

**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
TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE
FOODS INC.**

(Applicants)

**MOTION RECORD OF THE APPLICANTS
(Re: Stay Extension and Distribution)
(Returnable April 13, 2021)**

April 8, 2021

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TAB 1

**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
TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE
FOODS INC.**

APPLICANTS

**NOTICE OF MOTION
(Returnable April 13, 2021)**

The Applicants will make a motion to the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on **April 13, 2021** at **12:30 P.M. EST**.

PROPOSED METHOD OF HEARING: Due to the ongoing COVID-19 pandemic, the motion is to be heard via video conference, the details of which can be found in **Schedule "A"** to this Notice of Motion. If you intend to join the hearing on this Motion, please advise Mr. Lee Nicholson of Stikeman Elliott LLP by email at lnicholson@stikeman.com.

THE MOTION IS FOR:

1. An order:
 - (a) extending the Stay Period (as defined below) to June 27, 2021;
 - (b) authorizing the Monitor (as defined below), subject to the establishment of the Reserve (as defined below), to proceed with the distribution, without further order of the Court, of the purchase price to be paid by each of Save-On and Homestyle (as such terms are defined below) pursuant to the Save-On APA and the Homestyle APA (as such terms are defined below), as applicable, on account of Sun Rich Canada's and TG's respective indebtedness and obligations outstanding under or in connection with the following agreements (in the following order):
 - (i) First, the Super Senior Term Loan Credit Agreement and the Super Senior Canadian Guaranty (as such terms are defined below);

- (ii) Second, the First Lien Credit Agreement and the First Lien Canadian Guaranty (as such terms are defined below); and
 - (iii) Third, the Second Lien Credit Agreement and the Second Lien Canadian Guaranty (as such terms are defined below)
- (c) authorizing Sun Rich Canada and TG to establish with the Monitor a reserve (the “**Reserve**”) from the Sale Proceeds (as defined below), which the Monitor shall be authorized and directed to hold in segregated interest-bearing accounts, and pay therefrom, in the name of and on behalf of the Applicants, the Reserve Claims (as defined below).
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS APPLICATION ARE:

3. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Affidavit of Stephen Marotta sworn on April 8, 2021 (the “**Third Marotta Affidavit**”).

Background

4. The Applicants, TGF Acquisition Parent Ltd., Sun Rich Fresh Foods Inc. and Tiffany Gate Foods Inc. (collectively, the “**CCAA Entities**”), are part of a group of companies known as the Fresh Food Group (“**FFG**”), which include several entities that are based in the U.S., including Country Fresh Holding Company Inc., Country Fresh Midco Corp., Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, Country Fresh LLC, Country Fresh Dallas, LLC, Country Fresh Carolina, LLC, Country Fresh Midwest, LLC, Country Fresh Orlando, LLC, Country Fresh Transportation LLC, CF Products, LLC, Country Fresh Manufacturing, LLC, Champlain Valley Specialty of New York, Inc., Country Fresh Pennsylvania, LLC, Sun Rich Fresh Foods (NV) Inc., Sun Rich Foods (USA) Inc. and Sun Rich Fresh Foods (PA) Inc. (collectively, the “**Chapter 11 Entities**”).

5. On February 15, 2021, the Chapter 11 Entities filed voluntary petitions commencing parallel insolvency proceedings before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**US Court**”) under chapter 11 of title 11 of the United States Bankruptcy Code (the “**Chapter 11 Proceedings**” and together with the CCAA Proceedings, the “**Restructuring Proceedings**”).
6. On February 17, 2021, the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) rendered a “*first day*” Initial Order (the “**First Day Order**”) in favor of the CCAA Entities, among other things:
 - (a) declaring that the CCAA Entities were affiliated debtor companies to which the CCAA applied;
 - (b) staying all proceedings and remedies taken or that might be taken against or in respect of the CCAA Entities, any of their respective property or director and officers, except as otherwise set forth in the First Day Order or as otherwise permitted by law (the “**Stay**”), for an initial period of ten (10) days in accordance with the CCAA (the “**Stay Period**”);
 - (c) appointing Ernst & Young Inc. (“**E&Y**” or the “**Monitor**”) as the monitor of the CCAA Entities in these proceedings (the “**CCAA Proceedings**”);
 - (d) approving the execution by the CCAA Entities of a Super Priority Senior Secured Debtor-in-Possession Financing Agreement (the “**DIP Credit Agreement**”), together with certain ancillary agreements thereto (together with the DIP Credit Agreement, the “DIP Documents”) entered into on February 16, 2021, between, amongst others, the lenders thereunder (the “**DIP Lenders**”), Country Fresh Holdings, LLC, as borrower (in such capacity, the “**DIP Borrower**”), and several of its direct and indirect subsidiaries, including the CCAA Entities, as guarantors, pursuant to which amounts of up to US\$13,416,000 (the “**DIP Facility**”), would be made available to the DIP Borrower;
 - (e) granting: (a) a priority charge against the assets of the CCAA Entities in favor of the DIP Borrower and its U.S. subsidiaries that are party to the DIP Credit Agreement, securing the full amount of any funding or advances made by any

of them to any of the CCAA Entities (the “**Intercompany DIP Advances**”) plus interest during the course of these CCAA Proceedings (the “**Intercompany DIP Charge**”); and (b) a priority charge against the assets of the CCAA Entities for the benefit of the DIP Agent (as defined below) and the DIP Lenders (the “**DIP Lenders’ Charge**”), securing the full amount of the CCAA Entities’ obligations under the Canadian Guaranty and Security Agreement (the “**Canadian Guarantee Agreement**”) entered into in conjunction with the DIP Credit Agreement, which provides that, inter alia, the CCAA Entities would guarantee, in favor of the DIP Lender, the payment of an amount equivalent to the Intercompany DIP Advances, plus interest 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 the First Day Order;

- (f) granting an “**Administration Charge**” in an amount of US\$400,000 and a Directors’ Charge in an amount of US\$2,500,000 to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period;
- (g) approving a “**Canadian Intercompany Charge**” for the purpose of securing the repayment of the various amounts which may be advanced, from time to time, plus interest thereon, between the CCAA Entities during the initial Stay Period; and
- (h) authorizing the CCAA Entities to make payments to certain suppliers deemed crucial by the CCAA Entities, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, up to an amount of \$750,000, subject to the prior approval of the Proposed Monitor.

7. On February 26, 2021, the Canadian Court rendered an amended and restated initial order (the “**ARIO**”) in favor of the CCAA Entities, among other things:
- (a) extending the Stay Period until March 28, 2021;
 - (b) confirming the appointment of E&Y as the Monitor of the CCAA Entities in these CCAA Proceedings;
 - (c) approving the engagement of Ankura (Stephen Marotta), as Chief Restructuring Organization, and of Stout Capital, LLC (“**Stout**”), as investment banker and financial advisor to FFG, including the CCAA Entities, and granting to Stout a “Transaction Fee Charge” in the amount of US\$2,500,000 in order to secure the payment of the “Transaction Fee” payable under the Stout Engagement Letter (as defined below);
 - (d) confirming the approval of the DIP Credit Agreement, the Canadian Guarantee Agreement and the granting of the Intercompany DIP Charge and the DIP Lenders’ Charge;
 - (e) confirming and increasing, as applicable, the amount of the Administration Charge (US\$750,000) and the Directors Charge (US\$2,500,000) previously approved as part of the First Day Order;
 - (f) confirming the Canadian Intercompany Charge previously approved as part of the First Day Order;
 - (g) confirming the Applicants’ authority to make payments to certain suppliers deemed crucial by the Applicants, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, subject to the prior approval of the Proposed Monitor; and
 - (h) approving the Guidelines and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network for the purposes of these CCAA Proceedings.

8. On the same day, the U.S. Court rendered an order in the context of the Chapter 11 Proceedings (the “**U.S. Bidding Procedures Order**”), among other things:
 - (a) approving the execution by the Chapter 11 Entities of a stalking horse asset purchase agreement (the “**Stellex APA**”) entered into between the Chapter 11 Entities and the CCAA Entities, as sellers, and Stellex US Newco and Stellex Canadian Newco (both newly incorporated entities whose shares are owned by Stellex Capital Management (“**Stellex**”)), as purchasers, subject to certain amendments which could be agreed upon in respect of the Stellex APA; and
 - (b) approving the bidding procedures (the “**Bidding Procedures**”) to be followed in connection with the pursuit and continuation of the Formal Solicitation Process (as defined below) previously initiated by Stout in November 2020.
9. On March 1, 2021, following the issuance of the U.S. Bid Procedures Order by the U.S. Court, the Canadian Court also rendered an order in the context of the CCAA Proceedings (the “**Canadian Bidding Procedures Order**”, together with the U.S. Bidding Procedures Order, the “**Bidding Procedures Orders**”), among other things:
 - (a) approving the execution by the CCAA Entities of the Stellex APA, subject to certain amendments which could be agreed upon in respect of the Stellex APA;
 - (b) approving the Bidding Procedures to be followed in connection with the pursuit and continuation of the Formal Solicitation Process previously initiated by Stout in November 2020; and
 - (c) approving the form of notices to be sent to the counterparties to those contracts previously entered into by the CCAA Entities which may be assumed by the Stellex of the “*Successful Bidder*” to be determined in accordance with the Bidding Procedures.
10. Following the issuance of the Bidding Procedures Orders, the CCAA Entities and the Chapter 11 Entities have jointly conducted, with the assistance of Stout, the Formal Solicitation Process with the objective of soliciting and receiving offers for the business and assets of each of the CCAA Entities and the Chapter 11 Entities, either as a whole or on a stand-alone basis.

11. On March 24, 2021, after having received and considered a total amount of six (6) “*Qualified Bids*” submitted as part of the Formal Solicitation Process (including the offer submitted as part of the Stellex APA) and after having conducted an auction with a view to obtain the best offers possible for the assets of the CCAA Entities and the Chapter 11 Entities, together or on a standalone basis, Save-On Foods Limited Partnership (“**Save-On**”) and Homestyle Selections LP (“**Homestyle**”) were designated as the “*Successful Bidders*” for the assets of the Canadian Entities, and Stellex, Inc. was designated as the “*Successful Bidder*” for the assets of the U.S. Entities (the “**Stellex Transaction**”).
12. On the same date, and in accordance with the Bidding Procedures Order, FFG issued a Post-Auction Notice and served the Post-Auction Notice on the service list confirming the identity of the “*Successful Bidders*” and of the “*Back-up Bidders*”. On March 25, 2021, an asset purchase agreement was finalized and executed with each of Save-On (the “**Save-On APA**”) and Homestyle (the “**Homestyle APA**”).
13. On March 25, 2021, the U.S. Court approved the Stellex Transaction.
14. On March 26, 2021, the Canadian Court approved the transaction contemplated in each of the Save-On APA and the Homestyle APA and extended the Stay Period until April 18, 2021.

The Extension of the Stay Period

15. The CCAA Entities request that the Stay Period be extended until June 27, 2021, so as to allow them to proceed with the closing of the Save-On Transaction and the Homestyle Transaction (which are both expected to occur on or about April 16, 2021), and deal with any post-closing matters related therewith, while at the same time preserving the status quo and preventing creditors and others from taking any steps to try and better their positions in comparison to other creditors. I believe that the CCAA Entities’ stakeholders, including creditors, will all benefit from the Extension of the Stay Period
16. The CCAA Entities’ stakeholders, including creditors, will all benefit from the extension of the Stay Period.
17. As set out in the cash flow projections (the “**Cash Flow Statement**”) that was prepared by the CCAA Entities in consultation with Ankura, and reviewed by the Monitor for the

period up to June 27, 2021, the CCAA Entities expect that they will have sufficient cash to fund their projected operating costs during such period.

The Proposed Distribution and Establishment of a Reserve

18. The CCAA Entities now seek the Canadian Court's approval to proceed, upon closing of the Save-On Transaction and the Homestyle Transaction, with one or more distributions to be effected by the Monitor (the "**Proposed Distribution**") of all sale proceeds (the "**Sale Proceeds**") resulting from said transaction to the CCAA Entities' secured lenders, on account of Sun Rich Canada's and TG's respective indebtedness and obligations outstanding under or in connection with the following agreements (in the following order):
 - (a) First, the Term Loan Credit Agreement (Super Senior) (as amended on December 29, 2020 and February 4, 2021, the "**Super Senior Term Loan Credit Agreement**") entered into between Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as the Canadian borrower, and Cortland Capital Market Services LLC ("**Cortland**" or the "**Agent**"), as administrative agent to the lenders under the Super Senior Term Loan Credit Agreement (the "**First Lien Lenders**"), which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Super Senior) dated June 1, 2020 (the "**Super Senior Canadian Guaranty**"). As at the date hereof, a total amount of US\$24 million in principal (plus interests, costs and other allowable charges) remains outstanding under the First Lien Credit Agreement, and therefore under the Super Senior Canadian Guaranty;
 - (b) Second, the Credit Agreement (First Lien) (as amended on April 22, 2020, the "**First Lien Credit Agreement**") entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. Borrower, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the First Lien Credit Agreement, which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (First Lien) dated April 29, 2019 (the "**First Lien Canadian Guaranty**"). As at the date of this hereof, a total amount of US\$35 million in principal (plus interests,

costs and other allowable charges) remains outstanding under the First Lien Credit Agreement, and therefore under the First Lien Canadian Guaranty; and

- (c) Third, the Credit Agreement (Second Lien) (as amended on April 22, 2020, the “Second Lien Credit Agreement”) entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. Borrower, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the Super Second Lien Credit Agreement, which was guaranteed which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Second Lien) dated April 29, 2019 (the “Second Lien Canadian Guaranty”). As at the date hereof, a total amount of US\$60 million in principal (plus interests, costs and other allowable charges) remains outstanding under the Second Lien Credit Agreement, and therefore under the Second Lien Canadian Guaranty.

2. The Proposed Distribution is subject to the establishment of a reserve (i.e. the Reserve) which the Monitor shall hold back from the Sale Proceeds, in segregated interest-bearing accounts, for the benefit of the holders of the following claims (the “**Reserve Claims**”):

- (a) Any costs and fees incurred by the Applicants and the Monitor in connection with any post-closing matters contemplated in either the Save-On APA or the Homestyle APA, including any post-closing liability, obligation or claim against Sun Rich Canada or TG related to ordinary course trade payables, which are not assumed either by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;
- (b) Any unpaid employee wages, including vacation accruals, that are not otherwise assumed by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;
- (c) Any cure costs payable by Sun Rich Canada pursuant to Save-On APA, if any;
- (d) Any liability, obligation or claim (if any) secured by the Administration Charge, the Intercompany DIP Charge, the Directors’ Charge, the Transaction Fee Charge and the Canadian Intercompany Charge (as each of those terms are defined in the Initial Order) that were incurred either prior to or after the Closings and which, upon payment of same, shall be terminated, released and discharged without further order of the Court. It should

be noted that as of the date hereof, there is no amount owing that is secured by the Intercompany DIP Charge or the Canadian Intercompany Charge;

- (e) Any costs and fees incurred by the Applicants, the Monitor, their respective counsels and the other professionals engaged by the aforementioned parties in relation with the dissolution, winding-up, liquidation or bankruptcy of the Applicants, including all costs and fees incurred in relation to any proceedings under the BIA in respect of any of the Applicants;
 - (f) Any other amounts agreed upon between the CCAA Entities, the Monitor and the First Lien Lenders.
19. Based on the Applicants' current calculation of the Reserve Claims, an amount of US\$24 million should be distributed upon closing of the Save-On Transaction and the Homestyle Transaction to the CCAA Entities' secured lenders in accordance with the Proposed Distribution set out above.

Other Grounds

20. The provisions of the CCAA, including s. 11.02(2) thereof, and the inherent and equitable jurisdiction of this Honourable Court;
21. The provisions of the Rules of Civil Procedure, RRO 1990, Reg. 194, including rules 2.03, 3.02 and 37 thereof; and
22. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the applications:

- a. the Affidavits of Stephen Marotta, sworn on February 16, 2021, March 25, 2021 and on April 8, 2021, respectively, and the exhibits attached thereto;
- b. the Third Report of E&Y, as Monitor, to be filed; and
- c. such further and other evidence as counsel may advise and this Honourable Court may permit.

April 8, 2021

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Lawyers for the Applicants

SCHEDULE A

ZOOM MEETING DETAILS

Join Zoom Meeting

<https://zoom.us/j/99527477213>

Meeting ID: 995 2747 7213

One tap mobile

+14086380968,,99527477213# US (San Jose)

+16468769923,,99527477213# US (New York)

Dial by your location

+1 408 638 0968 US (San Jose)

+1 646 876 9923 US (New York)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

Meeting ID: 995 2747 7213

Find your local number: <https://zoom.us/u/ac5rtJAmJH>

**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

NOTICE OF MOTION

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Lawyers for the Applicants

TAB 2

**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
TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE
FOODS INC.**

(Applicants)

**AFFIDAVIT OF STEPHEN MAROTTA
(Sworn April 8, 2021)**

I, **STEPHEN MAROTTA**, of the City of New York, in the State of New York, United States of America, MAKE OATH AND SAY:

1. I am a Senior Managing Director of Ankura Consulting Group, LLC ("**Ankura**"), which has been appointed to act as Chief Restructuring Organization of Country Fresh Holding Company Inc. ("**CF Holding**"), a company which indirectly holds all of the shares of the Applicants. In this capacity, I am responsible for overseeing the operations of FFG (as defined below), which includes the Applicants, their liquidity management and, ultimately, for assisting them with their restructuring process. As such, I have knowledge of the matters to which I hereinafter depose herein, except where otherwise stated. The facts stated in the present affidavit are based on my personal knowledge of FFG, my review of its books and records, as well as on information received from other individuals, such as directors, officers and/or employees of FFG, which information I believe to be true.

2. This affidavit is sworn in support of a motion (the "**Motion**") by each of TGF Acquisition Parent Ltd. ("**TGF**"), Sun Rich Fresh Foods Inc. ("**Sun Rich Canada**") and Tiffany Gate Foods Inc. ("**Tiffany Gate**") and collectively with TGF and Sun Rich Canada, the "**Applicants**" or the "**CCAA Entities**", for the issuance of an order:

- (a) extending the Stay Period (as defined below) to June 27, 2021;
- (b) authorizing the Monitor (as defined below), subject to the establishment of the Reserve (as defined below), to proceed with the distribution, without further order of the Court, of the purchase price funds to be paid by each of Save-On and

Homestyle (as such terms are defined below) pursuant to the Save-On APA and the Homestyle APA (as such terms are defined below), as applicable, and to be held by the Monitor, on account of Sun Rich Canada's and TG's respective indebtedness and obligations outstanding under or in connection with the following agreements (in the following order):

- (i) First, the Super Senior Term Loan Credit Agreement and the Super Senior Canadian Guaranty (as such terms are defined below);
 - (ii) Second, the First Lien Credit Agreement and the First Lien Canadian Guaranty (as such terms are defined below); and
 - (iii) Third, the Second Lien Credit Agreement and the Second Lien Canadian Guaranty (as such terms are defined below).
- (c) authorizing Sun Rich Canada and TG to establish with the Monitor a reserve (the "**Reserve**") from the Sale Proceeds (as defined below), which the Monitor shall be authorized and directed to hold in segregated interest-bearing accounts, and pay therefrom, in the name of and on behalf of Sun Rich Canada and/or TG, the Reserve Claims (as defined below).

3. All capitalized terms not otherwise defined herein have the meaning ascribed to them in my affidavits sworn on February 16, 2021 (the "**February 16, 2021 Marotta Affidavit**") and on March 25, 2021 (the "**March 25, 2021 Marotta Affidavit**") filed in the context of these proceedings, a copy of which (without their exhibits) is attached hereto as **Exhibit "A"** and **Exhibit "B"**, respectively.

4. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

I. PROCEDURAL BACKGROUND

5. On February 15, 2021, certain US affiliates of the CCAA Entities, including CF Holding, Country Fresh Midco Corp., Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, Country Fresh LLC, Country Fresh Dallas, LLC, Country Fresh Carolina, LLC, Country Fresh Midwest, LLC, Country Fresh Orlando, LLC, Country Fresh Transportation LLC, CF Products, LLC, Country Fresh Manufacturing, LLC, Champlain Valley Specialty of New York, Inc., Country

Fresh Pennsylvania, LLC, Sun Rich Fresh Foods (NV) Inc., Sun Rich Foods (USA) Inc. and Sun Rich Fresh Foods (PA) Inc. (collectively, the “**Chapter 11 Entities**”, together with the CCAA Entities, “**FFG**”) filed voluntary petitions before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**U.S. Court**”) under chapter 11 of title 11 of the United States Code (the “**Chapter 11 Proceedings**” and together with the CCAA Proceedings, the “**Restructuring Proceedings**”).

6. On February 17, 2021, the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) rendered a “*first day*” Initial Order (the “**First Day Order**”) in favor of the CCAA Entities, among other things:

- (a) declaring that the CCAA Entities were affiliated debtor companies to which the CCAA applied;
- (b) staying all proceedings and remedies taken or that might be taken against or in respect of the CCAA Entities, any of their respective property or director and officers, except as otherwise set forth in the First Day Order or as otherwise permitted by law (the “**Stay**”), for an initial period of ten (10) days in accordance with the CCAA (the “**Stay Period**”);
- (c) appointing Ernst & Young Inc. (“**E&Y**” or the “**Monitor**”) as the monitor of the CCAA Entities in these proceedings (the “**CCAA Proceedings**”);
- (d) approving the execution by the CCAA Entities of a *Super Priority Senior Secured Debtor-in-Possession Financing Agreement* (the “**DIP Credit Agreement**”), together with certain ancillary agreements thereto (together with the DIP Credit Agreement, the “**DIP Documents**”) entered into on February 16, 2021, between, amongst others, the lenders thereunder (the “**DIP Lenders**”), Country Fresh Holdings, LLC, as borrower (in such capacity, the “**DIP Borrower**”), and several of its direct and indirect subsidiaries, including the CCAA Entities, as guarantors, pursuant to which amounts of up to US\$13,416,000 (the “**DIP Facility**”), would be made available to the DIP Borrower;
- (e) granting: (a) a priority charge against the assets of the CCAA Entities in favor of the DIP Borrower and its U.S. subsidiaries that are party to the DIP Credit Agreement, securing the full amount of any funding or advances made by any of

them to any of the CCAA Entities (the “**Intercompany DIP Advances**”) plus interest during the course of these CCAA Proceedings (the “**Intercompany DIP Charge**”); and (b) a priority charge against the assets of the CCAA Entities for the benefit of the DIP Agent (as defined below) and the DIP Lenders (the “**DIP Lenders’ Charge**”), securing the full amount of the CCAA Entities’ obligations under the *Canadian Guaranty and Security Agreement* (the “**Canadian Guarantee Agreement**”) entered into in conjunction with the DIP Credit Agreement, which provides that, *inter alia*, the CCAA Entities would guarantee, in favor of the DIP Lender, the payment of an amount equivalent to the Intercompany DIP Advances, plus interest 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 the First Day Order;

- (f) granting an “**Administration Charge**” in an amount of US\$400,000 and a Directors’ Charge in an amount of US\$2,500,000 to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period;
- (g) approving a “**Canadian Intercompany Charge**” for the purpose of securing the repayment of the various amounts which may be advanced, from time to time, plus interest thereon, between the CCAA Entities during the initial Stay Period; and
- (h) authorizing the CCAA Entities to make payments to certain suppliers deemed crucial by the CCAA Entities, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, up to an amount of \$750,000, subject to the prior approval of the Proposed Monitor.

7. On February 26, 2021, the Canadian Court rendered an amended and restated initial order (the “**ARIO**”) in favor of the CCAA Entities, among other things:

- (a) extending the Stay Period until March 28, 2021;
- (b) confirming the appointment of E&Y as the Monitor of the CCAA Entities in these CCAA Proceedings;
- (c) approving the engagement of Ankura (Stephen Marotta), as Chief Restructuring Organization, and of Stout Capital, LLC (“**Stout**”), as investment banker and

financial advisor to FFG, including the CCAA Entities, and granting to Stout a “Transaction Fee Charge” in the amount of US\$2,500,000 in order to secure the payment of the “Transaction Fee” payable under the Stout Engagement Letter (as defined below);

- (d) confirming the approval of the DIP Credit Agreement, the Canadian Guarantee Agreement and the granting of the Intercompany DIP Charge and the DIP Lenders’ Charge;
- (e) confirming and increasing, as applicable, the amount of the Administration Charge (US\$750,000) and the Directors Charge (US\$2,500,000) previously approved as part of the First Day Order;
- (f) confirming the Canadian Intercompany Charge previously approved as part of the First Day Order;
- (g) confirming the Applicants’ authority to make payments to certain suppliers deemed crucial by the Applicants, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, subject to the prior approval of the Proposed Monitor; and
- (h) approving the *Guidelines and Cooperation between Courts in Cross-Border Insolvency Matters* issued by the Judicial Insolvency Network for the purposes of these CCAA Proceedings;

8. On the same day, the U.S. Court rendered an order in the context of the Chapter 11 Proceedings (the “**U.S. Bidding Procedures Order**”), among other things:

- (a) approving the execution by the Chapter 11 Entities of a stalking horse asset purchase agreement (the “**Stellex APA**”) entered into between the Chapter 11 Entities and the CCAA Entities, as sellers, and Stellex US Newco and Stellex Canadian Newco (both newly incorporated entities whose shares are owned by Stellex Capital Management (“**Stellex**”)), as purchasers, subject to certain amendments which could be agreed upon in respect of the Stellex APA; and

- (b) approving the bidding procedures (the “**Bidding Procedures**”) to be followed in connection with the pursuit and continuation of the Formal Solicitation Process (as defined below) previously initiated by Stout in November 2020.

9. On March 1, 2021, following the issuance of the U.S. Bid Procedures Order by the U.S. Court, the Canadian Court also rendered an order in the context of the CCAA Proceedings (the “**Canadian Bidding Procedures Order**”, together with the U.S. Bidding Procedures Order, the “**Bidding Procedures Orders**”), among other things:

- (a) approving the execution by the CCAA Entities of the Stellex APA, subject to certain amendments which could be agreed upon in respect of the Stellex APA;
- (b) approving the Bidding Procedures to be followed in connection with the pursuit and continuation of the Formal Solicitation Process previously initiated by Stout in November 2020; and
- (c) approving the form of notices to be sent to the counterparties to those contracts previously entered into by the CCAA Entities which may be assumed by the Stellex of the “*Successful Bidder*” to be determined in accordance with the Bidding Procedures.

10. Following the issuance of the Bidding Procedures Orders, the CCAA Entities and the Chapter 11 Entities jointly conducted, with the assistance of Stout, the Formal Solicitation Process with the objective of soliciting and receiving offers for the business and assets of each of the CCAA Entities and the Chapter 11 Entities, either as a whole or on a stand-alone basis.

11. On March 24, 2021, after having received and considered a total amount of six (6) “*Qualified Bids*” submitted as part of the Formal Solicitation Process (including the offer submitted as part of the Stellex APA) and after having conducted an auction with a view to obtaining the best offers possible for the assets of the CCAA Entities and the Chapter 11 Entities, together or on a standalone basis, Save-On Foods Limited Partnership (“**Save-On**”) and Homestyle Selections LP (“**Homestyle**”) were designated as the “*Successful Bidders*” for the assets of the Canadian Entities, and Stellex, Inc. was designated as the “*Successful Bidder*” for the assets of the U.S. Entities (the “**Stellex Transaction**”).

12. On the same date, and in accordance with the Bidding Procedures Order, FFG issued and served a Post-Auction Notice on the service list confirming the identity of the “*Successful Bidders*” and of the “*Back-up Bidders*”.

13. On March 25, 2021, an asset purchase agreement was finalized and executed with each of Save-On (the “**Save-On APA**”) and Homestyle (the “**Homestyle APA**”), which each provide for a total purchase price payable of US\$2,500,000 and US\$30,000,000, respectively.

14. On March 25, 2021, the U.S. Court approved the Stellex Transaction.

15. On March 26, 2021, the Canadian Court approved the transaction contemplated in each of the Save-On APA and the Homestyle APA, and extended the Stay Period until April 18, 2021.

II. ORDER SOUGHT

A. Extension of the Stay Period

16. Since the approval by the Canadian Court of the transactions contemplated in each of the Save-On APA (the “**Save-On Transaction**”) and the Homestyle APA (the “**Homestyle Transaction**”), the Applicants and their advisors have been working towards a closing of both transactions.

17. As things currently stand, the closings of both the Save-On Transaction and the Homestyle Transaction are expected to close on or about April 16, 2021. However, following the closing of both transactions, it is expected that the CCAA Entities and some of the U.S. Entities will be expected to provide post-closing services to Save-On and Homestyle, pursuant to the terms of “*transition services agreements*” which are currently being negotiated amongst the parties.

18. Accordingly, the CCAA Entities request that the Stay Period be extended until June 27, 2021, so as to allow them to proceed with the closing of the Save-On Transaction and the Homestyle Transaction, to deal with any post-closing matters related therewith, including the finalization and implementation of the transition services agreement to be entered into with each of Save-On and Homestyle and, finally, proceed with the winding-up, dissolution and liquidation of the Applicants, while at the same time preserving the status quo and preventing creditors and others from taking any steps to try and better their positions in comparison to other creditors. I believe that the CCAA Entities’ stakeholders, including creditors, will all benefit from the Extension of the Stay Period.

19. As set out in the cash flow projections (the “**Cash Flow Statement**”) that was prepared by the CCAA Entities in consultation with Ankura, and reviewed by the Monitor for the period which goes up to June 27, 2021, the CCAA Entities expect that they will have sufficient cash to fund their projected operating costs during such period.

20. I understand that a copy of the Cash Flow Statement will be attached to the report of the Monitor, which will be filed with the Court in advance of the hearing on the Motion.

B. The Proposed Distribution and Establishment of a Reserve

21. The Monitor has advised that it sought and obtained a legal opinion from its independent legal counsel which confirmed, subject to standard qualifications and limitations, the validity and perfection of the security interests registered against the assets of the CCAA Entities by their secured lender, and that it will be providing further comments as part of its Third Report to be filed in connection with the Motion.

22. Accordingly, given that the CCAA Entities’ secured lenders have advised they require a distribution of the net sale proceeds resulting from the Save-On Transaction and the Homestyle Transaction (the “**Sale Proceeds**”) and given that such transactions are expected to close imminently, the CCAA Entities now seek the Canadian Court’s approval to proceed, upon closing of the Save-On Transaction and the Homestyle Transaction, with one or more distributions, to be effected by the Monitor (the “**Proposed Distribution**”) of such Sale Proceeds to the CCAA Entities’ secured lenders, on account of Sun Rich Canada’s and TG’s respective indebtedness and obligations outstanding under or in connection with the following agreements (collectively, the “**Loan Documents**”) in the following order:

- (a) First, the Term Loan Credit Agreement (Super Senior) (as amended on December 29, 2020 and February 4, 2021, the “**Super Senior Term Loan Credit Agreement**”) entered into between Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as the Canadian borrower, and Cortland Capital Market Services LLC (“**Cortland**” or the “**Agent**”), as administrative agent to the lenders under the Super Senior Term Loan Credit Agreement (the “**First Lien Lenders**”), which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Super Senior) dated June 1, 2020 (the “**Super Senior Canadian Guaranty**”). As at the date of this Affidavit, a total amount of US\$24 million in

principal (plus interests, costs and other allowable charges) remains outstanding under the First Lien Credit Agreement, and therefore under the Super Senior Canadian Guaranty;

- (b) Second, the Credit Agreement (First Lien) (as amended on April 22, 2020, the **"First Lien Credit Agreement"**) entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. Borrower, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the First Lien Credit Agreement, which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (First Lien) dated April 29, 2019 (the **"First Lien Canadian Guaranty"**). As at the date of this Affidavit, a total amount of US\$35 million in principal (plus interests, costs and other allowable charges) remains outstanding under the First Lien Credit Agreement, and therefore under the First Lien Canadian Guaranty; and
- (c) Third, the Credit Agreement (Second Lien) (as amended on April 22, 2020, the **"Second Lien Credit Agreement"**) entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. Borrower, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the Super Second Lien Credit Agreement, which was guaranteed which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Second Lien) dated April 29, 2019 (the **"Second Lien Canadian Guaranty"**). As at the date of this Affidavit, a total amount of US\$60 million in principal (plus interests, costs and other allowable charges) remains outstanding under the Second Lien Credit Agreement, and therefore under the Second Lien Canadian Guaranty.

23. The Proposed Distribution is subject to the establishment of a reserve (i.e. the Reserve) which the Monitor shall hold back from the Sale Proceeds, in segregated interest-bearing accounts, for the benefit of the holders of the following claims (the **"Reserve Claims"**):

- (a) Any costs and fees incurred by the Applicants and the Monitor in connection with any post-closing matters contemplated in either the Save-On APA or the Homestyle APA, including any post-closing liability, obligation or claim against Sun Rich Canada or TG related to ordinary course trade payables, which are not assumed either by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;

- (b) Any unpaid employee wages, including vacation accruals, that are not otherwise assumed by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;
- (c) Any cure costs payable by Sun Rich Canada pursuant to Save-On APA, if any;
- (d) Any liability, obligation or claim (if any) secured by the Administration Charge, the Intercompany DIP Charge, the Directors' Charge, the Transaction Fee Charge and the Canadian Intercompany Charge (as each of those terms are defined in the Initial Order) that were incurred either prior to or after the Closings and which, upon payment of same, shall be terminated, released and discharged without further order of the Court. It should be noted that as of the date hereof, there is no amount owing that is secured by the Intercompany DIP Charge or the Canadian Intercompany Charge;
- (e) Any costs and fees incurred by the Applicants, the Monitor, their respective counsels and the other professionals engaged by the aforementioned parties in relation with the dissolution, winding-up, liquidation or bankruptcy of the Applicants, including all costs and fees incurred in relation to any proceedings under the BIA in respect of any of the Applicants;
- (f) Any other amounts agreed upon between the CCAA Entities, the Monitor and the First Lien Lenders

24. Based on the Applicants' current calculation of the Reserve Claims, I understand that, subject to the necessary adjustments to be made upon closing of the Save-On Transaction and the Homestyle Transaction, an estimated amount of approximately US\$24,000,000 could be distributed as soon as practicable after such closings to the CCAA Entities' secured lenders in accordance with the Proposed Distribution set out above. It should be noted that the Proposed Distribution will not be sufficient to pay in full Sun Rich Canada and TG's indebtedness (as well as that of TGF) to their secured lenders under the Loan Documents.

25. The proposed Distribution Order sought by the CCAA Entities provides that following the payment of all Reserve Claims from the funds held in the Reserve (the "**Reserve Funds**"), the Monitor shall file a certificate with the Court and deliver a final accounting of the payments made from the Reserve Funds to the CCAA Entities and to the Agent. Provided that there remains any Reserve Funds in the Reserve after payment of all Reserve Claims, the CCAA Entities also request that the Monitor be authorized and directed to proceed with a final distribution of any remaining Reserve Funds to the Agent, on account of the CCAA Entities' respective

indebtedness and obligations outstanding under the Loan Documents, without further order of the Court.

III. CONCLUSIONS

26. In light of the foregoing, I believe that the relief sought by the Applicants as part of the Sale Approval Motion are reasonable in the circumstances.

27. Furthermore, I understand that E&Y, in its capacity as Monitor, will also be filing a report in advance of the hearing on the Motion, confirming its support for the reliefs sought in the Applicants' motion.

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.



STEPHEN MAROTTA

SWORN BEFORE ME remotely by video conference by Stephen Marotta, stated as being in the City of New York, in the State of New York, to the City of Toronto, in the Province of Ontario, on April 8, 2021, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits

**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 STEPHEN MAROTTA
(SWORN ON APRIL 8, 2021)**

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Lawyers for the Applicants

TAB A

EXHIBIT "A"
to the affidavit of
STEPHEN MAROTTA
sworn April 8, 2021



A commissioner etc.

Court File No. _____

**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
TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE
FOODS INC.**

(Applicants)

**AFFIDAVIT OF STEPHEN MAROTTA
(Sworn February 16, 2021)**

I, **STEPHEN MAROTTA**, of the City of New York, in the State of New York, United States of America, MAKE OATH AND SAY:

1. I am a Senior Managing Director of Ankura Consulting Group, LLC ("**Ankura**"), which has been appointed to act as Chief Restructuring Organization of Country Fresh Holding Company Inc. ("**CF Holding**"), which indirectly holds all of the shares of the Applicants. In this capacity, I am responsible for overseeing the operations of FFG (as defined below), which includes the Applicants, their liquidity management and, ultimately, for assisting them with their restructuring process. As such, I have knowledge of the matters to which I hereinafter depose herein, except where otherwise stated. The facts stated in the present affidavit are based on my personal knowledge of FFG, my review of its books and records, as well as on information received from other individuals, such as directors, officers and/or employees of FFG, which information I believe to be true.

2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

I. BACKGROUND

3. This affidavit is sworn in support of an application (the "**Application**") by each of TGF Acquisition Parent Ltd. ("**TGF**"), Sun Rich Fresh Foods Inc. ("**Sun Rich Canada**") and Tiffany Gate Foods Inc. ("**Tiffany Gate**" and collectively with TGF and Sun Rich Canada, the "**Applicants**" or the "**CCAA Entities**"), for the following orders pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") :

- (a) a first day initial order (the “**First Day Order**”), which will be sought by the Applicants at the “*first day hearing*” which will take place before the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) on Wednesday, February 17, 2021 (the “**First Day Hearing**”), among other things:
- (i) declaring that the Applicants are affiliated debtor companies to which the CCAA applies;
 - (ii) staying all proceedings and remedies taken or that might be taken against or in respect of the Applicants, any of their respective property or director and officers, except as otherwise set forth in the First Day Order or as otherwise permitted by law (the “**Stay**”), for an initial period of ten (10) days in accordance with the CCAA (the “**Stay Period**”);
 - (iii) appointing Ernst & Young Inc. (“**E&Y**” or the “**Proposed Monitor**”) as the monitor of the Applicants in these proceedings (the “**CCAA Proceedings**”);
 - (iv) approving the execution by the Applicants of a *Super Priority Senior Secured Debtor-in-Possession Financing Agreement* (the “**DIP Credit Agreement**”), together with certain ancillary agreements thereto (together with the DIP Credit Agreement, the “**DIP Documents**”) entered into on February 16, 2021, between, amongst others, the lenders thereunder (the “**DIP Lenders**”), Country Fresh Holdings, LLC, as borrower (in such capacity, the “**DIP Borrower**”), and several of its direct and indirect subsidiaries, including the Applicants, as guarantors, pursuant to which amounts of up to US\$13,416,000 (the “**DIP Facility**”), will be made available to the DIP Borrower;
 - (v) granting: (a) a priority charge against the assets of the CCAA Entities in favour of the DIP Borrower and its U.S. subsidiaries that are party to the DIP Credit Agreement, securing the full amount of any funding or advances made by any of them to any of the CCAA Entities (the “**Intercompany DIP Advances**”) plus interest during the course of

these CCAA Proceedings (the “**Intercompany DIP Charge**”); and (b) a priority charge against the assets of the CCAA Entities for the benefit of the DIP Agent (as defined below) and the DIP Lenders (the “**DIP Lenders’ Charge**”), securing the full amount of the Applicants’ obligations under the *Canadian Guaranty and Security Agreement* (the “**Canadian Guarantee Agreement**”) entered into in conjunction with the DIP Credit Agreement, which provides that, *inter alia*, the Applicants shall guarantee, in favour of the DIP Lender, the payment of an amount equivalent to the Intercompany DIP Advances, plus interest 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 the First Day Order;

- (vi) granting an “Administration Charge” in an amount of US\$400,000 and a Directors’ Charge in an amount of US\$2,500,000 to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period;
 - (vii) approving a Canadian Intercompany Charge (as defined below) for the purpose of securing the repayment of the various amounts which may be advanced, from time to time, plus interest thereon, between the Applicants, during the initial Stay Period; and
 - (viii) authorizing the Applicants to make payments to certain suppliers deemed crucial by the Applicants, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, up to an amount of \$750,000, subject to the prior approval of the Proposed Monitor.
- (b) an amended and restated initial order (the “**ARIO**”), which will be sought by the Applicants at the “*comeback hearing*” that will take place before the Canadian Court within ten (10) days of the First Day Hearing:
- (i) extending the Stay Period until March 28, 2021;

- (ii) confirming the appointment of E&Y as the Monitor of the Applicants in these CCAA Proceedings;
- (iii) approving the engagement of Ankura (Stephen Marotta), as Chief Restructuring Organization, and of Stout Capital, LLC ("**Stout**"), as investment banker and financial advisor to FFG, including the Applicants, and granting to Stout a "Transaction Fee Charge" in the amount of US\$2,500,000 in order to secure the payment of the "Transaction Fee" payable under the Stout Engagement Letter (as defined below);
- (iv) confirming the approval of the DIP Credit Agreement, the Canadian Guarantee Agreement and the granting of the Intercompany DIP Charge and the DIP Lenders' Charge;
- (v) confirming and increasing, as applicable, the amount of the Administration Charge (US\$750,000) and the Directors Charge (US\$2,500,000) previously approved as part of the First Day Order;
- (vi) confirming the Canadian Intercompany Charge previously approved as part of the First Day Order;
- (vii) confirming the Applicants' authority to make payments to certain suppliers deemed crucial by the Applicants, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, up to an aggregate amount of \$2 million, subject to the prior approval of the Proposed Monitor;
- (viii) approving the execution by the CCAA Entities of a stalking horse asset purchase agreement (the "**Stellex APA**") entered into between the Chapter 11 Entities, the CCAA Entities, as sellers, and Stellex US Newco and Stellex Canadian Newco (both newly incorporated entities whose shares are owned by Stellex Capital Management ("**Stellex**")), as purchasers;
- (ix) approving the bidding procedures (the "**Bidding Procedures**") to be followed in connection with the pursuit and continuation of the Formal

Solicitation Process (as defined below) previously initiated by Stout in November 2020.

4. On February 15, 2021, certain US affiliates of the CCAA Entities, including CF Holding, Country Fresh Midco Corp., Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, Country Fresh LLC, Country Fresh Dallas, LLC, Country Fresh Carolina, LLC, Country Fresh Midwest, LLC, Country Fresh Orlando, LLC, Country Fresh Transportation LLC, CF Products, LLC, Country Fresh Manufacturing, LLC, Champlain Valley Specialty of New York, Inc., Country Fresh Pennsylvania, LLC, Sun Rich Fresh Foods (NV) Inc., Sun Rich Foods (USA) Inc. and Sun Rich Fresh Foods (PA) Inc. (collectively, the “**Chapter 11 Entities**”, together with the CCAA Entities, “**FFG**”) filed voluntary petitions commencing parallel insolvency proceedings before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**US Court**”) under chapter 11 of title 11 of the United States Code (the “**Chapter 11 Proceedings**” and together with the CCAA Proceedings, the “**Restructuring Proceedings**”). A copy of the First Day Declaration that I swore in the Chapter 11 Proceedings is attached hereto as **Exhibit “A”**.

5. As part of the Chapter 11 Proceedings, the Chapter 11 Entities will also be requesting to have the Stellex APA and related Bidding Procedures approved by the US Court, so as to pursue and conclude the Formal Solicitation Process, as it relates to the Chapter 11 Entities.

6. Accordingly, while the CCAA Entities and the Chapter 11 Entities intend to run the CCAA Proceedings and the Chapter 11 Proceedings as parallel *main* proceedings, it is their intention to pursue and conclude the Formal Solicitation Process previously initiated by Stout in November, 2020, and continue to solicit offers for the business and assets of each of the CCAA Entities and the Chapter 11 Entities, either as a whole or on a stand-alone basis.

7. In fact, as will be further discussed below, the assets to be sold and purchased pursuant to the Stellex APA are those of the CCAA Entities as well as those of the Chapter 11 Entities. Accordingly, should Stellex be ultimately determined to be the “*Successful Bidder*” in accordance with the proposed Bidding Procedures, the CCAA Entities and the

Chapter 11 Entities intend to return before both the Canadian Court and the US Court to seek approval of the transaction contemplated therein.

8. Pursuant to Bidding Procedures agreed upon with Stellex, in consultation with the DIP Lenders, the CCAA Entities and the Chapter 11 Entities contemplate presenting a motion seeking the approval of a transaction involving the sale and purchase of the assets of FFG, including the CCAA Entities, by no later than March 26, 2021, and have such transaction close as soon as reasonably possible thereafter.

II. THE FRESH FOOD GROUP

A. Overview

9. FFG is the result of the business combination of various companies operating in the food sector in Canada and in the United States.

10. Today, FFG has grown into a group of companies which have become leading providers of branded and private-label offerings of fresh-cut fruits and vegetables, ready-to-go meals and meal kits, behind-the-glass salads, snacks, and ingredients/bulk food components to supermarkets, club stores, convenience stores, industrial, and food-service customers in the United States and Canada. Recently, FFG expanded its product offerings into *sous vide* and kettle cooking of chicken, fish, and beef entrees as well as pasta.

11. FFG carries the following brands:

- (a) Country Fresh: Country Fresh provides and distributes in the US fresh-cut fruit, apple slices, vegetable and snacking solutions on a variety of blends, sizes and packaging options. Its product offering includes, *inter alia*, cut fruit and vegetables, snacking solutions, side dishes, parfaits, meal kits and sous-vide proteins and vegetable and its customers include retail and foodservice companies;
- (b) Sun Rich: Sun Rich provides and distributes both in Canada (through Sun Rich Canada) and in the US (through Sun Rich USA) ready-to-serve fresh-cut fruits. Its product offering includes, *inter alia*, pails filled with a single type of precision-cut fruit, fresh fruit salads, meal kits that are ready to mix and serve and other snacking solutions, and its customers include retail and foodservice companies; and

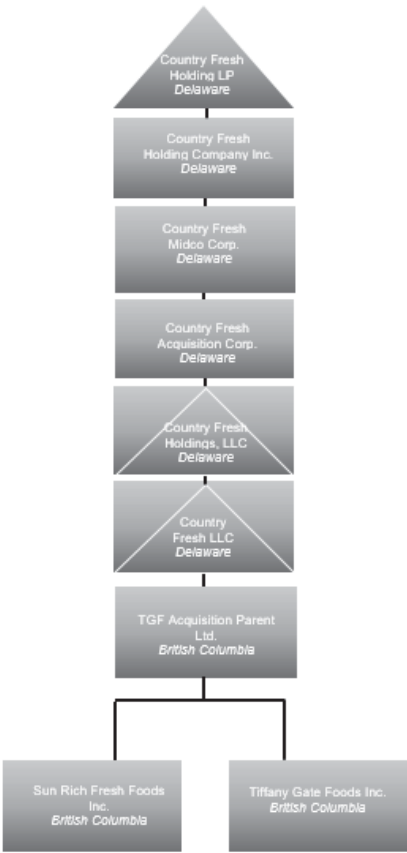
- (c) Tiffany Gate: Tiffany Gate creates, packages and delivers fresh-prepared food products to customers across Canada and the U.S. By combining state-of-the-art technology and food science with artisanal cooking techniques, Tiffany Gate is able to create homemade recipes on a commercial scale. Its product offering includes, *inter alia*, meal kits, pasta kits, soup and stew kits, deli salads, sauces, smoothies, butters and sous-vide proteins, vegetables and starches. Its customers include some of the largest retail food service companies and fresh-cut processors in Canada.

B. The Corporate Structure

12. Attached at **Exhibit “B”** to this affidavit is a copy of the current complete corporate structure chart of FFG, which is the result of a business combination between the operating entities of each of the above brands, two (2) of which (Sun Rich and Tiffany Gate) were acquired and included as part of FFG in 2017.

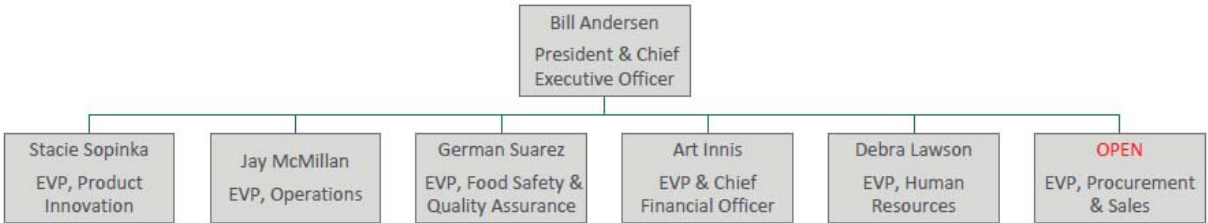
13. While some of the management functions of the entities forming part of FFG are intertwined in some respect, the respective business operations of each of these entities is generally divided geographically between Canada and the US.

14. The only debtors in the context of these CCAA Proceedings are the Canadian entities of FFG (i.e. TGF, Sun Rich Canada and Tiffany Gate), which are ultimately owned by Country Fresh LLC, a Chapter 11 Entity, which also own the other US operating entities of FFG, as appears from the below:



C. FFG’s Management

15. FFG’s management essentially consists in the following team, which also oversees the operations of the CCAA Entities, in conjunction with local management.



16. Mr. William (Bill) Andersen is the sole director of the CCAA Entities.

III. THE CCAA ENTITIES

A. Overview

17. TGF is a private holding company which was incorporated under the British Columbia *Business Corporations Act* (the “**BCBCA**”) for the purpose of acquiring the business and assets of Sun Rich Canada and of Tiffany Gate in 2017. While TGF is a borrower under the credit agreements entered into with the First Lien Lenders (as defined below) and the Second Lien Lenders (as defined below), TGF has no operations of its own and its assets essentially consists in its shares in each of Sun Rich Canada and Tiffany Gate. As appears from the corporate structure chart attached at Exhibit “A” to this affidavit, the shares of TGF are ultimately owned by Country Fresh Holding LP, a US entity which ultimately owns the shares of all of the entities forming part of FFG.

18. Sun Rich Canada is a private company wholly owned by TGF, which was incorporated under the BCBCA, whose business operations consist, as previously mentioned, in distributing ready-to-serve fresh-cut fruits, meal kits and other snacking solutions to retail and foodservice companies in Canada.

19. Tiffany Gate is a private company wholly-owned by TGF, which was incorporated under the BCBCA, whose business operations consist, as previously mentioned, in creating, packaging and delivering fresh-prepared food products (including meal kits, pasta kits, soup and stew kits, deli salads, sauces, smoothies, butters and sous-vide proteins, vegetables and starches) to large retail food service companies in Canada.

20. Each of the CCAA Entities have separate managerial functions such as accounting, management of accounts receivables and payables with Tiffany Gate managed out of an office and facility located at 195 Steinway Blvd., Etobicoke, Ontario (the “**Steinway Property**”), which is owned by Tiffany Gate, and Sun Rich Canada having certain managerial functions managed out of the U.S.

21. The Steinway Property is the only real property owned by the CCAA Entities, and a substantial portion of the CCAA Entities’ assets (i.e. equipment and inventory) is located within the Steinway Property.

22. In addition, and as will be discussed below, more than 77.5% of the CCAA Entities’ employees (on payroll) are located in Ontario.

B. The CCAA Entities' Owned and Leased Facilities

23. For the purposes of their operations, Sun Rich Canada and Tiffany Gate operate the following facilities in Canada:

LOCATION	PURPOSE	OWNED/LEASED	MONTHLY RENT	LEASE EXPIRATION DATE
195 Steinway Blvd., Etobicoke, Ontario (i.e. the Steinway Property)	Office, processing and manufacturing facility	Owned (Tiffany Gate)	N/A	N/A
35 Bramtree Court, Brampton, Ontario	Processing and manufacturing facility	Leased (Sun Rich Canada)	\$22,316.20	06/30/2021
22151 Fraserwood Way, Richmond, British Columbia	Office, manufacturing facility and distribution centre	Leased (Sun Rich Canada)	\$32,808.57	08/31/2022

C. The Employees

24. As at February 3, 2021, the CCAA Entities had a total of 538 employees on payroll, and, as at February 9, 2021, an additional 77 employees retained through various agencies, all of whom are located in Canada, as appears from the table below:

	LOCATION	EMPLOYEES ON PAYROLL	AGENCY/ CONTRACTUAL EMPLOYEES	TOTAL
SUN RICH CANADA	Brampton Facility	196	50	246
	Richmond Facility	121	0	121
	Total:	317	50	367
TIFFANY GATE	Etobicoke Facility	221	27	248
	Total:	221	27	248
Grand Total:		538	77	615

25. None of the above employees are unionized nor are they subject to a collective bargaining agreement.

26. The CCAA Entities remain and intend to remain current in the payment of the wages of their respective employees. However, vacation accruals for 2021 (inclusive of accruals carried over from 2020) amount to approximately \$1,178,799.78.

27. In addition, the above employees include a total of seven (7) employees whose involvement in these CCAA Proceedings as well as in the past few months leading up to these CCAA Proceedings were determined by FFG's management to be key employees who were included as part of a retention program to keep them employed throughout these CCAA Proceedings. The payments to the Canadian key employee totalled in aggregate approximately \$115,000 which were made prior to the commencement of the CCAA Proceedings. The key employees forfeit their entitlement to the retention payments upon certain trigger events, including if their employment ends with the CCAA Entities during the CCAA Proceedings. The Proposed Monitor has been provided with details regarding the payments to the key employees and the retention program.

D. Supply Chain

28. In the ordinary course of their respective businesses, the CCAA entities receive most of their raw inventory from suppliers that are located in:

- (a) Canada: 74%;
- (b) US: 24%; and
- (c) Other: 2%.

29. In 2020, the CCAA Entities had 14 significant suppliers which accounted for approximately 25% of supply needs.

30. As the CCAA Entities are in the business of selling fresh foods and given the perishable nature of their inventory, the CCAA Entities are supplied on a “just-in-time” basis. The CCAA Entities usually have limited supply of inventory on hand which is typically only sufficient to allow the business to continue operating for approximately 2 to 3 days. As discussed further below, any interruption to supply, even if short in duration, could have significant deferential impact on the CCAA Entities’ business and it will be very important for the CCAA Entities to be able to continue to rely on the above suppliers going forward.

E. Customers

31. As previously discussed, the CCAA Entities' customers are mainly comprised of Canadian retail and foodservice companies, with a portion of their revenues being attributable to club and industrial customers.

32. In 2020, the main sale channels of the CCAA Entities were as follows:

- (a) Retail: 47%;
- (b) Foodservice: 20%;
- (c) Club: 26%; and
- (d) Industrial and Others: 7%.

33. In 2020 also, the CCAA Entities had 10 significant customers which accounted for approximately 86% of their aggregate net revenues for that year.

F. Cash Management System

34. In the ordinary course of their business, each the CCAA Entities use a centralized cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with their operations.

35. The Cash Management System gives the CCAA Entities the ability to efficiently and accurately track and control corporate funds and ensure cash availability.

36. Sun Rich Canada maintains five (5) bank accounts, which are summarily described below:

- (a) PNC Bank Accounts:
 - (i) A Canadian dollar operating bank account (#5578) located in the U.S., which essentially consists in a lockbox in which certain accounts receivables are deposited in, and from which certain expenses are made, including the payment of rent;
 - (ii) A Canadian dollar operating account (#5636) located in the U.S., which is funded on an as-needed basis from account #5578 to facilitate payments

(either by cheques or wire transfers) in Canadian dollars in connection with various accounts payable and payroll. A portion of the money transferred into this account is also subsequently transferred into account #6523 described below;

- (iii) A US dollar operating bank account (#8747) located in the U.S., which essentially consists in a zero-balance account in which US accounts receivables are deposited into, and subsequently transferred to account #7157 described below, for the purpose of paying US accounts payable; and
- (iv) A US dollar operating bank account (#7157) located in Canada, which is funded on an as-needed basis from account #8747 to facilitate payments (either by cheques or wire transfers) in US dollars in connection with various accounts payable;

(b) RBC Account:

- (i) A Canadian dollar operating account (#6523) located in Canada, which is funded on an as-needed basis from account #5636 to facilitate payments in respect health insurance of Sun Rich Canada's employees, as well as its utility bills. in which Canadian dollar deposits, tax refunds and subsidies are deposited into, and from which Canadian dollar cheques

37. As for Tiffany Gate, it maintains ten (10) bank accounts, which are summarily described below:

(a) RBC Accounts:

- (i) a Canadian dollar operating bank account (#6317) located in Canada, in which Canadian dollar deposits, tax refunds and subsidies are deposited into, and from which cheques and wire transfers in Canadian dollars are issued from, namely to pay Canadian taxes and employee payroll;
- (ii) a US dollar operating account (#0275) located in Canada, in which US dollar deposits are made, and from which cheques and wire transfers in US dollars are issued for the payment of certain accounts payable;

- (iii) a Canadian dollar visa credit card account (#7007) located in Canada; and
 - (iv) a dormant Canadian dollar visa credit card account (#9823) located in Canada with currently no funds.
- (b) PNC Bank Accounts:
 - (i) a Canadian dollar operating account (#5628) located in the U.S., which is operated on RBC's platform, which essentially consists in a lockbox in which certain Canadian dollars deposits are deposited into, and from which certain wire transfers are issued for the payment of certain accounts payable;
 - (ii) a US dollar operating account (#3893) located in the U.S., in which certain US dollar deposits are made, and from which cheques and wire transfers in US dollars are issued for the payment of certain accounts payable;
 - (iii) a US dollar operating account (#3906), located in the U.S., which essentially consists in a zero-balance account in which in which certain US dollar deposits are made, and subsequently transferred to account #3893 described above, for the purpose of paying certain US accounts payable; and
 - (iv) a dormant Canadian dollar account (#5545) located in the U.S., which is operated on RBC's platform with currently no funds;
- (c) CIBC Accounts:
 - (i) a Canadian dollar operating account (#4910) located in Canada, in which sales tax refunds are deposited into, and subsequently transferred to account #6317 described above; and
 - (ii) a dormant US dollar account (#7313) located in Canada, with currently no funds.

38. Sun Rich Canada and Tiffany Gate's payroll is managed by Ceridian, which issues direct deposits to their respective employees on the date payroll is paid.

G. Intercompany Transactions

39. In light of the global nature of their business, in the ordinary course of business, the entities forming part of FFG maintain relationships with each other that result in claims arising from various transactions, both operational and financial. These entities track all intercompany transactions in their accounting system and can ascertain, trace and account for them as needed.

40. For instance, while Sun Rich Canada and Sun Rich USA's respective operations are geographically divided between Canada and the US, monies have, in the past, been transferred from their respective bank accounts, depending on their liquidity needs.

41. As for Tiffany Gate, in previous years, this entity has made various payments to certain of its US affiliates for monies owing in respect of management fees and delivery of supplies, and, in addition, has also paid various expenses and disbursements to Sun Rich Canada on account of shared operating and labour costs at Sun Rich Canada's Brampton and Vancouver facilities, and delivery of supplies.

42. In the immediate term, FFG will not incur any additional intercompany advances between the Chapter 11 Entities and the CCAA Entities, other than in connection with any Intercompany DIP Advances as set out in the DIP Credit Agreement, to the extent necessary to operate the business of the CCAA Entities.

43. However, certain intercompany advances may continue to be recorded amongst the CCAA Entities themselves, thus the reason for which the CCAA Entities requests this court to approve a Canadian Intercompany Charge in order to protect the estate of each of these CCAA Entities, as discussed below.

44. Following the initial proposed stay period, the CCAA Entities are also requesting, as part of the ARIO, the authorization from this Court for the CCAA Entities to advance funds to, or incur additional liabilities on behalf of, the Chapter 11 Entities, with approval of the Proposed Monitor and provided such amounts will be considered administrative expense claims in the Chapter 11 Proceedings. The CCAA Entities continued operations is dependent on continued existence of the Chapter 11 Entities due to the intertwined nature of their business and various

services provided by the Chapter 11 Entities to the CCAA Entities, including managerial services and strategic decision making by the senior managerial team. If any excess cash available to the CCAA Entities permitting it to be used in the operations of the Chapter 11 Entities with the oversight of the Proposed Monitor will assist maximize the value of the entire enterprise and ensure FFG is able to continue as “*going concern*” during the Restructuring Proceedings. Further, given the Applicants’ primary secured lenders are also the secured lenders of the Chapter 11 Entities, advances by the Applicants to the Chapter 11 Entities is unlikely to prejudice any of their stakeholders.

IV. THE CCAA ENTITIES FINANCIAL SITUATION

A. Financial Statements

45. In the ordinary course of their business, the entities forming part of FFG issue their financial statements on a consolidated basis.

46. Copies of FFG’s consolidated audited financial statements for the fiscal years 2018 and 2019 are attached hereto as **Exhibit “C”** and **Exhibit “D”**, respectively. Copies of FFG’s consolidated financial statements for the fiscal year 2020 have not yet been prepared.

47. Also attached as **Exhibit “E”** and **Exhibit “F”**, respectively, are copies of internal unaudited balance sheets for each of the entities operating as Sun Rich (including Sun Rich Canada and certain Chapter 11 Entities) and Tiffany Gate, for the period ending November 2020.

A. The Assets of the CCAA Entities

48. As at November 2020, the assets of Sun Rich Canada and Tiffany Gate had a book value of approximately US\$22 million and US\$116 million, respectively, as appears from the tables below:

Sun Rich Canada	
Description of Assets	Book Value
Cash	US\$2,037,828
Accounts Receivables	US\$5,008.059

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Inventory	US\$546,336
Prepayment & Deposits	US\$184,527
Equipment	US\$6,279,954
Intangibles	US\$7,938,899

Total: US\$21,995,602

Tiffany Gate	
Description of Assets	Book Value
Cash	US\$1,834,978
Accounts Receivables	US\$6,207,951
Prepayments & Deposits	US\$94,378
PP&E	US\$28,311,497
Intangibles	US\$76,812,727
Other	US\$590,382

Total: US\$116,793,300

49. As previously mentioned, TGF has no material assets of its own, other than its shares in Sun Rich Canada and Tiffany Gate.

B. The Liabilities of the CCAA Entities

50. As at November 2020, each of the CCAA Entities, including TGF, had liabilities totalling well in excess of US\$100,000,000, as appears from the tables below:

TGF Acquisition Parent Ltd.	
Description of Liabilities	Amount

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Secured Debt	US\$119,000,000
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Total: US\$119,000,000

Sun Rich Canada	
Description of Liabilities	Amount
Secured Debt	US\$119,000,000
Accounts Payables	US\$6,737,318
Note Payable	US\$9,798,429
Intercompany	US\$6,402,050
Other	US\$4,786,280

Total: US\$139,624.078

Tiffany Gate	
Description of Liabilities	Amount
Secured Debt	US\$119,000,000
Accounts Payable	US\$9,486,154
Other Notes & Loans	US\$808,403
Intercompany Loans	US\$27,827,264
Other	US\$1,848,594

Total: US\$158,970,415

51. As appears from the above, the principal liabilities of the CCAA Entities' consist in their long term secured debt, which is broken down in the table below:

Credit Agreements	Facility	Principal Amount Outstanding (in millions)	Interest Rate	Maturity
First Lien Credit Agreement	Revolving Loan	US\$25.0	7.1%	April 2023
	Term Loan	US\$10.0	7.1%	April 2023
Second Lien Credit Agreement	Term Loan	US\$60.0	10.6%	April 2024
Super Senior Term Loan Credit Agreement	Term Loan No. 1	US\$16.0	8.0%	June 2023
	Term Loan No. 2	US\$5.6	8.0%	June 2023
	Term Loan No. 3	US\$2.4	8.0%	June 2023

Total: US\$119,000,000

52. The Credit Agreements listed in the above table are further described below.

C. The First Lien Credit Agreement

53. On April 29, 2019, as part of the Exit Financing (as defined and further detailed below) provided to FFG in the context of the 2019 Restructuring Transactions (as defined and further detailed below), a Credit Agreement (First Lien) (as amended on April 22, 2020, the “**First Lien Credit Agreement**”) was entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as US Borrower, TGF, as Canadian Borrower and Cortland Capital Market Services LLC (“**Cortland**”), as administrative agent to the lenders under the First Lien Credit Agreement (collectively, the “**First Lien Lenders**”). A copy of the First Lien Credit Agreement is attached hereto as **Exhibit “G”**.

54. Pursuant to the First Lien Credit Agreement, the First Lien Lenders severally agreed (to the extent of such First Lien Lender’s commitment under the First Lien Credit Agreement) to provide to the Borrowers thereunder:

- (a) a revolving loan facility in an aggregate principal amount of US\$25,000,000 of new money revolving commitments; and
- (b) a term loan facility in an aggregate principal amount of US\$10,000,000, which, as part of the 2019 Restructuring Transactions, the Borrowers under the First Lien

Credit Agreement and the First Lien Lenders agreed that such amount would be deemed outstanding under such agreement.

55. The obligations of the “Borrowers” under the First Lien Credit Agreement are guaranteed by the CCAA Entities and the Chapter 11 Entities that are not otherwise borrowers under such credit agreement, and secured against each of the CCAA Entities and Chapter 11 Entities’ respective assets, in accordance with the terms of a Canadian Guaranty and Security Agreement (First Lien) (the “**First Lien Canadian Guaranty**”) and a US Guaranty and Security Agreement (First Lien) both dated as of April 29, 2019. A copy of the First Lien Canadian Guaranty is attached hereto as **Exhibit “H”**.

56. As at the date of this affidavit, a total amount of US\$35 million in principal (plus interests, costs and other allowable charges) remains outstanding under the First Lien Credit Agreement.

D. The Second Lien Credit Agreement

57. On April 29, 2019, also as part of the exit financing provided to FFG in the context of the 2019 Restructuring Transactions, a Credit Agreement (Second Lien) (as amended on April 22, 2020, the “**Second Lien Credit Agreement**”) was entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as US Borrower, TGF, as Canadian Borrower and Cortland, as administrative agent to the lenders under the Second Lien Credit Agreement (collectively, the “**Second Lien Lenders**”), all of which were first lien lenders prior to the 2019 Restructuring Transaction.

58. Pursuant to the Second Lien Credit Agreement, the Second Lien Lenders agreed to term loans to the Borrowers thereunder in an aggregate principal amount of US\$60,000,000, in exchange for, and to satisfy, a portion of the then pre-2019 Restructuring Transaction first lien loans and to pay a portion of the intercompany obligations between TGF and Country Fresh, LLC.

59. The Borrowers’ obligations under the Second Lien Credit Agreement are guaranteed by the CCAA Entities and the Chapter 11 Entities that are not otherwise borrowers under such credit agreement, and secured against each of the CCAA Entities and Chapter 11 Entities’ respective assets, in accordance with the terms of a Canadian Guaranty and Security Agreement (Second Lien) (the “**Second Lien Canadian Guaranty**”) and a US Guaranty and Security Agreement (First Lien) both dated as of April 29, 2019. A copy of the Second Lien Canadian Guaranty is attached hereto as **Exhibit “I”**.

60. As at the date of this affidavit, a total amount of US\$60 million in principal (plus interests, costs and other allowable charges) remains outstanding under the Second Lien Credit Agreement.

E. The Super Senior Term Loan Credit Agreement

61. On June 1, 2020, a *Term Loan Credit Agreement (Super Senior)* (the “**Super Senior Term Loan Credit Agreement**”) was entered between Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as US Borrower, TGF, as Canadian Borrower and Cortland, as administrative agent to the lenders under the Super Senior Term Loan Credit Agreement (collectively, the “**Super Senior Term Loan Lenders**”). A copy of the Super Senior Term Loan Credit Agreement is attached hereto as **Exhibit “J”**.

62. Pursuant to the Super Senior Term Loan Agreement, an ad hoc group of First Lien Lenders agreed to provide to the Borrowers under the Super Senior Term Loan Agreement additional liquidity in the form of closing and delayed-draw super senior term loans in an aggregate principal amount of US\$16,000,000 (the “**Super Senior Term Loan**”) to be advanced several tranches, with a maturity date of June 1, 2022.

63. On December 29, 2020, the Super Senior Term Loan Credit Agreement was amended pursuant to the terms of the *First Amendment to Term Loan Credit Agreement (Super Senior)* (the “**First Amendment**”), providing the Borrowers under the Super Senior Term Loan with emergency bridge financing in the total amount of US\$5,600,000 in the form of a term loan, which was to be advanced in two tranches. A copy of the First Amendment is attached hereto as **Exhibit “K”**.

64. On February 4, 2021, the Super Senior Term Loan Credit Agreement was once more amended pursuant to the terms of the *Second Amendment to Term Loan Credit Agreement (Super Senior)* (the “**Second Amendment**”), providing the Borrowers under the Super Senior Term Loan with further emergency bridge financing in the total amount of US\$2,400,000 in the form of a term loan, which was advanced on the same day. A copy of the Second Amendment is attached hereto as **Exhibit “L”**.

65. The Borrowers’ obligations under the Senior Term Loan Credit Agreement are guaranteed by the CCAA Entities and the Chapter 11 Entities that are not otherwise borrowers under such credit agreement, and secured against each of the CCAA Entities and Chapter 11 Entities’ respective assets, in accordance with the terms of a Canadian Guaranty and Security

Agreement (Super Senior) (the “**Super Senior Canadian Guaranty**”) and a US Guaranty and Security Agreement (Super Senior) both dated as of June 1, 2020. A copy of the Super Senior Canadian Guaranty is attached hereto as **Exhibit “M”**.

66. In addition to the Super Senior Canadian Guaranty, and in connection with the Super Senior Term Loan Credit Agreement, on July 30, 2020, Tiffany Gate also executed a Demand Debenture (the “**TG Debenture**”) pursuant to which it acknowledged being indebted and agreed to pay to Cortland, as administrative agent to the Super Senior Term Loan Lenders, on demand, a principal amount of up to \$50,000,000 in lawful money of Canada and interest thereon, from and including the date of the TG Debenture (or from and including the last interest payment date to which interest shall have been paid), at a rate of 25% per annum calculated and compounded monthly on the first day of each month. A copy of the TG Debenture is attached hereto as **Exhibit “N”**. Tiffany Gate’s obligations under the TG Debenture are secured by a mortgage and charge against the Steinway Property.

67. As at the date of this affidavit, a total amount of US\$24 million in principal (plus interests, costs and other allowable charges) remains outstanding under the Super Senior Term Loan Credit Agreement.

V. THE CCAA ENTITIES’ FINANCIAL DIFFICULTIES

68. In 2019, FFG faced significant liquidity and other economic pressures, which forced it to consider and implement certain strategic measures in order to deleverage its consolidated balance sheet.

69. On April 29, 2019, FFG entered into an exchange transaction (the “**Exchange Transaction**”) with its then existing lenders, including the current First Lien Lenders and the Second Lien Lenders, pursuant to which FFG restructured its indebtedness under the then existing first lien loan and second lien loan.

70. The Exchange Transaction resulted in a combination of a debt-for-equity exchange with the then First Lien Lenders (who now ultimately own 95% of the common shares of FFG) and Second Lien Lenders (who now ultimately own 5% of the common shares of FFG, as well as in an exit financing (the “**Exit Financing**”, together with the Exchange Transaction, the “**2019 Restructuring Transactions**”) entered into with the current First Lien Lenders, as part of which a new first lien loan in the aggregate amount of US\$35 million (\$10 million in first lien term loan

and \$25 million in first lien revolver) and a new second lien loan in the aggregate amount of \$60 million was made available to FFG.

71. Despite the Exchange Transaction, FFG has continued to face significant financial challenges in the context of its business operations, most recently due to economic pressures caused by the COVID-19 global pandemic.

72. More specifically, in 2020, the demand for FFG's largest product segments, fruits and vegetable trays, significantly declined as consumer habits began to change, and as the various federal, provincial and state governments in both Canada and in the US began imposing various sanitary measures and restrictions to prevent or limit the spread of the COVID-19 virus, which measures and restrictions have included the temporary closure of restaurants, businesses and schools (with students being forced, at times, to attend classes virtually).

73. FFG was also forced to temporarily close or idle several of its production facilities in the U.S., which contributed to a significant reduction of FFG's production, and, in turn, FFG's revenues.

74. FFG also faced supply-chain issues, which, for the most part, were caused by its suppliers also facing economic challenges as a result of the COVID-19 pandemic. These issues forced FFG to pay, at times, premiums for certain products as well as higher costs for the shipping of these products.

75. Taken together, these challenges have significantly affected FFG liquidity position throughout 2020.

VI. FFG'S SALE AND INVESTMENT SOLICITATION PROCESS

A. The Informal Process

76. In response to the aforementioned challenges, FFG, engaged in a thorough review of its strategic alternatives with the advice and guidance of their legal and financial advisors.

77. Starting in 2020, and before Stout was engaged, FFG decided to explore M&A opportunities with potential strategic acquirers in the food and beverage industry, which had approached FFG to discuss the terms of a potential transaction (the "**Informal Solicitation Process**").

78. As part of the Informal Solicitation Process, FFG held strategic discussions with various parties which were either contacted by FFG, or which contacted FFG themselves with inquiries in connection with a potential sale transaction. In total, nine (9) parties submitted such inquiries to FFG, two (2) of which submitted offers to FFG.

79. The first offer submitted to FFG was for only a small, discrete portion of its assets, and was deemed too low in price at the time. The second offer was submitted by a large strategic food provider was for substantially all of the FFG's assets, including certain of the assets of the CCAA Entities ("**Initial Potential Buyer**"). Given the serious nature of the discussions with the Initial Potential Buyer and recognizing the need to ensure that the offer submitted by the Initial Potential Buyer was competitive, relative to the market value of FFG's assets, FFG then engaged an investment banker, to further explore market opportunities and expand the list of potential interested parties.

B. The Formal Solicitation Process

80. In late October 2020, FFG engaged Stout Capital ("**Stout**"), as investment banker, to conduct a formal sale and investment solicitation process (the "**First Formal Solicitation Process**").

81. As part of the First Formal Solicitation Process, Stout assembled a list of potential buyers and prospective plan sponsors, in addition to those that FFG had initially identified as part of the Informal Process. These potential buyers and prospective plan sponsors included 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 transactions.

82. By the end of 2020, Stout had reached out to over thirty (30) potential acquirers. However, several of them advised Stout that they would pass 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 2020 holiday season.

83. However, some of these potential acquirers indicated that they remained interested in a potential transaction involving FFG's assets, in whole or in part, and indicated that they would consider participating in the Formal process conducted by Stout, which could eventually include an auction.

84. On December 14, 2020, having not received any serious alternative offer at that point, FFG entered into a non-binding letter of intent (the “**Initial LOI**”) with the Initial Potential Buyer, which contemplated the sale and purchase of all or substantially all of the assets of the Chapter 11 Entities, as well as certain of the assets of the CCAA Entities. This Initial LOI further contemplated that the Initial Potential Buyer would act as a stalking horse bidder, to allow Stout and FFG to establish a “floor” price and provide certainty to the FFG’s employees, customers and vendors. The Initial LOI contemplated the closing of a sale transaction by March 2021, should no superior offer be submitted to FFG.

85. Over the course of the 2020 holidays and in early January 2021, FFG, Stout and the Initial Potential Buyer continued their negotiations with a view of executing a binding stalking horse asset purchase agreement.

86. However, on January 7, 2021, FFG and Stout were advised that the Initial Potential Buyer was no longer prepared to enter into an asset purchase agreement and would therefore withdraw its offer set out in the Initial LOI, thereby forcing FFG and Stout to consider and implement contingency plans to try to keep the enterprise afloat while identifying a replacement bidder and/or new sources of financing.

87. Following the withdrawal of the Initial LOI by the Initial Potential Buyer, Stout launched a more comprehensive sale and investment solicitation process (the “**Second Formal Solicitation Process**”, together with the First Formal Solicitation Process, the “**Formal Solicitation Process**”). In connection therewith, solicitation materials were sent to an additional one hundred seventy (170) potential acquirers or investors, which included sponsors in the food/beverage industry, strategic parties in the consumer/retail sector, and packaged food processors and food distributors.

88. As part of the Second Formal Solicitation Process, Stout informed potentially interested parties that FFG was receptive to a wide range of transaction structures including, without limitation, sale transactions to be implemented pursuant to section 363 of the US Bankruptcy Code and section 36 of the CCAA, plan sponsorship, out-of-court sale transactions, structured deals involving “*take back*” debt and/or equity. In addition, Stout solicited bids for FFG (including the CCAA Entities), either as a whole or piece-meal (including with respect to the assets of the CCAA Entities), recognizing that the selling such assets in pieces could potentially yield higher value to FFG’s estate.

89. As at the date of this Affidavit:

(a) Stout has reached out to more than 210 potentially interested parties were solicited and received solicitation packages, including:

(i) 90 strategic parties;

(ii) 20 “*hybrid*” parties (meaning private equity firms with strategic portfolio companies in the food and beverage sector); and

(iii) More than 100 financial parties.

(b) 83 non-disclosure agreements were executed and given access to the virtual data room set up by Stout.

90. Several of the above parties signed non-disclosure agreements with FFG and were given access to the virtual data room set up by Stout, and several of them have indicated that they are still interested in a transaction involving some or all of the business and/or assets of FFG, while others have indicated a preference for certain selected assets only.

91. On January 20, 2021, FFG received a letter of intent from Stellex, a global private equity firm dealing at arm’s length with FFG, regarding a potential transaction whereby Stellex would acquire virtually all of FFG’s American and Canadian assets, subject to certain exceptions, and would assume some of its liabilities.

92. On February 15, 2021, after several weeks of negotiations, Stellex and FFG executed an asset purchase agreement (i.e. the Stellex APA), which contemplated Stellex to act as a stalking horse bidder. A copy of the Stellex APA is attached hereto as **Exhibit “O”**.

VII. THE STELLEX APA

93. The Stellex APA contemplates the sale of all or substantially all of the assets of FFG (including the CCAA Entities) other than the excluded assets listed thereunder, for the following purchase price (the “**Purchase Price**”), to be allocated between the assets to be purchased from the Chapter 11 Entities and those from the CCAA Entities, provided that Stellex is designated as the “*Successful Bidder*” following the completion of the Bidding Procedures (as defined below):

- (a) \$30 million in cash consideration;
- (b) \$25 million senior secured note against FFG's real estate to be sold and conveyed to Stellex as part of the Stellex APA;
- (c) payment or assumption of certain obligations and liabilities up to a total amount of \$21.5 million; and
- (d) payment or assumption of cure costs in connection with contracts to be assumed by and assigned to Stellex.

94. The Stellex APA also provides that in consideration for Stellex acting as the "*stalking horse bidder*", Stellex shall also be entitled to certain bid protections payable by the Chapter 11 Entities in the event that Stellex is not designated as the "Successful Bidder" following completion of the Bidding Procedures.

95. The Stellex APA is conditional upon, *inter alia*, approval of the Bidding Procedures (as defined below) and the transaction is ultimately conditional upon its approval by the Canadian Court and the US Court.

VIII. THE BIDDING PROCEDURES

96. In connection with the Stellex APA, FFG and Stellex have also designed and agreed upon the applicable procedures (the "**Bidding Procedures**") for the continuation of the Formal Solicitation Process previously initiated by Stout in November, 2020, which will allow the opportunity for FFG to pursue and conclude a competitive and expedient sale process, and, potentially obtain one or several superior offer to the Stellex APA. A copy of the Bidding Procedures is attached hereto as **Exhibit "P"**.

97. In essence, the Bidding Procedures contemplates the following milestones, which, as appears from the below, provides a deadline of March 31, 2021, for the closing of a transaction involving the assets of FFG:

Milestone	Key Dates
Issuance of Additional Solicitation Packages	As soon as reasonably possible following court approval

Due Diligence Period	Until March 19, 2021
Bid Deadline	March 19, 2021
Auction	March 22, 2021
US Sale Hearing	No later than March 26, 2021
Canadian Sale Hearing	No later than March 26, 2021
Closing	March 31, 2021

98. The DIP Lenders have been consulted in connection with the proposed Bidding Procedures and have advised that they are in agreement with them, as well as with the proposed milestones described above.

IX. THE CHAPTER 11 PROCEEDINGS

99. On February 15, 2021, the Chapter 11 Entities filed voluntary petitions to commence the Chapter 11 Proceedings. Contemporaneously therewith, the Chapter 11 Entities filed several “first day” motions seeking orders granting various forms of relief intended to stabilize FFG’s business operations, minimize the adverse effects of the commencement of the Chapter 11 Cases and facilitate the efficient administration of the Chapter 11 Proceedings.

X. PROPOSED FIRST DAY ORDER & ARIO

A. Stay of Proceedings

100. Over the past few years, the CCAA Entities have struggled to conduct their business operations on a profitable basis. While Tiffany Gate has been able to generate positive cash-flow in 2020, Tiffany Gate (as well as the other CCAA Entities) remain nonetheless indebted, either as borrowers or guarantors, under the First Lien Credit Agreement, the Second Lien Credit Agreement, the Super Senior Term Loan Credit Agreement and the TG Debenture, such that on a balance sheet test, the CCAA Entities are insolvent.

101. The CCAA Entities are concerned that unless a stay of proceedings is ordered, certain suppliers, creditors, co-contracting parties and other stakeholders may take steps that will jeopardize or, at the very least, hinder, their current restructuring efforts.

102. A stay of proceedings under the CCAA will allow the CCAA Entities to maintain operations while benefiting from CCAA protection to pursue and conclude the Formal Solicitation Process previously initiated (and well-advanced) by Stout, and determine whether a superior offer can be obtained in respect of the assets of the CCAA Entities, for the benefit of their creditors and other stakeholders.

103. Accordingly, the CCAA Entities request a stay of proceedings for an initial period of ten (10) days (i.e. the Stay Period), following which the CCAA Entities will request an extension of the Stay Period until March 28, 2021, so as to preserve the status quo and prevent creditors and others from taking any steps to try and better their positions in comparison to other creditors. In general, the CCAA Entities' stakeholders, including creditors, will benefit from a stay of proceedings.

104. As set out in the cash flow projections (the "**Cash Flow Statement**") that was prepared by the CCAA Entities in consultation with Ankura, and reviewed by the Proposed Monitor for the period from February 15, 2021 to March 28, 2021, the CCAA Entities expect that they will have sufficient cash to fund their projected operating costs during such period.

105. However, to the extent that additional funding is required by the CCAA Entities during the proposed Stay Period, or any extension thereof, the CCAA Entities will have access to such additional funding through the Intercompany DIP Advances.

106. I understand that a copy of the Cash Flow Statement will be attached to the pre-filing report of the Proposed Monitor, which will be filed with the Court in advance of the Application.

B. Appointment of E&Y as Monitor

107. E&Y has consented to act as the Court-appointed Monitor of the CCAA Entities, subject to Court approval. A copy of EY's formal consent to act is attached hereto as **Exhibit "Q"**.

108. E&Y is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* as amended and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

109. I understand that E&Y has extensive experience in matters of this nature, including in cross-border restructuring proceedings, and is therefore well-suited to this mandate.

110. I am advised by Alex Morrison of E&Y that the Proposed Monitor is supportive of the relief being sought in favour of the CCAA Entities as further set out in this affidavit. Mr. Morrison has also advised me that the Proposed Monitor will be filing a pre-filing Monitor's report set out its views and recommendations in connection with such relief.

C. Engagement of Ankura

111. As described above, Ankura was previously retained by FFG (including the CCAA Entities) on December 7, 2020, as its financial advisor and has, thus far, played and continues to play a central role in advising and assisting FFG with liquidity management and operational restructuring initiatives.

112. On February 16, 2021, an engagement letter was entered into between Ankura and FFG, designating Ankura as the Chief Restructuring Organization of FFG (the "**Ankura Engagement Letter**"). A copy of the Ankura Engagement Letter is attached hereto as **Exhibit "R"**.

113. The CCAA Entities are seeking the Court's confirmation of the retention of Ankura (Stephen Marrotta) and the approval of the Ankura Engagement Letter.

114. I believe that such approval by the Canadian Court is appropriate in the circumstances as both Ankura and myself have worked extensively with FFG (including the CCAA Entities) over the course of the past few months, and we have significant knowledge with respect to FFG's business, operations and finances. Ankura's continued involvement will be critical to the successful completion of a going-concern restructuring transaction as part of the CCAA Proceedings and the Chapter 11 Proceedings that will maximize value for stakeholders.

115. It should be noted that as the work performed and to be performed by Ankura will benefit both the CCAA Entities and the Chapter 11 Entities, it is proposed that CCAA Proceedings-related work will be performed by Ankura will be invoiced to the CCAA Entities, while Chapter 11 Proceedings-related work will be performed by Ankura and invoiced to the Chapter 11 Entities. Where financial advisory services are provided for the benefit of the CCAA Entities and the Chapter 11 Entities as a whole, Ankura will invoice the CCAA Entities and the Chapter 11 Entities on a 50/50 basis.

116. The ARIO contemplate that the fees billed by Ankura shall be paid only upon the consent of the Proposed Monitor or by order of the Court.

D. Engagement of Stout

117. As described above, Stout was previously retained by FFG and has played a central role in assisting FFG in reviewing its strategic options, developing a pre-filing sale and investment solicitation process and otherwise advising and assisting FFG.

118. On October 30, 2020, FFG and Stout entered into an engagement letter (the “**Stout Engagement Letter**”) setting out the terms and conditions of Stout’s engagement. A copy of the Stout Engagement Letter is attached hereto as **Exhibit “S”**.

119. The Stout Engagement Letter provides that in consideration for its work and services, Stout will be entitled to a monthly fee, as well as a transaction fee (the “**Transaction Fee**”) which will be earned upon the closing of a transaction in respect of FFG’s assets.

120. The CCAA Entities are seeking the Court’s confirmation of the retention of Stout and the approval of the Stout Engagement Letter, as well as the granting of a priority charge in the total amount of US\$2.5 million securing the payment of the Transaction Fee (the “**Transaction Fee Charge**”), with the understanding, however, if earned, the Transaction Fee shall be allocated proportionately among the respective estates of the CCAA Entities and the Chapter 11 Entities, based on the proceeds resulting from the sale of their respective assets.

121. I believe that the approval of the Stout Engagement Letter and the Transaction Fee Charge is appropriate in the circumstances as Stout has worked extensively with FFG, including the CCAA Entities, since its initial engagement and has significant knowledge with respect to their business, operations and finances. Stout’s continued involvement will also be critical to the successful completion of a going-concern restructuring transaction as part of the CCAA Proceedings and the Chapter 11 Proceedings that will maximize value for stakeholders.

122. It should be noted that as the work performed and to be performed by Stout will benefit both the CCAA Entities and the Chapter 11 Entities, Stout will split its monthly fee equally between the CCAA Entities and Chapter 11 Entities, and any Transaction Fee earned in accordance with the Stout Engagement Letter shall be allocated proportionately among the estates of the Canadian Entities and the Chapter 11 Entities based on sale proceeds.

123. The CCAA Entities have, in consultation with their advisors and the Proposed Monitor determined that the proposed system for allocating work by Stout is reasonable.

124. The ARIO contemplate that fees invoiced by Stout shall be paid only upon the consent of the Proposed Monitor or by order of the Court.

E. Administration Charge

125. The CCAA Entities seek a charge on their assets, property and undertakings (the “**Property**”) in the maximum amount of US\$400,000, as part of the First Day Order, and then increased to a total amount of US\$750,000, as part of the ARIO, to secure the fees and disbursements incurred in connection with services rendered to the CCAA Entities both before and after the commencement of the CCAA Proceedings by, initially, the Proposed Monitor, counsel to the Proposed Monitor, counsel to the CCAA Entities, counsel to Mr. William Andersen, as sole director of the CCAA Entities, and, after the comeback hearing, together with the foregoing parties, Ankura, for its fees incurred for the benefit of the CCAA Entities and Stout, also for its monthly fee (but not the Transaction Fee) incurred for the benefit of the CCAA Entities (the “**Administration Charge**”).

126. The CCAA Entities have worked with Ankura and the Proposed Monitor to estimate the proposed quantum of the Administration Charge. The Proposed Monitor has reviewed the quantum of the Administration Charge and believes it is reasonable and appropriate in view of the complexities of the CCAA Proceedings, to be conducted in parallel with the Chapter 11 Proceedings, and the services to be provided by the beneficiaries of the Administration Charge.

127. The CCAA Entities are represented by Stikeman Elliott LLP and Foley & Lardner LLP (“**Foley**”). Within the Restructuring Proceedings, it is expected that the majority of Foley’s work will be for the benefit of the Chapter 11 Entities, and Foley will invoice its fees accordingly. However, Foley may provide legal services for the benefit of the CCAA Entities. In such event, Foley will maintain separate invoices for such work and will remit those bills to the CCAA Entities for payment with the approval of the Proposed Monitor.

F. DIP Financing, Intercompany DIP Charge and DIP Lenders’ Charge

128. The CCAA Entities have historically self-funded their operations from available cash-flow. However, as described above, from time to time, costs and revenues fluctuate (particularly at Sun Rich Canada).

129. The Cash Flow Statement prepared by FFG does not project a need by the CCAA Entities for additional funding these CCAA Proceedings. However, there is the possibility, as a

result of the above-noted fluctuations in costs and revenues that the CCAA Entities may face an unanticipated need for additional funding.

130. Accordingly and as previously mentioned, on February 15, 2021, the DIP Credit Agreement, together with the other DIP Documents, were entered into between, *inter alia*, Country Fresh Holdings, LLC, as borrower (i.e. the DIP Borrower), several of the DIP Borrower's direct and indirect subsidiaries, including the CCAA Entities, as guarantors, Cortland Capital Market Services LLC, as administrative agent and collateral agent (the "**DIP Agent**") and the lenders party thereto (i.e. the DIP Lenders). A copy of the DIP Credit Agreement is attached hereto as **Exhibit "T"**.

131. Pursuant to the DIP Credit Agreement, the DIP Lenders have agreed to provide the DIP Borrower with a DIP Facility of up to US\$13,416,000, to fund the working capital requirements and other general corporate purposes of the Chapter 11 Entities during the pendency of the Restructuring Proceedings.

132. As part of the DIP financing arrangements, FFG requested, and the DIP Lenders have agreed, to permit certain intercompany transfers of funds from the DIP Facility to occur between the Chapter 11 Entities and the CCAA Entities (i.e. the Intercompany DIP Advances), to the extent such transfers are required by the CCAA Entities and permitted by the DIP Credit Agreement, the DIP Budget (as defined in the DIP Credit Agreement) related thereto and the orders rendered by the US Court as part of the Chapter 11 Proceedings.

133. As a result of this arrangement, the CCAA Entities will not directly borrow monies from the DIP Lenders under the DIP Facility. Rather, they will have the ability to receive funding, if required, through Intercompany DIP Advances made by a Chapter 11 Entity (which funding, itself, will have been made available to the Chapter 11 Entities through the DIP Facility).

134. Accordingly, in order to reflect the above arrangement, the CCAA Entities have entered into the DIP Credit Agreement and that certain Canadian Guaranty and Security Agreement, to provide that the CCAA Entities will guarantee the obligations of the DIP Borrower under the DIP Credit Agreement (the "**DIP Guarantee**"), up to an amount equivalent to the Intercompany DIP Advances, if any, plus interest thereon. A copy of the DIP Guarantee is attached hereto as **Exhibit "U"**.

135. In order to secure the full repayment of the Intercompany DIP Advances, if any, plus any interest thereon, and the obligations under the DIP Guarantee, the DIP Lenders have required, and the CCAA Entities, have agreed, to grant the following priority charges:

- (a) a priority charge (i.e. the Intercompany DIP Charge) against the assets of the CCAA Entities in favour of the DIP Borrower and its U.S. subsidiaries that are party to the DIP Credit Agreement (the “**Lending US Debtors**”), which shall be held by the Lending 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 CCAA Proceedings; and
- (b) a priority charge (i.e. the DIP Lenders’ Charge) against the assets of the CCAA Entities in favour of the DIP Agent and the DIP Lenders securing the CCAA Entities’ obligations under the DIP Guarantee in an amount equivalent 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 before and after the making of the First Day Order.

136. The amount of the Intercompany DIP Charge and the DIP Lenders’ Charge shall each not exceed the cumulative amount of the Intercompany Advances made to the CCAA Entities, if any, plus interest and fees accrued thereon and the reasonable fees and disbursements of Canadian counsel to the DIP Lenders at their standard rates and charges before and after the making of the First Day Order.

137. No Intercompany DIP Advance may be made to the CCAA Entities unless the DIP Credit Agreement has been previously approved by this Court and the Intercompany DIP Charge and the DIP Lenders’ Charge have been granted as part of the First Day Order.

138. Access, albeit indirect, to the DIP Facility by the CCAA Entities through the above arrangement will allow them to benefit from a cushion, should they require it during these CCAA Proceedings.

139. As the DIP Facility will be provided by existing lenders under the Super-Priority Term Loan, who already benefit from first ranking security interests on the assets of the CCAA

Entities, the CCAA Entities believe there will be no material prejudice to any of their existing creditors in approving the DIP Credit Agreement, the DIP Guarantee, the proposed Intercompany DIP Charge and the proposed DIP Lenders' Charge. Accordingly, the CCAA Entities seek an order authorizing and empowering the CCAA Entities to enter into the DIP Credit Agreement as guarantors and grant the Intercompany DIP Charge and the DIP Lenders' Charge.

140. The relief requested in the First Day Order limits the Intercompany DIP Advances that can be made to the CCAA Entities from the Chapter 11 Entities to US\$1 million. The amount was determined to limit the relief sought during the initial stay period but still provide sufficient authorization to protect the business of the CCAA Entities should the need for funding arise due to variances in the CCAA Entities' expected receipts or disbursements as set out in the Cash Flow Statement.

G. Directors' Charge

141. In order to continue to carry on business during these CCAA Proceedings, the CCAA Entities require the active and committed involvement of its director and officers (the "**D&Os**"), particularly given the fact that the CCAA Entities only have one director.

142. Since the continued assistance of the D&Os is required to ensure that these CCAA Proceedings and the Formal Solicitation Process are successfully completed, these D&Os require, in turn, that the CCAA Entities indemnify them for all liabilities which they may incur in the context of their positions after the filing of these proceedings, including liabilities relating to employee vacations accrued prior to these CCAA Proceedings, but which may be crystalized after the commencement of such proceedings.

143. Although the CCAA Entities intend to comply with all applicable laws and regulations, including with respect to the timely remittance of deductions at source and federal and provincial sales taxes, its directors and officers remain nevertheless concerned about their potential personal liability, particularly in the present circumstances.

144. While the CCAA Entities maintain directors' and officers' liability insurance (the "**D&O Insurance**"), such D&O Insurance is currently scheduled to expire on April 29, 2021, and it is uncertain at this point and time whether or not the CCAA Entities will be in a position to extend such coverage period.

145. In addition, certain of the CCAA Entities for which D&Os may be personally liable for may not be covered by the D&O Insurance, or the current amount of coverage provided by the D&O Insurance may not be sufficient to protect them from all of the potential directors' and officers' liability.

146. The CCAA Entities therefore request a Court-ordered charge over its Property (the **"Directors' Charge"**) in the amount of US\$2.5 million, as part of both the First Day Order and ARIO, to allow the CCAA Entities to properly indemnify their D&Os in connection with any claim which may be asserted against them, personally, from and after the commencement of these proceedings, including claims relating to employee vacations accrued prior to these CCAA Proceedings, but which may be crystalized after the commencement of such proceedings. The Proposed Monitor has advised that it is supportive of the proposed Directors' Charge and quantum thereof.

147. While the Directors' Charge requested proposes to cover claims or potential claims, which may be asserted against the D&Os, personally, in connection with employee vacations accrued prior to these CCAA Proceedings, but which may crystalize after the commencement of such proceedings, it should be noted that such inclusion has been negotiated with the secured lenders of the CCAA Entities, who, in this case, are the main if not the only economic stakeholders of the CCAA Entities, of given the estimated value of the CCAA Entities' assets, relative to their respective indebtedness. The Directors' Charge securing the aforementioned claims or potential claims related to employee vacations will assist in retaining the D&Os of the CCAA Entities during the pendency of these CCAA Proceedings and assist in implementing a transaction involving the CCAA Entities and/or their assets.

148. The CCAA Entities believe and submit that in these circumstances, the requested Directors' Charge is reasonable and adequate given, notably, the complexity of their business, and the corresponding potential exposure of their directors and officers to personal liability, especially in the present context.

149. Absent the approval by this Court of the Directors' Charge in the amounts set out above, the CCAA Entities are concerned that one or more of their director or officers will be forced to resign, which would, in all likelihood, render these CCAA Proceedings (and potentially the Chapter 11 Proceedings) and the Formal Solicitation Process much more challenging, and

possibly much more costly, to the detriment of the CCAA Entities' creditors and other stakeholders.

H. Canadian Intercompany Advances and Canadian Intercompany Charge

150. As previously discussed, in the ordinary course of their business operations, amounts of moneys may flow, from time to time, between the CCAA Entities.

151. Accordingly, the CCAA submit that it is necessary for this court to allow such intercompany advances (the "**Canadian Intercompany Advances**") to continue, and to grant a "**Canadian Intercompany Charge**" in order to secure such Canadian Intercompany Advances, if any, and protect the respective estates of the CCAA Entities. Further, this relief is necessary within the initial stay period in the CCAA Proceedings as the CCAA Entities' cash flow and ability to operate on a stand-alone basis with additional financial is predicated on the CCAA Entities' ability to advance funds to each other. The Canadian Intercompany Charge will preserve the status quo and protect stakeholders during this initial period.

I. Ranking of the Court Ordered Charges

152. The proposed ranking of the court ordered charges is as follows:

- (a) Administration Charge (up to the maximum amount of US\$400,000 in the First Day Order and US\$750,000 in the ARIO);
- (b) Intercompany DIP Charge / DIP Lenders' Charge;
- (c) Directors' Charge (up to the maximum amount of US\$2,500,000 in both the First Day Order and the ARIO);
- (d) the Transaction Fee Charge (up to the maximum amount of US\$2,500,000 in the ARIO); and
- (e) the Canadian Intercompany Charge.

J. Authority to Pay Certain Pre-Filing Amounts

153. As of the date of this affidavit, the CCAA Entities owe various amounts to suppliers and service providers, some of which are crucial for their continued operation.

154. While the draft First Day Order and the ARIO proposed in these CCAA Proceedings prevents counterparties from terminating their supply arrangements, uninterrupted supply of products is critical to ongoing operations and, by extension, the preservation of value of the business. Certain of these crucial suppliers are not located in Canada or have little business in Canada, and the CCAA Entities fear that such suppliers may be tempted to cease supply products to the CCAA Entities, to the extent that its claims are not fully paid. Further, given the CCAA Entities' limited inventory on hand, any supplier engaging in self-help, even for a short period of time, could disrupt the business of the CCAA Entities during a crucial period. A supplier operating in breach of the First Day Order could have a significant detrimental impact on the CCAA Entities' business and the Applicants may not have sufficient time to enforce the order with the Court. The CCAA Entities also have limited ability to replace certain suppliers in a timely manner.

155. In my opinion and the opinion of management of the CCAA Entities that, without payment of the pre-filing amounts owing to these suppliers, they may interrupt the CCAA Entities' ability to procure and sell products in the market, leading to a significant disruption in the CCAA Entities' business during the first important weeks of the CCAA Proceedings, potentially causing value dissipation. Further, I believe a limited amount of authorization is necessary in the First Day Order to ensure the continued operations of the CCAA Entities in the ordinary course of business during the initial stay period in the CCAA Proceedings.

156. As such, the CCAA Entities are seeking the authorization, but not the requirement, subject to the Definitive Documents (as defined in the proposed First Day Order and the ARIO) to make payments to these stakeholders, including those relating to the pre-filing period, with the prior approval of the Proposed Monitor. Pursuant to the terms of the draft First Day Order, such payments would not exceed an aggregate maximum of \$750,000, which would be subsequently increased to \$2,000,000, as part of the ARIO. These amounts were determined by Ankura, in consultation with the Proposed Monitor, as an estimate of potential amount that may be necessary to be paid in order to protect the CCAA Entities' continued supply during the initial stay period.

XI. PROPOSED STALKING HORSE AND BIDDING PROCEDURES ORDER

157. In addition to the above, and as part of the ARIO, the CCAA Entities will also be seeking the Canadian Court's approval of the Stellex APA and the Bidding Procedures.

158. As previously discussed, the Stellex APA and Bidding Procedures are the result of extensive discussions and negotiations among FFG, Stout and Stellex, and their respective legal and financial advisors over the course of the last few weeks, in consultation with the DIP Lenders.

159. At this point and time, the Stellex APA represents the best offer received by FFG and Stout in the context of the Formal Solicitation Process.

160. Most notably, the Stellex APA, in addition to being fully committed, fully financed and not contingent on additional business diligence, it also provides:

- (a) a clear path to the maintenance and pursuit of the operations of FFG, including the CCAA Entities;
- (b) a preservation of the employment of certain employees of FFG, including the CCAA Entities, if the Stellex is determined to be the Successful Bidder following the completion of the Bidding Procedures; and
- (c) reasonable consideration for FFG's assets, which will allow to maximize creditor recovery; and
- (d) a short timeline to closing the transaction,

while at the same time establishing a valuable baseline consideration which has the potential to improve any bids received in the context of the Formal Solicitation Process.

161. As previously mentioned, as things currently stand, FFG, including the CCAA Entities, consider that the Stellex APA represents the best possible option for maximizing value for FFG's creditors and other stakeholders, and that it is in its and their best interest that the execution of the Stellex APA be approved and ratified by the Canadian Court (and the US Court).

162. In connection with the Stellex APA, the parties thereto, in consultation with the DIP Lenders, agreed upon the Bidding Procedures and the pursuit and continuation of the Formal Solicitation Process, which will allow FFG (including the CCAA Entities) to continue the marketing process in respect of its assets, and ultimately maximize the value thereof, for the benefit of all of its creditors and other stakeholders.

163. While the Formal Solicitation Process will proceed expeditiously, I believe that the proposed timeline for the pursuit and continuation of such Formal Solicitation Process, in accordance with the Bidding Procedures, is reasonable in the circumstances, taking into account the fact that the assets of FFG have been formally marketed with the assistance of Stout since November, 2020, and FFG's current secured lenders have clearly advised that they are not willing to provide any additional funding, other than the DIP Facility and that the Restructuring Proceedings must be completed in short order.

164. Nonetheless, the pursuit and continuation of the Formal Solicitation Process in accordance with the Bidding Procedures will allow FFG, including the CCAA Entities, an opportunity to solicit a superior offer to that of Stellex, to maximize value for the benefit of its creditors and other stakeholders, all in a fair and transparent manner.

165. The DIP Lenders, as the principal economic stakeholders in these Restructuring Proceedings, have advised the CCAA Entities and the Chapter 11 Entities that they are supportive of the process outlined above.


XII. CONCLUSIONS

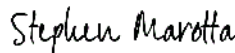
166. In light of the foregoing, I believe that the relief sought by the Applicants as part of the Application are reasonable in the circumstances.

167. Furthermore, I understand that E&Y, in its capacity as Proposed Monitor, will also be filing a pre-filing report in advance of the hearing on the Application, confirming its support for such relief.

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 New York, to the City of Toronto, Ontario, on February 16, 2021.

DocuSigned by:

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Commissioner for Taking Affidavits

DocuSigned by:

196AADD5E61F43D...
STEPHEN MAROTTA

TAB B

EXHIBIT "B"
to the affidavit of
STEPHEN MAROTTA
sworn April 8, 2021



A commissioner etc.

**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
TGF ACQUISITION PARENT LTD., SUN RICH FRESH FOODS INC. & TIFFANY GATE
FOODS INC.**

(Applicants)

**AFFIDAVIT OF STEPHEN MAROTTA
(Sworn March 25, 2021)**

I, **STEPHEN MAROTTA**, of the City of New York, in the State of New York, United States of America, MAKE OATH AND SAY:

1. I am a Senior Managing Director of Ankura Consulting Group, LLC ("**Ankura**"), which has been appointed to act as Chief Restructuring Organization of Country Fresh Holding Company Inc. ("**CF Holding**"), a company which indirectly holds all of the shares of the Applicants. In this capacity, I am responsible for overseeing the operations of FFG (as defined below), which includes the Applicants, their liquidity management and, ultimately, for assisting them with their restructuring process. As such, I have knowledge of the matters to which I hereinafter depose herein, except where otherwise stated. The facts stated in the present affidavit are based on my personal knowledge of FFG, my review of its books and records, as well as on information received from other individuals, such as directors, officers and/or employees of FFG, which information I believe to be true.

2. This affidavit is sworn in support of a motion (the "**Sale Approval Motion**") by each of TGF Acquisition Parent Ltd. ("**TGF**"), Sun Rich Fresh Foods Inc. ("**Sun Rich Canada**") and Tiffany Gate Foods Inc. ("**Tiffany Gate**") and collectively with TGF and Sun Rich Canada, the "**Applicants**" or the "**CCAA Entities**"), for the issuance of the following orders:

(a) an order (the "**Homestyle Sale Approval Order**"):

(i) approving the transaction (the ("**Homestyle Transaction**") contemplated in the *Asset Purchase Agreement* (the ("**Homestyle APA**") entered into between Sun Rich Canada and Tiffany Gate, as sellers, and Homestyle

Selections LP, as buyer ("**Homestyle**"), a party dealing at arm's length with FFG, including Sun Rich Canada and Tiffany Gate, and vesting in Homestyle all of the assets that are listed in the Homestyle APA (the "**Homestyle Purchased Assets**"), on a free and clear basis, pursuant to section 36 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

- (ii) approving the assignment of the "*11.3 Contracts*" and the "*11.3 Leases*" listed as a schedule to the draft Homestyle Sale Approval Order to Homestyle in accordance with section 11.3 of the CCAA, subject to Homestyle's right to designate, up until the Closing Date contemplated in the Homestyle APA, any such "*11.3 Contracts*" and "*11.3 Leases*" as an "*Excluded Contract*" or an "*Excluded Lease*" (as such terms are defined in the Homestyle APA. Each "*11.3 Contracts*" and "*11.3 Leases*" that is not designated by Homestyle as an "Excluded Contract" or "Excluded Lease" in accordance with the Homestyle APA prior to the Closing Date shall be a "**Homestyle Assigned Agreement**" and collectively, the "**Homestyle Assigned Agreements**". All counterparties to the "*11.3 Contracts*" and the "*11.3 Leases*" shall have the right to apply to the Canadian Court up until the Closing Date contemplated in the Homestyle APA to object to such assignment, but only on the basis that Homestyle will not be able to perform the obligations under such "*11.3 Contract*" or "*11.3 Lease*", but not on the basis of the other criteria set out in section 11.3 of the CCAA, including the quantum of the cure costs to be paid, as such issues, if any, will need to be adjudicated upon at the hearing for the approval of the Homestyle Transaction;

- (b) an order (the "**Save-On Sale Approval Order**");

- (i) approving the transaction (the ("**Save-On Transaction**") contemplated in the *Asset Purchase Agreement* (the ("**Save-On APA**") entered into between Sun Rich Canada, as seller, and Save-On-Foods Limited Partnership, as buyer ("**Save-On**"), a party dealing at arm's length with FFG, including Sun Rich Canada, and vesting in Save-On all of the

assets that are listed in the Save-On APA (the “**Save-On Purchased Assets**”), on a free and clear basis, pursuant to section 36 of the CCAA;

- (ii) approving the assignment of the “*11.3 Contracts*” and the “*Third Party Lease*” listed as a schedule to the draft Save-On Sale Approval Order to Save-On in accordance with section 11.3 of the CCAA, subject to Save-On’s right to designate, up until the Closing Date contemplated in the Save-On APA, any such “*11.3 Contracts*” as an “*Excluded Contract*” (as such terms are defined in the Save-On APA). Each “*11.3 Contracts*” that is not designated by Homestyle as an “*Excluded Contract*” in accordance with the Save-On APA prior to the Closing Date, together with the Third Party Lease, shall be a “**Save-On Assigned Agreement**” and collectively, the “**Save-On Assigned Agreements**”. All counterparties to the “*11.3 Contracts*” and the “*Third Party Lease*” shall have the right to apply to the Canadian Court up until the Closing Date contemplated in the Save-On APA to object to such assignment, but only on the basis that Save-On will not be able to perform the obligations under such “*11.3 Contract*” or “*Third Party lease*”, but not on the basis of the other criteria set out in section 11.3 of the CCAA, including the quantum of the cure costs to be paid, as such issues, if any, will need to be adjudicated upon a the hearing for the approval of the Save-On Transaction;

- (c) an order extending the Stay Period (as defined below) to April 18, 2021.

3. All capitalized terms not otherwise defined herein have the meaning ascribed to them in my affidavit sworn on February 16, 2021 filed in the context of these proceedings (the “**February 16, 2021 Marotta Affidavit**”), a copy of which (without its exhibits) is attached hereto as **Exhibit “A”**.

4. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

I. PROCEDURAL BACKGROUND

5. On February 15, 2021, certain US affiliates of the CCAA Entities, including CF Holding, Country Fresh Midco Corp., Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, Country Fresh LLC, Country Fresh Dallas, LLC, Country Fresh Carolina, LLC, Country Fresh Midwest, LLC, Country Fresh Orlando, LLC, Country Fresh Transportation LLC, CF Products, LLC, Country Fresh Manufacturing, LLC, Champlain Valley Specialty of New York, Inc., Country Fresh Pennsylvania, LLC, Sun Rich Fresh Foods (NV) Inc., Sun Rich Foods (USA) Inc. and Sun Rich Fresh Foods (PA) Inc. (collectively, the “**Chapter 11 Entities**”, together with the CCAA Entities, “**FFG**”) filed voluntary petitions before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**U.S. Court**”) under chapter 11 of title 11 of the United States Code (the “**Chapter 11 Proceedings**” and together with the CCAA Proceedings, the “**Restructuring Proceedings**”).

6. On February 17, 2021, the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) rendered a “*first day*” Initial Order (the “**First Day Order**”) in favor of the CCAA Entities, among other things:

- (a) declaring that the CCAA Entities were affiliated debtor companies to which the CCAA applied;
- (b) staying all proceedings and remedies taken or that might be taken against or in respect of the CCAA Entities, any of their respective property or director and officers, except as otherwise set forth in the First Day Order or as otherwise permitted by law (the “**Stay**”), for an initial period of ten (10) days in accordance with the CCAA (the “**Stay Period**”);
- (c) appointing Ernst & Young Inc. (“**E&Y**” or the “**Monitor**”) as the monitor of the CCAA Entities in these proceedings (the “**CCAA Proceedings**”);
- (d) approving the execution by the CCAA Entities of a *Super Priority Senior Secured Debtor-in-Possession Financing Agreement* (the “**DIP Credit Agreement**”), together with certain ancillary agreements thereto (together with the DIP Credit Agreement, the “**DIP Documents**”) entered into on February 16, 2021, between, amongst others, the lenders thereunder (the “**DIP Lenders**”), Country Fresh Holdings, LLC, as borrower (in such capacity, the “**DIP Borrower**”), and several of its direct and indirect subsidiaries, including the CCAA Entities, as guarantors,

pursuant to which amounts of up to US\$13,416,000 (the “**DIP Facility**”), would be made available to the DIP Borrower;

- (e) granting: (a) a priority charge against the assets of the CCAA Entities in favor of the DIP Borrower and its U.S. subsidiaries that are party to the DIP Credit Agreement, securing the full amount of any funding or advances made by any of them to any of the CCAA Entities (the “**Intercompany DIP Advances**”) plus interest during the course of these CCAA Proceedings (the “**Intercompany DIP Charge**”); and (b) a priority charge against the assets of the CCAA Entities for the benefit of the DIP Agent (as defined below) and the DIP Lenders (the “**DIP Lenders’ Charge**”), securing the full amount of the CCAA Entities’ obligations under the *Canadian Guaranty and Security Agreement* (the “**Canadian Guarantee Agreement**”) entered into in conjunction with the DIP Credit Agreement, which provides that, *inter alia*, the CCAA Entities would guarantee, in favor of the DIP Lender, the payment of an amount equivalent to the Intercompany DIP Advances, plus interest 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 the First Day Order;
- (f) granting an “**Administration Charge**” in an amount of US\$400,000 and a Directors’ Charge in an amount of US\$2,500,000 to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period;
- (g) approving a “**Canadian Intercompany Charge**” for the purpose of securing the repayment of the various amounts which may be advanced, from time to time, plus interest thereon, between the CCAA Entities during the initial Stay Period; and
- (h) authorizing the CCAA Entities to make payments to certain suppliers deemed crucial by the CCAA Entities, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, up to an amount of \$750,000, subject to the prior approval of the Proposed Monitor.

7. On February 26, 2021, the Canadian Court rendered an amended and restated initial order (the “**ARIO**”) in favor of the CCAA Entities, among other things:

- (a) extending the Stay Period until March 28, 2021;
- (b) confirming the appointment of E&Y as the Monitor of the CCAA Entities in these CCAA Proceedings;
- (c) approving the engagement of Ankura (Stephen Marotta), as Chief Restructuring Organization, and of Stout Capital, LLC ("**Stout**"), as investment banker and financial advisor to FFG, including the CCAA Entities, and granting to Stout a "Transaction Fee Charge" in the amount of US\$2,500,000 in order to secure the payment of the "Transaction Fee" payable under the Stout Engagement Letter (as defined below);
- (d) confirming the approval of the DIP Credit Agreement, the Canadian Guarantee Agreement and the granting of the Intercompany DIP Charge and the DIP Lenders' Charge;
- (e) confirming and increasing, as applicable, the amount of the Administration Charge (US\$750,000) and the Directors Charge (US\$2,500,000) previously approved as part of the First Day Order;
- (f) confirming the Canadian Intercompany Charge previously approved as part of the First Day Order;
- (g) confirming the Applicants' authority to make payments to certain suppliers deemed crucial by the Applicants, including with respect to goods delivered or services provided prior to the commencement of these CCAA Proceedings, subject to the prior approval of the Proposed Monitor; and
- (h) approving the *Guidelines and Cooperation between Courts in Cross-Border Insolvency Matters* issued by the Judicial Insolvency Network for the purposes of these CCAA Proceedings;

8. On the same day, the U.S. Court rendered an order in the context of the Chapter 11 Proceedings (the "**U.S. Bidding Procedures Order**"), among other things:

- (a) approving the execution by the Chapter 11 Entities of a stalking horse asset purchase agreement (the "**Stellex APA**") entered into between the Chapter 11

Entities and the CCAA Entities, as sellers, and Stellex US Newco and Stellex Canadian Newco (both newly incorporated entities whose shares are owned by Stellex Capital Management (“**Stellex**”)), as purchasers, subject to certain amendments which could be agreed upon in respect of the Stellex APA; and

- (b) approving the bidding procedures (the “**Bidding Procedures**”) to be followed in connection with the pursuit and continuation of the Formal Solicitation Process (as defined below) previously initiated by Stout in November 2020.

9. On March 1, 2021, following the issuance of the U.S. Bid Procedures Order by the U.S. Court, the Canadian Court also rendered an order in the context of the CCAA Proceedings (the “**Canadian Bidding Procedures Order**”, together with the U.S. Bid Procedures Order, the “**Bidding Procedures Orders**”), among other things:

- (a) approving the execution by the CCAA Entities of the Stellex APA, subject to certain amendments which could be agreed upon in respect of the Stellex APA;
- (b) approving the Bidding Procedures to be followed in connection with the pursuit and continuation of the Formal Solicitation Process previously initiated by Stout in November 2020; and
- (c) approving the form of notices to be sent to the counterparties to those contracts previously entered into by the CCAA Entities which may be assumed by the Stellex of the “*Successful Bidder*” to be determined in accordance with the Bidding Procedures.

10. As will be further discussed below, since the issuance of the Bidding Procedures Orders, the CCAA Entities and the Chapter 11 Entities have jointly conducted, with the assistance of Stout, the Formal Solicitation Process with the objective of soliciting and receiving offers for the business and assets of each of the CCAA Entities and the Chapter 11 Entities, either as a whole or on a stand-alone basis.

11. On March 24, 2021, after having received and considered a total amount of six (6) “*Qualified Bids*” submitted as part of the Formal Solicitation Process (including the offer submitted as part of the Stellex APA) and after having conducted an auction with a view to obtain the best offers possible for the assets of the CCAA Entities and the Chapter 11 Entities, together or on a standalone basis, Homestyle and Save-On were designated as the “*Successful*

Bidders” for the assets of the Canadian Entities, and Stellex, Inc. was designated as the “*Successful Bidder*” for the assets of the U.S. Entities (the “**Stellex Transaction**”).

12. On the same date, and in accordance with the Bidding Procedures Order, FFG issued a Post-Auction Notice and served the Post-Auction Notice on the service list confirming the identity of the “*Successful Bidders*” and of the “*Back-up Bidders*”. On March 25, 2021, the Homestyle APA and the Save-On APA were finalized and executed.

13. The Applicants’ Motion only deals with the approval of the Homestyle Transaction and the Save-On Transaction. The U.S. Court has approved the Stellex Transaction on March 25, 2021.

II. THE FRESH FOOD GROUP

14. Below is a summary description of FFG and of the CCAA Entities, taken from the February 16, 2021 Marotta Affidavit.

A. Overview of FFG

15. FFG is the result of the business combination of various companies operating in the food sector in Canada and in the United States.

16. Today, FFG has grown into a group of companies which have become leading providers of branded and private-label offerings of fresh-cut fruits and vegetables, ready-to-go meals and meal kits, behind-the-glass salads, snacks, and ingredients/bulk food components to supermarkets, club stores, convenience stores, industrial, and food-service customers in the United States and Canada. Recently, FFG expanded its product offerings into *sous vide* and kettle cooking of chicken, fish, and beef entrees as well as pasta.

17. FFG carries the following brands:

- (a) Country Fresh: Country Fresh provides and distributes in the US fresh-cut fruit, apple slices, vegetable and snacking solutions on a variety of blends, sizes and packaging options. Its product offering includes, *inter alia*, cut fruit and vegetables, snacking solutions, side dishes, parfaits, meal kits and sous-vide proteins and vegetable and its customers include retail and foodservice companies;

- (b) Sun Rich: Sun Rich provides and distributes both in Canada (through Sun Rich Canada) and in the US (through Sun Rich USA) ready-to-serve fresh-cut fruits. Its product offering includes, *inter alia*, pails filled with a single type of precision-cut fruit, fresh fruit salads, meal kits that are ready to mix and serve and other snacking solutions, and its customers include retail and foodservice companies; and
- (c) Tiffany Gate: Tiffany Gate creates, packages and delivers fresh-prepared food products to customers across Canada and the U.S. By combining state-of-the-art technology and food science with artisanal cooking techniques, Tiffany Gate is able to create homemade recipes on a commercial scale. Its product offering includes, *inter alia*, meal kits, pasta kits, soup and stew kits, deli salads, sauces, smoothies, butters and sous-vide proteins, vegetables and starches. Its customers include some of the largest retail food service companies and fresh-cut processors in Canada.

18. While some of the management functions of the entities forming part of FFG are intertwined in some respect, the respective business operations of each of these entities is generally divided geographically between Canada and the US.

19. The only debtors in the context of these CCAA Proceedings are the Canadian entities of FFG (i.e. TGF, Sun Rich Canada and Tiffany Gate), which are ultimately owned by Country Fresh LLC, a Chapter 11 Entity, which also own the other US operating entities of FFG.

B. Overview of the CCAA Entities

20. TGF is a private holding company which was incorporated under the British Columbia *Business Corporations Act* (the “**BCBCA**”) for the purpose of acquiring the business and assets of Sun Rich Canada and of Tiffany Gate in 2017. While TGF is a borrower under the credit agreements entered into with the First Lien Lenders (as defined below) and the Second Lien Lenders (as defined below), TGF has no operations of its own and its assets essentially consists in its shares in each of Sun Rich Canada and Tiffany Gate. The shares of TGF are ultimately owned by Country Fresh Holding LP, a US entity which ultimately owns the shares of all of the entities forming part of FFG.

21. Sun Rich Canada is a private company wholly owned by TGF, which was incorporated under the BCBCA, whose business operations consist, as previously mentioned, in distributing

ready-to-serve fresh-cut fruits, meal kits and other snacking solutions to retail and foodservice companies in Canada.

22. Tiffany Gate is a private company wholly-owned by TGF, which was incorporated under the BCBCA, whose business operations consist, as previously mentioned, in creating, packaging and delivering fresh-prepared food products (including meal kits, pasta kits, soup and stew kits, deli salads, sauces, smoothies, butters and sous-vide proteins, vegetables and starches) to large retail food service companies in Canada.

23. Each of the CCAA Entities have separate managerial functions such as accounting, management of accounts receivables and payables with Tiffany Gate managed out of an office and facility located at 195 Steinway Blvd., Etobicoke, Ontario (the “**Steinway Property**”), which is owned by Tiffany Gate, and Sun Rich Canada having certain managerial functions managed out of the U.S.

C. The Assets of the CCAA Entities

24. As at November 2020, the assets of Sun Rich Canada and Tiffany Gate had a *book value* of approximately US\$22 million and US\$116 million, respectively, as appears from the tables below:

Sun Rich Canada	
Description of Assets	Book Value
Cash	US\$2,037,828
Accounts Receivables	US\$5,008,059
Inventory	US\$546,336
Prepayment & Deposits	US\$184,527
Equipment	US\$6,279,954
Intangibles	US\$7,938,899
Total: US\$21,995,602	

Tiffany Gate	
Description of Assets	Book Value
Cash	US\$1,834,978
Accounts Receivables	US\$6,207,951
Prepayments & Deposits	US\$94,378
PP&E	US\$28,311,497
Intangibles	US\$76,812,727
Other	US\$590,382

Total: US\$116,793,300

25. The only real property owned by the CCAA Entities is the Steinway Property which is owned by Tiffany Gate.

26. As for TGF, it has no material assets of its own, other than its shares in Sun Rich Canada and Tiffany Gate.

D. The Liabilities of the CCAA Entities

27. As at November 2020, each of the CCAA Entities, including TGF, had liabilities totalling well in excess of US\$100,000,000, as appears from the tables below:

TGF Acquisition Parent Ltd.	
Description of Liabilities	Amount
Secured Debt	US\$119,000,000

Total: US\$119,000,000

Sun Rich Canada	
Description of Liabilities	Amount
Secured Debt	US\$119,000,000
Accounts Payables	US\$6,737,318
Note Payable	US\$9,798,429
Intercompany	US\$6,402,050
Other	US\$4,786,280

Total: US\$139,624.078

Tiffany Gate	
Description of Liabilities	Amount
Secured Debt	US\$119,000,000
Accounts Payable	US\$9,486,154
Other Notes & Loans	US\$808,403
Intercompany Loans	US\$27,827,264
Other	US\$1,848,594

Total: US\$158,970,415

28. As appears from the above, the principal liabilities of the CCAA Entities' consist in their long term secured debt, which is broken down in the table below:

Credit Agreements	Facility	Principal Amount Outstanding (in millions)	Interest Rate	Maturity
First Lien Credit Agreement	Revolving Loan	US\$25.0	7.1%	April 2023
	Term Loan	US\$10.0	7.1%	April 2023
Second Lien Credit Agreement	Term Loan	US\$60.0	10.6%	April 2024
Super Senior Term Loan Credit Agreement	Term Loan No. 1	US\$16.0	8.0%	June 2023
	Term Loan No. 2	US\$5.6	8.0%	June 2023
	Term Loan No. 3	US\$2.4	8.0%	June 2023

Total: US\$119,000,000

E. The Financial Difficulties of the CCAA Entities

29. In 2019, FFG faced significant liquidity and other economic pressures, which forced it to consider and implement certain strategic measures in order to deleverage its consolidated balance sheet.

30. On April 29, 2019, FFG entered into an exchange transaction (the “**Exchange Transaction**”) with its then existing lenders, including the current First Lien Lenders and the Second Lien Lenders, pursuant to which FFG restructured its indebtedness under the then existing first lien loan and second lien loan.

31. The Exchange Transaction resulted in a combination of a debt-for-equity exchange with the then First Lien Lenders (who now ultimately own 95% of the common shares of FFG) and Second Lien Lenders (who now ultimately own 5% of the common shares of FFG, as well as in an exit financing (the “**Exit Financing**”, together with the Exchange Transaction, the “**2019 Restructuring Transactions**”) entered into with the current First Lien Lenders, as part of which a new first lien loan in the aggregate amount of US\$35 million (\$10 million in first lien term loan

and \$25 million in first lien revolver) and a new second lien loan in the aggregate amount of \$60 million was made available to FFG.

32. Despite the Exchange Transaction, FFG has continued to face significant financial challenges in the context of its business operations, most recently due to economic pressures caused by the COVID-19 global pandemic.

33. More specifically, in 2020, the demand for FFG's largest product segments, fruits and vegetable trays, significantly declined as consumer habits began to change, and as the various federal, provincial and state governments in both Canada and in the US began imposing various sanitary measures and restrictions to prevent or limit the spread of the COVID-19 virus, which measures and restrictions have included the temporary closure of restaurants, businesses and schools (with students being forced, at times, to attend classes virtually).

34. FFG was also forced to temporarily close or idle several of its production facilities in the U.S., which contributed to a significant reduction of FFG's production, and, in turn, FFG's revenues.

35. FFG also faced supply-chain issues, which, for the most part, were caused by its suppliers also facing economic challenges as a result of the COVID-19 pandemic. These issues forced FFG to pay, at times, premiums for certain products as well as higher costs for the shipping of these products.

36. Taken together, these challenges have significantly affected FFG liquidity position throughout 2020.

III. FFG'S SALE AND INVESTMENT SOLICITATION PROCESS

F. The Informal Process

37. In response to the aforementioned challenges, FFG, engaged in a thorough review of its strategic alternatives with the advice and guidance of their legal and financial advisors.

38. Starting in 2020, and before Stout was engaged, FFG decided to explore M&A opportunities with potential strategic acquirers in the food and beverage industry, which had approached FFG to discuss the terms of a potential transaction (the "**Informal Solicitation Process**").

39. As part of the Informal Solicitation Process, FFG held strategic discussions with various parties which were either contacted by FFG, or which contacted FFG themselves with inquiries in connection with a potential sale transaction. In total, nine (9) parties submitted such inquiries to FFG, two (2) of which submitted offers to FFG.

40. The first offer submitted to FFG was for only a small, discrete portion of its assets, and was deemed too low in price at the time. The second offer was submitted by a large strategic food provider was for substantially all of the FFG's assets, including certain of the assets of the CCAA Entities ("**Initial Potential Buyer**"). Given the serious nature of the discussions with the Initial Potential Buyer and recognizing the need to ensure that the offer submitted by the Initial Potential Buyer was competitive, relative to the market value of FFG's assets, FFG then engaged an investment banker, to further explore market opportunities and expand the list of potential interested parties.

G. The Formal Solicitation Process

41. In late October 2020, FFG engaged Stout Capital ("**Stout**"), as investment banker, to conduct a formal sale and investment solicitation process (the "**First Formal Solicitation Process**").

42. As part of the First Formal Solicitation Process, Stout assembled a list of potential buyers and prospective plan sponsors, in addition to those that FFG had initially identified as part of the Informal Process. These potential buyers and prospective plan sponsors included 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 transactions.

43. By the end of 2020, Stout had reached out to over thirty (30) potential acquirers. However, several of them advised Stout that they would pass 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 2020 holiday season.

44. However, some of these potential acquirers indicated that they remained interested in a potential transaction involving FFG's assets, in whole or in part, and indicated that they would consider participating in the Formal process conducted by Stout, which could eventually include an auction.

45. On December 14, 2020, having not received any serious alternative offer at that point, FFG entered into a non-binding letter of intent (the “**Initial LOI**”) with the Initial Potential Buyer, which contemplated the sale and purchase of all or substantially all of the assets of the Chapter 11 Entities, as well as certain of the assets of the CCAA Entities. This Initial LOI further contemplated that the Initial Potential Buyer would act as a stalking horse bidder, to allow Stout and FFG to establish a “floor” price and provide certainty to the FFG’s employees, customers and vendors. The Initial LOI contemplated the closing of a sale transaction by March 2021, should no superior offer be submitted to FFG.

46. Over the course of the 2020 holidays and in early January 2021, FFG, Stout and the Initial Potential Buyer continued their negotiations with a view of executing a binding stalking horse asset purchase agreement.

47. However, on January 7, 2021, FFG and Stout were advised that the Initial Potential Buyer was no longer prepared to enter into an asset purchase agreement and would therefore withdraw its offer set out in the Initial LOI, thereby forcing FFG and Stout to consider and implement contingency plans to try to keep the enterprise afloat while identifying a replacement bidder and/or new sources of financing.

48. Following the withdrawal of the Initial LOI by the Initial Potential Buyer, Stout launched a more comprehensive sale and investment solicitation process (the “**Second Formal Solicitation Process**”, together with the First Formal Solicitation Process, the “**Formal Solicitation Process**”). In connection therewith, solicitation materials were sent to an additional one hundred seventy (170) potential acquirers or investors, which included sponsors in the food/beverage industry, strategic parties in the consumer/retail sector, and packaged food processors and food distributors.

49. As part of the Second Formal Solicitation Process, Stout informed potentially interested parties that FFG was receptive to a wide range of transaction structures including, without limitation, sale transactions to be implemented pursuant to section 363 of the US Bankruptcy Code and section 36 of the CCAA, plan sponsorship, out-of-court sale transactions, structured deals involving “*take back*” debt and/or equity. In addition, Stout solicited bids for FFG (including the CCAA Entities), either as a whole or piece-meal (including with respect to the assets of the CCAA Entities), recognizing that the selling such assets in pieces could potentially yield higher value to FFG’s estate.

50. As at the commencement of the Restructuring Proceedings:

- (a) More than 210 potentially interested parties had been solicited and had received solicitation packages, including:
 - (i) 90 strategic parties;
 - (ii) 20 “*hybrid*” parties (meaning private equity firms with strategic portfolio companies in the food and beverage sector); and
 - (iii) More than 100 financial parties.
- (b) 83 non-disclosure agreements had been executed by potentially interested parties to whom access to the virtual data room set up by Stout was given.

51. On January 20, 2021, FFG received a letter of intent from Stellex, a global private equity firm dealing at arm’s length with FFG, regarding a potential transaction whereby Stellex would acquire virtually all of FFG’s American and Canadian assets, subject to certain exceptions, and would assume some of its liabilities.

IV. THE STALKING HORSE BID

52. On February 15, 2021, after several weeks of negotiations, Stellex and FFG executed an asset purchase agreement (i.e. the Stellex APA), which contemplated Stellex acting as a stalking horse bidder. On March 12, 2021, the Stellex APA was amended to as to clarify certain elements of the proposed transaction.

53. The Stellex APA contemplated the sale of all or substantially all of the assets of FFG (including the CCAA Entities) other than the excluded assets listed thereunder, for the following purchase price (the “**Purchase Price**”), to be allocated between the assets to be purchased from the Chapter 11 Entities and those from the CCAA Entities, provided that Stellex is designated as the “*Successful Bidder*” following the completion of the Bidding Procedures (as defined below):

- (a) \$30 million in cash consideration;
- (b) \$25 million senior secured note against FFG’s real estate to be sold and conveyed to Stellex as part of the Stellex APA;

- (c) payment or assumption of certain obligations and liabilities up to a total amount of \$21.5 million; and
- (d) payment or assumption of cure costs in connection with contracts to be assumed by and assigned to Stellex.

54. The Stellex APA also provided that in consideration for Stellex acting as the “*stalking horse bidder*”, Stellex would also be entitled to certain bid protections payable by the Chapter 11 Entities in the event that Stellex was not designated as the “Successful Bidder” following completion of the Bidding Procedures.

55. On February 26, 2021 and March 1, 2021, respectively, the U.S. Court and the Canadian Court both approved the execution by FFG of the Stellex APA, as well as the related Bidding Procedures.

V. THE PURSUIT OF THE FORMAL SOLICITATION PROCESS IN ACCORDANCE WITH THE BIDDING PROCEDURES

56. Following the commencement of the Restructuring Proceedings and the approval of the Bidding Procedures by both the U.S. Court and the Canadian Court, FFG, with the assistance of Stout, pursued the Formal Solicitation Process in accordance with said Bidding Procedures, which contemplated the following milestones:

Milestone	Key Dates
Issuance of Additional Solicitation Packages	As soon as reasonably possible following court approval
Due Diligence Period	Until March 19, 2021
Bid Deadline	March 19, 2021
Auction	March 22, 2021
US Sale Hearing	No later than March 26, 2021
Canadian Sale Hearing	No later than March 26, 2021
Closing	March 31, 2021

57. On March 12, 2021, after consultation with Stout and the Consultation Parties described in the Bidding Procedures, which include the Monitor and the DIP Lenders, and in order to provide more time to consider bids that would be submitted by the March 19, 2021 Bid Deadline, FFG filed a *Notice of Reset Auction Date* in the context of the Chapter 11 Proceedings advising all potential purchasers that the Auction originally set for March 22, 2021, at 10:00 a.m. (CT) had been reset to March 23, 2021, at 10:00 a.m. (CT).

58. As part of the Formal Solicitation Process, FFG and Stout received a total of six (6) Qualified Bids (including the offer set out in the Stellex APA) in respect of the assets of FFG, including four (4) Qualified Bids in respect of some or all of the assets of the Canadian Entities.

59. On March 23 and 24, 2021, FFG and Stout conducted the Auction to which each Qualified Bidders Participated. The Auction was transparent and had competitive bidding between the various Qualified Bidders for the various assets. As result, as discussed below, FFG was able to achieve a combination of bids for the various assets that were significantly superior to the Stellex APA. Following the conduct of the Auction, Homestyle and Save-On were designated as the “*Successful Bidders*” for the assets of the Canadian Entities, and Stellex was designated as the “*Successful Bidder*” for the assets of the U.S. Entities. A copy of a table comparing the highest bids submitted as part of the auction (the “**Highest Bids Summary**”) is attached hereto, as **Exhibit “B”**.

60. On the same date, and in accordance with the Bidding Procedures Orders, FFG issued a Post-Auction Notice confirming the identity of the “*Successful Bidders*” and “*Back-up Bidders*”. A copy of the Post-Auction Notice is attached hereto as **Exhibit “C”**.

61. On March 25, 2021, the Homestyle APA and the Save-On APA were finalized and executed. A copy of each of the Homestyle APA and the Save-On APA (without schedules) is attached hereto, as **Exhibit “D”** and **Exhibit “E”**, respectively.

VI. THE SUCCESSFUL BIDS

A. The Homestyle Transaction

62. As appears from the Homestyle APA, its main terms and conditions are as follows:¹

- (a) Purchase Price: US\$30,000,000;
- (b) Homestyle Purchased Assets: All assets and properties owned by Sun Rich Canada and Tiffany Gate in connection with their respective Business of the Facilities, including the Brampton facility (leased) and the Steinway Property (owned), including, without limitation, the Inventory, Accounts Receivable, Assigned Contracts, Assigned Leases, Warranties, claims, Records, Permits, including Environmental Permits, goodwill and Intellectual Property;
- (c) Assumed Liabilities:
 - (i) all liabilities arising from the ownership and operation of the Homestyle Purchased Assets from and after the Closing (including all Liabilities for Taxes);
 - (ii) all of Sun Rich Canada's and Tiffany Gate's respective Liabilities under the Assigned Contracts and Assigned Leases 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 all Cure Costs related to any such Assigned Contracts and Assigned Leases;
 - (iii) all Liabilities related to the Post-Petition Trade Payables attributable to the Business of the Facilities, up to a maximum amount of US\$350,000;
 - (iv) all liability for any accrued but unpaid wages, vacation pay or overtime pay (up to two (2) weeks of wages) in relation to employees to whom Homestyle intends to make offers of employment and who accept such employment offer and commence working for Homestyle following Closing;

¹ For the purpose of this section, all capitalized terms not otherwise defined shall have the meaning ascribed to them in the Homestyle APA.

- (v) all Liabilities related to the Customer Rebates.
- (d) Assignment of Contracts: All 11.3 Contracts and 11.3 Leases listed in Schedules 2.6(a)(i) and 2.6(a)(ii) of the Homestyle APA shall be assigned to Homestyle, subject to Homestyle's right, in consultation with Sun Rich Canada and Tiffany Gate, to designate any of the 11.3 Contracts and 11.3 Leases as being an Excluded Contract or an Excluded Lease;
- (e) Employees: Within at least five (5) Business Days prior to the Closing, Homestyle shall provide a list of the Employees it intends to make offers of employment, provided that Homestyle shall hire a minimum of 193 employees of either Sun Rich Canada or Tiffany Gate, and Homestyle may also designate certain employees to retain following Closing that are deemed necessary to implement a course of action with respect to the Excluded Assets;
- (f) Main Conditions:
 - (i) The Canadian Court shall have entered the Homestyle Sale Approval Order and such order shall be a Final Order on the Closing Date;
 - (ii) Execution of a transitional services agreement in a form to be mutually agreed upon between Sun Rich Canada, Tiffany Gate and Homestyle, acting reasonably; and
 - (iii) All required filings shall have been made with, and all necessary approvals or consents shall have been received from, applicable governmental authorities, if any.
- (g) Outside Closing Date: May 31, 2021

B. The Save-On Transaction

63. As appears from the Save-On APA, its main terms and conditions are as follows: ²

- (a) Purchase Price: US\$2,500,000
- (b) Save-On Purchased Assets: All assets and properties owned by Sun Rich Canada in connection with the Business of the Vancouver facility, including, without limitation, Inventory, Accounts Receivable, Assigned Contracts, Assigned Leases, Assigned Permits, Warranties, Claims, Records, Permits, and Intangible Property;
- (c) Assumed Liabilities:
 - (i) all liabilities arising from the ownership and operation of the Save-On Purchased Assets from and after the Closing (including all Liabilities for Taxes);
 - (ii) all of Sun Rich Canada's and Tiffany Gate's respective Liabilities under the Assigned Contracts and Assigned Leases 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 all Cure Costs related to Assigned Contracts and Assigned Leases listed in the schedules to the Save-on APA, up to US\$100,000, with Sun Rich Canada being responsible for the Cure Costs on these specific Assigned Contracts and Assigned Leases above US\$100,000;
 - (iii) all Liabilities related to the Post-Petition Trade Payables attributable to the Business of the Facilities, up to a maximum amount of US\$750,000 (including Liabilities relating to Critical Vendor Payments);
 - (iv) all accrued Liabilities with respect to any employee of Sun Rich Canada employed by Save-On following Closing, which shall include all employees providing direct labor in connection with production for the Business of the Facility;

² For the purpose of this section, all capitalized terms not otherwise defined shall have the meaning ascribed to them in the Save-On APA.

- (d) Assignment of Contracts: All 11.3 Contracts and Third Party Lease listed in Schedules 2.6(a)(i) and 2.6(a)(ii) of the Save-On APA shall be assigned to Save-On, subject to Save-On's right to designate any of the 11.3 Contracts as being an Excluded Contract;
- (e) Employees: Within at least five (5) Business Days prior to the Closing, Save-On shall provide a list of the Employees it intends to make offers of employment, provided that Save-On shall hire a minimum of eighty percent (80%) of the Employees employed in connection with the Business of the Facility;
- (f) Main Conditions:
 - (i) The Canadian Court shall have entered the Save-On Sale Approval Order and such order shall not be subject to a stay pending appeal;
- (g) Outside Closing Date: May 31, 2021

C. The New Stellex Transaction

64. In addition to the Homestyle Transaction and Save-On Transaction, the US Entities agreed to a revised transaction with Stellex for only the assets of the U.S. Entities (the "**New Stellex Transaction**"). The New Stellex Transaction, among other things, increased the cash consideration paid by Stellex, favourably adjusted certain terms related to purchase price adjustments and favourably changed certain terms related to assumed liabilities under the sale.

65. After consulting the Consultation Parties, FFG and the Consultation Parties all agreed that the transactions contemplated in the Homestyle Transaction, the Save-On Transaction, and the New Stellex Transaction, constituted the best offers in respect of FFG's various assets and maximized value for the CCAA Entities, the Chapter 11 Entities and their stakeholders.

VII. THE SALE APPROVAL ORDERS SOUGHT

A. Sale Approval Orders

66. As previously discussed, the execution of the Homestyle APA and the Save-On APA constitutes the culmination of a solicitation process which began several months ago, and was pursued after the commencement of the Restructuring Proceedings in accordance with the Bidding Procedures previously approved by both the U.S. Court and the Canadian Court.

67. The Homestyle Transaction and the Save-On Transactions represent the best outcome following a competitive sales process since:

- (a) based on the Purchase Price payable under both the Homestyle APA and the Save-On APA, the Homestyle Transaction and the Save-On Transaction each provide for the best available value, well in excess of the values offered prior to the Auction under the Stellex APA) for the Homestyle Purchased Assets and the Save-On Purchased Assets, which will ultimately be to the benefit of the CCAA Entities' creditors;
- (b) both the Homestyle Transaction and the Save-On Transaction will allow the pursuit of the CCAA Entities' operations through Homestyle and Save-On, which, in turn, will allow for certain of the CCAA Entities' employees to preserve their employment and will allow for some of the CCAA Entities goods and service providers to maintain their business with a new client; and
- (c) Homestyle and Save-On have both committed to providing minimum amounts of employment offers to the employees of the CCAA Entities, which was not provided for under the Stellex APA and it was expect certain facilities may be required to be closed as part of the CCAA Proceedings.

68. At all times relevant, the Consultation Parties (as defined in the Bidding Procedures) which include the Monitor and the DIP Lenders, have been kept informed on a regular basis with respect to the conduct of the Formal Solicitation Process by Stout.

69. The Consultation Parties are supportive of the approval by this Court of the Homestyle Transaction and the Save-On Transaction, and the CCAA Entities understand that the Monitor shall be filing a report confirming such support in advance of the hearing on the Sale Approval Motion.

B. Assignment of Contracts

70. As part of both the Homestyle APA and the Save-On APA, Homestyle and Save-On have both provided a list of contracts and leases (together with the cure costs payable in respect therewith) which they intend on assuming, as part of the Homestyle Transaction and the Save-On Transaction (each of these contracts and leases are referred to in the Homestyle APA and the Save-On APA as the “11.3 Contracts” and the “11.3 Leases” (or the “*Third Party Lease*” in the Save-On APA)).

71. Pursuant to the draft Homestyle Sale Approval Order and the draft Save-On Sale Approval Order, the Applicants request the Canadian Court’s approval of the assignment of the aforementioned contracts and leases subject to the following:

- (a) each of Homestyle and Save-On will have the right, up until the Closing Date contemplated in each of the Homestyle APA and the Save-On APA, to designate any “11.3 Contracts” as an “*Excluded Contract*” and, in the Homestyle APA, to designate any of the “11.3 Leases” as an “*Excluded Lease*”; and
- (b) unless any such “11.3 Contracts” and “11.3 Leases” as an “*Excluded Contract*” or an “*Excluded Lease*” by either Homestyle or Save-On, as applicable, then such “11.3 Contracts” and “11.3 Leases” shall be assigned to Homestyle or Save-On, as applicable, in accordance with section 11.3 of the CCAA, without further order of the Canadian Court;
- (c) However, each counterparty to the “11.3 Contracts” and “11.3 Leases” listed in either the Homestyle APA or the Save-On APA shall be entitled, up until the Closing Date contemplated in the Homestyle APA or the Save-On APA, to object to such assignment, but only on the basis that on the basis that either Homestyle or Save-On, as applicable, will not be able to perform the obligations under such “11.3 Contract” or “11.3 Lease”, but not on the basis of the other criteria set out in Section 11.3 of the CCAA (including the quantum of the cure costs to be paid upon the assignment of the “11.3 Contract” or “11.3 Lease”), as such issues, if any, will need to be dealt with at the hearing on the Applicants’ Motion for the approval of the Homestyle Transaction and the Save-On APA. If any such objection is filed, the Applicants shall attempt to settle or resolve such objection,

failing which, the Applicants shall schedule a hearing before the Canadian Court to resolve such objection.

72. As of the date hereof, I am not aware of any objection from any counterparties to the “11.3 Contracts” or “11.3 Leases” listed in the schedules to the draft Homestyle Sale Approval Order and to the draft Save-On Sale Approval Order, including with respect to the proposed amount of cure costs payable in respect of such contracts and leases.

73. It bears mentioning that, as part of the Canadian Bidding Procedures Order, the Canadian Court had previously approved an assumption and assignment procedures which contemplated the issuance of assumption and assignment notices, a form of which was also approved by the Canadian Court (the “**Assumption and Assignment Notice**”) to the counterparties to contracts and leases that could be assigned to the Successful Bidder as part of an eventual transaction in respect of the assets of FFG (the “**Proposed Assigned Agreements**”), which Proposed Assigned Agreements included the aforementioned 11.3 Contracts” or “11.3 Leases” listed in the schedules to the draft Homestyle Sale Approval Order and to the draft Save-On Sale Approval Order.

74. As part of the Assumption and Assignment Notice, the counterparties to the Proposed Assigned Agreements, were advised of the Restructuring Proceedings, the Formal Solicitation Process and of the fact that all contracts listed in such Assumption and Assignment Notice could potentially be assigned as part of an eventual transaction in respect of the assets of FFG, including those of the CCAA Entities.

75. Furthermore, the counterparties to the Proposed Assigned Agreements were each also advised of the proposed cure costs payable for the assignment of such Proposed Assigned Agreements, and that pursuant to the orders rendered by the U.S. Court and the Canadian Court approving the Bidding Procedures, the issuance of the Assumption and Assignment Notice would constitute proper notice of the upcoming sale hearing before the U.S. Court and the Canadian Court, and proposed assignment of such Proposed Assigned Agreements, and that if any of these counterparties to the Proposed Assigned Agreements had any objection to the assignment thereof (other than on the basis of the identity of the proposed assignee), then a formal objection (each a “**Contract Objection**”) would need to be filed by 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 upon them.

76. On March 2, 2021, an Assumption and Assignment Notice was posted on the Monitor's website and was served by Epiq, on behalf of FFG, to all counterparties to the Proposed Assignment Agreements. On March 12, 2021, an amendment to the Assumption and Assignment Notice was posted on the Monitor's website and was served by Epiq, on behalf of FFG, to the same contract counterparties.

77. As at the date of this Affidavit, only two (2) Contract Objections have been filed in respect of a Proposed Assigned Contract entered into with one of the CCAA Entities, accordance with the Bidding Procedures Order. The Applicants expect to have such Contract Objections resolved before the hearing on its Motion.

78. In light of the foregoing, I believe that the issuance of an order approving the assignment of the Initial Assigned Agreements as well as the potential assignment of the Designated Agreements to the Canadian Buyer in accordance with the process set forth in the draft Sale Approval Order is reasonable and justified in the circumstances.

79. I understand that the Monitor is supportive of such proposed assignment of contracts, including the mechanics by which such proposed assignment of contracts is to be effected.

C. Extension of the Stay Period

80. As things currently stand, the Stay Period is currently expected to expire on March 28, 2021.

81. Accordingly, the CCAA Entities request that the Stay Period be extended until April 18, 2021, so as to allow them to proceed with the closing of the Homestyle Transaction and the Save-On Transaction, while at the same time preserving the status quo and preventing creditors and others from taking any steps to try and better their positions in comparison to other creditors. To the extent possible, and provided that the Homestyle Transaction and the Save-On Transaction will have closed by then, the CCAA Entities also intend to bring a motion to allow a distribution to be made in respect of the proceeds resulting from the aforementioned transaction to the secured creditors of the CCAA Entities, subject to the necessary holdbacks, on or before the next stay extension motion (on or about April 18, 2021). As part of such distribution motion, I understand that the Monitor shall report to the Court as to the validity of the secured lenders' security.

82. The CCAA Entities' stakeholders, including creditors, will all benefit from the Extension of the Stay Period.

83. As set out in the cash flow projections (the "**Cash Flow Statement**") that was prepared by the CCAA Entities in consultation with Ankura, and reviewed by the Monitor for the period from March 28, 2021 to April 18, 2021, the CCAA Entities expect that they will have sufficient cash to fund their projected operating costs during such period.

84. I understand that a copy of the Cash Flow Statement will be attached to the report of the Monitor, which will be filed with the Court in advance of the hearing on the Sale Approval Motion.

VIII. CONCLUSIONS

85. In light of the foregoing, I believe that the relief sought by the Applicants as part of the Sale Approval Motion are reasonable in the circumstances.

86. Furthermore, I understand that E&Y, in its capacity as Monitor, will also be filing a report in advance of the hearing on the Sale Approval Motion, confirming its support for such relief.

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.



STEPHEN MAROTTA

SWORN BEFORE ME remotely by video conference by Stephen Marotta, stated as being in the City of New York, in the State of New York, to the City of Toronto, in the Province of Ontario, on March [25], 2021, in accordance with O. Reg 431/20 *Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.)	TUESDAY, THE 13 th
)	
JUSTICE HAINEY)	DAY OF APRIL, 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.**

DISTRIBUTION ORDER

THIS MOTION, 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 at Tab 3 of the Motion Record was heard this day via video-conference due to the ongoing COVID-19 pandemic.

ON READING the affidavit of Stephen Marotta sworn April 8, 2021 and the Exhibits thereto (the "**Third Marotta Affidavit**"), the Third 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 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.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY PERIOD

2. **THIS COURT ORDERS** that the stay period referred to in the Initial Order of the Honourable Justice Hainey dated February 17, 2021 (as amended and restated on February 26, 2021, the “**Initial Order**”) is extended until and including June 27, 2021.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that, subject to the establishment of the Reserve (as defined below) in accordance with paragraph 6 hereof, upon closing (the “**Closings**”) of the sale transactions contemplated in each of the Asset Purchase Agreement (the “**Save-On APA**” and the “**Save-On Transaction**”) entered into between Sun Rich Fresh Foods Inc. (“**Sun Rich Canada**”) and Save-On-Foods Limited Partnership (“**Save-On**”) and in the Asset Purchase Agreement (the “**Homestyle APA**” and the “**Homestyle Transaction**”) entered into between Sun Rich Canada, Tiffany Gate Foods Inc. (“**TG**”) and Homestyle Selections LP (“**Homestyle**”) and upon filing of the Monitor’s Certificate referred to in both the Approval and Vesting Order (Re: Save-On-Foods Transaction) and the Approval and Vesting Order (Re: Homestyle Transaction) granted by this Court in these proceedings on March 26, 2021, the Monitor shall be authorized and directed, without further order of this Court, to make, as soon as practicable, one or more distributions of the net sale proceeds (collectively, the “**Sale Proceeds**”) resulting from the closing of the Save-On Transaction and the Homestyle Transaction to the Agent (as defined below) on account of Sun Rich Canada’s and TG’s respective indebtedness and obligations outstanding under or in connection with the following agreements (collectively, the “**Loan Documents**”), in the following order, and for greater certainty, in the event that one of the Closings occurs and not the other, the Sale Proceeds from the applicable Closing shall be distributed in accordance with this paragraph:

- (a) First, the Term Loan Credit Agreement (Super Senior) (as amended on December 29, 2020 and February 4, 2021, the “**Super Senior Term Loan Credit Agreement**”) entered into between Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as the Canadian borrower, and Cortland Capital Market Services LLC (“**Cortland**” or the “**Agent**”), as administrative agent to the lenders under the Super Senior Term Loan Credit Agreement (the “**First Lien Lenders**”), which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Super Senior) dated June 1, 2020;

- (b) Second, the Credit Agreement (First Lien) (as amended on April 22, 2020, the “**First Lien Credit Agreement**”) entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the First Lien Credit Agreement, which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (First Lien) dated April 29, 2019; and
- (c) Third, the Credit Agreement (Second Lien) (as amended on April 22, 2020, the “**Second Lien Credit Agreement**”) entered into among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, as U.S. borrowers, TGF Acquisition Parent Ltd., as Canadian Borrower and Cortland, as administrative agent to the lenders under the Super Second Lien Credit Agreement, which was guaranteed which was guaranteed by, *inter alia*, Sun Rich Canada and TG, under the Canadian Guaranty and Security Agreement (Second Lien) dated April 29, 2019.

4. **THIS COURT ORDERS AND DECLARES** that any payments, distributions and disbursements under this Order shall not constitute a “distribution” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 23 of the *Canada Pension Plan Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), section 14 of the *Tax Administration Act* (Quebec) and section 97.39 of the *Customs Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Monitor, Sun Rich Canada, TG and any officer or director of Sun Rich Canada or TG shall not incur any liability under the Tax Statutes in respect of its making any payments, distributions or disbursements ordered or permitted under this Order, and are hereby forever released and discharged from any claims against it, him or her under or pursuant to the Tax Statutes or otherwise at law, arising in respect of any such payments, distributions or disbursements made under this Order and any claims of this nature are hereby forever barred.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Canadian Sellers and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of any of the Applicants,

any distribution and disbursement to be made pursuant to this Order shall be binding on any trustee-in-bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by their respective creditors, nor shall any such distribution or disbursement constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

RESERVE

6. **THIS COURT ORDERS** that upon the Closings (or any one of them), the Applicants shall establish with the Monitor a reserve (the “**Reserve**”) from the Sale Proceeds, which the Monitor shall be authorized and directed to hold in segregated interest-bearing accounts, for the benefit of the holders of the Reserve Claims (as defined below).

7. **THIS COURT ORDERS** that the Monitor shall be authorized and directed to pay from the funds to be held in the Reserve (the “**Reserve Funds**”), in the name of and on behalf of the Applicants, or transfer all or portion of the Reserve Funds to Sun Rich Canada and/or TG to allow them to pay the following claims (collectively, the “**Reserve Claims**”):

- (a) Any costs and fees incurred by the Applicants and the Monitor in connection with any post-closing matters contemplated in either the Save-On APA or the Homestyle APA, including any post-closing liability, obligation or claim against Sun Rich Canada or TG related to ordinary course trade payables, which are not assumed either by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;
- (b) Any unpaid employee wages, including vacation accruals, that are not otherwise assumed by Save-On pursuant to the Save-On APA or Homestyle pursuant to the Homestyle APA;
- (c) Any cure costs payable by Sun Rich Canada pursuant to the Save-On APA, if any;
- (d) Any liability, obligation or claim (if any) secured by the Administration Charge, the Intercompany DIP Charge, the Directors’ Charge, the Transaction Fee Charge

and the Canadian Intercompany Charge (as each of those terms are defined in the Initial Order) that were incurred either prior to or after the Closings and which, upon payment of same, shall be terminated, released and discharged without further order of the Court;

- (e) Any costs and fees incurred by the Applicants, the Monitor, their respective counsels and the other professionals engaged by the aforementioned parties in relation with the dissolution, winding-up, liquidation or bankruptcy of the Applicants, including all costs and fees incurred in relation to any proceedings under the BIA in respect of any of the Applicants;
- (f) Any other amounts agreed upon between the Applicants, the Monitor and the First Lien Lenders.

8. **THIS COURT ORDERS** that following payment of all Reserve Claims from the Reserve Funds in accordance with this Order, the Monitor shall file a certificate substantially in the form attached hereto as Schedule "A" (the "**Reserve Certificate**") with the Court and deliver a final accounting of the payments made from the Reserve Funds to Sun Rich Canada, TG and to the Agent, and, provided that there remains any Reserve Funds in the Reserve after payment of all Reserve Claims, the Monitor shall be authorized and directed to proceed with a final distribution of any remaining Reserve Funds to the Agent on account of the Applicants' respective indebtedness and obligations outstanding under the Loan Documents, without further order of this Court.

MONITOR PROTECTIONS

9. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law or the Initial Order.

10. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor set forth in this Order, the Initial Order and the CCAA, the Monitor shall have no obligation to make any distribution unless the Monitor is in receipt of funds adequate to effect any such payment.

GENERAL

11. **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.

12. **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 – Form of Monitor’s Certificate

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

**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.**

The Applicants

RESERVE CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the “**Court**”) dated February 17, 2021, Ernst & Young Inc. was appointed as the monitor (the “**Monitor**”) of the Applicants, in respect of these CCAA Proceedings.
- B. Pursuant to an Order of the Court dated April 13, 2021 (the “**Distribution Order**”), the Court approved, *inter alia*, the establishment of a reserve (the “**Reserve**”) from the sale proceeds resulting from the Save-On Transaction and the Homestyle Transaction (as such terms are defined in the Distribution Order), as applicable;
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has paid the Reserve Claims in accordance with the Distribution Order, including the claims (if any) secured by the Administration Charge, the Intercompany DIP Charge, the Directors’ Charge, the Transaction Fee Charge and the Canadian Intercompany Charge which have been terminated, released and discharged in accordance with the Distribution Order;
2. The Reserve has been administered to the satisfaction of the Monitor; and

3. This Certificate was delivered by the Monitor at _____ [TIME] on _____, 2021.

**Ernst & Young Inc., in its capacity as Monitor
of the Applicants, and not in its personal or
corporate capacity**

Per: _____

Name:

Title:

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

DISTRIBUTION ORDER

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Lawyers for the Applicants

**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

**MOTION RECORD OF THE APPLICANTS
(Re: Stay Extension and Distribution)
(Returnable April 13, 2021)**

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