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)

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

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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.

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

On March 1, 2021, the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**" and together with the Bankruptcy Court, the "**Courts**") issued and entered a Bidding Procedures Order in the CCAA Proceedings (the "**Canadian Bidding Procedures 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; <u>provided</u>, <u>however,</u> 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. **<u>Bidding Process</u>**. 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, 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; <u>provided</u>, 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.

<u>Participation Requirements</u>

2. <u>Potential Bidder</u>. 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. **<u>Qualified Bid Requirements</u>**. 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 Bid 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:

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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 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 25, 2021 at 9:30 a.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, the Bid Procedures Order or the Canadian Bidding Procedures Order, nothing in the Bid Procedures Order, Canadian Bidding Procedures Order or these Bid 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 Canadian Bidding Procedures 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.