

Re TGF Acquisition Parent Ltd

① Order to go on the Terms of
The attached Bidding
Procedures Order.

Hainey J

March 4, 2021

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

JUSTICE HAINEY

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MONDAY, THE 1st

DAY OF MARCH, 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.

BIDDING PROCEDURES 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 "**CCA**") for an Order seeking relief substantially similar to the relief sought in the form of draft Order included in the Application 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

UPON HEARING the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the DIP Lenders, counsel for the Stalking Horse Bidder (as defined herein), 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;

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.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein have the meaning ascribed to them in the Amended and Restated Initial Order dated February 26, 2021 granted by this Court (the "**Amended and Restated Initial Order**").

BIDDING AND SALE PROCEDURES

3. **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 substantially in the form attached hereto.
4. **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.
5. **THIS COURT ORDERS** that the Applicants are hereby authorized to execute the asset purchase agreement dated as of February 15, 2021 (as may be amended, modified, and/or supplemented from time to time, 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**").
6. **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.

7. **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.

8. **THIS COURT ORDERS** that nothing in this Order shall impair or otherwise prejudice the rights of a Secured Creditor (as defined by the Bidding and Sale Procedures) to credit bid all or a portion of the value of such Secured Creditor's claims against the Applicants ("**Credit Bid**"); provided, that a Secured Creditor that is also a Consultation Party (as defined by the Bidding and Sale Procedures) may only Credit Bid in connection with the Bidding and Sale Procedures to the extent that the Applicants seek to consummate a sale or other transaction that is less favourable to the Applicants' estates than the Stalking Horse Purchase Agreement or the Closing (as defined by the Stalking Horse Purchase Agreement) does not occur in accordance with the Bidding and Sale Procedures. For the avoidance of doubt, nothing herein affects the DIP Lenders' Charge, the Intercompany DIP Charge or the enforcement rights of the DIP Agent or the DIP Lenders under the Amended and Restated Initial Order or any of the Definitive Documents.

ASSUMPTION AND ASSIGNMENT PROCEDURES

9. **THIS COURT ORDERS** that the Assumption and Assignment Notice attached hereto as Schedule "D" (the "**Assumption and Assignment Notice**") is hereby approved substantially in the form attached hereto.

10. **THIS COURT ORDERS** that as soon as reasonably practicable following the date of this Order and no later than March 9, 2021, 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**").

11. **THIS COURT ORDERS** that the Monitor shall cause the Assignment and Assumption Notice to be posted on the case website established by the Monitor with the following URL '<www.ey.com/ca/freshfoodcanada>' ("**Monitor's Website**") as soon as reasonably practicable after service thereof in accordance with paragraph 10 hereof.

12. **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 10 to 11 hereof shall be proper notice of the Sale Hearing and proposed assignment of their Proposed Assigned Contract.

13. **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 earlier of (i) March 23, 2021, and (ii) fourteen (14) calendar days following service of the Assumption and Assignment Notice (the "**Contract Objection Deadline**"), provided that, notwithstanding the above, if the Successful Bidder is not the Stalking Horse Bidder, a Contract Counterparty may file a Contract Objection in respect of the proposed assignment of their Proposed Assigned Contract until March 23, 2021 except in relation to the proposed Cure Amount.

14. **THIS COURT ORDERS** that if a Contract Counterparty files and serves a Contract Objection in accordance with paragraph 13 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.

15. **THIS COURT ORDERS** that if (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.

16. **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.

NOTICES

17. **THIS COURT ORDERS** that the Applicants, CRO, Stout and the Monitor and their counsel are at liberty to serve or distribute this Order, the notices contemplated herein any other materials and orders as may be reasonably required to implement the Bidding and Sale Procedures, 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).

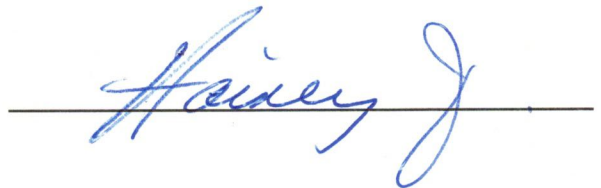
GENERAL

18. **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.

19. **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.

20. **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.

21. **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.

A handwritten signature in blue ink, appearing to read "Haley J", is written over a horizontal line.