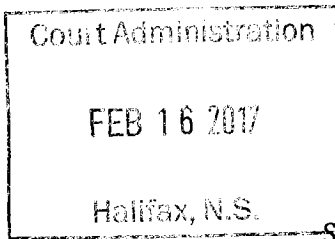


2016



Hfx. No. 454744

Supreme Court of Nova Scotia

Application by Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited (the "Applicants") for relief under the Companies' Creditors Arrangement Act



**Stalking Horse and Bidding Procedures Order**  
JUSTICE GLEN G. MCDUGALL

**AND UPON MOTION OF** Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited (the "Applicants") for an order approving the Stalking Horse Asset Purchase Agreement and related sales process;

**AND UPON READING** the affidavit of Jonathan Mullen sworn February 9, 2017, the Sixth Report of Deloitte Restructuring Inc., in its capacity as Monitor (the "Monitor"), dated February 10, 2017 ("the Sixth Report") and the exhibits thereto, filed, and on hearing the submissions of counsel for the Applicants, the Monitor, and those for the secured creditors as appeared:

**IT IS ORDERED THAT:**

**Service**

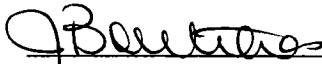
1. The time for service of the Notice of Motion, the Sixth Report and the other materials filed herein is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

**Stalking Horse Process**

2. The Applicants are hereby authorized and directed, *nunc pro tunc*, to enter into an agreement to sell all or substantially all of their assets, property and undertakings (the "Purchased Assets") to North American Fur Auctions Inc. (the "Stalking Horse Bidder"), substantially in the form of the agreement attached as Appendix "B" to the Sixth Report (the "Stalking Horse Asset Purchase Agreement"), and such agreement, subject to the terms of this Order, is hereby approved and accepted for the purpose of conducting the Stalking Horse Process (defined below) in accordance with the Bidding Procedures (defined below).

3. The bidding procedures described in the Sixth Report and attached hereto as Schedule "A" (the "Bidding Procedures") and the sale process and auction described therein (collectively, the "Stalking Horse Process") be and are hereby approved and the Monitor is hereby authorized and directed to conduct the Stalking Horse Process.
4. In connection with the Stalking Horse Process and pursuant to section 7(3)(c) of the *Personal Information Protection and Documents Act* (Canada), the Applicants and/or the Monitor may disclose personal information of identifiable individuals to prospective bidders for the Purchased Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Applicants and/or the Monitor or in the alternative shall destroy all such information and certify such destruction to the Applicants and/or the Monitor.
5. With respect to paragraph 8.8 of the Sixth Report of the Monitor filed February 10, 2017, the advertisements proposed shall each run once weekly for five consecutive weeks.
6. With respect to paragraph 8.10 of the Sixth Report of the Monitor filed February 10, 2017, the auction of the Purchased Assets shall take place, if necessary, on March 31, 2017, as provided for in paragraph 17 of the Bidding Procedures.

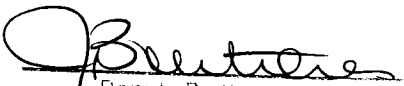
Issued February 16, 2017

  
Deputy Prothonotary

JESSICA BOUTILIER  
Deputy Prothonotary

IN THE SUPREME COURT  
COUNTY OF HALIFAX, N.S.  
I hereby certify that the foregoing document,  
identified by the seal of the court, is a true  
copy of the original document on the file herein.

FEB 16 2017

  
Deputy Prothonotary

JESSICA BOUTILIER  
Deputy Prothonotary

## **Schedule A — Bidding Procedures**

### **Bidding Procedures**

1. Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the sale (the "Sale") of the assets, property and undertakings (the "Purchased Assets") of Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited (the "Applicants") by the Applicants.
2. On February 16, 2017, the Court issued an order (the "Bidding Procedures Order") approving and accepting for the purpose of conducting the Stalking Horse Process in accordance with these Bidding Procedures that certain asset purchase agreement dated February 10, 2017 (the "Stalking Horse Asset Purchase Agreement" or "Stalking Horse Bid") between the Applicants and North American Fur Auctions Limited, or its assignee (the "Stalking Horse Bidder"), and approving these Bidding Procedures.
3. All amounts specified herein are in Canadian dollars.
4. Within five (5) business days following the Auction (defined below), the Applicants shall bring a motion (the "Sale Approval Motion") seeking the granting of an order by the Court authorizing and approving the Sale of the Purchased Assets to the Successful Bidder(s) (such order, as approved, the "Approval and Vesting Order").

### **Assets to Be Sold**

5. The Applicants, in consultation with Deloitte Restructuring Inc., (the "Monitor") in its capacity as the Court-appointed Monitor of the Applicants, are offering for sale all of the Applicants' right, title and interest in and to all of the Purchased Assets and encourages bids for all of the Purchased Assets, in whole.

### **Permitted Encumbrances**

6. The mortgages of real property made by the Applicants in favour of Nova Scotia Farm Loan Board and Farm Credit Canada shall be Permitted Encumbrances, and the sale herein contemplated shall be subject to said mortgages of real property.

## **The Bidding Process**

7. The Applicants, in consultation with the Monitor, shall (i) determine whether any person is a Qualified Bidder, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase the Purchased Assets (collectively, the "Bidding Process"). The Monitor, in consultation with the Applicants and the secured creditors, shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process, provided, however, that such other rules are not inconsistent with any of (i) the provisions of the Stalking Horse Asset Purchase Agreement (including the deadlines therein), (ii) the Bid Deposit Requirement (as defined below), and (iii) the bid protections granted to the Stalking Horse Bidder herein.

## **Participation Requirements**

8. A "Qualified Bidder" is a potential bidder that the Monitor, in consultation with the Applicants and the secured creditors, determines is likely (based on financial information submitted by the bidder, the availability of financing, experience and other considerations deemed relevant by the Monitor) to be able to consummate a sale if selected as the Successful Bidder (as defined below). Notwithstanding the foregoing, the Stalking Horse Bidder shall be deemed a Qualified Bidder.

## **Due Diligence**

9. Any Person that wishes to participate in the Bidding Process must (i) execute a confidentiality agreement in form and substance acceptable to the Monitor and (ii) be a Qualified Bidder. The Monitor shall not be obligated to furnish information of any kind whatsoever to any Person that the Monitor determines not to be a Qualified Bidder. The Monitor will afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence subject to the time frames contemplated by these Bidding Procedures. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders.

## **Bid Deadline**

10. A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Materials (defined below) to each of (i) the Monitor, Deloitte Restructuring Inc. Inc., 1969 Upper Water Street, Suite 1500, Halifax, NS, Canada B3J 3R7, Attention: James Foran; and (ii) counsel to the Monitor, McInnes Cooper, 1969 Upper Water Street, Suite 1300, Purdy's Wharf Tower II Halifax, NS, B3J 2V1, Attention: Ben R. Durnford, not later than 12:00 p.m. (Nova Scotia time) on March 24, 2017 (the "Bid Deadline"). In the event that a bid is determined to be a Qualified Bid, the Monitor shall deliver a written copy of any such Qualified Bid and the Required Bid Materials to the Stalking Horse Bidder's counsel, Burchell MacDougall LLP, 710 Prince St, PO Box 1128, Truro NS, B2N 5H1, Attention: Brian W. Stilwell, and to the Applicants' counsel, BoyneClarke LLP, 99 Wyse Road, Suite 600, Dartmouth, NS, B2Y 3Z5, Attention: Tim Hill, Q.C.

## **Bid Requirements**

11. All bids must include (unless such requirement is waived by the Monitor, with the concurrence of the Applicants and the secured creditors) (the "Required Bid Materials"):

- (i) A cash purchase price equal to or greater than \$4,000,000, (the "Minimum Bid Amount");
- (ii) An acknowledgement that the sale is subject to the Permitted Encumbrances;
- (iii) A letter stating that the bidder's offer is irrevocable until the first business day after the Purchased Assets have been sold pursuant to the closing of the sale or sales thereof approved by the Court;
- (iv) An executed copy of a proposed purchase agreement and a blackline of the Qualified Bidder's proposed purchase agreement reflecting variations from the Stalking Horse Asset Purchase Agreement (the "Marked Agreement"). All Qualified Bids must provide: (a) a commitment to close within five (5) business days after satisfaction of all conditions and a covenant to use commercial best efforts to satisfy all conditions; and (b) the identity of and contact information for the bidder and full disclosure of any affiliates and any debt or equity financing sources involved in such bid;

- (v) A cash deposit in the amount of \$400,000 in the form of a wire transfer, certified cheque or such other form acceptable to the Monitor (the "Bid Deposit"), which shall be placed in an escrow account (the "Escrow Account"). The Escrow Account shall not be subject to any Liens whatsoever of the Applicants' creditors or otherwise, and funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder at the Auction, its Bid Deposit will be applied to the purchase price payable by it under its bid on the closing thereof, and (ii) if the Qualified Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be returned to it (subject to the other provisions of these Bidding Procedures and the terms of its asset purchase agreement with the Monitor);
- (vi) A representation of the bidder and written evidence that the bidder has a commitment for financing or other evidence of the proposed purchaser's ability to consummate the proposed transaction, including executed copies of any financing agreements, commitments, guarantees of the payment obligations of the proposed purchaser, and which the Monitor, in consultation with the Applicants and the secured creditors, believes to be sufficient to satisfy the bidder's obligations under its proposed bid, including to consummate the transaction contemplated by the proposed agreement submitted by it as provided above;
- (vii) A representation of the bidder and written evidence that the bidder has entered into an agreement with Nova Scotia Farm Loan Board and Farm Credit Canada to assume the debt secured by the mortgages of real property which form part of the Permitted Encumbrances, should the bidder be the successful bidder;
- (viii) The bid shall identify with particularity those executory contracts and unexpired leases of the Applicants with respect to which the bidder seeks to receive an assignment;
- (ix) The bid shall not request or entitle the bidder to any transaction or break up fee, expense reimbursement, termination or similar type of fee or payment and shall include an acknowledgement and representation of the bidder that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise,

regarding the Purchased Assets, title to same, the financial performance of the Purchased Assets, the fitness for use of or the physical condition of the Purchased Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Stalking Horse Asset Purchase Agreement;

- (x) The bid shall not contain any due diligence, financing or regulatory contingencies of any kind other than those contained in the Stalking Horse Asset Purchase Agreement, though the bid may be subject to the satisfaction of other specific conditions in all material respects at the Closing Date (defined below);
  - (xi) The bid shall fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation;
  - (xii) The bid shall state that the offering party consents to the jurisdiction of the Court;
  - (xiii) The bid shall include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted purchase agreement of the bidder;
  - (xiv) The bid shall state that the offering party has not acted and will not act in collusion with any other undisclosed party or entity in connection with its bid; and
  - (xv) The bid shall identify with particularity any liabilities being assumed.
12. A bid received from a Qualified Bidder that includes all of the Required Bid Materials and is received by the Bid Deadline is a "Qualified Bid." The Monitor, in consultation with the Applicants and the secured creditors, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the "Lead Bid"). Forthwith after the Bid Deadline, the Monitor, in consultation with the Applicants and the secured creditors, shall determine which Qualified Bid shall be the Lead Bid for the purposes of the Auction. A copy of the Lead Bid will be provided to all Qualified Bidders prior to the Auction Date.
13. Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid.

## **Credit Bidding**

14. None of the bidders shall be permitted to credit bid any indebtedness owed to them by the Applicants in connection with the making of a Qualified Bid or in the conduct of the Auction. If any of the secured creditors or any affiliate thereof (other than the Stalking Horse Bidder) wishes to participate in the Auction, they must qualify as a Qualified Bidder in accordance with these Bidding Procedures and will forfeit any right of consultation with the Monitor provided for herein.

## **"As Is, Where Is, with All Faults"**

15. The sale of the Purchased Assets shall be on an "as is", "where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Monitor or the Applicants or their respective agents, representatives or estates, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Applicants. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Purchased Assets, title to the Purchased Assets, the financial performance of the Purchased Assets or the physical condition or location of the Purchased Assets or their fitness for use, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Applicants.

## **Free of Any and All Liens**

16. Except as otherwise provided in the Stalking Horse Asset Purchase Agreement or another Successful Bidder's purchase agreement, and subject to mortgages of real property in favour of Nova Scotia Farm Loan Board and Farm Credit Canada and any other security, charges or other restrictions ("Permitted Encumbrances") which may be defined in the Approval and Vesting Order, all of the Applicants' right, title and interest in and to the



Purchased Assets subject thereto shall, pursuant to the provisions of section 36 of the Companies' Creditors Arrangement Act, be sold free and clear of any and all security, charge or other restriction, other than Permitted Encumbrances as provided for in the Approval and Vesting Order.

### **The Auction and Auction Procedures**

17. If a Qualified Bid (other than that submitted by the Stalking Horse Bidder) or Qualified Bids which, in either case, in the aggregate provide for cash consideration of not less than the Minimum Bid Amount, have been received by the Monitor on or before the Bid Deadline, the Monitor shall conduct an auction (the "Auction") with respect to all of the Purchased Assets, with the Lead Bid as the starting bid for the Auction. The Auction shall be conducted at the offices of Deloitte Restructuring Inc. Inc., 1969 Upper Water Street, Suite 1500, Halifax, NS, Canada B3J 3R7 (the "Auction Site") at 11:00 a.m. (Nova Scotia time) on March 31, 2017 (the "Auction Date"), or such other place and time as the Monitor shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. Prior to moving the Auction Date, the Monitor shall consult with the Stalking Horse Bidder and the Applicants and the secured creditors.
18. Except as otherwise provided herein, based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Monitor determines is relevant, the Monitor, in consultation with the Applicants and the secured creditors, may conduct the Auction in any manner that it determines will achieve the maximum value for the Purchased Assets, provided that all Qualified Bidders that have timely submitted a Qualified Bid shall be entitled to be present during each round of bidding, the identity of each such Qualified Bidder shall be disclosed to all other Qualified Bidders, and all material terms of each Qualified Bid and each subsequent bid made by each such Qualified Bidder shall be disclosed to all other Qualified Bidders. The Monitor, in consultation with the Applicants and the secured creditors also may set opening bid amounts in each round of bidding as the Monitor determines to be appropriate.
19. If Qualified Bidders submit Qualified Bids, then the Monitor, in consultation with the Applicants and the secured creditors, shall (i) promptly following the Bid Deadline, review each Qualified Bid on the basis of the financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale as contemplated in the Stalking Horse and Bidding Procedures

Order and the Bidding Procedures, and (ii) as soon as practicable after the conclusion of the Auction, identify the best offer for the Purchased Assets (to the extent any such bid is acceptable to the Monitor, in consultation with the Applicants and the secured creditors, a "Successful Bid" and the bidder or bidders making such bid, the "Successful Bidder"). At the hearing on the Sale Approval Motion, the Monitor will present the Successful Bid to the Court for approval. The Monitor reserves all rights not to submit any bid which is not acceptable to the Monitor for approval by the Court. The Monitor acknowledges that the Stalking Horse Bid is a Qualified Bid and shall be submitted to the Court for approval in the event that there is no other Successful Bid. Except as otherwise provided herein or as restricted by the Stalking Horse Asset Purchase Agreement, the Monitor upon consultation with the Applicants, may adopt rules for bidding at the Auction that, in its business judgment, will better promote the goals of the bidding process or any order of the Court entered in connection herewith.

20. If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline or the Auction Date, then the Monitor shall cancel the Auction (in which case, the Successful Bid shall be the Stalking Horse Bid, and the Successful Bidder shall be the Stalking Horse Bidder).

#### **Overbid Amount; Minimum Bid Increment**

21. There shall be an overbid amount that a Qualified Bidder must bid to exceed the Stalking Horse Bid ("Overbid Amount"), and that amount shall be at least \$100,000 for all bids made by Qualified Bidders. At the Auction, all subsequent bids shall not be less than \$50,000 in excess of the preceding bid, unless modified by the Monitor.

#### **Acceptance of Qualified Bids**

22. The sale of the Purchased Assets to any Successful Bidder by the Applicants is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Sale Approval Motion. The Applicants' presentation of any Qualified Bid to the Court for approval does not obligate the Applicants to close the transaction contemplated by such Qualified Bid until the Court approves the bid. The Applicants will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Sale Approval Motion.

## **Sale Approval Motion Hearing**

23. The Sale Approval Motion shall be made on or before April 14, 2017. The Applicants, in consultation with the Monitor, in the exercise of its business judgment, in consultation with the Applicants and the secured creditors, reserves their rights to the extent consistent with the Stalking Horse Asset Purchase Agreement, to change the date of the hearing of the Sale Approval Motion in order to achieve the maximum value for the Assets.
24. At the hearing of the Sale Approval Motion, the Applicants shall seek approval from the Court to consummate the Successful Bid, and at the Monitor's election, to consummate the next best Qualified Bid (the "Back-Up Bid", and the party submitting the Back-Up Bid, the "Back-Up Bidder") should the Successful Bid not be closed in accordance with its terms for any reason.
25. If the Successful Bidder fails to consummate an approved Sale within five (5) business days after satisfaction of all conditions thereof ("the Closing Date"), the Applicants, in consultation with the Monitor, may, but shall not be required, to consummate the Back-Up Bid without the requirement of any further approval thereof by the Court. The Back-Up Bid shall remain open until the first business day following the consummation of the sale of the Purchased Assets to the Successful Bidder.

## **Modifications**

26. The Monitor, after consultation with the Applicants and the secured creditors, may (a) determine which Qualified Bid, if any, is the best offer; and (b) reject at any time before the issuance and entry of an Approval and Vesting Order approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Monitor, the Applicants' estate or their creditors. Notwithstanding the foregoing, the provisions of this paragraph shall not operate or be construed to permit the Monitor to - accept any Qualified Bid that (i) does not require a bid deposit of at least \$400,000 be placed in a protected, segregated account, which shall serve as protection and security for the Stalking Horse Bidder as outlined herein, (ii) does not equal or exceed the Overbid Amount, or (iii) impose any terms and conditions upon the Stalking Horse Bidder that are contradictory to or in breach of the terms of the Stalking Horse Asset Purchase Agreement

other than any such terms and conditions set forth in these Bidding Procedures or the Bidding Procedures Order.

### **Miscellaneous**

27. The Auction and these Bidding Procedures are for the benefit of the Applicants and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. The bid protections incorporated in these Bidding Procedures are for the benefit of the Stalking Horse Bidder.
28. The Monitor shall not have any liability whatsoever to any person or party, including without limitation the Applicants, the Stalking Horse Bidder, any other bidder or any creditor or other stakeholder, for any act or omission related to the process contemplated by these Bidding Procedures.
29. Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order.