

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CLOVER LEAF HOLDINGS COMPANY, CONNORS BROS. CLOVER LEAF  
SEAFOODS COMPANY, K.C.R. FISHERIES LTD., 6162410 CANADA LIMITED,  
CONNORS BROS. HOLDINGS COMPANY AND CONNORS BROS. SEAFOODS  
COMPANY**

**Applicants**

**AFFIDAVIT OF AIDEN NELMS**

**(sworn December 19, 2019)**

I, Aiden Nelms, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an associate at the law firm of Bennett Jones LLP, counsel for Clover Leaf Holdings Company, Connors Bros. Clover Leaf Seafoods Company, 6162410 Canada Limited, K.C.R. Fisheries Ltd., Connors Bros. Holdings Company and Connors Bros. Seafoods Company (collectively, the "**Applicants**"). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief, and where so stated, I believe such information to be true. The Applicants are affiliated with a number of U.S. entities (collectively, "**U.S. Bumble Bee**"), certain of which commenced Chapter 11 Proceedings (as defined in the affidavit of Gary Ware sworn December 11, 2019 (the "**December 11 Ware Affidavit**")). References to the "**Bumble Bee Group**" herein, collectively include U.S. Bumble Bee and the Applicants.
2. I swear this affidavit in support the Applicants' motion for the Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order (each as defined in the December 11 Ware Affidavit).
3. For convenience, a copy of the December 11 Ware Affidavit (without exhibits) is attached hereto as Exhibit "A".

4. At paragraph 26 of the December 11 Ware Affidavit, the affiant indicated that, to the extent the Bidding Procedures (as defined in the December 11 Ware Affidavit) were revised between the date of the swearing of the December 11 Ware Affidavit and the date on which the motion for the Bidding Procedures and Stay Extensions Order is heard, the Applicants intended to file a further affidavit with details regarding the revisions to the Bidding Procedures.
5. Following the swearing of the December 11 Ware Affidavit, the Bidding Procedures were revised (the "**Revised Bidding Procedures**") as a result of ongoing discussions between the Bumble Bee Group and certain stakeholders, including the recently formed Official Committee of Unsecured Creditors in the Chapter 11 Proceedings.

The Bidding Procedures

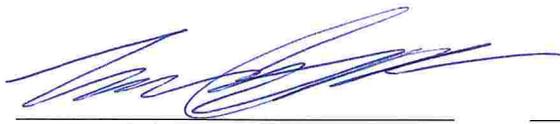
6. A summary of the material amendments reflected in the Revised Bidding Procedures are summarized below:<sup>1</sup>

<b>Subject</b>	<b>Previous Draft of the Bidding Procedures</b>	<b>Revised Bidding Procedures</b>
<b>Bid Deadline</b>	5:00 p.m. (prevailing Eastern Time) on January 2, 2020	5:00 p.m. (prevailing Eastern Time) on January 20, 2020
<b>Auction Time and Location</b>	10:00 a.m. (prevailing Eastern Time) on January 10, 2020 at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York.	10:00 a.m. (prevailing Eastern Time) on January 23, 2020 at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York.
<b>Canadian Sale Hearing (if the Auction is cancelled)</b>	January 17, 2020 at 10:00 a.m. (prevailing Eastern Time)	January 24, 2020 at 10:00 a.m. (prevailing Eastern Time)
<b>Canadian Sale Hearing (if the Auction takes place)</b>	January 17, 2020 at 10:00 a.m. (prevailing Eastern Time)	January 29, 2020 at 10:00 a.m. (prevailing Eastern Time)

<sup>1</sup> Defined terms not otherwise defined in the summary table have the meanings ascribed to them in the Revised Bidding Procedures.

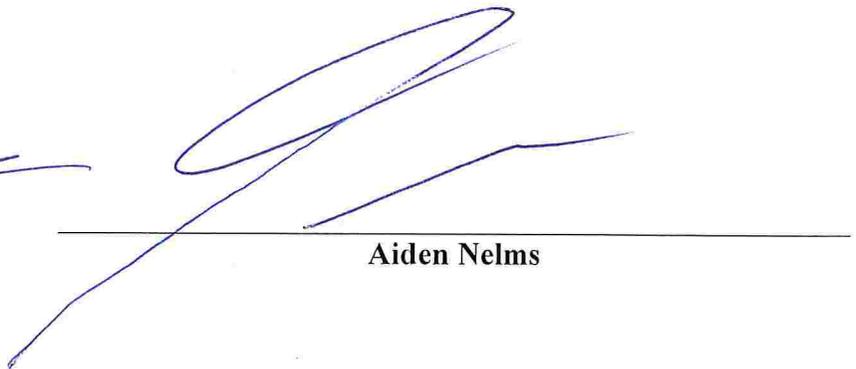
7. A copy of the Revised Bidding Procedures are attached hereto as Exhibit "B". A blackline comparison of the Revised Bidding Procedures to the previous draft Bidding Procedures is attached hereto as Exhibit "C".
8. Additionally, the aforementioned negotiations also led to a reduction of the Break-up Fee (as defined in the Stalking Horse APA) from USD\$27,750,000.00 to USD\$23,125,000.00.
9. I understand that corresponding amendments to the DIP Term Credit Agreement and the DIP ABL Credit Agreement (as defined in the affidavit of Gary Ware sworn November 24, 2019) will be required, the approval of which will be sought from the Court on a date to be determined.
10. I swear this affidavit in support of the Applicants' motion for the Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order and for no other or improper purpose.

SWORN BEFORE ME at the  
City of Toronto, in the Province  
of Ontario, on December 19,  
2019.



---

Commissioner for Taking Affidavits  
*Michael S. Shukra*



---

**Aiden Nelms**

# TAB A

This is Exhibit "A" referred to in the

affidavit of Aiden Nelms

sworn before me, this 19th

day of December, 2019



A COMMISSIONER FOR TAKING AFFIDAVITS

Michael S. Shakira

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CLOVER LEAF HOLDINGS COMPANY, CONNORS BROS. CLOVER LEAF  
SEAFOODS COMPANY, K.C.R. FISHERIES LTD., 6162410 CANADA LIMITED,  
CONNORS BROS. HOLDINGS COMPANY AND CONNORS BROS. SEAFOODS  
COMPANY**

**Applicants**

**AFFIDAVIT OF GARY WARE**

**(sworn December 11, 2019)**

I, Gary Ware, of the City of Whitby, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Vice President and Secretary of Clover Leaf Holdings Company ("**CLHC**"), Connors Bros. Clover Leaf Seafoods Company ("**CBCLS**") and a director of 6162410 Canada Limited ("**6162410**"), which together with K.C.R. Fisheries Ltd. ("**KCR**"), Connors Bros. Holdings Company ("**CBHC**") and Connors Bros. Seafoods Company ("**CBSC**"), comprise the applicants in these proceedings (the "**Applicants**" or "**Clover Leaf**"). CBCLS, 6162410, KCR and CBSC are subsidiaries of CLHC, and CBHC is a sister company to CLHC. As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief, and where so stated, I believe such information to be true. The Applicants are affiliated with a number of U.S. entities (collectively, "**U.S. Bumble Bee**"), certain of which commenced Chapter 11 Proceedings (as defined below). References to the "**Bumble Bee Group**" herein, collectively include U.S. Bumble Bee and the Applicants.
2. I swear this affidavit in support of a motion by the Applicants for:
  - (a) an Order (the "**Bidding Procedures and Stay Extension Order**");

- (i) authorizing the Applicants to execute the Stalking Horse APA (as defined below), *nunc pro tunc*;
  - (ii) approving the bid made by the Canadian Buyer (as defined below) pursuant to the Stalking Horse APA as the Stalking Horse Bid (as defined below);
  - (iii) approving the Bidding Procedures (as defined below);
  - (iv) approving the Termination Fee and Termination Fee Charge (each as defined below); and
  - (v) extending the Stay Period, as defined in paragraph 17 of the Amended and Restated Initial Order (as defined below) until and including January 31, 2020; and
- (b) a second amended and restated Initial Order (the "**Second Amended and Restated Initial Order**"), which, among other things, provides that the DIP Charges (as defined below) rank in priority to all Encumbrances (as defined in the Second Amended and Restated Initial Order), including the beneficiaries of such Encumbrances which were not previously provided with advance notice of the hearings in respect of the Initial Order and the Amended and Restated Initial Order.

## II. OVERVIEW OF THE CCAA PROCEEDINGS AND CHAPTER 11 PROCEEDINGS

3. On November 22, 2019, the Applicants sought and obtained the Initial Order under the *Companies' Creditors Arrangement Act* (the "**CCAA**") from the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**"). Among other things, the Initial Order granted a stay of proceedings in favour of the Applicants until and including December 2, 2019 (the "**Stay Period**") and appointed Alvarez & Marsal Canada Inc. as monitor (the "**Monitor**") in the Applicants' proceedings under the CCAA (the "**CCAA Proceedings**").

4. On November 21, 2019, certain of the U.S. Bumble Bee entities (collectively, the "**U.S. Debtors**")<sup>1</sup> filed voluntary petitions (the "**Petitions**") for relief pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**").
5. The cases commenced by the U.S. Debtors in the U.S. Bankruptcy Court are referred to herein as the "**Chapter 11 Proceedings**", and together with the CCAA Proceedings are collectively referred to as the "**Insolvency Proceedings**".
6. Concurrently with the filing of the Petitions, the U.S. Debtors filed several "first day motions" with the U.S. Bankruptcy Court. On November 22, 2019, the U.S. Bankruptcy Court heard such first day motions (collectively, the "**First Day Motions**"). Substantially all of the relief sought by the U.S. Debtors was granted by the U.S. Bankruptcy Court between November 22 and 25, 2019.
7. Additional details in respect of the Chapter 11 Proceedings and the First Day Motions are available in the Declaration of Kent McNeil in Support of the Chapter 11 Petitions and First-Day Motions sworn November 21, 2019 (the "**First-Day Declaration**"). A copy of the First Day Declaration (without exhibits) was appended as Exhibit "B" of my affidavit sworn November 24, 2019 in connection with the CCAA Proceedings (the "**November 24 Ware Affidavit**") and is also attached hereto as Exhibit "A". A copy of the November 24 Ware Affidavit without Exhibits is attached hereto as "Exhibit B".
8. Copies of all materials filed in connection with the Chapter 11 Proceedings and First Day Motions, including all orders granted by the U.S. Bankruptcy Court in connection with the First Day Motions are available on Prime Clerk LLC's website for the Chapter 11 Proceedings at the following link: <https://cases.primeclerk.com/bumblebee/>.
9. On November 25, 2019, the Applicants obtained an Amended and Restated Initial Order from the CCAA Court (the "**Amended and Restated Initial Order**"), among other things:

---

<sup>1</sup> The U.S. Debtors are Bumble Bee Parent, Inc.; Bumble Bee Holdings, Inc., Bumble Bee Foods, LLC, Anova Food, LLC and Bumble Bee Capital Corp.

- (a) approving the Applicants' ability to:
  - (i) borrow under a revolving asset-based debtor-in-possession credit facility (the "**DIP ABL Facility**"); and
  - (ii) guarantee a debtor-in-possession term loan facility (the "**DIP Term Facility**" and together with the DIP ABL Facility, the "**DIP Facilities**");
- (b) approving, but not requiring, the payment of pre-filing amounts owed to suppliers with the prior approval of the Monitor;
- (c) approving a key employee incentive plan;
- (d) granting the following charges over the property of the Applicants (each as defined in the Amended and Restated Initial Order):
  - (i) the Administration Charge;
  - (ii) the Directors' Charge;
  - (iii) the KEIP Charge;
  - (iv) the DIP Term Lenders' Charge;
  - (v) the DIP ABL Lenders' Charge (and together with the DIP Term Lenders' Charge, the "**DIP Charges**"); and
  - (vi) the Intercompany Charge;(collectively, the "**Charges**"); and
- (e) extending the Stay Period until and including December 31, 2019.

10. A copy of the Amended and Restated Initial Order is attached hereto as Exhibit "C".

### III. THE STALKING HORSE APA AND BIDDING PROCEDURES

#### Events Leading up to the Stalking Horse APA

11. Prior to the commencement of the Insolvency Proceedings, the Bumble Bee Group explored a number of options for restructuring their businesses. Houlihan Lokey Capital Inc. ("**Houlihan**"), the Bumble Bee Group's investment banker, conducted an initial sales process (the "**First Sales Process**") to solicit interest in the Applicants' business (the "**Canadian Business**") and a second, more comprehensive sales process (the "**Second Sales Process**"), to solicit interest in the sale of the Bumble Bee Group's U.S.-based business and the Canadian Business, together or individually (the "**Second Sales Process**"). Additional details in respect of the First Sales Process and the Second Sales Process are included in the November 24 Ware Affidavit and the First-Day Declaration.
12. The Second Sales Process culminated in the Applicants and certain other Bumble Bee Group entities entering into an asset purchase agreement dated November 21, 2019 (the "**Stalking Horse APA**"), with certain affiliates of FCF Co. Ltd. ("**FCF**"), including Tonos US LLC as U.S. Buyer (the "**U.S. Buyer**"), Tonos 1 Operating Corp as Canadian Buyer (the "**Canadian Buyer**") and Melissi 4 Inc. as Equity Buyer, for the sale of substantially all of Bumble Bee Group's businesses and assets (collectively, the "**Bumble Bee Group Business**"). A copy of the Stalking Horse APA is attached hereto as Exhibit "D".
13. FCF is a global fisheries enterprise based in Taiwan and is a current supplier of seafood inputs to U.S. Bumble Bee (but not Clover Leaf). FCF intends to acquire the Bumble Bee Group Business on a going concern basis.
14. FCF indirectly holds a passive, minority equity interest in the Bumble Bee Group. Through certain of its affiliates, FCF owns an approximately 23% limited partnership interest in Big Catch 1 L.P., a limited partnership that is four layers above the Applicants' direct parent company, Clover Leaf Seafood S.à.r.l. A copy of the Bumble Bee Group's corporate structure is attached hereto as Exhibit "E".
15. FCF does not have any designees on the Special Restructuring Committees formed by the boards of CLHC, Bumble Bee Parent Inc. and Bumble Bee Foods or the boards of directors

of any of the Applicants, the U.S. Debtors, their direct or indirect parent entities, or any other entity in the Bumble Bee Group corporate family. U.S. Bumble Bee and FCF have transacted business for many years, and continue to do so, on a strictly arms'-length basis.

16. Notwithstanding the existing relationship between U.S. Bumble Bee and FCF, I am advised by Kevin Zych of Bennett Jones LLP that FCF is not a "related person" to the Applicants as that term is contemplated under section 36(5) of the CCAA.

Summary of the Stalking Horse APA

17. Key terms of the Stalking Horse APA are summarized below:

Term	Details
<b>Purchase Price</b>	Purchase price of USD\$925.6 to USD\$930.6 million (including USD\$275 million of cash, up to USD\$638.6 million of new senior secured financing (which will take the form of rolled-over term loan indebtedness) and the assumption of the USD\$17 million outstanding U.S. Department of Justice fine).
<b>Structure</b>	FCF will acquire substantially all of the assets and business of both Bumble Bee U.S. and the Applicants and the equity interests of certain foreign affiliates. The Stalking Horse APA preserves the Bumble Bee Group's businesses as going concerns and contemplates assuming the employment of nearly all of the Bumble Bee Group's employees.
<b>Consideration / Financing</b>	Cash payment of USD\$275 million.  Assumption of the outstanding U.S. Department of Justice fine of USD\$17 million.  New senior secured financing in the approximate amount of USD\$638.6 million.
<b>Fees</b>	Break Up Fee of USD\$27.75 million (i.e., 3% of the purchase price).  Expense Reimbursement Fee of up to USD\$2.5 million.  (collectively, the " <b>Termination Fee</b> ").

18. The Stalking Horse APA preserves the Bumble Bee Group's businesses as going concerns (including the Applicants' business), contemplates the continued employment of nearly all

of the Bumble Bee Group's employees, and maintains a business partner to a significant number of vendors and customers who have conducted business with the Bumble Bee Group for decades.

19. The Stalking Horse APA also contains a form of transition services agreement to be entered into between the U.S. Buyer, the Canadian Buyer and the sellers under the Stalking Horse APA (collectively, the "**Sellers**"), pursuant to which the U.S Buyer and the Canadian Buyer will provide the Sellers with certain transition services in connection with the wind-down of the Sellers' businesses upon closing of the transaction contemplated under the Stalking Horse APA.
20. The consideration provided under the Stalking Horse APA for the acquisition of substantially all of the Bumble Bee Group's assets and business is both fair and reasonable to the Bumble Bee Group's stakeholders, including its Canadian stakeholders, and reflects the product of vigorous arms'-length, good faith negotiations among the relevant parties. In particular, the negotiations of the Stalking Horse APA involved the expenditure of substantial time and energy among the Bumble Bee Group and FCF, and the resulting Stalking Horse APA reflects a give-and-take, with substantial compromises and concessions made among the parties.
21. As previously described in the November 24 Ware Affidavit, Houlihan has marketed the Canadian Business to multiple parties as part of extensive pre-filing sales processes.
22. In connection with the First Sales Process, Houlihan contacted 9 potentially interested parties, all of which were strategic buyers. Four interested parties executed non-disclosure agreements and received a confidential information memorandum that provided a comprehensive overview of the Canadian Business.
23. In connection with the Second Sales Process, Houlihan contacted approximately 190 potentially interested parties, comprised of 66 strategic buyers and 124 financial buyers. Certain of the parties contacted as part of the Second Sales Process were already familiar with the Bumble Bee Group Business based on Houlihan's previous efforts to raise financing. Approximately 65 parties executed non-disclosure agreements and received a

confidential information memorandum that provided a comprehensive overview of the Bumble Bee Group Business.

24. Finally, I understand that the Monitor is supportive of the Stalking Horse APA.
25. Pursuant to the proposed Bidding Procedures and Stay Extension Order, the Applicants are seeking the CCAA Court's approval to enter into the Stalking Horse APA, *nunc pro tunc*. For clarity, approval to enter into the Stalking Horse APA is only being sought at this juncture for purposes of approving it as the stalking horse bid under the Bidding Procedures and approving the Termination Fee. To the extent the Stalking Horse APA is ultimately designated as the Successful Bid (as such term is defined in the Bidding Procedures), further approval will be sought from the CCAA Court to proceed to consummate the transactions contemplated by the Stalking Horse APA.

#### The Bidding Procedures

26. Pursuant to the proposed Bidding Procedures and Stay Extension Order, the Applicants are also seeking approval of certain bidding procedures (the "**Bidding Procedures**") which will govern the solicitation of higher and better offers for the Bumble Bee Group Business in the CCAA Proceedings and the Chapter 11 Proceedings. The Monitor has been involved in developing the Bidding Procedures. A copy of the proposed Bidding Procedures is attached hereto as Exhibit "F". To the extent the Bidding Procedures are revised between the date of the swearing of this affidavit and the date on which the motion for the Bidding Procedures and Stay Extension Order is heard, the Applicants will file a supplemental affidavit with details regarding the revisions to the Bidding Procedures.
27. The Bidding Procedures set forth the process by which the Applicants and the U.S. Debtors, in consultation with certain Consultation Parties (as defined in the Bidding Procedures), intend to conduct a process for the sale of all or substantially all of the Bumble Bee Group Business (the "**Stalking Horse Sales Process**"), which may include an auction (the "**Auction**").
28. Pursuant to the Bidding Procedures, the Bumble Bee Group will consider global bids to acquire the Bumble Bee Group's Business and individual bids to acquire only the Canadian

Business or the business and assets of the U.S. Bumble Bee entities and the equity of their international affiliates (collectively, the "**U.S. Business**").

29. The Stalking Horse APA will act as the stalking horse bid (the "**Stalking Horse Bid**") in the Sales Process and shall be subject to higher or otherwise better offers received as part of the Sales Process.
30. To the extent the Bumble Bee Group receives one or more Qualified Bids (as such term is used and defined in the Bidding Procedures) the Bumble Bee Group may hold the Auction.
31. Should no Qualified Bid other than the Stalking Horse Bid be received in the Sales Process, the Auction may be cancelled and approval of the sale of the Canadian Business to the Canadian Buyer pursuant to the Stalking Horse APA will be sought from the CCAA Court.
32. Notwithstanding the coordination of the Bidding Procedures between the Applicants and the U.S. Debtors, all matters related to the Bidding Procedures as they relate to the Applicants and the Canadian Business shall remain under the sole and exclusive jurisdiction of the CCAA Court and all matters related to the Bidding Procedures as they relate to the U.S. Debtors and the U.S. Business remain under the sole and exclusive jurisdiction of the U.S. Bankruptcy Court.
33. A summary of salient terms of the Bidding Procedures are summarized below:<sup>2</sup>

Subject	Details
<b>Potential Bidders</b>	<p>To participate in the bidding process, an entity must provide the following:</p> <ul style="list-style-type: none"> <li>(a) an executed confidentiality agreement;</li> <li>(b) evidence of such entity's financial capability;</li> <li>(c) if such entity has been formed for the purpose of acquiring some or all of the Company Assets, a written commitment from such entity's equity holder(s), sponsor(s), or other financial backer(s) ("<b>Bid Sponsor</b>") to be responsible for such entity's obligations in connection with participating in the bidding process and acquiring the applicable Assets and evidence of the Bid Sponsor's financial capability to acquire the applicable Company Assets; and</li> <li>(d) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate the entity's fitness to participate</li> </ul>

<sup>2</sup> Defined terms not otherwise defined in the Bidding Procedures summary table have the meanings ascribed to them in the Bidding Procedures.

Subject	Details
	in the bidding process or ability to timely acquire the Company Assets.
<b>Bid Deadline</b>	5:00 p.m. (prevailing Eastern Time) on January 2, 2020.
<b>Qualified Bids</b>	<p>The requirements for a Bid to constitute a Qualified Bid include the following:</p> <p><b>Assets</b> - each Bid must clearly state which of the Company Assets that the Qualified Bidder is agreeing to purchase and assume.</p> <p><b>Assumption of Obligations</b> - each Bid must clearly state which liabilities and obligations that the Qualified Bidder is agreeing to assume.</p> <p><b>Purchase Price</b> - each Bid must clearly set forth the purchase price, including and identifying separately any cash and non-cash components.</p> <p><b>Minimum Bid</b> - each Whole Company Bid must have a Purchase Price that in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal to or greater than the Aggregate Acquisition Consideration, plus the Termination Fee, plus US\$1 million in cash or cash equivalents (the "<b>Whole Company Bid Threshold</b>"). With respect to Canada Only Bids and U.S. Only Bids, the Debtors, in consultation with their advisors and the Consultation Parties, may determine that a standalone Canada Only Bid or U.S. Only Bid is not a Qualified Bid unless another Qualified Bidder submitted a complementary bid that, when combined with such standalone Bid, provides monetary value in excess of the Whole Company Bid Threshold.</p> <p><b>Markup of the Stalking Horse APA</b> - each Bid must be accompanied by a duly authorized and executed Purchase Agreement and a redline of such Purchase Agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA.</p> <p><b>Deposit</b> - each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to seven and one half percent (7.5%) of the aggregate cash portion of the Purchase Price of the Bid.</p> <p><b>Employee Obligations</b> - each Bid must expressly assume the Debtors' prepetition collective bargaining agreements, defined benefit and defined contribution pension plans, and employment of employees.</p> <p><b>Transition Services Agreement</b> - each Canada Only Bid or U.S. Only Bid must be accompanied by a proposed mark-up of the form transition services agreement provided to Potential Bidders by the Debtors pursuant to which transition services would be provided by the acquired U.S. operations to the acquired Canadian operations post-closing.</p>

Subject	Details
	<p><b>Committed Financing</b> - to the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution.</p> <p><b>Contingencies</b> - a Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.</p> <p><b>Closing</b> - closing must be no later than March 31, 2020.</p>
<p><b>Auction Time and Location</b></p>	<p>The Auction, if any, shall take place at 10:00 a.m. (prevailing Eastern Time) on January 10, 2020 at the offices of Paul, Weiss, Rifkind, Wharton &amp; Garrison LLP, New York, New York.</p> <p>If held, the Auction shall be conducted in accordance with the Bidding Procedures and continue until there is one Bid (or a combination of Bids) that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid (or Bids) for the Company Assets. Such Bid(s) shall be declared the "Successful Bid" and such Qualified Bidder(s), the "Successful Bidder," at which point the Auction will be closed.</p> <p>If no Qualified Bids other than the Stalking Horse Bid are received or if the only Qualified Bid received is a U.S. Only Bid or a Canada Only Bid, then the Debtors may cancel the Auction.</p>
<p><b>Credit Bid Backup Bid</b></p>	<p>The Term Agents, on behalf of the Term Loan Lenders, may submit a Credit Bid any time after the Bid Deadline or during the Auction, unless otherwise ordered by the Court for cause; provided, however, that (i) any such Credit Bid shall only serve as a "back-up" bid to the Stalking Horse Bid, and (ii) the Term Agents must provide Qualified Bid Documents to the Debtors no later than two (2) business days after the Bid Deadline and such Credit Bid shall remain irrevocable until the closing of the sale to the Stalking Horse Bidder or any other Successful Bidder, if applicable (a "Credit Bid Backup Bid"). Other than with respect to the Qualified Bid Documents, the Credit Bid Backup Bid shall not be subject to the requirements herein for a Qualified Bid or an Auction Backup Bid. For the avoidance of doubt, the Credit Bid Backup Bidder cannot be designated as a Backup Bidder unless such party consents to such designation.</p>

34. I am advised by Matthew Kaczmarek at Houlihan that since the execution of the Stalking Horse APA and the commencement of the Insolvency Proceedings, Houlihan has been in contact or attempted to contact each party that executed a non-disclosure agreement in

connection the First Sale Process and the Second Sale Process to advise them about the Bidding Proceeding and to seek a Qualified Bid.

35. The Stalking Horse Sales Process will ensure maximum value is received for the Bumble Bee Group Business, for the benefit of all of the Applicants' stakeholders. To date, no creditor of the Applicants has objected to the relief being sought on this motion, which was previewed in the initial CCAA materials.
36. In connection with the Stalking Horse APA, the Applicants are also seeking approval of the Applicants' obligation to pay their portion of the Termination Fee to be allocated to them under the Stalking Horse APA and the approval of a Charge on the Property of the Applicants (as defined in the Second Amended and restated Initial Order) as security for the payment of the same (the "**Termination Fee Charge**").
37. Pursuant to paragraphs 49 and 50 of the proposed Second Amended and Restated Initial Order, the Termination Fee Charge will rank in priority to all Encumbrances, but subordinate to the Pre-Filing ABL Security, the Pre-Filing Term Loan Security and all of the Charges, except for the Intercompany Charge (all as defined in the proposed Second Amended and Restated Initial Order).
38. I understand that Houlihan is of the view that the percentage of the purchase price used to calculate the Termination Fee is typical for a transaction of this type and size and represents fair and adequate compensation to FCF for its efforts and commitment to date should a Better Bid be selected as the successful bid in the Sale Process. I understand that CCAA Court approval of the Applicants' portion of the Termination Fee and the Termination Fee Charge are also required under the Stalking Horse APA and that FCF is not prepared to proceed with the Stalking Horse APA if the Termination Fee and Termination Fee Charge are not approved.

#### IV. **EXTENSION OF THE STAY OF PROCEEDINGS**

39. Pursuant to the Amended and Restated Initial Order, the CCAA Court, among other things, extended the Stay Period until and including December 31, 2019, or such later date as the CCAA Court may order.

40. Pursuant to the proposed Bidding Procedures and Stay Extension Order, the Applicants are seeking an extension of the Stay Period until and including January 31, 2020.
41. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until January 31, 2020, as it will allow the Bumble Bee Group, including the Applicants, to complete the Sales Process and return to Court for approval of the Stalking Horse APA or other Successful Bid, which will ultimately preserve and maximize the value of the Applicants' business for their secured creditors and other stakeholders.
42. The Applicants, with the assistance of the Monitor, are preparing a revised cash flow forecast for the period until the week ending February 1, 2020 (the "**Cash Flow Forecast**"). The Cash Flow Forecast will be appended to the Second Report of the Monitor to be filed in connection with the Applicants' motion for the Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order.
43. As will be reflected in the Cash Flow Forecast, the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of CCAA Proceedings through the end of the extended Stay Period. The Applicants expect to return to the CCAA Court in advance of the expiry of the extended Stay Period to seek additional relief in connection with a transaction in respect of the Stalking Horse APA or other Successful Bid (as defined in the Bidding Procedures).

#### V. **SECOND AMENDED AND RESTATED INITIAL ORDER**

44. I am advised that the DIP Term Lenders and the DIP ABL Lenders (each as defined in the Second Amended and Restated Initial Order and collectively, the "**DIP Lenders**") require that the Amended and Restated Initial Order be further amended to provide that the DIP Charges rank in priority to all Encumbrances, including Encumbrances in favour of any person that was not previously provided with notice of the hearings in respect of the Initial Order and the Amended and Restated Initial Order.
45. Paragraph 52 of the Amended and Restated Initial Order provides that the beneficiaries of the Charges, including the DIP Lenders, are entitled to seek priority for their respective

Charge over any Encumbrances in favour of any person that was not previously served with notice of the hearings in respect of the Initial Order and the Amended and Restated Initial Order.

46. I am advised that the persons holding such Encumbrances will be given notice of the motion in respect of Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order.
47. I understand that the only beneficiary of an Encumbrance over which the beneficiaries of the Charges will have priority is Xerox Canada Ltd. ("**Xerox**"), who provides two photocopy/printing machines to the Applicants. I am advised that Xerox will be given adequate notice of the motion in respect of Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order.

## **VI. CONCLUSION**

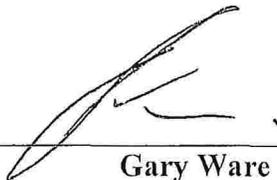
48. Since the granting of the Amended and Restated Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to complete a restructuring under the CCAA. The Applicants have also provided information to, and answered inquiries from, their various stakeholders and have contacted substantially all of their vendors and suppliers.
49. The Applicants continue to carry on their business in accordance with the CCAA and the Amended and Restated Initial Order. I do not believe that any of the Applicants' stakeholders will suffer material prejudice if the Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order are granted as requested. I also understand that the Monitor and the DIP Lenders are supportive of the relief sought in connection with the Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order.

50. I swear this affidavit in support of the Applicants' motion for the Bidding Procedures and Stay Extension Order and the Second Amended and Restated Initial Order and for no other or improper purpose.

SWORN BEFORE ME at the City of Whitby, in the Province of Ontario, on December 11, 2019.



Commissioner for Taking Affidavits



Gary Ware

Joshua Louis Foster, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires May 11, 2021.

# TAB B

This is Exhibit..... "B"..... referred to in the

affidavit of..... Aiden Nelms.....

sworn before me, this..... 19th.....

day of..... December, 2019.....

  
.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

*Michael S. Slaker*

## FORM OF BIDDING PROCEDURES

### BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF BUMBLE BEE FOODS, LLC AND CERTAIN DEBTOR SUBSIDIARIES AND AFFILIATES

On [●], 2019, the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) entered the *Order (A) Establishing Bidding Procedures for the Sale of all or Substantially all of the Debtors’ Assets, (B) Authorizing and Approving Entry into the Stalking Horse APA, (C) Approving the Designation of the Stalking Horse Bidder, (D) Approving Bid Protections, (E) Scheduling a Sale Hearing and Objection Deadlines with respect to the Sale, (F) Scheduling an Auction, (G) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (H) Approving Contract Assumption and Assignment Procedures, and (I) Granting Related Relief* [Docket No. \_\_] (the “U.S. Bidding Procedures Order”), by which the U.S. Court approved the procedures set forth herein (the “Bidding Procedures”) with respect to the U.S. Debtors<sup>1</sup> and their assets.<sup>2</sup>

On [●], 2019, the Ontario Superior Court of Justice (Commercial List) (the “CCAA Court” and together with the U.S. Court, the “Bankruptcy Courts”) granted the *CCAA Bidding Procedures Order* (the “CCAA Bidding Procedures Order” and together with the U.S. Bidding Procedures Order, the “Bidding Procedures Orders”) by which the CCAA Court approved the Bidding Procedures with respect to the Debtors’ Canadian affiliates (the “CCAA Debtors” and together with the U.S. Debtors, the “Debtors” and the Debtors, together with their non-Debtor affiliates, the “Company”) who initiated proceedings (the “CCAA Proceedings” and together with the Chapter 11 Cases, the “Bankruptcy Cases”) on November 22, 2019 (the “Canadian Filing Date”) pursuant to the Companies’ Creditors Arrangement Act (the “CCAA”) before the CCAA Court.

Notwithstanding the coordination of the Bidding Procedures, all matters related to the Bidding Procedures as they relate to the U.S. Debtors and the U.S. Assets shall remain under the sole and exclusive jurisdiction of the U.S. Court and all matters related to the Bidding Procedures as they relate to the CCAA Debtors and the Canadian Assets shall remain under the sole and exclusive jurisdiction of the CCAA Court.

#### **I. OVERVIEW**

The Company comprises two operating segments: (i) Bumble Bee’s U.S. operations owned and operated by the U.S. Debtors, and (ii) Clover Leaf’s Canadian operations, which include the international export business, owned and operated by the CCAA Debtors.

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties (as defined herein), to conduct an auction (the

---

<sup>1</sup> The “U.S. Debtors” are: Bumble Bee Parent, Inc., Bumble Bee Holdings, Inc., Bumble Bee Foods, LLC, Anova Food, LLC, and Bumble Bee Capital Corp.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the U.S. Bidding Procedures Order, CCAA Bidding Procedures Order, or the *Interim Order: (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing And (B) Utilize Cash Collateral; (II) Granting Liens And Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling Final Hearing; And (VI) Granting Related Relief* [Docket No. 77], as applicable.

“Auction”), if any, for the sale (the “Sale”) of all or substantially all of the assets of the U.S. Debtors (the “U.S. Assets”) and the CCAA Debtors (the “Canadian Assets” and collectively with the U.S. Assets and the Foreign Entity Equity (as defined below), the “Company Assets”). The Company Assets include the equity interests in the non-Debtor, non-U.S. entities that own assets primarily used by and operated for the benefit of the Anova frozen food business (the “Foreign Entity Equity”).

The Company will consider (1) bids to acquire all operating segments (a “Whole Company Bid”), or (2) separate bids to acquire (x) the U.S. operations, including the Foreign Entity Equity (a “U.S. Only Bid”), and (y) the Canadian operations (a “Canada Only Bid” and together with any Whole Company Bid(s) and/or any U.S. Only Bid, the “Bids”), to the extent that the consummation of such Transactions maximizes value for stakeholders and can be accomplished efficiently. The Company’s preferred transaction structure is for a Whole Company Bid.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

## **II. THE STALKING HORSE BID**

TONOS US LLC, TONOS 1 OPERATING CORP., and MELISSI 4 INC., (collectively, the “Stalking Horse Bidder”), affiliates of FCF Co., Ltd., a Taiwanese Company, submitted a Whole Company Bid (the “Stalking Horse Bid”) that includes a Bid for the Company Assets to set a floor for the Sale.

Having announced and received approval of the designation of the Stalking Horse Bid from the Bankruptcy Courts, the Debtors will now conduct a round of open bidding intended to obtain the highest or otherwise best bid for all or substantially all of the Company Assets, (1) through a Whole Company Bid, or (2) a combination of a U.S. Only Bid and a Canada Only Bid which, when taken together with any U.S. Only Bids, are higher or otherwise better than a Whole Company Bid, which may culminate in an Auction for the Company Assets.

## **III. KEY DATES**

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Company Assets. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until **January 20, 2020 at 5:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”).

The key dates for the sale process are as follows:<sup>3</sup>

January 20, 2020 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
--	---

<sup>3</sup> These dates are subject to extension or adjournment.

January 21, 2020 at 5:00 p.m. (prevailing Eastern Time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder
January 22, 2020 at 12:00 noon (prevailing Eastern Time)	Debtors to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both (i) the highest or otherwise best fully binding offer for all of the Company Assets and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the U.S Assets and the Canadian Assets
January 23, 2020 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any), which will be held at Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019
January 23, 2020 at 1:30 p.m. (prevailing Eastern Time)	U.S. Sale Hearing (if the Auction is cancelled), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801
January [24], 2020 at [__:__] a.m. / p.m. (prevailing Eastern Time)	Canadian Sale Hearing (if the Auction is cancelled), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, ON M5G 1R7
January 29, 2020 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability)	U.S. Sale Hearing (if the Auction takes place), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801
January [29], 2020 at [__:__] a.m. / p.m (prevailing Eastern Time)]	Canadian Sale Hearing (if the Auction takes place), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, ON M5G 1R7.

#### IV. Bidding Process

##### A. *Submissions to the Debtors.*

These Bidding Procedures set forth the terms by which prospective bidders, if any, may qualify for and participate in an Auction, thereby competing to make the highest or otherwise best offer for the Company Assets. The Debtors, in consultation with their advisors and the Consultation Parties, may consider any Whole Company Bids and any U.S. Only Bids or Canada Only Bids

(including, among other possibilities, multiple Bids submitted by the same bidder or one or more Bids submitted by a consortium acting as a single bidder). The Company's preferred transaction structure is for a Whole Company Bid. The Stalking Horse APA and Stalking Horse Bid referenced herein provide for the Stalking Horse Purchaser's acquisition of substantially all of the Company's Assets, subject to the terms and conditions of the Stalking Horse APA.

***B. Potential Bidders.***

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, an entity (other than the Stalking Horse Bidder and the Credit Bid Backup Bidder) interested in consummating a Sale must deliver or have previously delivered the following to the Debtors (any such entity, a "Potential Bidder"):

- (a) an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"), to the extent not already executed;
- (b) (x) evidence of such entity's financial capability to acquire the applicable Company Assets, the adequacy of which will be assessed by the Debtors (with the assistance of their advisors) or (y) if such entity has been formed for the purpose of acquiring some or all of the Company Assets, (I) a written commitment from such entity's equity holder(s), sponsor(s), or other financial backer(s) ("Bid Sponsor") to be responsible for such entity's obligations in connection with participating in the bidding process and acquiring the applicable Assets and (II) evidence of the Bid Sponsor's financial capability to acquire the applicable Company Assets, the adequacy of which will be assessed by the Debtors (with the assistance of their advisors); and
- (c) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate the entity's fitness to participate in the bidding process or ability to timely acquire the Company Assets.

***C. Due Diligence.***

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors. **No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors.** The Debtors will provide to each Potential Bidder that satisfies the foregoing commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors' electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Company Assets, liabilities of the U.S. Debtors or the CCAA Debtors, or the Sale to any person or entity except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent

provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide (or elect to withdraw access to) due diligence information to any Potential Bidder who, at such time and in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has not established (or there is otherwise a reasonable basis to doubt), that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right, in consultation with the Consultation Parties, to withhold any diligence materials that the Debtors determine are sensitive or otherwise not appropriate for disclosure to a Potential Bidder that the Debtors determine is (or is affiliated with) a competitor or supplier of the Debtors, or is otherwise an entity to which the disclosure of sensitive or competitive information, in the Debtors' exercise of their reasonable business judgment (in consultation with their advisors), may risk unduly placing the Debtors at a competitive disadvantage or subject them to regulatory scrutiny. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any entity that is not determined to be a Potential Bidder.

**All due diligence requests must be directed to** Houlihan Lokey Capital, Inc., 111 South Wacker Drive, 37<sup>th</sup> Floor, Chicago, Illinois 60606, Attn: Matt Kaczmarek (312) 456-4761 (MKaczmarek@HL.com) and Nathan Grow (312) 456-4755 (NGrow@HL.com).

1. Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale, or any transaction relating to the Debtors between or amongst Potential Bidders shall be conducted exclusively through the Debtors and the Debtors' advisors. **Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors, in consultation with the Consultation Parties, expressly consent in writing to such communication; provided that if such consent is given a representative of the Debtors shall be present for or party to any such communications (unless otherwise agreed by the Debtors in their sole discretion).**

The Prepetition Secured Parties and DIP Lenders have confirmed that they will make their representatives available to discuss potential financing arrangements with Potential Bidders.

2. Due Diligence of Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding qualification as a Potential Bidder or Qualified Bidder, the terms of the Potential Bidder's Bid, or the ability of the Potential Bidder to acquire the applicable Company Assets. Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, in consultation with the Consultation Parties, to determine that such bidder is no longer a Potential Bidder or that any bid made by such Potential Bidder is not a Qualified Bid (a "Non-Qualifying Bid").

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable confidentiality

agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with the Bankruptcy Cases, in each case in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable confidentiality agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of such Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular Potential Bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

The Debtors encourage all Potential Bidders interested in submitting a U.S. Only Bid or Canada Only Bid to promptly notify the Debtors and their advisors of such interest. Such Potential Bidders should submit mark-ups of the Form U.S.-Canada TSA (as defined below) or term sheets based thereon in order to allow the Debtors, in consultation with their advisors and the Consultation Parties, to assess, among other things, the feasibility of such U.S. Only Bids or Canada Only Bids standing alone, or in combination with complementary Bids or negotiations related thereto.

#### **D. *Qualified Bidders.***

1. *A "Qualified Bidder" is a Potential Bidder (i) that demonstrates the financial capability to consummate the Sale (as determined by the Debtors in consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within two (2) business days after the Bid Deadline, the Debtors' advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times. Subject to Section F of these Bidding Procedures, the Credit Bid Backup Bidder shall also be deemed a Qualified Bidder for all purposes under these Bidding Procedures. The Prepetition ABL Agent and the ABL DIP Agent shall be deemed Qualified Bidders with respect to ABL Priority Collateral.*
2. *If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Potential Bidder's Deposit and all accumulated interest thereon within five (5) business days after the Bid Deadline.*
3. *For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder that its bid is a Non-Qualifying Bid and permit such Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.*

4. *Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; provided that any Qualified Bid may be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures, and the Debtors expressly reserve the right to request additional diligence information and assurances necessary to assess and ensure continued compliance (including additional information, assurances, or commitments regarding the applicable Qualified Bidder's financial capability to consummate the transactions contemplated by such improved Qualified Bid).*

**E. Bid Requirements.**

A Bid by a Potential Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements"), as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a "Qualified Bid". The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times. Subject to Section F of these Bidding Procedures, the Credit Bid Backup Bid shall also be deemed a Qualified Bid for all purposes under these Bidding Procedures.

1. *Assets. Each Bid must clearly state which of the Company Assets that the Qualified Bidder is agreeing to purchase and assume, including whether the Bid is for the U.S. Assets, the Canadian Assets or the Company Assets.*
2. *Assumption of Obligations. Each Bid must clearly state which liabilities and obligations of the U.S. Debtors and the CCAA Debtors the Qualified Bidder is agreeing to assume.*
3. *Purchase Price. Each Bid must clearly set forth the purchase price to be paid for the Company Assets, the U.S. Assets or the Canadian Assets, as applicable, including the allocation of responsibility for the payment of any cure costs and otherwise identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and assumed liabilities (the "Purchase Price").*
4. *Minimum Bid. At a minimum, each Whole Company Bid must have a Purchase Price that in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal to or greater than the Aggregate Acquisition Consideration, plus the Break-Up Fee (in the amount of \$23,125,000) and the maximum amount of the Expense Reimbursement (in the amount of \$2,500,000), plus \$1,000,000.00 in cash or cash equivalents (the "Whole*

Company Bid Threshold”). With respect to Canada Only Bids and U.S. Only Bids, the Debtors, in consultation with their advisors and the Consultation Parties, may determine that a standalone Canada Only Bid or U.S. Only Bid is not a Qualified Bid unless another Qualified Bidder submitted a complementary bid that, when combined with such standalone Bid, provides monetary value in excess of the Whole Company Bid Threshold.

5. Markup of the Stalking Horse APA. Each Bid must be accompanied by a duly authorized and executed asset purchase agreement (“Purchase Agreement”), an electronic copy of such Purchase Agreement in Microsoft Word format, and a redline of such Purchase Agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA provided by the Debtors to Potential Bidders. Each such Purchase Agreement must provide for (i) payment in cash at closing of the Expense Reimbursement and the Break Up Fee to the Stalking Horse Purchaser, and (ii) a representation that the Qualified Bidder will:
  - (a) with respect to a sale of the U.S. Assets, make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), if applicable, and submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; provided, however, that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; or
  - (b) with respect to a sale of the Canadian Assets, make all necessary filings under the (x) Competition Act (R.S.C., 1985, c. C-34, as amended (the “Competition Act”)); and (y) Investment Canada Act, (R.S.C., 1985, c. 28 (1st Supp.)) (the “ICA”), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; provided, however, that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid.
6. Deposit. Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to seven-and-a-half percent (7.5%) of the aggregate Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “Deposit”).
7. Transition Services Agreement. Each Canada Only Bid or U.S. Only Bid must be accompanied by a proposed mark-up of the form transition services agreement provided to Potential Bidders by the Debtors (the “Form U.S.-Canada TSA”) pursuant to which transition services would be provided by the acquired U.S. operations to the acquired Canadian operations post-closing, (“U.S.-Canada TSA” and together with the Form U.S.-Canada TSA, the “TSAs”) in Microsoft Word format, and a redline of such U.S.-Canada TSA marked to reflect the amendments and modifications made to the Form U.S.-Canada TSA.

8. Qualified Bid Documents. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid and shall include a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the Purchase Agreement clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the "Qualified Bid Documents").
9. Committed Financing. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the applicable Company Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors, in consultation with the Consultation Parties.
10. Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the Debtors in their business judgment, after consultation with the Consultation Parties.
11. Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each Bid Sponsor, if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid, including any employment or compensation arrangements being negotiated or agreed to between the Qualified Bidder and any employee of the Debtors. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors be associated with any Bid (including any Overbid at the Auction). Each Bid must also include contact information for the specific persons and counsel whom Houlihan Lokey Capital, Inc., Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Bennett Jones LLP should contact regarding such Bid.

12. Adequate Assurance of Future Performance. Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale, and (ii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.
13. Time Frame for Closing. A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors after consultation with the Consultation Parties, which time frame shall include a closing by no later than March 31, 2020.
14. Binding and Irrevocable. A Qualified Bidder's Bid for the applicable Company Assets shall be irrevocable unless and until the Debtors notify such Qualified Bidder that such Bid has not been approved as a Successful Bid or a Backup Bid at the Sale Hearings.
15. Expenses; Disclaimer of Fees. Each Bid (other than the Stalking Horse Bid, and solely to the extent set forth in the Stalking Horse APA) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder, and solely to the extent set forth in the Stalking Horse APA) will be permitted to request at any time, whether as part of the Auction, if any, or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
16. Authorization. Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
17. As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Company Assets, the U.S. Assets or the Canadian Assets, as applicable, prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or such assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the applicable Company Assets or the completeness of any information provided in

connection therewith or the Auction, except those expressly stated in the Stalking Horse APA.

18. Adherence to Bid Procedures. By submitting a Bid, each Qualified Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of these Bidding Procedures and after the conclusion of the Auction, if any, agrees not to submit a Bid, or seek to reopen the Auction.
19. Government Approvals. Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;
20. Government Approvals Timeframe. Each Bid must set forth an estimated timeframe for obtaining any required, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.
21. Consent to Jurisdiction. By submitting a Bid, each Qualified Bidder agrees and shall be deemed to have agreed, to submit to the jurisdiction of the Bankruptcy Courts and waives any right to a jury trial in connection with any disputes relating to the Debtors' qualification of bids, the Auction, if any, the construction and enforcement of these Bidding Procedures, the Sale documents, and the Closing, as applicable.
22. Bid Deadline. Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **5:00 p.m. (prevailing Eastern Time) on January 20, 2020** by:
  - (a) Debtors. Bumble Bee Foods, LLC, 280 10<sup>th</sup> Avenue, San Diego, CA 92101, Attn: Jill Irvin (Jill.Irvin@bumblebee.com).
  - (b) Debtors' Counsel. Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Kelley A. Cornish (kcornish@paulweiss.com) and Alan W. Kornberg (akornberg@paulweiss.com).
  - (c) Debtors' Co-Counsel. Young Conaway Stargatt and Taylor, LLP, Rodney Square, 1000 North Kind Street, Wilmington, Delaware 19801, Attn: Pauline K. Morgan (PMorgan@ycst.com).
  - (d) CCAA Debtors' Counsel. Bennett Jones LLP, 100 King St. W Suite 3400, Toronto, ON M5X 1A4, Attn: Kevin Zych and Sean Zweig.
  - (e) CCAA Monitor. Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, Royal Bank South Tower, Toronto ON M5J 2J1, Attn. Josh Nevsky.

- (f) **Debtors' Financial Advisors.** Houlihan Lokey Capital, Inc., 111 South Wacker Drive, 37<sup>th</sup> Floor, Chicago, Illinois 60606, Attn: Matt Kaczmarek (MKaczmarek@HL.com) and Nathan Grow (NGrow@HL.com), and AlixPartners, 909 Third Avenue, 30th Floor, New York, New York 10022, Attn: David Orlofsky (dorlofsky@alixpartners.com).
- (g) **Counsel for the Committee.** Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York, 10020, Attn: Eric Chafetz, Esq. (echafetz@lowenstein.com) and Andrew Behlmann, Esq. (abehlmann@lowenstein.com).

**F. *Right to Credit Bid and Credit Bid Backup Bid***

At the Auction, if any, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "Secured Creditor") shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Creditor's claims (a "Credit Bid"), to the extent permitted under section 363(k) of the Bankruptcy Code, as it relates to the U.S. Debtors, and applicable Canadian law, as it relates to the CCAA Debtors; *provided*, however, that any Secured Creditor, other than the Prepetition Term Loan Agent, Term Loan DIP Agent, Prepetition ABL Agent, or the ABL DIP Agent, that intends to participate in the Auction with a Bid that includes a Credit Bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) calendar days prior to the Bid Deadline that it intends to submit a Credit Bid, and (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Creditor's potential Credit Bid.

The Term Agents, on behalf of the Term Loan Lenders, may submit a Credit Bid any time after the Bid Deadline or during the Auction, unless otherwise ordered by the Court for cause; *provided, however*, that (i) any such Credit Bid shall only serve as a "back-up" bid to the Stalking Horse Bid, and (ii) the Term Agents must provide Qualified Bid Documents to the Debtors and the Committee no later than one (1) business day after the Bid Deadline and such Credit Bid shall remain irrevocable until the closing of the sale to the Stalking Horse Bidder or any other Successful Bidder, if applicable (a "Credit Bid Backup Bid"). Other than with respect to the Qualified Bid Documents, the Credit Bid Backup Bid shall not be subject to the requirements herein for a Qualified Bid or an Auction Backup Bid. For the avoidance of doubt, the Credit Bid Backup Bidder cannot be designated as a Backup Bidder unless such party consents to such designation.

**G. *Allocation of Value.***

At any time, depending on the number and nature of the Bids submitted at the Auction, the Debtors, in consultation with their advisors and the Consultation Parties, may require that Qualified Bidders submitting Whole Company Bids allocate the values of such Bid attributable to (i) the Canadian Assets and (ii) the U.S. Assets plus the Foreign Entity Equity, respectively, for purposes of these Bidding Procedures only.

**H. *Consultation Parties.***

The term "Consultation Parties" shall mean: (a) the Monitor (with respect to the Canadian Assets); (b) the Committee (with respect to the U.S. Assets); (c) counsel and financial advisors to the Term

Agents; and (d) counsel and financial advisors to the ABL Agents. In the event that a Consultation Party submits a Bid (other than the Credit Bid Backup Bidders' submission of a Credit Bid Backup Bid), such party shall no longer be a Consultation Party until such time as such party withdraws from bidding on the Company Assets subject to such Bid; *provided, however*, that counsel and financial advisors to the Term Agents and/or ABL Agents shall remain Consultation Parties notwithstanding that the Term Agents and/or ABL Agents (i) are deemed Qualified Bidders or (ii) may submit or have submitted a Credit Bid Backup Bid. In addition, counsel to the Prepetition Secured Parties shall have consultation rights with respect to any antitrust approval process related to the Sale.

## *I. Auction.*

### 1. Qualified U.S./Canada Joint Bids.

If one or more U.S. Only Bid(s) and one or more Canada Only Bid(s) that constitute Qualified Bids are received but none of the U.S. Only Bid(s) or Canada Only Bid(s) on their own are better or higher than the Stalking Horse Bid, then the Debtors, in consultation with their advisors and the Consultation Parties, may (a) elect to conduct a sub-auction, (b) oversee and facilitate a series of negotiations among such Qualified Bidders, or (c) otherwise pursue any process that the Debtors, in consultation with their advisors and the Consultation Parties, believe will result in a value-maximizing joint Bid for the Company Assets (the "Qualified U.S./Canada Joint Bid," and such Qualified Bidders, the "Qualified U.S./Canada Joint Bidders").

The Debtors, in consultation with their advisors and the Consultation Parties and in the exercise of their reasonable business judgment may allow such Qualified U.S./Canada Joint Bid to participate in an Auction against Whole Company Bids provided that such Qualified U.S./Canada Joint Bid constitutes a higher or otherwise better Bid than the Stalking Horse Bid. After any designation of a Qualified U.S./Canada Joint Bid, (i) the Qualified U.S./Canada Joint Bidders shall supplement their respective Deposits as necessary and use reasonable best efforts to arrange revised Qualified Bid Documents reflecting their joint pursuit of the Qualified U.S./Canada Joint Bid, including with respect to the TSAs, and (ii) the Debtors may, in consultation with their advisors and the Consultation Parties, declare that any or all of the other U.S. Only Bids and Canada Only Bids shall no longer constitute Qualified Bids.

### 2. Cancellation of Auction.

If no Qualified Bids other than the Stalking Horse Bid are received in accordance with these Bidding Procedures, or if the only Qualified Bid received is a U.S. Only Bid or a Canada Only Bid, then the Debtors may decide, in the Debtors' reasonable business judgment in consultation with the Consultation Parties, to cancel the Auction and designate the Stalking Horse Bid as the Successful Bid and the Credit Bid Backup Bid as the Backup Bid and pursue entry of the orders approving a Sale of the Company Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

If the Auction is cancelled, the Debtors shall promptly file a notice of cancellation of the Auction and designation of the Stalking Horse Bid as the Successful Bid and the designation of the Credit

Bid Backup Bid as a Backup Bid, if applicable, including a copy of the applicable Qualified Bid Documents for the Credit Bid Backup Bid.

3. Bid Assessment Criteria.

The Debtors shall evaluate all Qualified Bids (including any Qualified U.S./Canada Joint Bid) and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid for the Company Assets (the "Baseline Bid"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder at or prior to the Auction. When determining the highest or otherwise best Qualified Bid(s) and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties, consider the following factors in addition to any other factors that the Debtors deem appropriate:

- (a) the number, type, and nature of any changes to the Stalking Horse APA, if any, requested by the Qualified Bidder, including the type and amount of assets sought and obligations to be assumed in the Qualified Bid;
- (b) the amount and nature of the total consideration;
- (c) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof;
- (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents;
- (e) the tax consequences of such Qualified Bid;
- (f) the impact on employees, including the number of employees proposed to be transferred and whether the bid includes an assumption of the Debtors' prepetition collective bargaining agreements, defined benefit and defined contribution pension plans;
- (g) the assumption of liabilities, including obligations under contracts and leases;
- (h) the cure amounts to be paid; and
- (i) the terms and conditions of a transition services agreement (collectively, items (a) through (i) hereof, the "Bid Assessment Criteria").

4. Auction Time and Location.

The Auction, if any, shall take place at **10:00 a.m. (prevailing Eastern Time) on January 23, 2020** at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York 10019, or such later date and time as selected by the Debtors after consultation with the Consultation Parties. The Auction, if any, shall be conducted in a timely fashion according to the procedures set forth herein.

5. The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the material terms of the Baseline Bid for the Company Assets on the record. The Debtors shall maintain a written transcript of the Auction and all Bids made and announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only (A) Qualified Bidders (including the Stalking Horse Bidder) and their legal and financial advisors, (B) the Consultation Parties and their legal and financial advisors, and (C) actual creditors of the Debtors (provided that they give at least two (2) business days' notice to the Debtors' counsel of their intention to attend the Auction), shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders (including the Qualified U.S./Canada Joint Bidders, if any) shall be entitled to bid at the Auction, if any.

The Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including determining whether to adjourn the Auction to facilitate separate discussions between any Qualified Bidders, the Debtors, and/or the Consultation Parties, as applicable.

6. Terms of Overbids.

"Overbid" means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors' announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

- (a) **Minimum Overbid Increment.** The Overbid(s) for the Company Assets shall provide for total consideration with a value that exceeds the value of the consideration under the Baseline Bid(s) by an incremental amount that is not less than \$500,000.00 (as applicable, the "Minimum Overbid Increment"), and successive Overbids shall be higher than the Prevailing Highest Bid (as defined below) by at least the Minimum Overbid Increment.

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid or Prevailing Highest Bid may include: (a) cash; (b) assumption of liability, which shall be ascribed a value by the Debtors, in consultation with the Consultation Parties, in determining whether the Minimum Overbid Increment has been met; and (c) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of such Secured Creditor's allowed secured claim pursuant to section 363(k) of the Bankruptcy Code and/or applicable Canadian law; *provided, however*, subject to the terms of any DIP financing orders, that nothing herein shall impact any parties' rights with respect to challenges to the liens or claims of a Secured Creditor.

- (b) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (c) **Overbid Alterations.** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid so long as, after giving effect to the same, the terms of the Overbid are no less favorable to the Debtors’ estates than any prior Bid or Overbid of such Qualified Bidder, as determined in the Debtors’ reasonable business judgment after consultation with the Consultation Parties, and shall otherwise comply with the terms of these Bidding Procedures.
- (d) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors, shall announce whether the Debtors have identified in the applicable Overbid round, an Overbid (or combination of Overbids) as being higher or otherwise better than, in the Overbid round, the Baseline Bid plus the Minimum Overbid Increment, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

7. Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

8. Closing the Auction.

- (a) The Auction, if any, shall continue until there is one Bid (or a combination of Bids) for the Company Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid (or Bids) for the Company Assets. Such Bid(s) shall be declared the “Successful Bid” and such Qualified Bidder(s), the “Successful Bidder,” at which point the Auction will be closed. The Auction, if any, shall not close unless and until all

Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Courts of the Successful Bid.

- (b) The Successful Bidder shall, within one business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors after consulting with the Consultation Parties.
- (c) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (d) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (including, for the avoidance of doubt, a Credit Bid Backup Bid), to be filed with the Bankruptcy Courts.
- (e) To the extent that any Qualified Bid is modified before, during, or after the Auction, the Debtors reserve the right to require that such Qualified Bidder adjust its deposit so that it equals ten percent (10%) of the aggregate cash portion of the Purchase Price.

9. *No Collusion; Good-Faith Bona Fide Offer.*

Each Qualified Bidder participating in the Auction will be required to confirm on the record at the Auction, that (a) it has not engaged in any collusion with respect to the bidding and the Auction, (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Backup Bidder, and (c) the Qualified Bidder (other than the Credit Bid Backup Bidder) agrees to serve as the Backup Bidder if its Qualified Bid is the next highest or otherwise best bid after the Successful Bid.

**J. Backup Bidder.**

- 1. *Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Company Assets, the Qualified Bidder with the next-highest or otherwise second-best Bid at the Auction for the applicable Company Asset(s), as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the "Auction Backup Bid"), shall be required to serve as a backup bidder (the "Auction Backup Bidder") for such Company Assets, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.*

2. *The identity of the Auction Backup Bidder and the amount and material terms of the Auction Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Auction Backup Bidder shall be required to keep its Bid (or if the Auction Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Auction Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.*
3. *The Auction Backup Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Backup Bid. The Backup Bid may not be assigned to any party without the consent of the Debtors after consulting with the Consultation Parties.*
4. *For purposes of these Bidding Procedures, "Backup Bid" and "Backup Bidder" shall mean (i) if an Auction is held, the applicable Auction Backup Bid and Auction Backup Bidder, and (ii) if no Auction is held and a Credit Bid Backup Bid is timely submitted, the Credit Bid Backup Bid and the Credit Bid Backup Bidder.*

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Courts.

**K. *Reservation of Rights.***

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the sale of the Company Assets, including: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction, including at the Auction and/or adjourning the Sale Hearing, including in open court, without further notice; (c) modifying the Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids; *provided, however*, that the Debtors may not modify the rules, procedures, or deadlines, or adopt new rules, procedures, or deadlines that would impair in any material respect the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement unless (x) agreed in writing by the Stalking Horse Bidder and the Debtors (in consultation with the Consultation Parties) or (y) ordered by the Bankruptcy Courts.

**L. Approval of Sale Transactions.** If an Auction is held, Hearings to consider approval of the Sale of the Company Assets to the Successful Bidder, and the approval of Backup Bid are currently scheduled to take place: (i) at **10:00 a.m. (prevailing Eastern Time) on January 29, 2020** before the Honorable Laurie Selber Silverstein, at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware (the “U.S. Sale Hearing”);<sup>4</sup> and (ii) on or before [ ] (**prevailing Eastern Time) on [January 29, 2020]** at the Ontario Superior Court of Justice (Commercial List) (the “Canadian Sale Hearing” and together with the U.S. Sale Hearing, the “Sale Hearings”). The U.S. Sale Hearing and Canadian Sale Hearing may be held jointly.

**The Sale Hearings may be adjourned or continued to a later date by the Debtors, after consultation with the Consultation Parties, by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such adjournment or continuance will be required to be provided to any party (including the Stalking Horse Bidder).**

At the Sale Hearings, the Debtors, in consultation with their advisors and the Consultation Parties, shall present the Successful Bid and any Backup Bid, to the Bankruptcy Courts for approval. The Sale Order submitted at the Sale Hearings shall provide that: (i) if the Successful Bid is not consummated, the Debtors may file a notice with the Court designating the applicable Backup Bidder(s) as the applicable Successful Bidder(s), and such Backup Bidder(s) shall be deemed the Successful Bidder(s) for all purposes; and (ii) the Debtors will be authorized, but not required, to consummate all transactions contemplated by the applicable Backup Bid, once so designated as the Successful Bid, without further order of the Bankruptcy Courts or notice to any party.

**M. Return of Deposits.**

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors’ estates absent further order of the Bankruptcy Courts; *provided, however*, that the Deposit of any Successful Bidder (including any Backup Bidder that becomes a Successful Bidder) may be forfeited to the Debtors or credited toward the Purchase Price set forth in the Successful Bid, in either case as set forth in these Bidding Procedures. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder (or Backup Bidder, as applicable) timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a sale transaction because of a breach or failure to perform on the part of the Successful Bidder (or Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors as partial compensation for the damages caused to the Debtors and their

---

<sup>4</sup> If no Auction is held, the U.S. Sale Hearing will take place on January 23, 2019 at 1:30 p.m. (prevailing Eastern Time), and the Canadian Sale Hearing will take place on January [24], at [10:00 a.m.] (prevailing Eastern Time).

estates as a result of such breach or failure to perform without prejudice to any claims, rights, or remedies of the Debtors or their estates for additional damages.

*M. Fiduciary Out.*

*Nothing in these Bidding Procedures shall restrain the board of directors, board of managers, or such similar governing body of any of the Debtors or their affiliates from taking any action, or refraining from taking any action to the extent that such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law; provided however, that the Debtors shall provide the Consultation Parties with notice of such action or inaction as soon as practicable.*

# TAB C

This is Exhibit..... "C"..... referred to in the

affidavit of..... Aiden Nelms.....

sworn before me, this..... 19th.....

day of..... December, 2019.....



A COMMISSIONER FOR TAKING AFFIDAVITS



## FORM OF BIDDING PROCEDURES

### BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF BUMBLE BEE FOODS, LLC AND CERTAIN DEBTOR SUBSIDIARIES AND AFFILIATES

On [●], 2019, the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) entered the *Order (A) Establishing Bidding Procedures for the Sale of all or Substantially all of the Debtors’ Assets, (B) Authorizing and Approving Entry into the Stalking Horse APA, (C) Approving the Designation of the Stalking Horse Bidder, (D) Approving Bid Protections, (E) Scheduling a Sale Hearing and Objection Deadlines with respect to the Sale, (F) Scheduling an Auction, (G) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (H) Approving Contract Assumption and Assignment Procedures, and (I) Granting Related Relief* [Docket No. \_\_\_] (the “U.S. Bidding Procedures Order”), by which the U.S. Court approved the procedures set forth herein (the “Bidding Procedures”) with respect to the U.S. Debtors<sup>1</sup> and their assets.<sup>2</sup>

On [●], 2019, the Ontario Superior Court of Justice (Commercial List) (the “CCAA Court” and together with the U.S. Court, the “Bankruptcy Courts”) granted the *CCAA Bidding Procedures Order* (the “CCAA Bidding Procedures Order” and together with the U.S. Bidding Procedures Order, the “Bidding Procedures Orders”) by which the CCAA Court approved the Bidding Procedures with respect to the Debtors’ Canadian affiliates (the “CCAA Debtors” and together with the U.S. Debtors, the “Debtors” and the Debtors, together with their non-Debtor affiliates, the “Company”) who initiated proceedings (the “CCAA Proceedings” and together with the Chapter 11 Cases, the “Bankruptcy Cases”) on November [●]22, 2019 (the “Canadian Filing Date”) pursuant to the Companies’ Creditors Arrangement Act (the “CCAA”) before the CCAA Court.

Notwithstanding the coordination of the Bidding Procedures, all matters related to the Bidding Procedures as they relate to the U.S. Debtors and the U.S. Assets shall remain under the sole and exclusive jurisdiction of the U.S. Court and all matters related to the Bidding Procedures as they relate to the CCAA Debtors and the Canadian Assets shall remain under the sole and exclusive jurisdiction of the CCAA Court.

#### **I. OVERVIEW**

The Company comprises two operating segments: (i) Bumble Bee’s U.S. operations owned and operated by the U.S. Debtors, and (ii) Clover Leaf’s Canadian operations, which include the international export business, owned and operated by the CCAA Debtors.

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties (as defined herein), to conduct an auction (the

<sup>1</sup> The “U.S. Debtors” are: Bumble Bee Parent, Inc., Bumble Bee Holdings, Inc., Bumble Bee Foods, LLC, Anova Food, LLC, and Bumble Bee Capital Corp.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the U.S. Bidding Procedures Order, CCAA Bidding Procedures Order, or the *Interim Order: (I) Authorizing Debtors to (A) Obtain Postpetition Secured Financing And (B) Utilize Cash Collateral; (II) Granting Liens And Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying Automatic Stay; (V) Scheduling Final Hearing; And (VI) Granting Related Relief* [ECF Docket No. ●77], as applicable.

“Auction”), if any, for the sale (the “Sale”) of all or substantially all of the assets of the U.S. Debtors (the “U.S. Assets”) and the CCAA Debtors (the “Canadian Assets” and collectively with the U.S. Assets and the Foreign Entity Equity (as defined below), the “Company Assets”). The Company Assets include the equity interests in the non-Debtor, non-U.S. entities that own assets primarily used by and operated for the benefit of the Anova frozen food business (the “Foreign Entity Equity”).

The Company will consider (1) bids to acquire all operating segments (a “Whole Company Bid”), or (2) separate bids to acquire (x) the U.S. operations, including the Foreign Entity Equity (a “U.S. Only Bid”), and (y) the Canadian operations (a “Canada Only Bid” and together with any Whole Company Bid(s) and/or any U.S. Only Bid, the “Bids”), to the extent that the consummation of such Transactions maximizes value for stakeholders and can be accomplished efficiently. The Company’s preferred transaction structure is for a Whole Company Bid.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

## **II. THE STALKING HORSE BID**

TONOS US LLC, TONOS 1 OPERATING CORP., and MELISSI 4 INC., (collectively, the “Stalking Horse Bidder”), affiliates of FCF Co., Ltd., a Taiwanese Company, submitted a Whole Company Bid (the “Stalking Horse Bid”) that includes a Bid for the Company Assets to set a floor for the Sale.

Having announced and received approval of the designation of the Stalking Horse Bid from the Bankruptcy Courts, the Debtors will now conduct a round of open bidding intended to obtain the highest or otherwise best bid for all or substantially all of the Company Assets, (1) through a Whole Company Bid, or (2) a combination of a U.S. Only Bid and a Canada Only Bid which, when taken together with any U.S. Only Bids, are higher or otherwise better than a Whole Company Bid, which may culminate in an Auction for the Company Assets.

## **III. KEY DATES**

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Company Assets. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until **January 220, 2020 at 5:00 p.m. (prevailing Eastern Time)** (the “Bid Deadline”).

The key dates for the sale process are as follows:<sup>3</sup>

January 220, 2020 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
---	---

<sup>3</sup> These dates are subject to extension or adjournment.

January <del>6</del> <u>21</u> , 2020 at 5:00 p.m. (prevailing Eastern Time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder
January <del>9</del> <u>22</u> , 2020 at 5:00 <del>p.m.</del> <u>12:00 noon</u> (prevailing Eastern Time)	Debtors to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both (i) the highest or otherwise best fully binding offer for all of the Company Assets and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the U.S Assets and the Canadian Assets
January <del>10</del> <u>23</u> , 2020 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any), which will be held at Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019
<u>January 23, 2020 at 1:30 p.m. (prevailing Eastern Time)</u>	<u>U.S. Sale Hearing (if the Auction is cancelled), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801</u>
<u>January [24], 2020 at [ ]: [ ] a.m. / p.m. (prevailing Eastern Time)</u>	<u>Canadian Sale Hearing (if the Auction is cancelled), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, ON M5G 1R7</u>
January <del>17</del> <u>29</u> , 2020 at [ ]:00 [ ] <u>10:00</u> a.m. (prevailing Eastern Time) (pending the Court's availability)	U.S. Sale Hearing <u>(if the Auction takes place)</u> , which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801
January <del>17</del> <u>[29]</u> , 2020 at [ ]:00 [ ] <u>a.m./p.m</u> (prevailing Eastern Time)]	Canadian Sale Hearing <u>(if the Auction takes place)</u> , which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, ON M5G 1R7.

#### IV. Bidding Process

##### A. *Submissions to the Debtors.*

These Bidding Procedures set forth the terms by which prospective bidders, if any, may qualify for and participate in an Auction, thereby competing to make the highest or otherwise best offer for the Company Assets. The Debtors, in consultation with their advisors and the Consultation

Parties, may consider any Whole Company Bids and any U.S. Only Bids or Canada Only Bids (including, among other possibilities, multiple Bids submitted by the same bidder or one or more Bids submitted by a consortium acting as a single bidder). The Company's preferred transaction structure is for a Whole Company Bid. The Stalking Horse APA and Stalking Horse Bid referenced herein provide for the Stalking Horse Purchaser's acquisition of substantially all of the Company's Assets, subject to the terms and conditions of the Stalking Horse APA.

**B. *Potential Bidders.***

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, an entity (other than the Stalking Horse Bidder and the Credit Bid Backup Bidder) interested in consummating a Sale must deliver or have previously delivered the following to the Debtors (any such entity, a "Potential Bidder"):

- (a) an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"), to the extent not already executed;
- (b) (x) evidence of such entity's financial capability to acquire the applicable Company Assets, the adequacy of which will be assessed by the Debtors (with the assistance of their advisors) or (y) if such entity has been formed for the purpose of acquiring some or all of the Company Assets, (I) a written commitment from such entity's equity holder(s), sponsor(s), or other financial backer(s) ("Bid Sponsor") to be responsible for such entity's obligations in connection with participating in the bidding process and acquiring the applicable Assets and (II) evidence of the Bid Sponsor's financial capability to acquire the applicable Company Assets, the adequacy of which will be assessed by the Debtors (with the assistance of their advisors); and
- (c) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate the entity's fitness to participate in the bidding process or ability to timely acquire the Company Assets.

**C. *Due Diligence.***

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors. **No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors.** The Debtors will provide to each Potential Bidder that satisfies the foregoing commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors' electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Company Assets, liabilities of the U.S. Debtors or the CCAA Debtors, or the Sale to any person or entity except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide (or elect to withdraw access to) due diligence information to any Potential Bidder who, at such time and in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has not established (or there is otherwise a reasonable basis to doubt), that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right, in consultation with the Consultation Parties, to withhold any diligence materials that the Debtors determine are sensitive or otherwise not appropriate for disclosure to a Potential Bidder that the Debtors determine is (or is affiliated with) a competitor or supplier of the Debtors, or is otherwise an entity to which the disclosure of sensitive or competitive information, in the Debtors' exercise of their reasonable business judgment (in consultation with their advisors), may risk unduly placing the Debtors at a competitive disadvantage or subject them to regulatory scrutiny. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any entity that is not determined to be a Potential Bidder.

**All due diligence requests must be directed to** Houlihan Lokey Capital, Inc., 111 South Wacker Drive, 37<sup>th</sup> Floor, Chicago, Illinois 60606, Attn: Matt Kaczmarek (312) 456-4761 (MKaczmarek@HL.com) and Nathan Grow (312) 456-4755 (NGrow@HL.com).

1. *Communications with Potential Bidders.*

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale, or any transaction relating to the Debtors between or amongst Potential Bidders shall be conducted exclusively through the Debtors and the Debtors' advisors. **Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors, in consultation with the Consultation Parties, expressly consent in writing to such communication; *provided that* if such consent is given a representative of the Debtors shall be present for or party to any such communications (unless otherwise agreed by the Debtors in their sole discretion).**

The Prepetition Secured Parties and DIP Lenders have confirmed that they will make their representatives available to discuss potential financing arrangements with Potential Bidders.

2. *Due Diligence of Potential Bidders.*

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding qualification as a Potential Bidder or Qualified Bidder, the terms of the Potential Bidder's Bid, or the ability of the Potential Bidder to acquire the applicable Company Assets. Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, in consultation with the Consultation Parties, to determine that such

bidder is no longer a Potential Bidder or that any bid made by such Potential Bidder is not a Qualified Bid (a “Non-Qualifying Bid”).

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with the Bankruptcy Cases, in each case in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable confidentiality agreement, the Debtors and the Debtors’ advisors may disclose confidential information: (i) with the prior written consent of such Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular Potential Bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

The Debtors encourage all Potential Bidders interested in submitting a U.S. Only Bid or Canada Only Bid to promptly notify the Debtors and their advisors of such interest. Such Potential Bidders should submit mark-ups of the Form U.S.-Canada TSA (as defined below) or term sheets based thereon in order to allow the Debtors, in consultation with their advisors and the Consultation Parties, to assess, among other things, the feasibility of such U.S. Only Bids or Canada Only Bids standing alone, or in combination with complementary Bids or negotiations related thereto.

#### **D. *Qualified Bidders.***

1. *A “Qualified Bidder” is a Potential Bidder (i) that demonstrates the financial capability to consummate the Sale (as determined by the Debtors in consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within two (2) business days after the Bid Deadline, the Debtors’ advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times. Subject to Section F of these Bidding Procedures, the Credit Bid Backup Bidder shall also be deemed a Qualified Bidder for all purposes under these Bidding Procedures. The Prepetition ABL Agent and the ABL DIP Agent shall be deemed Qualified Bidders with respect to ABL Priority Collateral.*
2. *If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such*

*Potential Bidder's Deposit and all accumulated interest thereon within five (5) business days after the Bid Deadline.*

3. *For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder that its bid is a Non-Qualifying Bid and permit such Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.*
4. *Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; provided that any Qualified Bid may be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures, and the Debtors expressly reserve the right to request additional diligence information and assurances necessary to assess and ensure continued compliance (including additional information, assurances, or commitments regarding the applicable Qualified Bidder's financial capability to consummate the transactions contemplated by such improved Qualified Bid).*

#### **E. Bid Requirements.**

A Bid by a Potential Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements"), as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a "Qualified Bid". The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times. Subject to Section F of these Bidding Procedures, the Credit Bid Backup Bid shall also be deemed a Qualified Bid for all purposes under these Bidding Procedures.

1. Assets. *Each Bid must clearly state which of the Company Assets that the Qualified Bidder is agreeing to purchase and assume, including whether the Bid is for the U.S. Assets, the Canadian Assets or the Company Assets.*
2. Assumption of Obligations. *Each Bid must clearly state which liabilities and obligations of the U.S. Debtors and the CCAA Debtors the Qualified Bidder is agreeing to assume.*
3. Purchase Price. *Each Bid must clearly set forth the purchase price to be paid for the Company Assets, the U.S. Assets or the Canadian Assets, as applicable, including the allocation of responsibility for the payment of any cure costs and otherwise identifying separately any cash and non-cash components, which*

non-cash components shall be limited only to credit-bids and assumed liabilities (the "Purchase Price").

4. Minimum Bid. At a minimum, each Whole Company Bid must have a Purchase Price that in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal to or greater than the Aggregate Acquisition Consideration, plus the **Break-Up Fee (in the amount of \$23,125,000) and the maximum amount of the Expense Reimbursement and the Break-Up Fee** (each as defined ~~(in the Stalking Horse APA~~**amount of \$2,500,000**), plus \$1,000,000.00 in cash or cash equivalents (the "Whole Company Bid Threshold"). With respect to Canada Only Bids and U.S. Only Bids, the Debtors, in consultation with their advisors **and the Consultation Parties**, may determine that a standalone Canada Only Bid or U.S. Only Bid is not a Qualified Bid unless another Qualified Bidder submitted a complementary bid that, when combined with such standalone Bid, provides monetary value in excess of the Whole Company Bid Threshold.
5. Markup of the Stalking Horse APA. Each Bid must be accompanied by a duly authorized and executed asset purchase agreement ("Purchase Agreement"), an electronic copy of such Purchase Agreement in Microsoft Word format, and a redline of such Purchase Agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA provided by the Debtors to Potential Bidders. Each such Purchase Agreement must provide for (i) payment in cash at closing of the Expense Reimbursement and the Break Up Fee to the Stalking Horse Purchaser, and (ii) a representation that the Qualified Bidder will:
  - (a) with respect to a sale of the U.S. Assets, make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), if applicable, and submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; provided, however, that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; or
  - (b) with respect to a sale of the Canadian Assets, make all necessary filings under the (x) Competition Act (R.S.C., 1985, c. C-34, as amended (the "Competition Act")); and (y) Investment Canada Act, (R.S.C., 1985, c. 28 (1st Supp.)) (the "ICA"), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; provided, however, that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid.
6. Deposit. Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to seven-and-a-half percent (7.5%) of the

aggregate Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the "Deposit").

- ~~7. Employee Obligations. Each Bid must expressly assume the Debtors' prepetition collective bargaining agreements, defined benefit and defined contribution pension plans, and employment of employees (collectively, the "Employee Obligations").~~
- ~~7.~~ 8. Transition Services Agreement. Each Canada Only Bid or U.S. Only Bid must be accompanied by a proposed mark-up of the form transition services agreement provided to Potential Bidders by the Debtors (the "Form U.S.-Canada TSA") pursuant to which transition services would be provided by the acquired U.S. operations to the acquired Canadian operations post-closing, ("U.S.-Canada TSA" and together with the Form U.S.-Canada TSA, the "TSAs") in Microsoft Word format, and a redline of such U.S.-Canada TSA marked to reflect the amendments and modifications made to the Form U.S.-Canada TSA.
- ~~8.~~ 9. Qualified Bid Documents. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid and shall include a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the Purchase Agreement clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the "Qualified Bid Documents").
- ~~9.~~ 10. Committed Financing. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder's capacity to consummate the sale set forth in its Bid with cash on hand, each Bid must include unconditional committed financing from a reputable financing institution, documented to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder's Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the applicable Company Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors, in consultation with the Consultation Parties.
- ~~10.~~ 11. Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the

*Debtors in their business judgment, after consultation with the Consultation Parties.*

11. ~~12.~~ Identity. *Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each Bid Sponsor, if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid, including any employment or compensation arrangements being negotiated or agreed to between the Qualified Bidder and any employee of the Debtors. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors be associated with any Bid (including any Overbid at the Auction). Each Bid must also include contact information for the specific persons and counsel whom Houlihan Lokey Capital, Inc., Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Bennett Jones LLP should contact regarding such Bid.*
12. ~~13.~~ Adequate Assurance of Future Performance. *Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale, (ii) ~~provide for the payment of all cure costs related to such executory contracts and unexpired leases by the Qualified Bidder and~~ (iii) and (ii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.*
13. ~~14.~~ Time Frame for Closing. *A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors after consultation with the Consultation Parties, which time frame shall include a closing by no later than March 31, 2020.*
14. ~~15.~~ Binding and Irrevocable. *A Qualified Bidder's Bid for the applicable Company Assets shall be irrevocable unless and until the Debtors notify such Qualified Bidder that such Bid has not been approved as a Successful Bid or a Backup Bid at the Sale Hearings.*
15. ~~16.~~ Expenses; Disclaimer of Fees. *Each Bid (other than the Stalking Horse Bid, and solely to the extent set forth in the Stalking Horse APA) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder, and solely to the extent set forth in the Stalking Horse APA) will be permitted to request at any*

time, whether as part of the Auction, if any, or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

16. ~~17.~~ Authorization. Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
17. ~~18.~~ As-Is, Where-Is. Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Company Assets, the U.S. Assets or the Canadian Assets, as applicable, prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or such assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the applicable Company Assets or the completeness of any information provided in connection therewith or the Auction, except those expressly stated in the Stalking Horse APA.
18. ~~19.~~ Adherence to Bid Procedures. By submitting a Bid, each Qualified Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of these Bidding Procedures and after the conclusion of the Auction, if any, agrees not to submit a Bid, or seek to reopen the Auction.
19. ~~20.~~ Government Approvals. Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;
20. ~~21.~~ Government Approvals Timeframe. Each Bid must set forth an estimated timeframe for obtaining any required—~~internal~~, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.
21. ~~22.~~ Consent to Jurisdiction. By submitting a Bid, each Qualified Bidder agrees and shall be deemed to have agreed, to submit to the jurisdiction of the Bankruptcy Courts and waives any right to a jury trial in connection with any disputes relating to the Debtors' qualification of bids, the Auction, if any, the

construction and enforcement of these Bidding Procedures, the Sale documents, and the Closing, as applicable.

**22.** ~~23.~~ **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before 5:00 p.m. (prevailing Eastern Time) on January ~~21~~, 2020 by:

- (a) **Debtors.** Bumble Bee Foods, LLC, 280 10<sup>th</sup> Avenue, San Diego, CA 92101, Attn: Jill Irvin (Jill.Irvin@bumblebee.com).
- (b) **Debtors' Counsel.** Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Kelley A. Cornish (kcornish@paulweiss.com) and Alan W. Kornberg (akornberg@paulweiss.com).
- (c) **Debtors' Co-Counsel.** Young Conaway Stargatt and Taylor, LLP, Rodney Square, 1000 North Kind Street, Wilmington, Delaware 19801, Attn: Pauline K. Morgan (PMorgan@ycst.com).
- (d) **CCAA Debtors' Counsel.** Bennett Jones LLP, 100 King St. W Suite 3400, Toronto, ON M5X 1A4, Attn: Kevin Zych and Sean Zweig.
- (e) **CCAA Monitor.** Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, Royal Bank South Tower, Toronto ON M5J 2J1, Attn. Josh Nevsky.
- (f) **Debtors' Financial Advisors.** Houlihan Lokey Capital, Inc., 111 South Wacker Drive, 37<sup>th</sup> Floor, Chicago, Illinois 60606, Attn: Matt Kaczmarek (MKaczmarek@HL.com) and Nathan Grow (NGrow@HL.com), and AlixPartners, 909 Third Avenue, 30th Floor, New York, New York 10022, Attn: David Orlofsky (dorlofsky@alixpartners.com).
- (g) **Counsel for the Committee. Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York, 10020, Attn: Eric Chafetz, Esq. (echafetz@lowenstein.com) and Andrew Behlmann, Esq. (abehlmann@lowenstein.com).**

#### **F. Right to Credit Bid and Credit Bid Backup Bid**

At the Auction, if any, any Qualified Bidder who has a valid and perfected lien on any assets of the Debtors' estates (a "Secured Creditor") shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Creditor's claims (a "Credit Bid"), to the extent permitted under section 363(k) of the Bankruptcy Code, as it relates to the U.S. Debtors, and applicable Canadian law, as it relates to the CCAA Debtors; *provided*, however, that any Secured Creditor, other than the Prepetition Term Loan Agent, Term Loan DIP Agent, Prepetition ABL Agent, or the ABL DIP Agent, that intends to participate in the Auction with a Bid that includes a Credit Bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) calendar days prior to the Bid Deadline that it intends to submit a Credit

Bid, and (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Creditor's potential Credit Bid.

The Term Agents, on behalf of the Term Loan Lenders, may submit a Credit Bid any time after the Bid Deadline or during the Auction, unless otherwise ordered by the Court for cause; *provided, however*, that (i) any such Credit Bid shall only serve as a "back-up" bid to the Stalking Horse Bid, and (ii) the Term Agents must provide Qualified Bid Documents to the Debtors and the Committee no later than ~~two~~one (21) business days after the Bid Deadline and such Credit Bid shall remain irrevocable until the closing of the sale to the Stalking Horse Bidder or any other Successful Bidder, if applicable (a "Credit Bid Backup Bid"). Other than with respect to the Qualified Bid Documents, the Credit Bid Backup Bid shall not be subject to the requirements herein for a Qualified Bid or an Auction Backup Bid. For the avoidance of doubt, the Credit Bid Backup Bidder cannot be designated as a Backup Bidder unless such party consents to such designation.

#### **G. Allocation of Value.**

At any time, depending on the number and nature of the Bids submitted at the Auction, the Debtors, in consultation with their advisors and the Consultation Parties, may require that Qualified Bidders submitting Whole Company Bids allocate the values of such Bid attributable to (i) the Canadian Assets and (ii) the U.S. Assets plus the Foreign Entity Equity, respectively, for purposes of these Bidding Procedures only.

#### **H. Consultation Parties.**

The term "Consultation Parties" shall mean: (a) the Monitor (with respect to the Canadian Assets); (b) the ~~official committee appointed by the Office of the United States Trustee pursuant to section 1102 of the Bankruptcy Code (the "Committee")~~ (with respect to the U.S. Assets); (c) counsel and financial advisors to the ~~Prepetition Term Loan Agent and the DIP Term Loan Agent (the "Term Agents")~~; and (d) counsel and financial advisors to the ~~Prepetition ABL Agent and ABL DIP Agent (the "ABL Agents")~~. In the event that a Consultation Party submits a Bid (other than the Credit Bid Backup Bidders' submission of a Credit Bid Backup Bid), such party shall no longer be a Consultation Party until such time as such party withdraws from bidding on the Company Assets subject to such Bid; *provided, however*, that counsel and financial advisors to the Term Agents and/or ABL Agents shall remain Consultation Parties notwithstanding that the Term Agents and/or ABL Agents (i) are deemed Qualified Bidders or (ii) may submit or have submitted a Credit Bid Backup Bid. In addition, counsel to the Prepetition Secured Parties shall have consultation rights with respect to any antitrust approval process related to the Sale.

#### **I. Auction.**

##### **1. Qualified U.S./Canada Joint Bids.**

If one or more U.S. Only Bid(s) and one or more Canada Only Bid(s) that constitute Qualified Bids are received but none of the U.S. Only Bid(s) or Canada Only Bid(s) on their own are better or higher than the Stalking Horse Bid, then the Debtors, in consultation with their advisors and the Consultation Parties, may (a) elect to conduct a sub-auction, (b) oversee and facilitate a series

of negotiations among such Qualified Bidders, or (c) otherwise pursue any process that the Debtors, in consultation with their advisors and the Consultation Parties, believe will result in a value-maximizing joint Bid for the Company Assets (the "Qualified U.S./Canada Joint Bid," and such Qualified Bidders, the "Qualified U.S./Canada Joint Bidders").

The Debtors, in consultation with their advisors and the Consultation Parties and in the exercise of their reasonable business judgment may allow such Qualified U.S./Canada Joint Bid to participate in an Auction against Whole Company Bids provided that such Qualified U.S./Canada Joint Bid constitutes a higher or otherwise better Bid than the Stalking Horse Bid. After any designation of a Qualified U.S./Canada Joint Bid, (i) the Qualified U.S./Canada Joint Bidders shall supplement their respective Deposits as necessary and use reasonable best efforts to arrange revised Qualified Bid Documents reflecting their joint pursuit of the Qualified U.S./Canada Joint Bid, including with respect to the TSAs, and (ii) the Debtors may, in consultation with their advisors and the Consultation Parties, declare that any or all of the other U.S. Only Bids and Canada Only Bids shall no longer constitute Qualified Bids.

## 2. Cancellation of Auction.

If no Qualified Bids other than the Stalking Horse Bid are received in accordance with these Bidding Procedures, or if the only Qualified Bid received is a U.S. Only Bid or a Canada Only Bid, then the Debtors ~~may cancel the Auction,~~ and may decide, in the Debtors' reasonable business judgment in consultation with the Consultation Parties, to cancel the Auction and designate the Stalking Horse Bid as the Successful Bid and the Credit Bid Backup Bid as the Backup Bid and pursue entry of the orders approving a Sale of the Company Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

If the Auction is cancelled, the Debtors shall promptly file a notice of cancellation of the Auction and designation of the Stalking Horse Bid as the Successful Bid and the designation of the Credit Bid Backup Bid as a Backup Bid, if applicable, including a copy of the applicable Qualified Bid Documents for the Credit Bid Backup Bid.

## 3. Bid Assessment Criteria.

The Debtors shall evaluate all Qualified Bids (including any Qualified U.S./Canada Joint Bid) and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid for the Company Assets (the "Baseline Bid"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder at or prior to the Auction. When determining the highest or otherwise best Qualified Bid(s) and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties, consider the following factors in addition to any other factors that the Debtors deem appropriate:

- (a) the number, type, and nature of any changes to the Stalking Horse APA, if any, requested by the Qualified Bidder, including the type and amount of assets sought and obligations to be assumed in the Qualified Bid;
- (b) the amount and nature of the total consideration;

- (c) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof;
- (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents;
- (e) the tax consequences of such Qualified Bid;
- (f) the impact on employees, including the number of employees proposed to be transferred and **whether the Employee Obligations bid includes an assumption of the Debtors' prepetition collective bargaining agreements, defined benefit and defined contribution pension plans;**
- (g) the assumption of liabilities, including obligations under contracts and leases;
- (h) the cure amounts to be paid; and
- (i) the terms and conditions of a transition services agreement (collectively, items (a) through (i) hereof, the "Bid Assessment Criteria").

4. Auction Time and Location.

The Auction, if any, shall take place at **10:00 a.m. (prevailing Eastern Time) on January 10~~23~~, 2020** at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York 10019, or such later date and time as selected by the Debtors after consultation with the Consultation Parties. The Auction, if any, shall be conducted in a timely fashion according to the procedures set forth herein.

5. The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the material terms of the Baseline Bid for the Company Assets on the record. The Debtors shall maintain a written transcript of the Auction and all Bids made and announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only (A) Qualified Bidders (including the Stalking Horse Bidder) and their legal and financial advisors and, (B) the Consultation Parties and their legal and financial advisors, and (C) actual creditors of the Debtors (provided that they give at least two (2) business days' notice to the Debtors' counsel of their intention to attend the Auction), shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders (including the Qualified U.S./Canada Joint Bidders, if any) shall be entitled to bid at the Auction, if any.

The Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including

determining whether to adjourn the Auction to facilitate separate discussions between any Qualified Bidders, the Debtors, and/or the Consultation Parties, as applicable.

6. Terms of Overbids.

“Overbid” means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

- (a) **Minimum Overbid Increment.** The Overbid(s) for the Company Assets shall provide for total consideration with a value that exceeds the value of the consideration under the Baseline Bid(s) by an incremental amount that is not less than \$500,000.00 (as applicable, the “Minimum Overbid Increment”), and successive Overbids shall be higher than the Prevailing Highest Bid (as defined below) by at least the Minimum Overbid Increment.

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid or Prevailing Highest Bid may include: (a) cash; (b) assumption of liability, which shall be ascribed a value by the Debtors, in consultation with the Consultation Parties, in determining whether the Minimum Overbid Increment has been met; and (c) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of such Secured Creditor’s allowed secured claim pursuant to section 363(k) of the Bankruptcy Code and/or applicable Canadian law; *provided, however*, subject to the terms of any DIP financing orders, that nothing herein shall impact any parties’ rights with respect to challenges to the liens or claims of a Secured Creditor.

- (b) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (c) **Overbid Alterations.** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid so long as, after giving effect to the same, the terms of the Overbid are no less favorable to the Debtors’ estates than any prior Bid or Overbid of such Qualified Bidder, as determined in the Debtors’ reasonable business judgment after consultation with the Consultation Parties, and shall otherwise comply with the terms of these Bidding Procedures.
- (d) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors, shall announce whether the Debtors have identified in the

applicable Overbid round, an Overbid (or combination of Overbids) as being higher or otherwise better than, in the Overbid round, the Baseline Bid plus the Minimum Overbid Increment, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the "Prevailing Highest Bid"). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

7. Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

8. Closing the Auction.

- (a) The Auction, if any, shall continue until there is one Bid (or a combination of Bids) for the Company Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid (or Bids) for the Company Assets. Such Bid(s) shall be declared the "Successful Bid" and such Qualified Bidder(s), the "Successful Bidder," at which point the Auction will be closed. The Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Courts of the Successful Bid.
- (b) The Successful Bidder shall, within one business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors after consulting with the Consultation Parties.
- (c) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

- (d) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (including, for the avoidance of doubt, a Credit Bid Backup Bid), to be filed with the Bankruptcy Courts.
- (e) To the extent that any Qualified Bid is modified before, during, or after the Auction, the Debtors reserve the right to require that such Qualified Bidder adjust its deposit so that it equals ten percent (10%) of the aggregate cash portion of the Purchase Price.

9. No Collusion; Good-Faith Bona Fide Offer.

Each Qualified Bidder participating in the Auction will be required to confirm on the record at the Auction, that (a) it has not engaged in any collusion with respect to the bidding and the Auction, (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Backup Bidder, and (c) the Qualified Bidder (other than the Credit Bid Backup Bidder) agrees to serve as the Backup Bidder if its Qualified Bid is the next highest or otherwise best bid after the Successful Bid.

**J. Backup Bidder.**

1. *Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Company Assets, the Qualified Bidder with the next-highest or otherwise second-best Bid at the Auction for the applicable Company Asset(s), as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the "Auction Backup Bid"), shall be required to serve as a backup bidder (the "Auction Backup Bidder") for such Company Assets, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.*
2. *The identity of the Auction Backup Bidder and the amount and material terms of the Auction Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Auction Backup Bidder shall be required to keep its Bid (or if the Auction Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Auction Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.*
3. *The Auction Backup Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Backup Bid. The Backup Bid may not be assigned*

to any party without the consent of the Debtors after consulting with the Consultation Parties.

4. For purposes of these Bidding Procedures, "Backup Bid" and "Backup Bidder" shall mean (i) if an Auction is held, the applicable Auction Backup Bid and Auction Backup Bidder, and (ii) if no Auction is held **and** a Credit Bid Backup Bid is timely submitted, the Credit Bid Backup Bid and the Credit Bid Backup Bidder.

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Courts.

#### **K. Reservation of Rights.**

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the sale of the Company Assets, including: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction, including at the Auction and/or adjourning the Sale Hearing, including in open court, without further notice; (c) modifying the Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids; *provided, however*, that the Debtors may not modify the rules, procedures, or deadlines, or adopt new rules, procedures, or deadlines that would impair in any material respect the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement unless (x) agreed in writing by the Stalking Horse Bidder and the Debtors (in consultation with the Consultation Parties) or (y) ordered by the Bankruptcy Courts.

- L. **Approval of Sale Transactions. If an Auction is held.** Hearings to consider approval of the Sale of the Company Assets to the Successful Bidder, and the approval of Backup Bid are currently scheduled to take place: (i) ~~on or before [ ] at 10:00 a.m. (prevailing Eastern Time) on January 1729, 2020~~ before the Honorable Laurie Selber Silverstein, at the Bankruptcy Court, 824 Market Street, Wilmington, Delaware (the "U.S. Sale Hearing");<sup>4</sup> and (ii) on or before [ ] (prevailing Eastern Time) on ~~[ ] January 1729, 2020~~ at the Ontario Superior Court of Justice (Commercial List) (the "Canadian Sale Hearing") and together with the U.S. Sale Hearing, the "Sale Hearings"). The U.S. Sale Hearing and Canadian Sale Hearing may be held jointly.

The Sale Hearings may be adjourned or continued to a later date by the Debtors, after consultation with the Consultation Parties, by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such adjournment or continuance will be required to be provided to any party (including the Stalking Horse Bidder).

<sup>4</sup> If no Auction is held, the U.S. Sale Hearing will take place on January 23, 2019 at 1:30 p.m. (prevailing Eastern Time), and the Canadian Sale Hearing will take place on January [24], at [10:00 a.m.] (prevailing Eastern Time).

At the Sale Hearings, the Debtors, in consultation with their advisors and the Consultation Parties, shall present the Successful Bid and any Backup Bid, to the Bankruptcy Courts for approval. The Sale Order submitted at the Sale Hearings shall provide that: (i) if the Successful Bid is not consummated, the Debtors may file a notice with the Court designating the applicable Backup Bidder(s) as the applicable Successful Bidder(s), and such Backup Bidder(s) shall be deemed the Successful Bidder(s) for all purposes; and (ii) the Debtors will be authorized, but not required, to consummate all transactions contemplated by the applicable Backup Bid, once so designated as the Successful Bid, without further order of the Bankruptcy Courts or notice to any party.

**M. *Return of Deposits.***

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Courts; *provided, however*, that the Deposit of any Successful Bidder (including any Backup Bidder that becomes a Successful Bidder) may be forfeited to the Debtors or credited toward the Purchase Price set forth in the Successful Bid, in either case as set forth in these Bidding Procedures. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder (or Backup Bidder, as applicable) timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a sale transaction because of a breach or failure to perform on the part of the Successful Bidder (or Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors as partial compensation for the damages caused to the Debtors and their estates as a result of such breach or failure to perform without prejudice to any claims, rights, or remedies of the Debtors or their estates for additional damages.

**M. *Fiduciary Out.***

*Nothing in these Bidding Procedures shall restrain the board of directors, board of managers, or such similar governing body of any of the Debtors or their affiliates from taking any action, or refraining from taking any action to the extent that such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law; provided however, that the Debtors shall provide the Consultation Parties with notice of such action or inaction as soon as practicable.*

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 CLOVER LEAF HOLDINGS COMPANY, CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY, K.C.R. FISHERIES LTD., 6162410 CANADA LIMITED, CONNORS BROS. HOLDINGS COMPANY AND CONNORS BROS. SEAFOODS COMPANY

Court File No. CV-19-631523-00CL

---

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

Proceedings commenced in Toronto

---

**AFFIDAVIT OF AIDEN NELMS**

---

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Kevin Zych (LSO 33129T)  
Sean Zweig (LSO 57307I)  
Mike Shakra (LSO 64604K)

Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicants