable hearing, including any concurrent or joint hearing, or such other time as set by the Bankruptcy Court ~~or~~and the CCAA Court.

Return of Deposit

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22. ~~21.~~ **Return Date**. The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Sellers, but shall not become property of the Sellers' estates absent further order of the Bankruptcy Court and the CCAA Court or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Back-up Bidder shall be returned to such Qualified Bidder not later than three (3) business days after the Sale Hearing. The Deposit of the Back-up Bidder, if any, shall be returned to such Back-up Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Back-up Bidder, if applicable) fails to consummate a sale transaction because of a breach or failure to perform on the part of the Successful Bidder (or Back-up Bidder, if applicable), the Sellers will not have any obligation to return the Deposit deposited by the Successful Bidder (or Back-up Bidder, if applicable), and such Deposit shall irrevocably become property of the Sellers and allocated between the U.S. Debtors and the Canadian Debtors as determined (a) by an agreement between the U.S. Debtors and Canadian Debtors, in consultation with the Consultation Parties or (ii) by the Bankruptcy Court and the CCAA Court; provided, that the Deposit of the Stalking Horse Bidder shall be governed by the Stalking Horse Purchase Agreement.

Reservation of Rights

23. ~~22.~~ **Sellers' Reservation of Rights**.

a. The Sellers, after consultation with the Consultation Parties, may (a) determine, which Qualified Bid, if any, is the highest or otherwise best offer and (b) reject at any time before entry of an order of the Bankruptcy Court and/or the CCAA Court approving a Qualified Bid, any Bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the CCAA, the Bid Procedures or the terms and conditions of sale or (iii) contrary to the best interests of the Sellers, their respective estates and creditors.

b. The Sellers reserve their rights to modify these Bid Procedures, after consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the sale of some or all of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bid Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the U.S. Sale Hearing and/or the Canadian Sale Hearing in open court without further notice; (c) modifying the Bid Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential

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Bidders; provided, however, that any modification, extension, waiver, or addition to the Bid Procedures shall not be inconsistent with the DIP Order, the Bid Procedures Order, or any other order of the Bankruptcy Court or the CCAA Court. Furthermore, notwithstanding anything to the contrary herein or the Bidding Procedures Order, nothing in the Bidding Procedures Order or Bidding Procedures shall amend, modify, waive or impair, or be deemed to amend, modify, waive or impair, any provisions of the Stalking Horse Purchase Agreement, or any rights or remedies of the Stalking Horse Bidder, all of which are hereby preserved.

Free and Clear of Any And All Interests

24. ~~23.~~ **Sale Free and Clear**. Except as otherwise provided in the Bid Procedures Motion and any exhibits thereto, and the application materials filed by the Canadian Debtors in connection with the Amended and Restated Initial Order (the "**Initial Order Application**"), all of the Sellers' rights, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "**Interests**") in accordance with section 363 of the Bankruptcy Code and section 36 of the CCAA, with such Interests to attach to the net proceeds of the sale of the Assets. However, notwithstanding anything contained in these Bid Procedures ~~or~~, the Bid Procedures Motion and the Initial Order Application to the contrary, no sale under section 363 of the Bankruptcy Code or section 36 of the CCAA shall occur without approval by the Bankruptcy Court and the CCAA Court.

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EXHIBIT ~~D~~C

Assumption and Assignment Notice

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~~IN THE UNITED STATES BANKRUPTCY COURT~~
~~FOR THE SOUTHERN DISTRICT OF TEXAS~~
~~HOUSTON DIVISION~~

~~In re:~~		
~~COUNTRY FRESH HOLDING~~	§	~~Chapter 11~~
~~COMPANY INC., *et. al.*,~~[1]	§	
~~Debtors.~~	§	~~Case No.: 21-30574~~
	§	
	§	~~(Joint Administration Requested)~~
	§	

NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT MAY BE ASSUMED OR ASSUMED AND ASSIGNED IN CONNECTION WITH SALE AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO

PLEASE TAKE NOTICE OF THE FOLLOWING:

On February ~~[___]~~15, 2021, Country Fresh Holding LP and certain of its ~~above-captioned~~ debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

On February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The U.S. Debtors and the Canadian

~~[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.~~

[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

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Debtors are collectively referred to as the "**Sellers**".

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the U.S. Debtors' Entry into the Stalking Horse Bid ~~Protections; (C)~~Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (~~D~~E) Authorizing and Approving Assumption and Assignment Procedures; and (~~E~~F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. ___] ~~(the "**Motion**")~~ in the ~~United States~~ Bankruptcy Court ~~for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**")~~.

~~The Canadian affiliates of the Debtors[2](the "**Canadian Debtors**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively, the "**Debtors**").~~

On [__________], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases~~.~~, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

~~The Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**" and together with the Bankruptcy Court, the "**Courts**") has also entered an order (the "**Canadian Bid Procedures Order**" and together with the Bid Procedure Order, the "**Bid Procedures Orders**")~~On [______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings ~~approving the stalking horse agreement and these Bid Procedures and authorizing~~(the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with ~~these~~the sale and bid procedures annexed to the Amended and Restated Initial Order (the "**Canadian** **Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**").

You are receiving this notice (the "Assumption and Assignment Notice") because you may be a Counterparty to an executory contract or unexpired lease of the ~~Debtors~~Sellers that potentially could be assumed or assumed and assigned to a Successful Bidder in connection with a Sale Transaction.

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the ~~Debtors~~Sellers may, in connection with any Sale with a Successful Bidder (as defined in the Bid Procedures), seek to assume or assume and assign to the Successful Bidder

~~[2]~~ ~~The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.~~

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

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(or its designated affiliate assignee, if applicable) certain executory contracts or unexpired leases of the ~~Debtors~~Sellers.

Each of the executory contracts or unexpired leases that may be assumed or assumed and assigned (the "**Proposed Assumed Contracts**") in connection with the Sale with a Successful Bidder and the ~~Debtors~~Sellers' calculation of the Cure Amounts with respect thereto are set forth in **Exhibit 1** hereto (the "**Proposed Assumed Contracts List**").

The inclusion of any Proposed Assumed Contract on **Exhibit 1** does not constitute an admission that a particular Proposed Assumed Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or an assignable contract under the CCAA or require or guarantee that such Proposed Assumed Contract ultimately will be assumed or assumed and assigned. The assumption or assumption and assignment of a Proposed Assumed Contract is subject to Bankruptcy Court or CCAA Court approval, as applicable. All rights of the ~~Debtors~~Sellers with respect thereto are reserved.

No later than two (2) days prior to the closing date, the Successful Bidder may add or remove any executory contract or unexpired lease from the Proposed Assumed Contract List and either advise the ~~Debtors~~Sellers (i) that it has no objection to the ~~Debtors~~Sellers rejecting or disclaiming such executory contract or unexpired lease or (ii) to put such executory contract or unexpired lease (each a "**Designated Contract**") on a list that the Successful Bidder shall not assume ~~or~~, reject, or disclaim on the closing date (the "**Designation List**").

Until the earlier of (i) ninety (90) days following the closing date, (ii) the effective date of a confirmed plan of reorganization or liquidation for the ~~Debtors~~Sellers, ~~or~~ (iii) such time that the Chapter 11 Cases are closed or converted to cases under chapter 7 of the Bankruptcy Code, or (iv) dismissal of the ~~chapter~~Chapter 11 ~~cases~~Cases and the CCAA Proceedings, the Successful Bidder, in consultation with the ~~Debtors~~Sellers, shall have the option to designate any Designated Contract as a Proposed Assumed Contract.

Objections

Any objection to the proposed assumption or assumption and assignment of a contract or lease identified on **Exhibit 1**, or the proposed Cure Amounts therefor (a "**Contract Objection**"), must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv) be filed with the Bankruptcy Court, via ECF, and/or received by the Monitor (as defined below) at freshfoodcanada.monitor@ca.ey.com no later than 5:00 p.m. (prevailing Central Time) on **[~~——————]~~March 15], 2021** (the "**Contract Objection Deadline**"). For the avoidance of doubt, any objections to a Successful Bidder's proposed form of adequate assurance of future performance will be resolved at the U.S. Sale Hearing.

IF NO CONTRACT OBJECTION IS TIMELY RECEIVED WITH RESPECT TO ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF A PROPOSED ASSUMED CONTRACT: (I) THE COUNTERPARTY TO SUCH PROPOSED ASSUMED ~~CONTRACTSHALL~~CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE ~~DEBTORS~~SELLERS AND ASSIGNMENT TO SUCCESSFUL BIDDER OF THE PROPOSED ASSUMED CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE CURE AMOUNT ~~AND~~, ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE SUCCESSFUL BIDDER, WHETHER THE SUCCESSFUL BIDDER WOULD BE ABLE TO PERFORM THE OBLIGATIONS AND

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WHETHER THE ASSIGNEE IS APPROPRIATE); (II) ANY AND ALL DEFAULTS UNDER THE PROPOSED ASSUMED ~~CONTRACTAND~~CONTRACT AND ANY AND ALL PECUNIARY LOSSES/MONETARY DEFAULTS RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND (B) ~~UPON PAYMENT OF THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH 365 CONTRACT; AND (III) THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH PROPOSED ASSUMED CONTRACTSHALL BE CONTROLLING, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUCH PROPOSED ASSUMED CONTRACT, OR ANY OTHER RELATED DOCUMENT, THE COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE CURE AMOUNT AND SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH PROPOSED ASSUMED CONTRACTAGAINST THE DEBTORS AND THEIR ESTATES OR THE SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING THE CONTRACTOBJECTIONS AND THE ORDER APPROVING THE SALE TO THE SUCCESSFUL BIDDER); (II) ANY AND ALL DEFAULTS UNDER THE PROPOSED ASSUMED CONTRACTAND ANY AND ALL PECUNIARY LOSSES RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND (B)~~OR SECTION 11.3 OF THE CCAA UPON PAYMENT OF THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH PROPOSED ASSUMED CONTRACT; AND (III) THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH PROPOSED ASSUMED ~~CONTRACTSHALL~~CONTRACT SHALL BE CONTROLLING, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUCH PROPOSED ASSUMED CONTRACT, OR ANY OTHER RELATED DOCUMENT, AND THE COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE CURE AMOUNT AND SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH PROPOSED ASSUMED ~~CONTRACTAGAINST~~CONTRACT AGAINST THE ~~DEBTORS~~SELLERS AND THEIR ESTATES OR THE SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING THE CONTRACT OBJECTIONS AND THE ORDER APPROVING THE SALE TO THE SUCCESSFUL BIDDER.

Sale Hearing

PLEASE TAKE FURTHER NOTICE that the hearing (the "**U.S. Sale Hearing**") to approve ~~the Motion~~and authorized the sale of the U.S. Debtors' Assets will be held on ~~[_____]~~**March 26, 2021** at __________ __.m. (prevailing Central Time) electronically via video/telephone before the Bankruptcy Court before the Honorable ~~______________ on [_____], 2021 at [●] [a.m./p.m.]~~Marvin Isgur, United States Bankruptcy Judge (prevailing Central Time). If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at 1-832-917-1510 and entering conference code ~~___________~~954554. You may also join by videoconference by use of an internet connection, using the website www.join.me, selecting "join a meeting," and entering meeting code "~~______________~~JudgeIsgur." At such hearing, the U.S. Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale of the U.S. Debtors' Assets to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the U.S. Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with the assumption and assignment of executory contracts and unexpired leases.

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PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern Time** (the "**Canadian Sale Hearing**"). Further details may be found on the Monitor's Website (defined below).

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale ~~Hearing~~Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the ~~Debtors~~Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale ~~Hearing~~Hearings.

The ~~Debtors~~Sellers' presentation to the Bankruptcy Court and CCAA Court for approval of a Successful Bid does not constitute the ~~Debtors~~Sellers' acceptance of the Successful Bid. The ~~Debtors~~Sellers shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Bankruptcy Court and CCAA Court.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **[~~______~~March 23], 2021 at 4:00 P.M. CST.** Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure or the CCAA, as applicable, and (d) be filed with both the Bankruptcy Court and the CCAA Court and served on undersigned counsel for the Debtors.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed ~~sale~~Sale as related to the U.S. Debtors, including the ~~Sale~~Bid Procedures Order (and attached bid procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at ~~https://dm.epiq11.com/freshfoodgroup~~https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at ~~https://ecf.txsb.uscourts.gov/~~https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the ~~proposed~~ noticing agent, Epiq Corporate Restructuring, LLC (~~freshfoodgroup@epiqglobal.com~~freshfoodgroup@epiqglobal.com), or (ii) counsel for the U.S. Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (~~mbales@foley.com).~~

mbales~~DATED: February 21, 2021~~

~~Respectfully submitted by:~~
~~**FOLEY & LARDNER, LLP**~~
~~/s/~~
~~John P. Melko (TX 13919600)~~
~~Email: jmelko@foley.com~~
~~Sharon M. Beausoleil (TX 24025245)~~
~~Email: sbeausoleil@foley.com~~
~~1000 Louisiana Street, Suite 2000~~
~~Houston, TX 77002~~
~~Telephone: 713.276.5500~~
~~and~~
~~Mark C. Moore (TX 24074751)~~

~~Email: mmoore~~@foley.com).

~~Melina T. Bales (TX 24106851)~~
~~Email: mbales@foley.com~~
~~2021 McKinney Avenue, Suite 1600~~
~~Dallas, Texas 75201~~

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~~Telephone: 214.999.4150~~

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada (the "**Monitor's Website**"). Should you require further information regarding the Canadian Debtors and the CCAA Proceedings, you may contact: (i) the Monitor at: freshfoodcanada.monitor@ca.ey.com; or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

~~**PROPOSED COUNSEL TO**~~
~~**DEBTORS AND DEBTORS-IN-POSSESSION**~~

~~**CERTIFICATE OF SERVICE**~~

~~I hereby certify that, on February 21, 2021, a true and correct copy of the foregoing document was served electronically by the Court's PACER system.~~

~~/s/~~ ____________

<u>Exhibit 1</u>

Proposed Assumed Contracts

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EXHIBIT ~~F~~D

~~Proposed~~ Form of Sale Notice

~~IN THE UNITED STATES BANKRUPTCY COURT~~
~~FOR THE SOUTHERN DISTRICT OF TEXAS~~
~~HOUSTON DIVISION~~

~~In re:~~		
~~COUNTRY FRESH HOLDING COMPANY INC., *et. al.*,~~[1]	§	~~Chapter 11~~
	§	
~~Debtors.~~	§	~~Case No.: 21-30574~~
	§	
	§	~~(Joint Administration Requested)~~
	§	

NOTICE OF (I) SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE U.S. DEBTORS AND ~~(II) SALE HEARING~~CANADIAN DEBTORS AND (II) SALE HEARINGS

PLEASE TAKE NOTICE that, on ~~[______]~~February 15, 2021, Country Fresh Holding LP and certain of its ~~above-captioned~~ debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

PLEASE FURTHER TAKE NOTICE that, on February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act*

~~[1] The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.~~

[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

(“**CCAA**”). The U.S. Debtors and the Canadian Debtors are collectively referred to as the “**Sellers**”.

PLEASE FURTHER TAKE NOTICE that, on February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. ~~__~~51] ~~(the “**Motion**”)~~ in the ~~United States~~ Bankruptcy Court ~~for the Southern District of Texas, Houston Division (the “**Bankruptcy Court**”)~~.

~~The Canadian affiliates of the Debtors[2](the “**Canadian Debtors**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). The U.S. Debtors and the Canadian Debtors are collectively, the “**Debtors**”).~~

~~On~~**PLEASE FURTHER TAKE NOTICE** that, on [______], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the “**Bid Procedures Order**”)[3] in the Chapter 11 Cases~~.~~, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the “**U.S. Bid Procedures**”) and conduct an auction (the “**Auction**”) to select a party or parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

On [______] 2021, the ~~Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**” and together with the Bankruptcy Court, the “**Courts**”) also entered an order (the “**Canadian Bid Procedures Order**” and together with the Bid Procedure Order, the “**Bid Procedures Orders**”)~~CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings ~~approving the stalking horse agreement and bid procedures in respect of the Debtors~~(the “**Amended and Restated Initial Order**”) which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Amended and Restated Initial Order (the “**Canadian Bid Procedures**” and, together with the U.S. Bid Procedures, the “**Bid Procedures**”).

PLEASE TAKE FURTHER NOTICE that the Bid Deadline under the Bid Procedures is **[March 19], 2021 at 4:00 p.m. (prevailing Central Time)**, and that any person or entity who wishes to participate in the Auction must comply with the participation requirements, bid requirements, and other requirements set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that the Sellers intend to conduct the Auction at which it will consider proposals submitted to the Sellers and their professionals, by and pursuant to the Bid Procedures as set forth in the Bid Procedures Order and the Amended and Restated

~~2 The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.~~

3 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

Initial Order, on **[March 22], 2021 at 10:00 a.m. (prevailing Central Time)**. Instructions to participate in the Auction via video will be provided to Qualified Bidders prior to the Auction.

PLEASE TAKE FURTHER NOTICE that the hearing (the "**U.S. Sale Hearing**") to approve and authorized the sale of the U.S. Debtors' Assets will be held on **[~~_____~~March 26], 2021** at __________ __.m. ____________________.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern Time** (the "**Canadian Sale Hearing**") ~~to approve the sale of the Canadian Assets will be held on [______], 2021 at __________ __.m. ____________________~~.

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearings.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **[~~_____~~March 23], 2021 at 4:00 P.M. CST.** Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure or the CCAA, as applicable, and (d) be filed with both the Bankruptcy Court and the CCAA Court and served on undersigned counsel for the ~~Debtors~~Sellers.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed ~~sale~~Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached ~~bid procedures~~Bid Procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the proposed noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii), counsel for the U.S. ~~counsel for the~~ Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed ~~sale~~Sale as related to the Canadian Debtors and the CCAA Proceedings, including the ~~Canadian Bid Procedures~~Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors~~,~~ (the "**Monitor**") at ~~https://www.ey.com/ca/~~ https://www.ey.com/ca/freshfoodcanada. Should you require further information regarding the Canadian Debtors and the CCAA Proceedings you may contact, (i) the Monitor at (freshfoodcanada.monitor@ca.ey.com); or (ii) ~~Canadian~~ counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

~~DATED:__________~~

~~Respectfully submitted by:~~

~~**FOLEY & LARDNER, LLP**~~
~~/s/~~ ____________________
~~John P. Melko (TX 13919600)~~

~~Email: jmelko@foley.com~~
~~Sharon M. Beausoleil (TX 24025245)~~
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~~1000 Louisiana Street, Suite 2000~~
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~~Telephone: 713.276.5500~~
~~and~~
~~Mark C. Moore (TX 24074751)~~
~~Email: mmoore@foley.com~~
~~Melina T. Bales (TX 24106851)~~
~~Email: mbales@foley.com~~
~~2021 McKinney Avenue, Suite 1600~~
~~Dallas, Texas 75201~~
~~Telephone: 214.999.4150~~
~~**PROPOSED COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION**~~

~~**CERTIFICATE OF SERVICE**~~

~~I hereby certify that, on ______________ true and correct copy of the foregoing document was served electronically by the Court's PACER system.~~

~~/s/~~ ________________

EXHIBIT E

Post Auction Notice

~~IN THE UNITED STATES BANKRUPTCY COURT~~
~~FOR THE SOUTHERN DISTRICT OF TEXAS~~
~~HOUSTON DIVISION~~

~~In re:~~		
~~COUNTRY FRESH HOLDING COMPANY INC., *et. al.*,[1]~~	§	~~Chapter 11~~
	§	
~~Debtors.~~	§	~~Case No.: 21-30574~~
	§	
	§	~~(Joint Administration Requested)~~
	§	

NOTICE OF DESIGNATION OF SUCCESSFUL BID AND BACK-UP BID

PLEASE TAKE NOTICE OF THE FOLLOWING:

On February ~~[___]~~15, 2021, Country Fresh Holding LP and certain of its ~~above-captioned~~ debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

On February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the

~~1 The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.~~

[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

Companies' Creditors Arrangement Act ("**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively referred to as the "**Sellers**".

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the U.S. Debtors' Entry into the Stalking Horse Bid ~~Protections; (C)~~Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (~~D~~E) Authorizing and Approving Assumption and Assignment Procedures; and (~~E~~F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. ~~__~~51] ~~(the "**Motion**")~~ in the ~~United States~~ Bankruptcy Court ~~for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**")~~.

~~The Canadian affiliates of the Debtors[2](the "**Canadian Debtors**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively, the "Debtors").~~

On [__________], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases~~.~~, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

~~The Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**" and together with the Bankruptcy Court, the "**Courts**") has also entered an order (the "**Canadian Bid Procedures Order**" and together with the Bid Procedure Order, the "**Bid Procedures Orders**")~~On [_______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings ~~approving the stalking horse agreement and these Bid Procedures and authorizing~~(the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the ~~bid and~~ sale and bid procedures ~~(~~annexed to the Amended and Restated Initial Order (the "**Canadian Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**")~~[3]~~.

Pursuant to the Bid Procedures Orders, (i) the deadline for submitting a Qualified Bid was ~~____________~~**[March 19], 2021 at prevailing Central Time** (the "**Bid Deadline**") and (ii) in

~~[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.~~

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

~~[3] Capitalized terms not defined herein shall have the meaning ascribed to them in the Bid Procedures.~~

the event that (x) the ~~Debtors~~Sellers timely received one or more Qualified Bids or (y) a Stalking Horse Bidder was selected and the ~~Debtors~~Sellers received a Qualified Bid that the ~~Debtors~~Sellers in their business judgment, in consultation with the Consultation Parties, determined to be the Initial Bid, the ~~Debtors~~Sellers would conduct the Auction to be held on **10:00 a.m. prevailing Central Time on [______] 2021** ~~on _______, 2021~~ (the "**Auction**").

On **_____________, 2021**, the ~~Debtors~~Sellers conducted the Auction in accordance with the Bid Procedures and certain rules distributed to Auction attendees prior to and at the Auction. At the Auction, the ~~Debtors~~Sellers determined that the highest or best offer was submitted by [●] (the "**Successful Bidder**" and the Successful Bidder's winning bid, the "**Successful Bid**") and the second highest or best offer was submitted by [●] (the "**Back-up Bidder**," and the Back-up Bidder's bid, the "**Back-up Bid**").

Exhibit 1 attached hereto is a copy of the final, fully-executed asset purchase agreement (the "**APA**," and the transaction contemplated thereby the "**Sale Transaction**") between the ~~Debtors~~Sellers and the Successful Bidder, containing the terms of the Successful Bid.

Important Dates and Deadlines

Sale Objection Deadline:

Objections (the "**Objections**") to consummation of the Sale Transaction, if any, shall be filed with both the Bankruptcy Court and the CCAA Court not later than **[___ a.m./p.m.] prevailing Central Time on [~~______~~March 23], 2021**. Any Objections not resolved prior to the Sale ~~Hearing~~Hearings shall be argued at the Sale ~~Hearing~~Hearings or such other time as set by the Bankruptcy Court and/or the CCAA Court.

Sale ~~Hearing~~Hearings:

The ~~Sale Hearing~~hearing to approve and authorized the sale of the U.S. Debtors' Assets pursuant to the Sale Transaction (the "**U.S. Sale Hearing**") shall be held electronically via video/telephone before the Bankruptcy Court before the Honorable [●] on ~~____________~~**[March 26], 2021 at [●] [a.m./p.m.] (prevailing Central Time)**. If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at **1-832-917-1510** and entering conference code ~~[________]~~954554. You may also join by videoconference by use of an internet connection, using the website **www.join.me**, selecting "**join a meeting**," and entering meeting code "~~**Judge______**~~**JudgeIsgur**." At such hearing, the U.S. Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale of the U.S. Assets to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the U.S. Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with any executory contracts or unexpired leases.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern time** (the "**Canadian Sale Hearing**").

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale ~~Hearing~~Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the ~~Debtors~~Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by ~~Debtors~~Sellers of the adjourned date at the Sale ~~Hearing.~~ Hearings.

The ~~Debtors~~Sellers' presentation to the Bankruptcy Court and CCAA Court for approval of a Successful Bid does not constitute the ~~Debtors~~Sellers' acceptance of the Successful Bid. The ~~Debtors~~Sellers shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Bankruptcy Court and CCAA Court.

If the Sale Transaction is not consummated with the Successful Bidder pursuant to the Successful Bid, the ~~Debtors~~Sellers shall designate the Back-up Bidder as the Successful Bidder and such Back-up Bidder's Back-up Bid as the Successful Bid.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed ~~sale~~Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached bid procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the proposed noticing agent ~~at: ____________~~, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii) counsel for the U.S. Debtors ~~listed below.~~

at: Foley & Lardner LLP, c/o ~~DATED:~~ ~~Respectfully submitted by:~~

~~**FOLEY & LARDNER, LLP**~~
~~/s/~~ ______________________
~~John P. Melko (TX 13919600)~~
~~Email: jmelko@foley.com~~
~~Sharon M. Beausoleil (TX 24025245)~~
~~Email: sbeausoleil@foley.com~~
~~1000 Louisiana Street, Suite 2000~~
~~Houston, TX 77002~~
~~Telephone: 713.276.5500~~
~~and~~
~~Mark C. Moore (TX 24074751)~~
~~Email: mmoore@foley.com~~

Melina T. Bales (~~TX 24106851~~mbales@foley.com).

~~Email: mbales@foley.com~~
~~2021 McKinney Avenue, Suite 1600~~
~~Dallas, Texas 75201~~
~~Telephone: 214.999.4150~~

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada. Should you require further information regarding the Canadian Debtors and the CCAA Proceedings you may contact, (i) the Monitor at freshfoodcanada.monitor@ca.ey.com; or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

~~**PROPOSED COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION**~~

~~**CERTIFICATE OF SERVICE**~~

~~I hereby certify that, on ______________, 2021February 21, 2021, a true and correct copy of the foregoing document was served electronically by the Court's PACER system.~~

~~/s/~~ ________________

Exhibit 1

Asset Purchase Agreement

[Link-to-previous setting changed from on in original to off in modified.].

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-21-00657098-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF LEE NICHOLSON
(SWORN ON FEBRUARY 24, 2021)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Joseph Reynaud
Tel: (514) 397-3019
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Lawyers for the Applicants

TAB 2

Court File No. CV-21-00657098-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	FRIDAY, THE 26th
	)	
JUSTICE HAINEY	)	DAY OF FEBRUARY, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc., Tiffany Gate Foods Inc. (collectively, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA"**) for an Order substantially in the form included in the Applicants Record was heard this day via video-conference due to the ongoing COVID-19 pandemic.

ON READING the affidavit of Stephen Marotta sworn February 16, 2021 and the Exhibits thereto (the "**Marotta Affidavit**"), the Pre-Filing Report of Ernst & Young Inc., in its capacity as proposed Monitor of the Applicants and the First Report of Ernst & Young Inc., in its capacity as Monitor of the Applicants (the "**Monitor**") and on being advised that the secured creditors who are likely to be affected by the Charges (as defined below) were given notice; and

UPON HEARING the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the DIP Lenders (as defined herein), counsel for the Stalking Horse Bidder (as defined herein), counsel for the Royal Bank of Canada and other counsel as listed on the Counsel Slip, no one else appearing for any party although duly served as appears on the affidavits of service of Lee Nicholson and Keisha Lackpatiah-Sealy and on reading the consent of Ernst & Young Inc. to act as the Monitor;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are "debtor companies" to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein), to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Marotta Affidavit or, with the consent of the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the

Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, subject to and in accordance with the Definitive Documents, the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, and subject to the terms of the Definitive Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, in accordance with the applicable real property lease. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in

respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

11. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, including the Budget, the Applicants are permitted, but not required, to pay amounts owing for goods or services supplied to the Applicants prior to February 17, 2021, provided that, the Applicants determine such payments are necessary to maintain the Business or the Property and are approved by the Monitor in consultation with the DIP Lenders.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding $200,000 in any one transaction or $1 million in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and

(c) pursue all avenues of restructuring of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material restructuring,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under

such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor twenty-four (24) hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including March 28, 2021, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants, the Monitor or the CRO, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the Monitor or the CRO, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which obligation may become due and payable after the commencement of these proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of US$2.5 million, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 46 and 48 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 herein.

APPOINTMENT OF CHIEF RESTRUCTURING ORGANIZATION

24. **THIS COURT ORDERS** Ankura Consulting Group, LLC ("**Ankura**") is hereby appointed as Chief Restructuring Organization (the "**CRO**") of the Applicants and shall, subject to the Orders of the Court granted from time to time in these proceedings, have the powers and obligations set out in the engagement letter dated February 15, 2021 (the "**Ankura Engagement Letter**"), which Ankura Engagement Letter is hereby approved.

25. **THIS COURT ORDERS** that the CRO shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the CRO Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

APPROVAL OF STOUT ENGAGEMENT

26. **THIS COURT ORDERS** that the engagement of Stout Capital, LLC ("**Stout**") by the Applicants as investment banker pursuant to the engagement letter dated October 30, 2020 is hereby approved (the "**Stout Engagement Letter**") and the payment of the monthly fees and expenses (the "**Monthly Fees**") and the transaction fees set out in the Stout Engagement Letter and described in the Marotta Affidavit (the "**Transaction Fee**") are hereby approved in accordance with the terms hereof.

27. **THIS COURT ORDERS** that Stout shall be entitled to the benefit of and are hereby granted a charge (the "**Transaction Fee Charge**") on the Property, which charge shall not exceed an aggregate amount of $2.5 million, as security for the Transaction Fee. The Transaction Fee Charge shall have the priority set out in paragraphs 46 and 48 herein.

28. **THIS COURT ORDERS** that Stout shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Stout Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination of reports and other information to the DIP Agent (as defined herein) and the DIP Lenders and their respective counsel, pursuant to and in accordance with the Definitive Documents, or as may otherwise be reasonably requested by the DIP Agent and the DIP Lenders;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the DIP Agent and the DIP Lenders and the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP Agent and the DIP Lenders and their respective counsel in accordance with the Definitive Documents;

(e) advise the Applicants in their development of their Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Monitor and the CRO shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business (in the case of Ankura, other than as contemplated in the Ankura

Engagement Letter), and shall not, by fulfilling their obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor and the CRO to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Agent and the DIP Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants are confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the director of the Applicants, the CRO and Stout, shall be paid their

reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, and in the case of the CRO and Stout subject to an allocation agreed between the Applicants and the US Debtors, in consultation with the Monitor and the DIP Lenders. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicants and counsel to the director of the Applicants on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the director of the Applicants, reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel and counsel to the director of the Applicants, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of U$750,000, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order, in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46 and 48 herein. With respect to the portion of their fees and disbursements allocated to the Applicants pursuant to paragraph 35 hereof, the CRO and Stout shall also be entitled to the benefit of the Administration Charge. For greater certainty, however, Stout's Transaction Fee shall not be secured by the Administration Charge, but rather by the Transaction Fee Charge.

DIP FINANCING

38. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute, enter into and deliver:

(a) the Superpriority Senior Secured Debtor-in-Possession Credit Agreement (the "**DIP Credit Agreement**") dated February 17, 2021 between, amongst others, Country Fresh Holdings, LLC ("**US Borrower**"), as borrower, certain of its U.S. subsidiaries, as guarantors (collectively with US Borrower, the "**US Debtors**"), the Applicants, as guarantors, and the lenders from time to time party thereto (the "**DIP Lenders**"), and Cortland Capital Market Services LLC, as administrative agent and collateral agent (the "**DIP Agent**"), pursuant to which, *inter alia*, the DIP Lenders have agreed to provide interim financing of up to US$13,416,000 plus capitalized interest thereon (the "**DIP Facility**") to the US Borrower to, among other things, fund the US Debtors' working capital requirements and other general corporate purposes of the US Debtors; and

(b) the Canadian Guaranty and Security Agreement (the "**DIP Guarantee**"), pursuant to which, *inter alia*, the Applicants have agreed to guarantee, in favour of the DIP Lenders, the obligations of the US Borrower and the other US Debtors under the DIP Credit Agreement, up to an amount equivalent to the aggregate of any and all advances made by any of the US Debtors to any of the Applicants (the "**Intercompany DIP Advances**") plus interest, provided that the Intercompany DIP Advances shall be made in accordance with and subject to the terms and conditions set forth in the DIP Credit Agreement, the DIP Guarantee, the Budget, the Intercompany Note (as such terms are defined in the DIP Credit Agreement) and the other Definitive Documents and with approval of the Monitor;

39. **THIS COURT ORDERS** that, in addition to the DIP Credit Agreement and the DIP Guarantee, the Applicants are also hereby authorized and empowered to execute and deliver such other credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, including the Budget and the Intercompany Note (as defined in the DIP Credit Agreement) (collectively with the DIP Credit Agreement and the DIP Guarantee, the "**Definitive Documents**"), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the DIP Credit Agreement, the DIP Guarantee and the other Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. **THIS COURT ORDERS** that the Applicants' obligations under the DIP Credit Agreement and the DIP Guarantee be secured by the following priority charges which shall have the priority set out in paragraphs 46 and 48 herein:

(a) a charge against the Property in favour of the US Borrower and the other US Debtors having made any Intercompany DIP Advance to any of the Applicants (the “**Lending US Debtors**”), which shall be held by such US Borrower and other US Debtors for the sole benefit of the DIP Agent and the DIP Lenders, securing the full amount of any Intercompany DIP Advances outstanding, plus any unpaid interest thereon, made during the course of these proceedings (the “**Intercompany DIP Charge**”); and

(b) a charge against the Property for the benefit of the DIP Agent and the DIP Lenders securing the Applicants’ obligations under the DIP Guarantee in an amount equal to the Intercompany DIP Advances outstanding plus unpaid interest thereon and the reasonable fees and disbursements of Canadian counsel to the DIP Lenders at their standard rates and charges both before and after the making of this Order (the “**DIP Lenders Charge**”).

41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent and the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders’ Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents or the DIP Lenders’ Charge, the DIP Agent and the DIP Lenders, as applicable, may, make demand, accelerate payment and give other notices, provided that, the DIP Agent and the DIP Lenders must apply on five (5) prior business days’ written notice (which may include the service of materials in connection with such an application to this Court) to the Applicants and the Monitor, to enforce against or exercise any other rights and remedies in respect of the Applicants or the Property under or pursuant to the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents and the DIP Lenders’ Charge, including without limitation, to consolidate any amounts that may be owing by the DIP Lenders against the obligations of the Applicants to the DIP Lenders under the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents or the DIP Lenders’ Charge, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

42. **THIS COURT ORDERS AND DECLARES** that the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* (the "**BIA**"), with respect to the DIP Credit Agreement, the DIP Guarantee and the other Definitive Documents.

43. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents, the Intercompany DIP Charge and the DIP Lenders' Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Agent, the DIP Lenders or the Lending US Debtors, whether under this Order (as made prior to the Variation), under the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents, or the Intercompany Note with respect to any advances made or obligations incurred prior to the DIP Agent, the DIP Lenders or the Lending US Debtors being given notice of the Variation, and the DIP Agent, the DIP Lenders and the Lending US Debtors shall be entitled to rely on this Order as issued (including, without limitation, the Intercompany DIP Charge and the DIP Lenders' Charge) for all advances so made and other obligations set out in the DIP Credit Agreement, the DIP Guarantee and the other Definitive Documents.

CANADIAN INTERCOMPANY ADVANCES

44. **THIS COURT ORDERS** that to the extent that any one or more of the Applicants (the "**Lending Applicant**") after the date of this Order, makes any payment or incurs or discharges any obligation that is a payment or obligation any of one or more of the other Applicants or otherwise transfers value to or for the benefit of one or more of the other Applicants, the applicable Lending Applicant shall be entitled to the benefit of and is hereby granted a charge (the "**Canadian Intercompany Charge**") on the applicable recipient's Property, which charge shall be in the aggregate amount of such payments, obligations or transfers. The Canadian Intercompany Charge shall have the priority set out in paragraphs 46 and 48 herein.

45. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, the Applicants, with approval of the Monitor and the DIP Lenders, are permitted, but not required, to make advances or payments or incur or discharge any obligations that is an obligation of any of one or more of the US Debtors and the Applicants shall receive adequate protections or security in respect of any such payments or incurrence or discharge of any such obligations provided for in an order to be rendered by the U.S. Bankruptcy Court for the Southern District of Texas (Houston Division) (the "**U.S. Court**") in the proceedings styled *In re Country Fresh Holding Company Inc., et al*. (Case No. 21-30574).

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge, the Intercompany DIP Charge, the DIP Lenders' Charge, the Transaction Fee Charge and the Canadian Intercompany Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of US$750,000);

Second – Intercompany DIP Charge and DIP Lenders' Charge;

Third – Directors' Charge (to the maximum amount of US$2.5 million);

Fourth – Transaction Fee Charge (to the maximum amount of US$2.5 million); and

Fifth – Canadian Intercompany Charge.

47. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

48. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person other than a Person with a valid and perfected purchase money security interest under the *Personal Property*

Security Act (Ontario) or such other applicable provincial legislation (a "**PMSI Lessor**") solely with respect to equipment leased to the Applicants by such PMSI Lessor. For greater certainty, a PMSI Lessor shall not have any priority to the Charges in respect of any Property which is not the equipment leased to the Applicants by such PMSI Lessor.

49. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, and of the applicable charge(s) entitled to the benefit of the Charges (collectively, the "**Chargees**") which may be affected by the Applicants granting any Encumbrances over any Property that rank in priority or *pari passu* with any such Charges, or further Order of this Court.

50. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the DIP Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

BIDDING AND SALE PROCEDURES

52. **THIS COURT ORDERS** that (a) the Bidding and Sale Procedures attached hereto as Schedule "A" (the "**Bidding and Sale Procedures**"); (b) the Sale Notice attached hereto as Schedule "B"; and (c) the Post Auction Notice attached hereto as Schedule "C", are each hereby approved.

53. **THIS COURT ORDERS** that the Applicants, the Monitor, the CRO and Stout are hereby authorized and directed to carry out the Bidding and Sale Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Bidding and Sale Procedures.

54. **THIS COURT ORDERS** that the Applicants are hereby authorized to execute the asset purchase agreement dated as of February 15, 2021 (the "**Stalking Horse Purchase Agreement**") among the Applicants, the US Debtors, and Stellex/CF Buyer (US) LLC and Stellex/CF Buyer (CN) Inc. (collectively, the "**Stalking Horse Bidder**") *nunc pro tunc*, provided that nothing herein approves the sale and the vesting of the Assets (as defined in the Stalking Horse Purchase Agreement) to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement and that the approval of the sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the Bidding and Sale Procedures (the "**Sale Hearing**").

55. **THIS COURT ORDERS** that each of the Applicants, the Monitor, the CRO and Stout and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Bidding and Sale Procedures, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Applicants, the Monitor, the CRO and Stout , as applicable, as determined by this Court. For greater clarity, nothing in this

paragraph limits any liability or obligation of the Applicants pursuant to the Stalking Horse Purchase Agreement.

56. **THIS COURT ORDERS** that Bidders (as defined by the Bidding and Sale Procedures) shall not contact, communicate with or have dealings with the customers and suppliers of the Applicants with respect to the Applicants, their business or their assets or in relation to any bid related to the Applicants, their business or their assets, except with the written consent of the Applicants and the Monitor.

ASSUMPTION AND ASSIGNMENT PROCEDURES

57. **THIS COURT ORDERS** that the Assumption and Assignment Notice attached hereto as Schedule "D" (the "**Assumption and Assignment Notice**") is hereby approved.

58. **THIS COURT ORDERS** that as soon as reasonably practicable following the date of this Order the Applicants shall serve a copy of the Assumption and Assignment Notice, on counterparties to contracts that may be assigned to the Successful Bidder (as defined in the Bidding and Sale Procedures) pursuant to the Stalking Horse Purchase Agreement or other definitive asset purchase agreement (the "**Proposed Assigned Contracts**"), by ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the counterparties to the Proposed Assigned Contracts at their respective addresses as last shown on the records of the Applicants. The Assumption and Assignment Notice shall include the proposed amount to cure all monetary defaults in relation to the Proposed Assigned Contract other than (a) those arising by reason only of the Applicants' insolvency, (b) the commencement of these proceedings; or (c) the Applicants' failure to perform a non-monetary obligation (the "**Cure Amount**").

59. **THIS COURT ORDERS** that the Monitor shall cause the Assignment and Assumption Notice to be posted on the Monitor's Website (as defined below) as soon as reasonably practicable after service thereof in accordance with paragraph 58 hereof.

60. **THIS COURT ORDERS** that service of the Assumption and Assignment Notice on the counterparties of the Proposed Assigned Contracts and the posting on the Monitor's Website in accordance with paragraphs 58 to 59 hereof shall be proper notice of the Sale Hearing and proposed assignment of their Proposed Assigned Contract.

61. **THIS COURT ORDERS** that a counterparty to a Proposed Assigned Contract ("**Contract Counterparty**") set forth on the Assumption and Assignment Notice may file an objection (a "**Contract Objection**") to the proposed assignment of the applicable Proposed

Assigned Contract and/or the proposed Cure Amounts, if any. All Contract Objections must (a) state, with specificity, the legal and factual basis for the objection and, if applicable, what Cure Amounts are required, (b) include appropriate documentation in support thereof, and (c) to the extent the Proposed Assigned Contract that is the subject of the Contract Objection relates to the Applicants, the Business or the Property, be served on the Monitor and counsel to the Applicants so as to be actually received no later than 5:00 p.m. EST on the later of (i) March 23, 2021, and (ii) fourteen (14) calendar days following service of the Assumption and Assignment Notice (the "**Contract Objection Deadline**").

62. **THIS COURT ORDERS** that if a Contract Counterparty files and serves a Contract Objection in accordance with paragraph 61 above with respect to a Proposed Assigned Contract that relates to the Applicants, the Business or the Property, and the parties are unable to consensually resolve the dispute, such objection will be determined at the Sale Hearing or such other date determined by this Court. A timely and properly filed Contract Objection will reserve such objecting Contract Counterparty's rights against the Applicants only with respect to (a) the assignment of the Proposed Assigned Contract at issue, to the extent objected to, and/or (b) the Cure Amounts, to the extent objected to, but will not constitute an objection to the remaining relief requested at the Sale Hearing.

63. **THIS COURT ORDERS** that (a) prior to the closing date of a transaction approved at the Sale Hearing (the "**Sale**"), the Applicants (x) discover contracts inadvertently omitted from the list of Proposed Assigned Contracts; or (y) elect to modify the previously stated Cure Amounts associated with a Proposed Assigned Contract, or (b) until the earlier of (i) ninety (90) days following the closing date of the Sale, (ii) the effective date of a confirmed plan of compromise, arrangement or reorganization for the Applicants, or (iii) termination or discharge of these proceedings, the Successful Bidder, in consultation with the Applicants, designates contracts not previously designated as a Proposed Assigned Contract which will proposed to be assigned pursuant to an order of this Court under Section 11.3 of the CCAA, the Applicants will promptly serve a supplemental notice of potential assignment on the counterparty to each impacted contract (a "**Supplemental Assumption and Assignment Notice**") and provide a reasonable opportunity for the counterparties to object thereto.

64. **THIS COURT ORDERS** that the inclusion of a Proposed Assigned Contract on an Assumption and Assignment Notice (or a Supplemental Assumption and Assignment Notice), will not: (a) obligate the Successful Bidder to take assignment of such Proposed Assigned Contract; (b) prevent the Applicants from disclaiming such Proposed Assigned Contract in

accordance with this Order and the CCAA; or (c) constitute any admission or agreement of the Applicants that such Proposed Assigned Contract is a contract that may only be assigned pursuant to an order of this Court under Section 11.3 of the CCAA.

SERVICE AND NOTICE

65. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1,000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

66. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<www.ey.com/ca/freshfoodgroup>' ("**Monitor's Website**").

67. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

68. **THIS COURT ORDERS** that the Applicants, the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

69. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

70. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

71. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

72. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

73. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network

and adopted by this Court and the U.S. Court and attached hereto as Schedule “E” (the “**JIN Guidelines**”), are hereby approved by this Court for purposes of these proceedings and the parties to these proceedings and any other Person shall be governed by and shall comply with the JIN Guidelines.

74. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days’ notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

75. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for filing or entry.

Schedule "A" - Bidding and Sale Procedures

[Attached]

BID AND SALE PROCEDURES

Set forth below are the bid and sale procedures (the "**Bid Procedures**") to be employed with respect to the proposed disposition (the "**Sale**") of substantially all of the assets of Country Fresh Holdings Company Inc. and its U.S. debtor affiliates, as debtors and debtors in possession (collectively, the "**U.S. Debtors"**[1]), in jointly administered Chapter 11 cases (the "**Chapter 11 Cases**") and its Canadian affiliates (the "**Canadian Debtors"**[2]) that have commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The U.S. Debtors and the Canadian Debtors are the "**Sellers**".

Bid Procedures Motions

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Debtors' Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. 51] (the "**Bid Procedures Motion**") in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") seeking the entry of an order: (a) approving bidding procedures, (b) approving stalking horse bid protections, (c) scheduling an auction and sale hearing, (d) approving the assumption and assignment procedures for executory contracts and unexpired leases; and (e) approving the sale of substantially all of the assets of the U.S. Debtors free and clear of all liens, claims, encumbrances and interests.

These Bid Procedures were approved and authorized by the Bankruptcy Court's *Order (A) Authorizing and Approving Bid Procedures; (B) Authorizing the Debtors' Entry into the Stalking Horse Purchase Agreement; (C) Authorizing and Approving Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases.

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[1] The U.S. Debtors in the Chapter 11 Cases and the last four digits of each U.S. Debtors' taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Fresh Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The U.S. Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

[3] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bid Procedures Order entered by the Bankruptcy Court.

On February [___], 2021, the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**" and together with the Bankruptcy Court, the "**Courts**") issued and entered an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved these Bid Procedures, approved the execution of the stalking horse agreement subject to higher and better offers, and authorized the Canadian Debtors to market their business and assets in accordance with these Bid Procedures.

To the extent that these Bid Procedures require the Sellers to consult with any Consultation Party (as defined below) in connection with making a determination or taking any action, or in connection with any other matter related to these Bid Procedures or at the Auction (as defined below), if any, the Sellers shall do so in a regular and timely manner prior to making such determination or taking any such action; provided, however, that during any period in which a Consultation Party has submitted a Qualified Bid and has become a Qualified Bidder, such Consultation Party shall no longer be considered a Consultation Party under these Bid Procedures.

The Sellers shall exercise their reasonable business judgment when taking any action, making any decision or determination, or reviewing or considering any proposal under these Bid Procedures, including, without limitation, with respect to determining the Initial Bid, the Successful Bidder(s), the Back-Up Bidder(s), and the Qualified Bidder(s) (each as defined below). In the case of the Canadian Debtors, the Sellers shall also consult with Ernst & Young Inc., in its capacity as the court-appointed Monitor of the Canadian Debtors (the "**Monitor**") in connection with the sale of the Canadian Debtors' assets.

The Bidding Process

1. Bidding Process. Set forth below, is the general process to be employed by the Sellers with respect to the Sale of substantially all of their assets as set forth in the Stalking Horse Purchase Agreement (as defined below) attached to the Bid Procedures Motion (the "**Assets**"):

a. From and after the Petition Date and the date of the Amended and Restated Initial Order, the Sellers, through their investment banker, Stout Capital, LLC ("**Stout**") shall market to those parties reasonably known by the Sellers to have a potential interest in purchasing some or all of such Assets and any other parties expressing an interest therein.

b. The Sellers have obtained a "stalking horse" bid from Stellex/CF Buyer (US) and Stellex/CF Buyer (CN) Inc. (together, the "**Stalking Horse Bidder**"). The Sellers and the Stalking Horse Bidder have entered into an asset purchase agreement, a form of which is attached to the Bid Procedures Motion (the "**Stalking Horse Purchase Agreement**"), which contemplates the sale of the Assets to the Stalking Horse Bidder for a total consideration of: (a) $30 million in cash consideration; (b) $25 million senior secured note; (c) assumption of certain liabilities relating to PACA Claims, Assumed Prepetition Payables and Post-Petition Trade Payables not to exceed, in the aggregate, $21.5 million; and (d) Cure Costs (the "**Stalking Horse Bid**").

c. As part of the Bid Procedures Order, the Bankruptcy Court has approved stalking horse bid protections including a Break-Up Fee in the amount of $1,450,000 and Expense Reimbursement in the amount of $700,000 (collectively, the "**Stalking Horse Bid Protections**").

d. Any person interested in making an offer to purchase some or all of the Assets shall comply with these Bid Procedures. Any person interested may make, and the Sellers shall consider, a bid for some or all of the Assets in accordance with these Bid Procedures.

e. Only Qualified Bids (as defined below) shall be considered by the Sellers.

f. If the Sellers do not receive another Qualified Bid prior to the Bid Deadline (as defined below), then the Stalking Horse Bidder's offer to acquire the Assets under the Stalking Horse Purchase Agreement shall constitute the Successful Bid (as defined below).

g. If the Sellers receive another Qualified Bid prior to the Bid Deadline, then the Sellers, after consultation with the Official Committee of Unsecured Creditors (if appointed), the Monitor, the Ad Hoc Group (as defined in the DIP Order) and the DIP Lenders (as defined in the DIP Order) (each a "**Consultation Party**" and collectively, the "**Consultation Parties**"),[4] shall

[4] The "**DIP Order**" means the Bankruptcy Court's *Interim Order (I) Authorizing the Debtors to Obtain Postpetition*

select the highest or otherwise best Qualified Bid as the Successful Bid after the Sellers have conducted an Auction and considered, among other things, the financial and contractual terms relevant to the Sale, including those factors affecting speed and certainty of consummating the Sale or the overall value to be provided thereby.

h. Upon failure to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder (as defined below) (or Back-Up Bidder (as defined below), if applicable), the Sellers shall be permitted to (i) retain the Successful Bidder's Deposit (as defined below) as liquidated damages and (ii) select the next highest or otherwise best Qualified Bid to be the Successful Bid and to consummate such transaction without further order of the Bankruptcy Court or the CCAA Court; provided, that the release of the Deposit paid by the Stalking Horse Bidder shall be governed by the terms and conditions set forth in the Stalking Horse Purchase Agreement.

i. All Qualified Bidders (as defined below) at the Auction shall be deemed to have (i) consented to the core jurisdiction of the Bankruptcy Court and the CCAA Court, as applicable, with respect to these Bid Procedures, the bid process, the Auction, any Sale, the Sale Hearings (as defined below), or the construction or enforcement of any agreement of any other document related to the Sale; and (ii) waived any right to a jury trial in connection with any of the foregoing and the construction and enforcement of the Qualified Bidder's contemplated transaction documents, as applicable; and (iii) consented to entry of a final order or judgment in any way related to any of the foregoing if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Participation Requirements

2. Potential Bidder. Any person other than the Stalking Horse Bidder, the DIP Secured Parties (as defined in the DIP Order) and the Prepetition Secured Parties (as defined in the DIP Order) desiring to participate in the bidding process or otherwise be considered for any purpose under these Bid Procedures (each, a "**Potential Bidder**") will be required to deliver (unless previously delivered) to the Sellers, on or before the Bid Deadline, the following materials:

a. an executed confidentiality agreement on terms acceptable to the Sellers (a "**Confidentiality Agreement**"), to the extent not already executed;

b. an executed asset purchase agreement in PDF with an accompanying MS-

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Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 42]. The DIP Order is available on the U.S. Debtors' claims agent's website at https://dm.epiq11.com/countryfresh or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/.

WORD format document, and a mark-up of the Stalking Horse Purchase Agreement, if any, marked to show all changes of its proposed offer as compared to the Stalking Horse Purchase Agreement (the "**Bidder's APA**");

c. in a form acceptable to the Sellers and their advisors, in consultation with the Consultation Parties: (i) financial information demonstrating the financial wherewithal of such Potential Bidder's ability to consummate the proposed transaction as follows: (x) current financial statements of the Potential Bidder, (y) if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current financial statements of the equity holder(s) of the Potential Bidder or (z) such other information as required by the Sellers, in consultation with the Consultation Parties, and (ii) a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale; and

d. any other evidence the Sellers, in consultation with the Consultation Parties, may reasonably request to evaluate the Potential Bidder.

3. Qualified Bid Requirements. A bid ("**Bid**") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements in this paragraph 3 and all subparts (the "**Bid Requirements**") shall constitute a "**Qualified Bid**". The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bid Procedures and at all times. To be a Qualified Bid, the Bid must:

a. Disclose the identity of the Potential Bidder and each entity that will be participating in its Bid, including any and all terms regarding or restricting such participation, and provide proof the Potential Bidder is legally empowered, by power of attorney, corporate authorization and approval from Potential Bidder's board of directors (or comparable governing body) to submit, execute, and close the transactions contemplated in such Bid;

b. Include an earnest-money deposit (the "**Deposit**") in cash or in other form of immediately available U.S. funds equal to 10% of the aggregate value of the Potential Bidder's cash and non-cash consideration to be held in the Sellers' counsel's trust account for the benefit of the U.S. Debtors and the Canadian Debtors;

c. Specify that the aggregate amount of cash and other consideration being offered by the Potential Bidder exceeds the aggregate sum of the following: (i) the Purchase Price (as defined in the Stalking Horse Purchase Agreement); (ii) an amount in cash sufficient to satisfy the Stalking Horse Bid Protections payable to the Stalking Horse Bidder; and (iii) minimum overbid amount of $500,000 in cash or cash equivalents (collectively, the "**Minimum Overbid**");

d. Indicate whether it is an all-cash offer (including confirmation that the cash component of the Bid is based in U.S. Dollars) or consists of certain non-cash components, such as a credit bid and/or the assumption of liabilities and provide a detailed analysis of the value of any non-cash component of the Bid, if any, and back-up documentation to support such value, and any other information the Sellers, in consultation with the Consultation Parties, may reasonably request;

e. Identify the Assets the Potential Bidder is agreeing to purchase and assume;

f. Identify any executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale and: (i) provide for the payment of all cure costs related to such executory contracts and unexpired leases; and (ii) provide evidence of ability to comply with section 365 of the Bankruptcy Code and section 11.3 of the CCAA;

g. Identify all liabilities the Potential Bidder seeks to assume, if any, including any employees to be offered employment and proposed treatment of wages and benefits;

h. Include all non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid;

i. Provide that the Assets are being purchased "as is, where is," and that such Potential Bidder is not relying upon any representation or warranty from the Sellers, or their bankruptcy estates or any person or entity, except as otherwise provided in the Stalking Horse Purchase Agreement, if any;

j. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Sellers in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the purchased Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Sellers, in consultation with the Consultation Parties;

k. Include sufficient financial or other information to demonstrate that the Bid is not conditioned on (i) obtaining financing; (ii) any internal approval; (iii) the outcome or review of unperformed due diligence, but may be subject to the accuracy at closing of specified representations and warranties or the satisfaction of specified, usual and customary conditions (including required Bankruptcy Court and CCAA Court approval), which shall be acceptable to the Sellers after consultation with the Consultation Parties;

l. Acknowledges that the Potential Bidder will not seek any transaction, termination, topping, work or break-up fee, expense reimbursement, or any similar type of payment or reimbursement and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process;

m. Include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Sellers, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;

n. Set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale;

o. Contain no conditions to closing of the Sale on the receipt of any third party approvals (excluding required Bankruptcy Court and CCAA Court approvals);

p. Confirms that the Potential Bidder consents to the jurisdiction of the Bankruptcy Court and the CCAA Court and agrees to be bound by the Bid Procedures, including willingness to serve as the Back-Up Bidder, if selected by the Sellers, and waives any right to a jury trial in connection with any disputes relating to the Auction and construction and enforcement of these Bid Procedures;

q. Provide an express statement that: (a) the Potential Bidder agrees to all terms of the Bidding Procedures; and (b) the Potential Bidder has not engaged in any collusive discussion with any other Potential Bidder;

r. Provide that closing of the contemplated transactions of the Bid shall occur no later than March 31, 2021;

s. Provide that the offer (a) is binding, unconditional and irrevocable until the Successful Bidder and Back-Up Bidder are selected and such Potential Bidder is not selected as either the Successful Bidder or the Back-Up Bidder and (b) is not subject to any due diligence condition, contingencies of any kind or character, indemnities, or qualifications relating to due diligence or board approval; and

t. Include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets and the liabilities to be assumed, if any, prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets and the liabilities to be assumed, if any, in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets and the liabilities to be assumed, if any, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's asset purchase agreement.

Notwithstanding the foregoing, where there are multiple Bids for different Assets that are not materially overlapping and that, when taken together, would otherwise constitute a Qualified Bid, the Sellers, in consultation with the Consultation Parties, may designate such Bids together as a Qualified Bid and may negotiate such amendments or modifications to such individual Bids as may be necessary for them to no longer be overlapping.

4. **Qualified Bidders**. A Potential Bidder who delivers the documents and the Deposit described in Paragraphs 2 and 3 (including all subparagraphs) above and who the Sellers determine, in consultation with the Consultation Parties, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale will be deemed to be a "Qualified Bidder." The Sellers' advisors will notify each Potential Bidder in writing (which may be via email) whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder, the DIP Secured Parties and the Prepetition Secured Parties shall be deemed Qualified Bidders for all purposes under these Bid Procedures and at all times.

a. If any Potential Bidder is determined by the Sellers, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Sellers will refund such Potential Bidder's Deposit and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.

b. The Sellers, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder prior to the Bid Deadline that its Bid is not a Qualified Bid (a "**Non-Qualifying Bid**") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid by the Bid Deadline.

c. Between the date that the Sellers notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Sellers may discuss, negotiate, seek clarification of, or request additional information regarding any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse Purchase Agreement, without the written consent of the Sellers, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bid Procedures; provided, that any Qualified Bid may be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bid Procedures.

5. **Right to Credit Bid**. At the Auction, if any, any Qualified Bidder who holds a valid and perfected lien on any assets of the Sellers' estates (a "**Secured Creditor**"), including, for the avoidance of doubt, the DIP Secured Parties, shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the

Bankruptcy Code and to the extent permitted by section 363(k) of the Bankruptcy Code, the CCAA or applicable law; provided, that nothing herein shall impact any parties' rights with respect to challenges to the liens or claims of any Secured Creditor.

6. **Due Diligence**. After receipt of the Confidentiality Agreement, Potential Bidders shall be eligible to receive due diligence information and access to the Sellers' electronic data room and to additional non-public information regarding the Sellers.

a. **Written Request Required**. Any due diligence requests must be in writing and sent to Aaron Perez of Stout at aperez@stout.com.

b. **Deadline**. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Sellers shall have no obligation to furnish any due diligence information.

c. **Sellers' Obligations**. The Sellers and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; provided, that the Sellers may withhold any diligence materials that the Sellers determine are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Sellers, in consultation with the Consultation Parties, determine is a competitor of the Sellers or is affiliated with any competitor of the Sellers. Neither the Sellers nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder.

Notice Parties

7. **Notice Parties**. The following parties are referred to herein and defined as the "Notice Parties" for the purpose of these Bid Procedures:

Counsel for the Sellers

John P. Melko
Sharon M. Beausoleil
Foley & Lardner LLP
1000 Louisiana Street, Suite 2000
Houston, TX 77002

Joseph Reynaud
Danny Duy Vu
Lee Nicholson
Stikeman Elliott LLP
199 Bay St., Suite 5300
Toronto, ON M5L 1B9

Counsel for the Ad Hoc Group and the DIP Lenders

Elizabeth R. McColm
John T. Weber
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

-and-

Tracy C. Sandler
Richard M. Borins
Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 2600, P.O. Box 50
Toronto ON M5X 1B5
TSandler@osler.com
RBorins@osler.com

The Monitor

Alex Morrison
Allan Yao
Ernst & Young Inc.
100 Adelaide St W
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Alex.F.Morrison@parthenon.ey.com
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Counsel to the Monitor

Rebecca Kennedy
Puya Fesharaki
Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7
rkennedy@tgf.ca
pfesharaki@tgf.ca

AND

Counsel for the Unsecured Creditors' Committee:

[________________________]
[________________________]
[________________________]

AND

United States Trustee:

Hector Duran
Stephen Statham
Trial Attorneys
515 Rusk Street, Suite 3516
Houston, TX 77002
Hector.Duran.Jr@usdoj.gov
Stephen.Statham@usdoj.gov

Bid Deadline and Requirements

8. **Bid Deadline**. A Qualified Bidder, other than the Stalking Horse Bidder, that desires to make a Bid for some or all of the Assets shall deliver written copies of its Bid that satisfies the Bid Requirements by email (in .pdf or similar format) so that such is **actually received** no later than **4:00 p.m. prevailing Central Time on March 19, 2021** (the "**Bid Deadline**") by the Sellers. The Sellers shall then distribute any Bids received prior to the Bid Deadline to the Notice Parties.

9. **Bid Rejection**. In determining whether a Bid is a Qualified Bid, the Sellers, in consultation with the Consultation Parties, may reject any Bid that: (a) is on terms that are materially more burdensome or conditional than the terms of the Stalking Horse Purchase Agreement; (b) requires the Sellers to indemnify the Qualified Bidder or any other person; (c) includes non-cash consideration which is not freely marketable; (d) is subject to any due diligence, financing condition or other contingencies or conditions that are not included in the Stalking Horse Purchase Agreement; or (e) is received after the Bid Deadline.

10. **Initial Bid**. After the Bid Deadline, the Sellers, after consultation with the Consultation Parties, shall determine which Qualified Bid represents the then highest or otherwise best value to the Sellers (the "**Initial Bid**"). No later than 12:00 p.m. Central Time on the day prior to the Auction, if any, the Sellers shall distribute copies of the Initial Bid to each Qualified Bidder.

Auction

11. **Auction**. If the Sellers receive at least one Qualified Bid (other than that of the Stalking Horse Bidder) on or prior to the Bid Deadline, the Sellers will conduct an auction via video conferencing (the "**Auction**") for the sale of the Assets. **The Auction, if one is necessary, will commence at 10:00 a.m. prevailing Central Time on March 22, 2021. Instructions to participate via video in the Auction will be provided to Qualified Bidders prior to the Auction.**

12. **Participation**. Only Qualified Bidders are eligible to participate in the Auction. No later than 5:00 p.m. prevailing Central Time on the day prior to the Auction, each Qualified Bidder must inform the Sellers whether it intends to participate in the Auction. The Sellers will promptly thereafter inform in writing each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have indicated their intent to participate in the Auction. If the Sellers do not receive any Qualified Bids other than the Stalking Horse Bid or if no Qualified Bidder other than the Stalking Horse Bidder has indicated its intent to participate in the Auction, the Sellers will not hold an auction and the Stalking Horse Bidder will be named the Successful Bidder.

13. Auction Procedures. The Auction shall be governed by the following procedures:

a. Attendance. Only the Sellers, the Consultation Parties, the Stalking Horse Bidder, and any other Qualified Bidder who has submitted a Qualified Bid and each of their respective advisors will be entitled to attend the Auction, and only the Stalking Horse Bidder and Qualified Bidders will be entitled to make any subsequent Overbids at the Auction;

b. No Collusion. Each Qualified Bidder participating at the Auction shall be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding or the Sale; and (ii) its Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder or the Back-Up Bidder;

c. Minimum Overbid. The Auction shall begin with the Initial Bid and, any bid made at the Auction by a Qualified Bidder subsequent to the Sellers' announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of $200,000;

d. Bidding Disclosure. The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders and that all material terms of each subsequent bid will be fully disclosed to all other bidders throughout the entire Auction;

e. Bidding Conclusion. The Auction shall continue in one or more rounds of bidding and will conclude after (i) each participating Qualified Bidder has had the opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid or bids and (ii) there is only one offer that the Sellers, in consultation with the Consultation Parties, determine is the Successful Bid; and

f. No Post-Auction Bids. No bids will be considered for any purpose after the Auction has concluded.

Selection of Successful Bid

14. Successful Bid Selection. At the conclusion of the Auction, or as soon as practicable thereafter, the Sellers, in consultation with their advisors and the Consultation Parties, will: (a) review each Qualified Bid, considering, among other things, (i) the amount of the

Purchase Price, (ii) the form of consideration being offered and, if applicable, the proposed allocation of same, (iii) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof and (iv) the net benefit to the Sellers' estates; and (b) identify the highest or otherwise best offer for the Assets received at the Auction (the "**Successful Bid**" and the bidder making such bid, the "**Successful Bidder**").

15. **Successful Bid Acknowledgement**. Within one business day after adjournment of the Auction, 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.

Selection of Back-Up Bidder

16. **Back-Up Bidder**.

a. Notwithstanding anything in these Bid Procedures to the contrary, if an Auction is conducted for some or all of the Assets, the Qualified Bidder with the next-highest or otherwise second-best bid at the Auction for such Asset(s), as determined by the Sellers, after consultation with the Consultation Parties (the "**Back-up Bid**"), shall be required to serve as a back-up bidder (the "**Back-up Bidder**") for such Asset(s), and each Qualified Bidder in submitting its Bid shall agree and be deemed to agree to be the Back-up Bidder if so designated by the Sellers. For greater certainty, the Sellers shall have the ability to select one or more Back-Up Bidders for non-overlapping Assets.

b. The identity of the Back-up Bidder and the amount and material terms of the Back-up Bid shall be announced by the Sellers at the conclusion of the Auction, if any, at the same time the Sellers announce the identity of the Successful Bidder. The Back-up Bidder shall be required to keep its Bid (or if the Back-up Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Back-up Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.

c. If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Back-up Bidder shall be deemed the Successful Bidder for all purposes. The Sellers shall consummate all transactions contemplated by the Bid of such Back-up Bidder without further order of the Bankruptcy Court and CCAA Court or notice to any party in accordance with the terms of such Bid. Sellers specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance; provided, that remedies against the Stalking Horse Bidder shall be governed by the terms and conditions set forth in the Stalking Horse Purchase Agreement.

The Sale Hearing

17. **Allocation.** The Successful Bidder(s), and any Back-Up Bidder(s), shall provide the Sellers and the Monitor with an allocation of the offer consideration among the Assets as soon as practicable in advance of the Sales Hearings (defined below).

18. **U.S. Sale Hearing**. On **March 26, 2021 at [ ]:00 [ ].m. prevailing Central Time**, the U.S. Debtors will seek entry of an order from the Bankruptcy Court at a hearing (the "**U.S. Sale Hearing**") to approve and authorize a Sale of the U.S. Debtors' Assets to the Successful Bidder pursuant to the Successful Bid (the "**U.S. Sale Order**"). With the consent of the Successful Bidder and the Consultation Parties, the U.S. Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the U.S. Sale Hearing or otherwise.

19. **Canadian Sale Hearing**. On **March 26, 2021 at 12:00 p.m. prevailing Eastern Time,** the Canadian Debtors will seek entry of an order from the CCAA Court at a hearing (the "**Canadian Sale Hearing**") to approve and authorize a Sale of the Canadian Debtors' Assets to the Successful Bidder pursuant to the Successful Bid (the "**Canadian Sale Order**"). With the consent of the Successful Bidder and the Consultation Parties, the Canadian Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Canadian Sale Hearing or otherwise.

20. **Joint Hearing**. The Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Courts if determined efficient and desirable by each of the Bankruptcy Court and the CCAA Court.

21. **Objections to the Sale**:

a. Objections, if any, to the consummation of the Sale(s) (the "**Objections**") shall be filed with both the Bankruptcy Court and the CCAA Court not later than **4:00 p.m. prevailing Central time on March 23, 2021**. For greater certainty, each court will retain jurisdiction over its respective proceedings.

b. Any Objections not resolved before the U.S. Sale Hearing and the Canadian Sale Hearing shall be argued at the applicable hearing, including any concurrent or joint hearing, or such other time as set by the Bankruptcy Court and the CCAA Court.

Return of Deposit

22. **Return Date**. The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Sellers, but shall not become property of the Sellers' estates absent further order of the Bankruptcy Court and the CCAA Court or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Back-up Bidder shall be returned to such Qualified Bidder not later than three (3) business days after the Sale Hearing. The Deposit of the Back-up Bidder, if any, shall be returned to such Back-up Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Back-up Bidder, if applicable) fails to consummate a sale transaction because of a breach or failure to perform on the part of the Successful Bidder (or Back-up Bidder, if applicable), the Sellers will not have any obligation to return the Deposit deposited by the Successful Bidder (or Back-up Bidder, if applicable), and such Deposit shall irrevocably become property of the Sellers and allocated between the U.S. Debtors and the Canadian Debtors as determined (a) by an agreement between the U.S. Debtors and Canadian Debtors, in consultation with the Consultation Parties or (ii) by the Bankruptcy Court and the CCAA Court; provided, that the Deposit of the Stalking Horse Bidder shall be governed by the Stalking Horse Purchase Agreement.

Reservation of Rights

23. Sellers' Reservation of Rights.

a. The Sellers, after consultation with the Consultation Parties, may (a) determine, which Qualified Bid, if any, is the highest or otherwise best offer and (b) reject at any time before entry of an order of the Bankruptcy Court and/or the CCAA Court approving a Qualified Bid, any Bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the CCAA, the Bid Procedures or the terms and conditions of sale or (iii) contrary to the best interests of the Sellers, their respective estates and creditors.

b. The Sellers reserve their rights to modify these Bid Procedures, after consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the sale of some or all of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bid Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the U.S. Sale Hearing and/or the Canadian Sale Hearing in open court without further notice; (c) modifying the Bid Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders; provided, however, that any modification, extension, waiver, or addition to the Bid Procedures shall not be inconsistent with the DIP Order, the Bid Procedures Order, or any other order of the Bankruptcy Court or the CCAA Court. Furthermore, notwithstanding anything to the contrary herein or the Bidding Procedures Order, nothing in the Bidding Procedures Order or Bidding Procedures shall amend, modify, waive or impair, or be deemed to amend, modify, waive or impair, any provisions of the Stalking Horse Purchase Agreement, or any rights or remedies of the Stalking Horse Bidder, all of which are hereby preserved.

<u>Free and Clear of Any And All Interests</u>

24. **<u>Sale Free and Clear</u>**. Except as otherwise provided in the Bid Procedures Motion and any exhibits thereto, and the application materials filed by the Canadian Debtors in connection with the Amended and Restated Initial Order (the "**Initial Order Application**"), all of the Sellers' rights, title, and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "**Interests**") in accordance with section 363 of the Bankruptcy Code and section 36 of the CCAA, with such Interests to attach to the net proceeds of the sale of the Assets. However, notwithstanding anything contained in these Bid Procedures, the Bid Procedures Motion and the Initial Order Application to the contrary, no sale under section 363 of the Bankruptcy Code or section 36 of the CCAA shall occur without approval by the Bankruptcy Court and the CCAA Court.

Schedule "B" – Sale Notice

[Attached]

NOTICE OF (I) SALE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF THE U.S. DEBTORS AND CANADIAN DEBTORS <u>AND (II) SALE HEARINGS</u>

PLEASE TAKE NOTICE that, on February 15, 2021, Country Fresh Holding LP and certain of its debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

PLEASE FURTHER TAKE NOTICE that, on February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively referred to as the "**Sellers**".

PLEASE FURTHER TAKE NOTICE that, on February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free* and *Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. 51] in the Bankruptcy Court.

PLEASE FURTHER TAKE NOTICE that, on [______], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

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[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors' principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

On [______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Amended and Restated Initial Order (the "**Canadian Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**").

PLEASE TAKE FURTHER NOTICE that the Bid Deadline under the Bid Procedures is **[March 19], 2021 at 4:00 p.m. (prevailing Central Time)**, and that any person or entity who wishes to participate in the Auction must comply with the participation requirements, bid requirements, and other requirements set forth in the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that the Sellers intend to conduct the Auction at which it will consider proposals submitted to the Sellers and their professionals, by and pursuant to the Bid Procedures as set forth in the Bid Procedures Order and the Amended and Restated Initial Order, on **[March 22], 2021 at 10:00 a.m. (prevailing Central Time)**. Instructions to participate in the Auction via video will be provided to Qualified Bidders prior to the Auction.

PLEASE TAKE FURTHER NOTICE that the hearing (the "**U.S. Sale Hearing**") to approve and authorized the sale of the U.S. Debtors' Assets will be held on **[March 26], 2021** at _________ __.m. _________________.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern Time** (the "**Canadian Sale Hearing**").

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearings.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **[March 23], 2021 at 4:00 P.M. CST.** Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure or the CCAA, as applicable, and (d) be filed with both the Bankruptcy Court and the CCAA Court and served on undersigned counsel for the Sellers.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached Bid Procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the proposed noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii). counsel for the U.S. Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada. Should you require further information regarding the

Canadian Debtors and the CCAA Proceedings you may contact, (i) the Monitor at (freshfoodcanada.monitor@ca.ey.com); or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

Schedule "C" – Post-Auction Notice

[Attached]

NOTICE OF DESIGNATION OF SUCCESSFUL BID AND BACK-UP BID

PLEASE TAKE NOTICE OF THE FOLLOWING:

On February 15, 2021, Country Fresh Holding LP and certain of its debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

On February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively referred to as the "**Sellers**".

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the U.S. Debtors' Entry into the Stalking Horse Bid Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. 51] in the Bankruptcy Court.

On [__________], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or

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[1] The U.S. Debtors in the Chapter 11 Cases, along with the last four digits of each U.S. Debtor's federal tax identification number, are: Country Fresh Holding Company Inc. (7822), Country Fresh Midco Corp. (0702), Country Fresh Acquisition Corp. (5936), Country Fresh Holdings, LLC (7551), Country Fresh LLC (1258), Country Fresh Dallas, LLC (7237), Country Fresh Carolina, LLC (8026), Country Fresh Midwest, LLC (0065), Country Fresh Orlando, LLC (7876), Country Fresh Transportation LLC (8244), CF Products, LLC (8404), Country Fresh Manufacturing, LLC (7839), Champlain Valley Specialty of New York, Inc. (9030), Country Fresh Pennsylvania, LLC (7969), Sun Rich Fresh Foods (NV) Inc. (5526), Sun Rich Foods (USA) Inc. (0429), Sun Rich Fresh Foods (PA) Inc. (4661). The principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

On [______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Amended and Restated Initial Order (the "**Canadian Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**").

Pursuant to the Bid Procedures Orders, (i) the deadline for submitting a Qualified Bid was **[March 19], 2021 at prevailing Central Time** (the "**Bid Deadline**") and (ii) in the event that (x) the Sellers timely received one or more Qualified Bids or (y) a Stalking Horse Bidder was selected and the Sellers received a Qualified Bid that the Sellers in their business judgment, in consultation with the Consultation Parties, determined to be the Initial Bid, the Sellers would conduct the Auction to be held on **10:00 a.m. prevailing Central Time on [______] 2021** (the "**Auction**").

On **_____________, 2021**, the Sellers conducted the Auction in accordance with the Bid Procedures and certain rules distributed to Auction attendees prior to and at the Auction. At the Auction, the Sellers determined that the highest or best offer was submitted by [●] (the "**Successful Bidder**" and the Successful Bidder's winning bid, the "**Successful Bid**") and the second highest or best offer was submitted by [●] (the "**Back-up Bidder**," and the Back-up Bidder's bid, the "**Back-up Bid**").

Exhibit 1 attached hereto is a copy of the final, fully-executed asset purchase agreement (the "**APA**," and the transaction contemplated thereby the "**Sale Transaction**") between the Sellers and the Successful Bidder, containing the terms of the Successful Bid.

Important Dates and Deadlines

Sale Objection Deadline:

Objections (the "**Objections**") to consummation of the Sale Transaction, if any, shall be filed with both the Bankruptcy Court and the CCAA Court not later than **[___ a.m./p.m.] prevailing Central Time on [March 23], 2021**. Any Objections not resolved prior to the Sale Hearings shall be argued at the Sale Hearings or such other time as set by the Bankruptcy Court and/or the CCAA Court.

Sale Hearings:

The hearing to approve and authorized the sale of the U.S. Debtors' Assets pursuant to the Sale Transaction (the "**U.S. Sale Hearing**") shall be held electronically via video/telephone before the Bankruptcy Court before the Honorable [●] on **[March 26], 2021 at [●] [a.m./p.m.] (prevailing Central Time)**. If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at **1-832-917-1510** and entering conference code 954554. You may also join by videoconference by use of an internet connection, using the website **www.join.me**, selecting "**join a meeting**," and entering meeting code "**JudgeIsgur**." At such hearing, the U.S.

Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale of the U.S. Assets to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the U.S. Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with any executory contracts or unexpired leases.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing Eastern time** (the "**Canadian Sale Hearing**").

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Sellers of the adjourned date at the Sale Hearings.

The Sellers' presentation to the Bankruptcy Court and CCAA Court for approval of a Successful Bid does not constitute the Sellers' acceptance of the Successful Bid. The Sellers shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Bankruptcy Court and CCAA Court.

If the Sale Transaction is not consummated with the Successful Bidder pursuant to the Successful Bid, the Sellers shall designate the Back-up Bidder as the Successful Bidder and such Back-up Bidder's Back-up Bid as the Successful Bid.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached bid procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the proposed noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii) counsel for the U.S. Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada. Should you require further information regarding the Canadian Debtors and the CCAA Proceedings you may contact, (i) the Monitor at freshfoodcanada.monitor@ca.ey.com; or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

Exhibit 1

Asset Purchase Agreement

Schedule "D" – Assignment and Assumption Notice

[Attached]

NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT MAY BE ASSUMED OR ASSUMED AND ASSIGNED IN CONNECTION WITH SALE AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO

PLEASE TAKE NOTICE OF THE FOLLOWING:

On February 15, 2021, Country Fresh Holding LP and certain of its debtor affiliates[1], as debtors and debtors-in-possession (collectively, the "**U.S. Debtors**") filed voluntary petitions commencing parallel insolvency proceedings (the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Bankruptcy Court**") under chapter 11 of title 11 of the United States Bankruptcy Code.

On February 17, 2021, the Canadian affiliates of the U.S. Debtors[2] (the "**Canadian Debtors**") commenced parallel insolvency proceedings (the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* ("**CCAA**"). The U.S. Debtors and the Canadian Debtors are collectively referred to as the "**Sellers**".

On February 17, 2021, the U.S. Debtors filed their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the U.S. Debtors' Entry into the Stalking Horse Bid Purchase Agreement; (C) Authorizing and Approving the Expense Reimbursement and Break-Up Fee; (D) Scheduling an Auction and Sale Hearing; (E) Authorizing and Approving Assumption and Assignment Procedures; and (F) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the U.S. Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* [Docket No. ___] in the Bankruptcy Court.

On [_________], 2021, the Bankruptcy Court entered its *Order (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures* [Docket No. ____] (the "**Bid Procedures Order**")[3] in the Chapter 11 Cases, authorizing the U.S. Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Bid Procedures Order (the "**U.S. Bid Procedures**") and conduct an auction (the "**Auction**") to select a party or parties to purchase all or some of the U.S. Debtors' assets in accordance with the U.S. Bid Procedures.

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[2] The Canadian Debtors in the CCAA Proceedings are TGF Acquisition Parent Ltd., Sunrich Fresh Foods Inc. and Tiffany Gate Foods Inc.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Order or the Bid Procedures annexed thereto, as applicable.

On [______] 2021, the CCAA Court issued an Amended and Restated Initial Order in the CCAA Proceedings (the "**Amended and Restated Initial Order**") which, among other things, approved the execution of the Stalking Horse Agreement and authorized the Canadian Debtors to market their business and assets in accordance with the sale and bid procedures annexed to the Amended and Restated Initial Order (the "**Canadian Bid Procedures**" and, together with the U.S. Bid Procedures, the "**Bid Procedures**").

You are receiving this notice (the "Assumption and Assignment Notice") because you may be a Counterparty to an executory contract or unexpired lease of the Sellers that potentially could be assumed or assumed and assigned to a Successful Bidder in connection with a Sale Transaction.

In accordance with the Assumption and Assignment Procedures and the Bidding Procedures Order, the Sellers may, in connection with any Sale with a Successful Bidder (as defined in the Bid Procedures), seek to assume or assume and assign to the Successful Bidder (or its designated affiliate assignee, if applicable) certain executory contracts or unexpired leases of the Sellers.

Each of the executory contracts or unexpired leases that may be assumed or assumed and assigned (the "**Proposed Assumed Contracts**") in connection with the Sale with a Successful Bidder and the Sellers' calculation of the Cure Amounts with respect thereto are set forth in **Exhibit 1** hereto (the "**Proposed Assumed Contracts List**").

The inclusion of any Proposed Assumed Contract on **Exhibit 1** does not constitute an admission that a particular Proposed Assumed Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or an assignable contract under the CCAA or require or guarantee that such Proposed Assumed Contract ultimately will be assumed or assumed and assigned. The assumption or assumption and assignment of a Proposed Assumed Contract is subject to Bankruptcy Court or CCAA Court approval, as applicable. All rights of the Sellers with respect thereto are reserved.

No later than two (2) days prior to the closing date, the Successful Bidder may add or remove any executory contract or unexpired lease from the Proposed Assumed Contract List and either advise the Sellers (i) that it has no objection to the Sellers rejecting or disclaiming such executory contract or unexpired lease or (ii) to put such executory contract or unexpired lease (each a "**Designated Contract**") on a list that the Successful Bidder shall not assume, reject, or disclaim on the closing date (the "**Designation List**").

Until the earlier of (i) ninety (90) days following the closing date, (ii) the effective date of a confirmed plan of reorganization or liquidation for the Sellers, (iii) such time that the Chapter 11 Cases are closed or converted to cases under chapter 7 of the Bankruptcy Code, or (iv) dismissal of the Chapter 11 Cases and the CCAA Proceedings, the Successful Bidder, in consultation with the Sellers, shall have the option to designate any Designated Contract as a Proposed Assumed Contract.

Objections

Any objection to the proposed assumption or assumption and assignment of a contract or lease identified on **Exhibit 1**, or the proposed Cure Amounts therefor (a "**Contract Objection**"), must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv) be filed with the Bankruptcy Court, via ECF, and/or received by the Monitor (as defined below) at freshfoodcanada.monitor@ca.ey.com no later than the earlier of (i) 4:00 p.m. (prevailing Central Time) on **[March 23], 2021**, and (ii) fourteen (14) calendar days following service of the Assumption and Assignment Notice (the "**Contract Objection Deadline**"). For the avoidance of doubt, any objections to a Successful Bidder's proposed form of adequate assurance of future performance will be resolved at the U.S. Sale Hearing.

IF NO CONTRACT OBJECTION IS TIMELY RECEIVED WITH RESPECT TO ASSUMPTION OR ASSUMPTION AND ASSIGNMENT OF A PROPOSED ASSUMED CONTRACT: (I) THE COUNTERPARTY TO SUCH PROPOSED ASSUMED CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE SELLERS AND ASSIGNMENT TO SUCCESSFUL BIDDER OF THE PROPOSED ASSUMED CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE CURE AMOUNT, ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE SUCCESSFUL BIDDER, WHETHER THE SUCCESSFUL BIDDER WOULD BE ABLE TO PERFORM THE OBLIGATIONS AND WHETHER THE ASSIGNEE IS APPROPRIATE); (II) ANY AND ALL DEFAULTS UNDER THE PROPOSED ASSUMED CONTRACT AND ANY AND ALL PECUNIARY LOSSES/MONETARY DEFAULTS RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND (B) OR SECTION 11.3 OF THE CCAA UPON PAYMENT OF THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH PROPOSED ASSUMED CONTRACT; AND (III) THE CURE AMOUNT SET FORTH IN THE ASSUMPTION AND ASSIGNMENT NOTICE FOR SUCH PROPOSED ASSUMED CONTRACT SHALL BE CONTROLLING, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SUCH PROPOSED ASSUMED CONTRACT, OR ANY OTHER RELATED DOCUMENT, AND THE COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE CURE AMOUNT AND SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH PROPOSED ASSUMED CONTRACT AGAINST THE SELLERS AND THEIR ESTATES OR THE SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING THE CONTRACT OBJECTIONS AND THE ORDER APPROVING THE SALE TO THE SUCCESSFUL BIDDER.

Sale Hearing

PLEASE TAKE FURTHER NOTICE that the hearing (the "**U.S. Sale Hearing**") to approve and authorized the sale of the U.S. Debtors' Assets will be held on **March 26, 2021** at _________ __.m. (prevailing Central Time) electronically via video/telephone before the Bankruptcy Court before the Honorable Marvin Isgur, United States Bankruptcy Judge (prevailing Central Time). If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at 1-832-917-1510 and entering conference code 954554. You may also join by videoconference by use of an internet connection, using the website www.join.me, selecting "join a meeting," and entering meeting code "JudgeIsgur." At such hearing, the U.S. Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the Sale of the U.S. Debtors' Assets to the Successful Bidder on the terms and conditions of the Successful Bid. The Successful Bidder shall appear at the U.S. Sale Hearing and be prepared to testify in support of the Successful Bid and the Successful Bidder's ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with the assumption and assignment of executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that the hearing to approve and authorize the sale of the Canadian Debtors' Assets will be held on **March 26, 2021 at 12:00 p.m. prevailing**

Eastern Time (the "**Canadian Sale Hearing**"). Further details may be found on the Monitor's Website (defined below).

PLEASE TAKE FURTHER NOTICE that the Canadian Sale Hearing and the U.S. Sale Hearing (collectively, the "**Sale Hearings**") may be heard concurrently or jointly by the Bankruptcy Court and CCAA Court if determined efficient and desirable.

The Sale Hearings may be adjourned or rescheduled as ordered by the Bankruptcy Court and/or the CCAA Court, or by the Sellers in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearings.

The Sellers' presentation to the Bankruptcy Court and CCAA Court for approval of a Successful Bid does not constitute the Sellers' acceptance of the Successful Bid. The Sellers shall be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by order of the Bankruptcy Court and CCAA Court.

PLEASE TAKE FURTHER NOTICE that the deadline for filing an objection to the Sale(s) is **[March 23], 2021 at 4:00 P.M. CST.** Any such objection must (a) be in writing, (b) state with specificity the nature of such objection, (c) comply with the Federal Rules of Bankruptcy Procedure or the CCAA, as applicable, and (d) be filed with both the Bankruptcy Court and the CCAA Court and served on undersigned counsel for the Debtors.

PLEASE TAKE FURTHER NOTICE that copies of pleadings related to the proposed Sale as related to the U.S. Debtors, including the Bid Procedures Order (and attached bid procedures) approved by the Bankruptcy Court, are available on the U.S. Debtors' website at https://dm.epiq11.com/freshfoodgroup or on the Bankruptcy Court's website at https://ecf.txsb.uscourts.gov/. You can request any pleading you need from (i) the noticing agent, Epiq Corporate Restructuring, LLC (freshfoodgroup@epiqglobal.com), or (ii) counsel for the U.S. Debtors at: Foley & Lardner LLP, c/o Melina T. Bales (mbales@foley.com).

PLEASE TAKE FURTHER NOTICE that copies of motions and materials related to the proposed Sale as related to the Canadian Debtors and the CCAA Proceedings, including the Amended and Restated Initial Order, are available on the website of Ernst & Young Inc., in its capacity as Court-appointed Monitor of the Canadian Debtors (the "**Monitor**") at https://www.ey.com/ca/freshfoodcanada (the "**Monitor's Website**"). Should you require further information regarding the Canadian Debtors and the CCAA Proceedings, you may contact: (i) the Monitor at: freshfoodcanada.monitor@ca.ey.com; or (ii) counsel for the Canadian Debtors at: Stikeman Elliott LLP, c/o Lee Nicholson (leenicholson@stikeman.com).

<u>Exhibit 1</u>

Proposed Assumed Contracts

Schedule "E" – JIN Guidelines

[Attached]

JIN GUIDELINES

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction ("Parallel Proceedings") by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.

B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.

C. In particular, these Guidelines aim to promote:

(i) the efficient and timely coordination and administration of Parallel Proceedings;

(ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders' interests are respected;

(iii) the identification, preservation, and maximisation of the value of the debtor's assets, including the debtor's business;

(iv) the management of the debtor's estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;

(v) the sharing of information in order to reduce costs; and

(vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties[1] in Parallel Proceedings.

D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit.[2]

E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

ADOPTION & INTERPRETATION

[1] The term "parties" when used in these Guidelines shall be interpreted broadly.
[2] Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, "administrator" includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order,[3] following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

(i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;

(ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;

(iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or

(iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

[3] In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

COMMUNICATION BETWEEN COURTS

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

(i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(ii) Directing counsel or other appropriate person to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(iii) Participating in two-way communications with the other court, by telephone or video conference call or other electronic means, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, other than on administrative matters, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

(i) In the normal case, parties may be present.

(ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications.

(iii) The communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.

(iv) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.

(v) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable in the court.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol, order or directions made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

(i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.

(ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.

(iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.

(iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.

(v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.

(vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.

(vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to· whether some or all of such communications should be recorded and preserved.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C 36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

Court File No.: CV-21-00657098-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicants

TAB 3

Court File No. CV-21-00657098-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	~~WEDNESDAY~~FRIDAY, THE ~~17th~~ 26th
	)	
JUSTICE HAINEY	)	DAY OF FEBRUARY, 2021

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc., Tiffany Gate Foods Inc. (collectively, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA"**) for an Order substantially in the form included in the Applicants Record was heard this day via video-conference due to the ongoing COVID-19 pandemic.

ON READING the affidavit of Stephen Marotta sworn February 16, 2021 and the Exhibits thereto (the "**Marotta Affidavit**") ~~and~~ , the Pre-Filing Report of Ernst & Young Inc., in its capacity as proposed Monitor of the Applicants and the First Report of Ernst & Young Inc., in its capacity as Monitor of the Applicants (the "**Monitor**") and on being advised that the secured creditors who are likely to be affected by the Charges (as defined below) were given notice; and

UPON HEARING the submissions of counsel for the Applicants, counsel for the ~~proposed~~ Monitor, counsel for the DIP Lenders (as defined herein), counsel for the Stalking Horse Bidder (as defined herein), counsel for the Royal Bank of Canada and other counsel as listed on the Counsel Slip, no one else appearing for any party although duly served as appears on the affidavits of service of Lee Nicholson and Keisha Lackpatiah-Sealy and on reading the consent of Ernst & Young Inc. to act as the Monitor;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are “debtor companies~~"~~” to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. ~~3.~~**THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as defined herein), to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. ~~4.~~**THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Marotta Affidavit or, with the consent of the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the

Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any ~~plan of compromise or arrangement~~ Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. ~~5.~~**THIS COURT ORDERS** that, subject to and in accordance with the Definitive Documents, the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. ~~6.~~**THIS COURT ORDERS** that, except as otherwise provided to the contrary herein~~,~~, and subject to the terms of the Definitive Documents, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers~~'~~' insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. ~~7.~~**THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. ~~8.~~**THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, in accordance with the applicable real property lease. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. ~~9.~~**THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances

upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

11. ~~10.~~**THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, including the Budget, the Applicants are permitted, but not required, to pay amounts owing for goods or services supplied to the Applicants prior to February 17, 2021~~ up to an aggregate maximum of $750,000~~, provided that~~,~~, the Applicants determine such payments are necessary to maintain the Business or the Property and are approved by the Monitor in consultation with the DIP Lenders.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding $200,000 in any one transaction or $1 million in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and

(c) pursue all avenues of restructuring of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material restructuring,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaims the lease governing such leased

premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor twenty-four (24) hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. ~~11.~~**THIS COURT ORDERS** that until and including ~~February 26~~March 28, 2021, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants ~~or~~ , the Monitor or the CRO, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. ~~12.~~**THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants ~~or~~ , the Monitor or the CRO, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (~~i~~a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (~~ii~~b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section

11.1 of the CCAA, (~~iii~~c) prevent the filing of any registration to preserve or perfect a security interest, or (~~iv~~d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. ~~13.~~**THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. ~~14.~~**THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. ~~15.~~**THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. ~~16.~~**THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. ~~17.~~**THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which obligation may become due and payable after the commencement of these proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. ~~18.~~**THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of US$2.5 million, as security for the indemnity provided in paragraph ~~17~~ 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~36~~ 46 and ~~38~~ 48 herein.

23. ~~19.~~**THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~17~~ 21 herein.

APPOINTMENT OF CHIEF RESTRUCTURING ORGANIZATION

24. **THIS COURT ORDERS** Ankura Consulting Group, LLC ("**Ankura**") is hereby appointed as Chief Restructuring Organization (the "**CRO**") of the Applicants and shall, subject to the

Orders of the Court granted from time to time in these proceedings, have the powers and obligations set out in the engagement letter dated February 15, 2021 (the "**Ankura Engagement Letter**"), which Ankura Engagement Letter is hereby approved.

25. **THIS COURT ORDERS** that the CRO shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the CRO Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

APPROVAL OF STOUT ENGAGEMENT

26. **THIS COURT ORDERS** that the engagement of Stout Capital, LLC ("**Stout**") by the Applicants as investment banker pursuant to the engagement letter dated October 30, 2020 is hereby approved (the "**Stout Engagement Letter**") and the payment of the monthly fees and expenses (the "**Monthly Fees**") and the transaction fees set out in the Stout Engagement Letter and described in the Marotta Affidavit (the "**Transaction Fee**") are hereby approved in accordance with the terms hereof.

27. **THIS COURT ORDERS** that Stout shall be entitled to the benefit of and are hereby granted a charge (the "**Transaction Fee Charge**") on the Property, which charge shall not exceed an aggregate amount of $2.5 million, as security for the Transaction Fee. The Transaction Fee Charge shall have the priority set out in paragraphs 46 and 48 herein.

28. **THIS COURT ORDERS** that Stout shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the Stout Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

APPOINTMENT OF MONITOR

29. ~~20.~~**THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. ~~21.~~**THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination of reports and other information to the DIP Agent (as defined herein) and the DIP Lenders and their respective counsel, pursuant to and in accordance with the Definitive Documents, or as may otherwise be reasonably requested by the DIP Agent and the DIP Lenders;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting required by the DIP Agent and the DIP Lenders and the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP Agent and the DIP Lenders and their respective counsel in accordance with the Definitive Documents;

(e) advise the Applicants in their development of their Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) ~~(e)~~have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) ~~(f)~~be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) ~~(g)~~perform such other duties as are required by this Order or by this Court from time to time.

31. ~~22.~~**THIS COURT ORDERS** that the Monitor and the CRO shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business (in the case of Ankura, other than as contemplated in the Ankura Engagement Letter), and shall not, by fulfilling ~~its~~ their obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

32. ~~23.~~**THIS COURT ORDERS** that nothing herein contained shall require the Monitor and the CRO to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. ~~24.~~**THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Agent and the DIP Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants are confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

34. ~~25.~~**THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

35. ~~26.~~**THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants~~ and ~~, counsel to the director of the Applicants, the CRO and Stout, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, and in the case of the CRO and Stout subject to an allocation agreed between the Applicants and the US Debtors, in consultation with the Monitor and the DIP Lenders. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicants and counsel to the director of the Applicants on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the director of the Applicants~~–~~, reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. ~~27.~~**THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. ~~28.~~**THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel and counsel to the director of the Applicants, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of ~~US$400,000~~U$750,000, as security for their professional fees and disbursements incurred at their respective standard rates and charges~~ of the Monitor and such counsel~~, both before and after the making of this Order~~-~~, in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~36 ~~46 and ~~38 herein~~48 herein. With respect to the portion of their fees and disbursements allocated to the Applicants pursuant to paragraph 35 hereof, the CRO and Stout shall also be entitled to the benefit of the Administration Charge. For greater certainty, however, Stout's Transaction Fee shall not be secured by the Administration Charge, but rather by the Transaction Fee Charge.

DIP FINANCING

38. ~~29.~~**THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute, enter into and deliver:

(a) the Superpriority Senior Secured Debtor-in-Possession Credit Agreement (the "**DIP Credit Agreement**") dated February 17, 2021 between, amongst others, Country Fresh Holdings, LLC ("**US Borrower**"), as borrower, certain of its U.S.

subsidiaries, as guarantors (collectively with US Borrower, the "**US Debtors**"), the Applicants, as guarantors, and the lenders from time to time party thereto (the "**DIP Lenders**"), and Cortland Capital Market Services LLC, as administrative agent and collateral agent (the "**DIP Agent**"), pursuant to which, *inter alia*, the DIP Lenders have agreed to provide interim financing of up to US$13,416,000 plus capitalized interest thereon (the "**DIP Facility**") to the US Borrower to, among other things, fund the US Debtors' working capital requirements and other general corporate purposes of the US Debtors; and

(b) the Canadian Guaranty and Security Agreement (the "**DIP Guarantee**"), pursuant to which, *inter alia*, the Applicants have agreed to guarantee, in favour of the DIP Lenders, the obligations of the US Borrower and the other US Debtors under the DIP Credit Agreement, up to an amount equivalent to the aggregate of any and all advances made by any of the US Debtors to any of the Applicants (the "**Intercompany DIP Advances**")~~,~~ plus interest, provided that the Intercompany DIP Advances shall be made in accordance with and subject to the terms and conditions set forth in the DIP Credit Agreement, the DIP Guarantee, the Budget, the Intercompany Note (as such terms are defined in the DIP Credit Agreement) and the other Definitive Documents and with approval of the Monitor~~, and that during the Stay Period, the Intercompany DIP Advances shall not exceed US$1 million~~;

39. ~~30.~~**THIS COURT ORDERS** that, in addition to the DIP Credit Agreement and the DIP Guarantee, the Applicants are also hereby authorized and empowered to execute and deliver such other credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, including the Budget and the Intercompany Note (as defined in the DIP Credit Agreement) (collectively with the DIP Credit Agreement and the DIP Guarantee, the "**Definitive Documents**"), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the DIP Credit Agreement, the DIP Guarantee and the other Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. ~~31.~~**THIS COURT ORDERS** that the Applicants' obligations under the DIP Credit Agreement and the DIP Guarantee be secured by the following priority charges which shall have the priority set out in paragraphs ~~36~~ 46 and ~~38~~ 48 herein:

(a) a charge against the Property in favour of the US Borrower and the other US Debtors having made any Intercompany DIP Advance to any of the Applicants (the "**Lending US Debtors**"), which shall be held by such US Borrower and other US Debtors for the sole benefit of the DIP Agent and the DIP Lenders, securing the full amount of any Intercompany DIP Advances outstanding, plus any unpaid interest thereon, made during the course of these proceedings (the "**Intercompany DIP Charge**"); and

(b) a charge against the Property for the benefit of the DIP Agent and the DIP Lenders securing the Applicants' obligations under the DIP Guarantee in an amount equal to the Intercompany DIP Advances outstanding plus unpaid interest thereon and the reasonable fees and disbursements of Canadian counsel to the DIP Lenders at their standard rates and charges both before and after the making of this Order (the "**DIP Lenders~~'~~ Charge**").

41. ~~32.~~**THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent and the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents or the DIP Lenders' Charge, the DIP Agent and the DIP Lenders, as applicable, may, make demand, accelerate payment and give other notices, provided that, the DIP Agent and the DIP Lenders must apply on five (5) prior business days' written notice (which may include the service of materials in connection with such an application to this Court) to the Applicants and the Monitor, to enforce against or exercise any other rights and remedies in respect of the Applicants or the Property under or pursuant to the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents and the DIP Lenders' Charge, including without limitation, to consolidate any amounts that may be owing by the DIP Lenders against the obligations of the Applicants to the DIP Lenders under the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents or the DIP Lenders' Charge, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

42. ~~33.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* (the "**BIA**"), with respect to the DIP Credit Agreement, the DIP Guarantee and the other Definitive Documents.

43. ~~34.~~ **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents, the Intercompany DIP Charge and the DIP Lenders' Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Agent, the DIP Lenders or the Lending US Debtors, whether under this Order (as made prior to the Variation), under the DIP Credit Agreement, the DIP Guarantee, the other Definitive Documents, or the Intercompany Note with respect to any advances made or obligations incurred prior to the DIP Agent, the DIP Lenders or the Lending US Debtors being given notice of the Variation, and the DIP Agent, the DIP Lenders and the Lending US Debtors shall be entitled to rely on this Order as issued (including, without limitation, the Intercompany DIP Charge and the DIP Lenders' Charge) for all advances so made and other obligations set out in the DIP Credit Agreement, the DIP Guarantee and the other Definitive Documents.

CANADIAN INTERCOMPANY ADVANCES

44. ~~35.~~ **THIS COURT ORDERS** that to the extent that any one or more of the Applicants (the "**Lending Applicant**") after the date of this Order, makes any payment or incurs or discharges any obligation that is a payment or obligation any of one or more of the other Applicants or otherwise transfers value to or for the benefit of one or more of the other Applicants, the

applicable Lending Applicant shall be entitled to the benefit of and is hereby granted a charge (the "**Canadian Intercompany Charge**") on the applicable recipient's Property~~.~~, which charge shall be in the aggregate amount of such payments, obligations or transfers. The Canadian Intercompany Charge shall have the priority set out in paragraphs ~~36~~ 46 and ~~38~~ 48 herein.

45. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, the Applicants, with approval of the Monitor and the DIP Lenders, are permitted, but not required, to make advances or payments or incur or discharge any obligations that is an obligation of any of one or more of the US Debtors and the Applicants shall receive adequate protections or security in respect of any such payments or incurrence or discharge of any such obligations provided for in an order to be rendered by the U.S. Bankruptcy Court for the Southern District of Texas (Houston Division) (the "**U.S. Court**") in the proceedings styled *In re Country Fresh Holding Company Inc., et al*. (Case No. 21-30574).

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. ~~36.~~**THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge, the Intercompany DIP Charge, the DIP Lenders' Charge, the Transaction Fee Charge and the Canadian Intercompany Charge (collectively, the "**Charges**"), as among them, shall be as follows:

> *First* – Administration Charge (to the maximum amount of ~~US$400,000~~US$750,000);
>
> *Second* – Intercompany DIP Charge and DIP Lenders' Charge;
>
> *Third* – Directors' Charge (to the maximum amount of US$2.5 million);~~and~~
>
> *Fourth* – Transaction Fee Charge (to the maximum amount of US$2.5 million); and
>
> ~~*Fourth*~~ *Fifth* – Canadian Intercompany Charge.

47. ~~37.~~**THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

48. ~~38.~~**THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person ~~except any~~ other than a Person with a ~~properly~~ valid and perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation ~~that has not been served with notice of the application for this Order.~~(a "**PMSI Lessor**") solely with respect to equipment leased to the Applicants by such PMSI Lessor. For greater certainty, a PMSI Lessor shall not have any priority to the Charges in respect of any Property which is not the equipment leased to the Applicants by such PMSI Lessor.

49. ~~39.~~**THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor~~.~~, and of the applicable charge(s) entitled to the benefit of the Charges (collectively, the "**Chargees**") which may be affected by the Applicants granting any Encumbrances over any Property that rank in priority or *pari passu* with any such Charges, or further Order of this Court.

50. ~~40.~~**THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the other Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the other Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the DIP Credit Agreement or the other Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. ~~41.~~**THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

BIDDING AND SALE PROCEDURES

52. **THIS COURT ORDERS** that (a) the Bidding and Sale Procedures attached hereto as Schedule "A" (the "**Bidding and Sale Procedures**"); (b) the Sale Notice attached hereto as Schedule "B"; and (c) the Post Auction Notice attached hereto as Schedule "C", are each hereby approved.

53. **THIS COURT ORDERS** that the Applicants, the Monitor, the CRO and Stout are hereby authorized and directed to carry out the Bidding and Sale Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Bidding and Sale Procedures.

54. **THIS COURT ORDERS** that the Applicants are hereby authorized to execute the asset purchase agreement dated as of February 15, 2021 (the "**Stalking Horse Purchase Agreement**") among the Applicants, the US Debtors, and Stellex/CF Buyer (US) LLC and Stellex/CF Buyer (CN) Inc. (collectively, the "**Stalking Horse Bidder**") *nunc pro tunc*, provided that nothing herein approves the sale and the vesting of the Assets (as defined in the Stalking Horse Purchase Agreement) to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement and that the approval of the sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the Bidding and Sale Procedures (the "**Sale Hearing**").

55. **THIS COURT ORDERS** that each of the Applicants, the Monitor, the CRO and Stout and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Bidding and Sale Procedures, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Applicants, the Monitor, the CRO and Stout , as applicable, as determined by this Court. For greater clarity, nothing in this paragraph limits any liability or obligation of the Applicants pursuant to the Stalking Horse Purchase Agreement.

56. **THIS COURT ORDERS** that Bidders (as defined by the Bidding and Sale Procedures) shall not contact, communicate with or have dealings with the customers and suppliers of the Applicants with respect to the Applicants, their business or their assets or in relation to any bid related to the Applicants, their business or their assets, except with the written consent of the Applicants and the Monitor.

ASSUMPTION AND ASSIGNMENT PROCEDURES

57. **THIS COURT ORDERS** that the Assumption and Assignment Notice attached hereto as Schedule "D" (the "**Assumption and Assignment Notice**") is hereby approved.

58. **THIS COURT ORDERS** that as soon as reasonably practicable following the date of this Order the Applicants shall serve a copy of the Assumption and Assignment Notice, on counterparties to contracts that may be assigned to the Successful Bidder (as defined in the Bidding and Sale Procedures) pursuant to the Stalking Horse Purchase Agreement or other definitive asset purchase agreement (the "**Proposed Assigned Contracts**"), by ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the counterparties to the Proposed Assigned Contracts at their respective addresses as last shown on the records of the Applicants. The Assumption and Assignment Notice shall include the proposed amount to cure all monetary defaults in relation to the Proposed Assigned Contract other than (a) those arising by reason only of the Applicants' insolvency, (b) the commencement of these proceedings; or (c) the Applicants' failure to perform a non-monetary obligation (the "**Cure Amount**").

59. **THIS COURT ORDERS** that the Monitor shall cause the Assignment and Assumption Notice to be posted on the Monitor's Website (as defined below) as soon as reasonably practicable after service thereof in accordance with paragraph 58 hereof.

60. **THIS COURT ORDERS** that service of the Assumption and Assignment Notice on the counterparties of the Proposed Assigned Contracts and the posting on the Monitor's Website in accordance with paragraphs 58 to 59 hereof shall be proper notice of the Sale Hearing and proposed assignment of their Proposed Assigned Contract.

61. **THIS COURT ORDERS** that a counterparty to a Proposed Assigned Contract ("**Contract Counterparty**") set forth on the Assumption and Assignment Notice may file an objection (a "**Contract Objection**") to the proposed assignment of the applicable Proposed Assigned Contract and/or the proposed Cure Amounts, if any. All Contract Objections must (a) state, with specificity, the legal and factual basis for the objection and, if applicable, what Cure Amounts are required, (b) include appropriate documentation in support thereof, and (c) to the extent the Proposed Assigned Contract that is the subject of the Contract Objection relates to the Applicants, the Business or the Property, be served on the Monitor and counsel to the Applicants so as to be actually received no later than 5:00 p.m. EST on the later of (i) March 23, 2021, and (ii) fourteen (14) calendar days following service of the Assumption and Assignment Notice (the "**Contract Objection Deadline**").

62. **THIS COURT ORDERS** that if a Contract Counterparty files and serves a Contract Objection in accordance with paragraph 61 above with respect to a Proposed Assigned Contract that relates to the Applicants, the Business or the Property, and the parties are unable to consensually resolve the dispute, such objection will be determined at the Sale Hearing or such other date determined by this Court. A timely and properly filed Contract Objection will reserve such objecting Contract Counterparty's rights against the Applicants only with respect to (a) the assignment of the Proposed Assigned Contract at issue, to the extent objected to, and/or (b) the Cure Amounts, to the extent objected to, but will not constitute an objection to the remaining relief requested at the Sale Hearing.

63. **THIS COURT ORDERS** that (a) prior to the closing date of a transaction approved at the Sale Hearing (the "**Sale**"), the Applicants (x) discover contracts inadvertently omitted from the list of Proposed Assigned Contracts; or (y) elect to modify the previously stated Cure Amounts associated with a Proposed Assigned Contract, or (b) until the earlier of (i) ninety (90) days following the closing date of the Sale, (ii) the effective date of a confirmed plan of compromise, arrangement or reorganization for the Applicants, or (iii) termination or discharge of these proceedings, the Successful Bidder, in consultation with the Applicants, designates contracts not previously designated as a Proposed Assigned Contract which will proposed to be assigned pursuant to an order of this Court under Section 11.3 of the CCAA, the Applicants will promptly

serve a supplemental notice of potential assignment on the counterparty to each impacted contract (a "**Supplemental Assumption and Assignment Notice**") and provide a reasonable opportunity for the counterparties to object thereto.

64. **THIS COURT ORDERS** that the inclusion of a Proposed Assigned Contract on an Assumption and Assignment Notice (or a Supplemental Assumption and Assignment Notice), will not: (a) obligate the Successful Bidder to take assignment of such Proposed Assigned Contract; (b) prevent the Applicants from disclaiming such Proposed Assigned Contract in accordance with this Order and the CCAA; or (c) constitute any admission or agreement of the Applicants that such Proposed Assigned Contract is a contract that may only be assigned pursuant to an order of this Court under Section 11.3 of the CCAA.

SERVICE AND NOTICE

65. ~~42.~~**THIS COURT ORDERS** that the Monitor shall (~~i~~a) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (~~ii~~b) within five days after the date of this Order, (~~A~~i) make this Order publicly available in the manner prescribed under the CCAA, (~~B~~ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1,000, and (~~C~~iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

66. ~~43.~~**THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in ~~this proceeding~~these proceedings, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<www.ey.com/ca/freshfoodgroup>' ("**Monitor's Website**").

67. ~~44.~~**THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

68. **THIS COURT ORDERS** that the Applicants, the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

69. ~~45.~~**THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

70. ~~46.~~**THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

71. ~~47.~~**THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

72. ~~48.~~**THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~49. **THIS COURT ORDERS** that a hearing for the balance of the relief sought by the Applicants in the Notice of Application is hereby scheduled before this Court for February 26, 2021 at ● or such other date as determined by this Court.~~

73. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and adopted by this Court and the U.S. Court and attached hereto as Schedule "E" (the "**JIN Guidelines**"), are hereby approved by this Court for purposes of these proceedings and the parties to these proceedings and any other Person shall be governed by and shall comply with the JIN Guidelines.

74. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

75. ~~50.~~**THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for filing or entry.

____

Schedule "A" - Bidding and Sale Procedures

[Attached]

Schedule "B" – Sale Notice

[Attached]

Schedule "C" – Post-Auction Notice

[Attached]

Schedule "D" – Assignment and Assumption Notice

[Attached]

Schedule "E" – JIN Guidelines

[Attached]

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C 36, AS AMENDED

Court File No.: CV-21-00657098-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE FOODS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C 36, AS AMENDED

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

SUPPLEMENTARY APPLICATION RECORD OF THE APPLICANTS
(Returnable February 26, 2021)

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